

**UNIVERSITY OF ZIMBABWE**



**AN ASSESSMENT OF CHILD JUVENILE  
DETAINEES' ACCESS TO LEGAL AID IN  
TANZANIA**

**BY CHARLOTTE KANGERE KABUNGA**

**APRIL 2016**

**SUPERVISOR: DR. ROSALIE KATSANDE**

## DECLARATION

I Charlotte Kangere Kabunga declare that the work presented in this research write up is my own research and has not been submitted anywhere else or any other university.

SIGNED.....

Date.....this.....day of.....2016

## **Dedication**

This work is dedicated to my beloved husband Shaban Kabunga for his kindness, love and support and to my sons Japher, Tariq, Malik and Kamal whom i continue to counsel.

## **Acknowledgments**

There a number of people to whom i owe my gratitude for helping me in undertaking and completing my Masters in Women's Law Degree course but i cannot thank them all but i am grateful for their input.

I am also indebted to the Norwegian Agency for International Development (NORAD) for granting me the necessary financial support throughout the course.

I am profoundly grateful to Dr.Rosalie Katsande for her supervision throughout my research. I have greatly benefited from her comments, and guidance throughout the research.

I would like to thank the entire SEARCWL staff for their support during my studies (Professor Julie Stewart, Cecil, Sesedzai, Blessing Rudo, Johnson, and Primrose). I am grateful for your support given in one way or another.

I also thank Mr Ramadhan Yaya, Officer in Charge of the Upanga Retention Home for allowing me to conduct my research at the Juvenile Retention Home and for providing me with all the necessary support and contacts that i needed.

I also give special thanks to my husband Shaban Kabunga for holding the forte while i was away and taking care of our 4 boys during my stay in Zimbabwe and for the tireless help with translations during my field work.

Finally, I would like to acknowledge with special thanks to my colleagues and friends on the course who offered me assistance and support in one way or another at various stages of my academic work.

## **Abstract**

This study centres on the access to legal aid for child juvenile detainees in Tanzania mainland. The study aims at looking at access to legal aid by child juvenile detainees living in the retention home. Further it aims at understanding the juvenile justice system and to develop strategies for ensuring the the justice system is strengthened by protecting the rights of children who come into conflict with the law.

In this study, an investigation was made at the Upanga Retention Home as a starting point where children were interviewed to find out the lived experiences in accessing justice especially free legal aid.

The study also stresses that a child juvenile detainee has rights enshrined in various national and international instruments and they deserve to get free legal aid services. These rights should be realised with the help of various stakeholders.

It is therefore hoped that the recommendations that have been laid out be forwarded to the relevant stakeholders and that the gaps are tackled in the realisation of access to justice for child juvenile detainees.

Chapter one talks about the background of the study, the objectives of the study, the problem statement and the limitations of the study.

Chapter two discusses the literature reviewed for this study and the legislative framework. It points out the gaps in the domestic regional and international human rights instruments regarding juvenile justice. The chapter identifies the rights of the child juvenile detainees and discusses some case law that discuss where the law has fallen short in realising the rights of child juvenile detainees in Tanzania.

Chapter three talks about the methodology and research methods used when conducting research in the field. It discusses the Grounded approach, human rights approach, actors and structures, and the legal aid approach. The research methods used include the one on one interviews, cases study method as well as observation

Chapter four looks at the findings and analysis of the data was collected during the field research. The chapter reveals the voices of the children who are affected by the lack of legal

aid as well as the voices of the government officials and legal aid providers who deal with child juvenile detainees.

Chapter five talks about the conclusions and recommendations of how to improve the situation of child juvenile detainees gaining access to legal aid in Tanzania. The recommendations section outlines a recommendation for government (different ministries), legal aid providers, and police officers.

## **List of Statutes**

Criminal Procedure Act, 1985

International Covenant on Civil and Political Rights (ICCPR) 1966

Judicial Service Act, 2005

Law of the Child Act 2009

Legal Aid Criminal Proceedings Act 2002

The United Republic of Tanzania Constitution 1977

The 2013 Draft Constitution of Tanzania 2013

United Nations Convention on the Rights of the Child 1989

United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985  
(Beijing Rules)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh)

## **List of Cases**

Gabriel George v. R Criminal Appeal No.46 of 1976, High Court of Tanzania

Mokamambogo v. Republic (1971) H.C.D.63

Republic v. Tatu Shabani (The Rural Primary Court in Morogoro Region; Criminal Case No.322 of 2003

Republic v.Fideelis John (1988) TRL P.165

Republic v. Mohamed Abdullah (Criminal case No.116 of 1999)

Republic V. Njama Zuberi (1985) TLR 241

Transport Equipment Ltd and another v. D.P. Valambhia Civil Application No. 19 of 1993,  
Court of Appeal of Tanzania



## **List of Acronyms**

ACRWC African Charter on the Rights and Welfare of the Child

CHRAGG Commission for Human Rights and Good Governance

CRC Convention on the Rights of the Child

DPP Director of Public Prosecution

FIDA International Federation of Women Lawyers

ICCPR International Covenant on Civil and Political Rights (ICCPR)

LAPs Legal Aid Providers

LCA Law of the Child Act

LHRC Legal and Human Rights Centre (LHRC)

LSF Legal Services Facility

MCLA Ministry of Constitutional and Legal Affairs

SWO Social Welfare Officer

TLS Tanganyika Law Society

TAWLA Tanzania Women Lawyers Association (TAWLA)

TWCWC Tanzania Women and Children Welfare Centre (TWCWC)

UDHR Universal Declaration on Human Rights

WAT Women Advancement Trust

WLAC Women Legal Aid Centre (WLAC)

UNICEF United Nations Children's Fund

## **List of Tables**

Table1: Key informants that were interviewed

## EXECUTIVE SUMMARY

The research investigates the access of legal aid by juvenile detainees in Tanzania. It looks at how child juvenile detainees in Tanzania face a lack of legal assistance while in retention homes. Legal aid services offered by state lawyers are often poorly managed and funded by the state thus causing problems of the quality of legal services provided. Further there is limited regulation and coordination of legal aid work undertaken by NGOs and paralegals.

This report is therefore a result of field work carried out in Dar es Salaam where the only juvenile court exists. The research covers, why child juvenile detainees' cases take long to be heard, child juvenile detainees do not receive adequate legal representation, how child juvenile detainees lack knowledge on legal aid services available. It further discusses how children are withheld in police stations for longer than the statutory 24 hour limited, before being brought to a court. The research also discusses whether the government has the capacity to provide legal aid services to child juvenile detainees.

The whole purpose of the research is to investigate how child juvenile detainees access legal aid in Tanzania. This arises from the fact that the laws of Tanzania provide that a person is entitled to free legal services. Children are also entitled to receiving free legal aid but this as will be shown in the research is far from reality. Free legal aid is only available to a few persons particularly in crimes like murder.

The majority of the children living in the retention home i visited have never heard of a lawyer offering their services. Children instead represent themselves in the primary and district court.

The research covers access to justice by child juvenile detainees focusing on child juvenile detainees living in the retention home. The research was carried out with the assumption that child juvenile detainees receive free legal aid services. It was also assumed that these children had knowledge on the legal aid services offered by NGOs. This however is not the case as will be explained in the research.

The main methods of data collection employed were desk research and field research. I employed the grounded approach whereby i used the dung beetle method to collect information from one respondent to another.

I also used one on one interviews to collect information from the respondents who included child juvenile detainees, social welfare officers, government officials and a representative from the juvenile Court.

I further used the human rights approach to enable me to look at rights of the child from a human rights perspective. I was able to look at the human rights instruments and draw conclusion of whether these children's human rights were being violated. The human rights approach was therefore very cardinal in the research as it helped assess what rights were being infringed.

The Legal aid approach was also used to investigate whether child juvenile detainees had access to legal aid assistance. Further, the actors and structures approach was employed to interrogate , assess and evaluate the involvement of state actors in ensuring that child juvenile detainees get access to free legal aid services. Therefore in the light of the application of the above methodological choices, child juvenile detainees do not get access to free legal aid services

To conclude, there is need for intervention into ensuring that child juvenile detainees get access to legal aid services and ensure that their rights are ensured because it is enshrined in the laws that a person can get free legal aid services and further there is need to ensure that child juvenile detainees' rights while in police custody are not infringed. It is therefore pertinent that the legal and policy framework in Tanzania is used in practice and does not remain on paper.

## TABLE OF CONTENTS

DECLARATION .....	i
Dedication .....	ii
Acknowledgments.....	iii
Abstract.....	iv
List of Acronyms.....	viii
List of Tables .....	ix
EXECUTIVE SUMMARY .....	x
CHAPTER ONE .....	1
1.1 <i>Background of Study</i> .....	1
<i>Objectives of the Study</i> .....	4
1.3 <i>Statement of the problem</i> .....	4
<i>Assumptions</i> .....	5
<i>Research Questions</i> .....	5
<i>Definition of terms</i> .....	6
<i>Limitations of study</i> .....	7
CHAPTER 2 .....	9
2.0 <i>Literature Review and Legislative framework</i> .....	9
2.1 <i>Desk Research</i> .....	9
2.1.1 Police detention of child juvenile detainees for longer than 24 hours.....	11
2.1.2 Delay of child juvenile cases to be heard.....	12
2.1.3 Lack of awareness of legal aid services by child juvenile detainees .....	13
2.1.4 Lack of legal aid representation of child juvenile detainees.....	14
2.1.5 Capacity of the Ministry of Justice and Constitutional affairs to provide legal aid services to juvenile detainees. ....	15
2.2 <i>Legal framework</i> .....	19
2.2.1 <i>Domestic legislation</i> .....	19
2.2.2 The Constitution.....	19
2.2.4 The Law of the Child Act 2009.....	19
2.2.6 The Criminal Procedure Act 1985 .....	20
2.2.1.5 African Charter on the Rights and Welfare of the Child (ACRWC) .....	21
2.2.1.6 The African Charter on Human and Peoples' Rights (ACHPR) .....	22

2.2.1.7	The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Maputo Protocol).....	22
2.2.2	<i>International Legislation</i> .....	22
2.2.2.1	UN Convention on the Rights of the Child (UNCRC).....	23
2.2.2.2	UN Committee on the Rights of the Child (CRC) .....	24
2.2.2.3	International Covenant on Civil and Political Rights (ICCPR).....	24
2.2.2.4	The Universal Declaration of Human Rights (UDHR).....	25
2.2.2.5	United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 25	25
2.2.2.6	United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh).....	26
2.2.2.6	United Nations Standard Minimum Rule for the Administration of Juvenile Justice 1985 (Beijing Rules) .....	26
CHAPTER 3 .....		29
3.1	<i>Methodology and Research methods</i> .....	29
3.1.1	<i>Grounded approach</i> .....	29
3.1.2	<i>Human rights approach</i> .....	30
3.1.3	<i>Actors and Structures</i> .....	31
3.1.4	<i>Legal aid approach</i> .....	31
3.2	<i>Research methods</i> .....	31
3.2.1	One on one interviews.....	32
3.2.2	Case study method .....	33
3.2.3	Observation .....	33
CHAPTER 4 .....		35
	<i>Child juvenile detainees’ cases take long to be heard because of inadequacy in legal aid services.</i> .....	35
4.2	<i>Lack of adequate legal representation for child juvenile detainees</i> .....	39
4.3	<i>Lack of knowledge on legal aid services offered to juvenile detainees</i> .....	40
	<i>The legal profession in Tanzania mainland has not adopted an information or outreach strategy, and little is done in practice to inform the public of the legal aid services provided by lawyers (Danish Institute for Human Rights, 2011). However it should be noted that efforts have been made by the Ministry of Justice and the TLS to inform Tanzanias on the Legal Aid Day. This however, is still not sufficient to send information to all who need legal aid services.</i> .....	41
4.4	<i>Detention of children in police stations for longer than 24 hours before being brought to court</i> .....	42
CHAPTER 5 .....		49
5.0	CONCLUSIONS AND RECOMMENDATIONS.....	49
5.1	CONCLUSION .....	49
5.2	RECOMMENDATIONS.....	50

# CHAPTER ONE

## 1.1 Background of Study

Tanzania as a developing country has been experiencing economic and political changes that have resulted into a free market economy and the emerging of a multiparty political system. The narrowing economic base has led to the rural dwellers to migrate to urban cities. This has left a tremendous effect on children. This has forced a lot of children to end up in conflict of the law because when they come from disadvantaged homes they are more likely to be forced into crimes like theft and armed robbery in order to survive. Juvenile delinquency is very common. As a result, juvenile justice has become a very integral part of the national development process. (Maganga C 2005). Tanzania is yet to meet the challenges facing juveniles. A Ministry of Constitutional and Legal Affairs 2013 report revealed that boys are far more likely to come into conflict with the law than girls.

The government of Tanzania has in the last years made efforts to improving lives of children in Tanzania. However, a 2009 report conducted jointly by the Government of Tanzania, United Nations Children's Fund (UNICEF), and Research on Poverty Alleviation (REPOA) found that a "substantial number of children in Tanzania are living in desperate conditions. (MCLA 2013)

It is however evident that despite the ratification of the United Nations Convention on the Rights of the Child (UNCRC), studies have shown that there is still less political will expressed on the need to safeguard the general welfare including the rights and interests of children in Tanzania. The government still has not met her obligations in ensuring the realisation of rights of a child juvenile. The spirit and purpose of the Convention on the Rights of the Child still have not been put into practice in Tanzania

The research aims at investigating the access of legal aid by juvenile detainees in Tanzania mainland. The research was conducted in Dar es Salaam City where the only juvenile court in the country is situated. During the research focus was put on one retention centre, the Upanga retention home and different stakeholders were interviewed, as well as capturing the voices of the child juvenile detainees themselves. Legal aid is essential in realization of access to justice and there is a big gap between realizing the right to legal aid. The focus of the study was on children living in a retention home and by specifically targeting this group i sought to

investigate the experiences of the children. In view of that the study i aimed at identifying children who had gone through police stations up to the time when their case was on trial.

According to the Tanzania Human Rights Report (2014), in Tanzania, legal aid provision has been mostly undertaken by non-governmental organizations. This is problematic as most non-governmental organisations target urban areas. Legal aid providers fail to reach many people even in the urban areas. Legal aid can be described as the provision of assistance to people who are unable of afford legal representation and access to court systems.

In order to deal with shortage of lawyers, paralegals are used to reach the grassroots community to provide basic legal aid. Paralegals are individuals with certain qualifications who are trained on legal knowledge selected from communities to allow them to assist fellow community members. Paralegals are trained to deal with non-complicated cases where they will give advice, take statement, draft simple correspondences, draft court papers (as far as the law permits) and assist in negotiations and reconciliation. Data from the TLS Paralegal Baseline Survey in 2010 indicated that there are more paralegal centres offering legal advice than assisting in preparing documents. However, some NGOs providing paralegals have different mandates others focus on women, others civil matters, maintenance or inheritance issues. Paralegals cannot reach all the children in need of legal aid because of the limitation of lawyers or paralegals.

Regarding the juvenile justice system in Tanzania, the welfare of children falls under the Ministry of Health and Social Welfare while the issues regarding justice are death with under the Ministry of Justice and Constitutional Affairs.

Tanzania still does not have a judicial system that has separate procedures for children and in as a matter of fact, Tanzania has one juvenile court which results in children's cases being heard by an adult court. Children juvenile detainees are often detained in police custody for long hours. In 1997, the Tanzanian the government constructed a separate juvenile court at Kisutu in Dar es Salaam.

According to an Impact assessment Committee report, it recommended the increase of the number of juvenile courts, remand homes as well as expansion of the Mbeya approved school. It further recommended the training of juvenile administration officials to understand better the rights of juveniles.



Further, the government of Tanzania in 2001 established the Commission for Human Rights and Good Governance. The functions of this commission include investigating whether children's rights are being violated. The UN Convention of the Rights of the Child and the African charter on the rights and Welfare of the Child entail the rights of juveniles and treatment and care of children who are in all forms of detention. Tanzania has ratified these treaties and therefore has an obligation to ensure that they are implemented. As a result of ratification, the Parliament of Tanzania has domesticated the Law of the Child Act in, 2009.

Tanzania has signed and ratified both the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), but has not yet changed its laws as laid out in the treaties in order for their practical application.

However, it should be noted that Tanzania enacted all its legislations dealing with children before the ratification of the CRC. Further, the legislation on children still fall short and are not comprehensive enough.

There are no state provided defence lawyers in the juvenile court and the majority of the youth are required to defend themselves especially in the magistrates and District Courts. Children do not have ready access to trained legal advice and advocacy before being unnecessarily sentenced, or forced to endure weeks or months of pre-trial incarceration.

According to the Baseline study, In July 2011 a contract was signed between the Government of Tanzania and the Government of Denmark to establish a Legal Aid Basket Fund through the Legal Services Facility (LSF). The function of the LSF was to ensure access to justice for vulnerable people on both Tanzania mainland and Zanzibar. The legal services Facility had the mandate to ensure quality legal aid services, support efforts for recognition of paralegals, and support the capacity building of legal aid service providers in Tanzania.

In accessing justice much still has to be done to ensure that real Access to Justice is achieved and there is need to continue to work to bring more comprehensive and effective legal services to all. Lang (1976). There is still very little knowledge on domestic laws and most of the people working in the juvenile justice system are not knowledgeable about the international standards required when administering juvenile justice. Furthermore, in cases where free legal aid is offered, it is only limited to serious cases such as murder or treason.

It should be noted that to date, the legal systems in Africa still face a challenge. Today, many formal legal systems in Africa are in crisis. There is corruption within the judiciary in most countries (Penal Reform International 2007).

It should be noted that the government has the responsibility of ensuring adequate legal assistance for all. In addition governments should ensure basic human rights for all as well as ensuring legal aid for persons who need it.

### **Objectives of the Study**

- To assess why child juvenile detainees' cases take long to be heard
- To investigate why child juvenile detainees do not receive adequate legal representation
- To assess why child juvenile detainees in retention homes are not aware of legal aid services offered by NGOs
- To investigate why child juvenile detainees are being held in police stations for longer than 24 hours before being brought to Court
- To investigate whether the Ministry of Justice and Constitutional Affairs has the capacity to provide legal aid services to child juvenile detainees

### **1.3 Statement of the problem**

Tanzania under the Legal Aid (Criminal Proceedings) Act (cap 21 R.E 2002) provides that an accused should have legal aid services. The Law of the Child Act enshrines the rights of children and provides under Section 99(1) (f) it provides that a child shall have the right to be represented by an advocate. Other legislations such as the Penal Code and the Criminal Procedure Act 1985 provide for the protection of children's rights in how they are handled when they come into conflict with the law.

Access to justice is a right but not all child juvenile detainees enjoy it. The majority of children who have come into conflict with the law go through the judicial system with their rights being violated and may never realise their right to free legal aid. Some of the factors that lead to a child not realising their rights include, ignorance of the law by police officers, absence of defined systems in the justice system, corruption,

intentional delays of children's cases by police officers, lack of knowledge of legal aid services by children who come into conflict with the law.

Child juvenile detainees in Tanzania face a lack of legal aid assistance while in retention homes. Services offered by state lawyers are often poorly managed and funded by the state causing problems of the quality of legal services provided. There is limited regulation and coordination of legal aid work undertaken by NGOs and paralegals.

### **Assumptions**

- Child juvenile detainees cases take long to be heard because of inadequacy in legal aid services
- Child juvenile detainees do not receive adequate legal representation and when they do it is of poor quality because it's a free service
- Child juvenile detainees in retention homes are not aware of legal aid services offered by NGOs
- Children are being held in police stations for longer than 24 hours before being brought to Court because they lack legal representation
- The Ministry of Justice and Constitutional Affairs does not have the capacity to provide legal aid services to child juvenile detainees

### **Research Questions**

- Do cases of child juvenile detainees take long to be heard?
- Do child juvenile detainees lack access to adequate legal representation?
- Are child juvenile detainees aware of legal aid services offered by NGOs and paralegals
- Are child juvenile detainees held in police stations for 24 hours without any legal representation

- Does the Ministry of Justice and Constitutional affairs have the capacity to provide legal aid services to child juvenile detainees

The assumptions of the research are meant through the research questions to critically investigate the plight faced by child juvenile detainees in accessing free legal aid services from the government and other legal aid providers in Tanzania.

### **Definition of terms**

“Advocate” is a term used for admitted members of the bar who are allowed to represent clients in all courts except the primary courts while lawyers is a general term for a holder of a legal degree but not necessarily admitted to the bar

“Child” under the Law of the Child Act refers to all persons below the age of 18 years.

The word “juvenile” is derived from the Latin word “juvenus” meaning a young person. The Beijing Rules do not set a fixed age but state that for the purposes of that instrument[a] juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult (Rule 2.2.a)

“Legal Aid” -The Lilongwe Declaration defines ‘legal aid’ as including ‘legal advice, assistance, representation, education and mechanisms for alternative dispute resolution; and as including a wide range of stakeholders, such as non-governmental organizations, professional bodies and academic institutions’

“Legal assistance” offered varies from clients to clients according to the individual case. Services, which could actually be considered as legal aid, include:

- i. Giving legal advice and counselling,
- ii. Offering legal assistance to individuals so that they can represent themselves in court,
- iii. Offering legal representation in court, whereby advocates represent selected clients
- iv. Facilitating mediation and reconciliation,
- v. Assisting with the preparation of legal documents, i.e., drafting wills, contracts, writing letters to officials, filling court documents necessary to institute a case,

- vi. Assisting in filing applications and other documents in the court or tribunal,
- vii. Following up of legal issues with institutions or individuals such as Attorney General's Chambers, companies, and ministries,
- viii. Pursuing court remedies such as appeals, reviews and revisions,
- ix. Conducting strategic and public interest litigation
- x. Executing decrees or orders,
- xi. Any other service connected or incidental to the services mentioned above,
- xii. Coaching

“A paralegal” is defined as a person who has some education in law and assist a lawyer in duties related to the practice of law but who is not licensed attorney.(Black's Law Dictionary: Ninth Edition)

“Retention Home” Section 3 of the Law of the Child Act, a “retention home” means a ‘place where a child is safely accommodated while his case is being considered.

### **Limitations of study**

I decided to restrict my research to the Tanzania Mainland instead of the entire United Republic of Tanzania thus leaving out Zanzibar in order to focus my study and for manageability.

The following are the difficulties i encountered during my research.

#### **1.1.1 Inaccessibility of data**

I was not able to recover enough data from my respondents especially the Social Welfare officer at the Juvenile Court. This caused a problem because data was crucial for my research. Instead she referred me to the legal aid provider who was handling child juvenile cases at the Juvenile Court. The legal aid provider could only offered me a 2013 report.

### 1.1.2 Inaccessibility of girl child

During my research i was not able to get to interview many girls compared to boys because i focused my study on one remand home which only had 3 girls. It was therefore difficult for me to sample how the girl child is accessing legal aid.

### CONCLUSION

This Chapter was an introduction and background to the study and revealed that child juvenile detainees experience permanent delay of their cases and stay for a long time on remand and further do not have access to legal representation. Although juvenile justice in Tanzania is governed by the Law of the Child Act, 2009 however, these fundamental rights that are enshrined are still being violated in reality.

The next chapter will discuss the background of the study and discuss more about what has led to child juvenile detainees not accessing legal aid services in Tanzania.

## **CHAPTER 2**

### **2.0 Literature Review and Legislative framework**

#### **2.1 Desk Research**

Child friendly legal aid entails legal assistance and this entails legal and social needs being faced by children. UNICEF, UNDOC (2011).

International and regional conventions, declarations, and rules contain references to states' obligations to provide legal assistance to children however, they not discuss the unique attributes of the children and are therefore not child friendly.

According to a Law Reform Commission report (1994), a juvenile means a person below the age of eighteen, and this includes a young person from 12 to 16 years and a child below twelve years and a child under the Law of the Child Act is a person below the age of 18.

Some of the factors leading to juvenile delinquency include, poor economic standing of parents, unemployment, generally having inadequate means of subsistence, inadequate family provisions such as shelter, food, clothing, education, influence of anti-social behaviour which leads to criminal acts such as theft, prostitution, robbery. Children may also suffer due to unhappy, unstable and broken homes which cause mental suffering to the children particularly in cases of separated or divorced parents. According to a FIDA Nigeria (1986) publication it states that a vacuum is created by feeling of lack of security and love and protection in the lives of these children. There are also oversized families with little and inadequate financial resources. This becomes a push factor for children to be involved in crime.



**Figure 2: Upanga Retention Home, Dar es Salaam (translation: in the background “For the health of the children”)**

A study by the Constitutional and Legal Affairs 2013 revealed that the most common offence by children were theft, secondly sexual offences including rape, disorderly conduct, murder or manslaughter and other offences. Further the report indicated there was poverty, and a lack of parental care. The Commission for Human Rights and Good governance in June CHRAGG (2011) report revealed that most of the children who have come into conflict with the law are being arrested for crimes including rape, assault, grievous harm, rape unnatural offences and possession of illicit drugs as well as burglary.

In Tanzania the way of dealing with juvenile offenders include a probation order, a parent or guardian may pay a fine, compensation, discharging the child, may be repatriated at the cost of the Government to his home or district, an order that the child or young person be handed over to a fit institution, or an approved school order.

Children and youth who come into conflict with the law are treated as adults, thus violating children’s rights. In 2011 according to a UNICEF report it was estimated that over 1400 children were held in adult prisons, 75 percent of whom were awaiting trial. There are few alternatives available to detention. (UNICEF 2009)

Children who have committed crimes do not have their rights guaranteed and are frequently treated in a manner that is inconsistent with a child’s sense of dignity and worth, despite Tanzania being a party to the Convention on the Rights of the Child. (Policy Brief Nr 08, September 2009, Institute for Security Studies).



According to the Policy brief Number 08, September 2009, during the period 2003-2005, 515 boys and 79 girls were charged with various crimes in Dar es Salaam. In Tanzania, it was found that adults are required to be separated from juveniles while in detention but this was not possible due to limited accommodation for inmates.

On arrest of a child, a child should be kept away from adults and should be treated in friendly manner and handled with care until brought before a juvenile court. In addition, detention should be used as solution of last resort. Further, children being mixed up with adults while in detention should not happen because children get exposed to conditions that are degrading and children might be ill-treated while in detention together with adults. A child while in police custody has the right of bail which should be exercised by the parent or relative. However the following offences are not bailable, murder, treason, armed robbery, defilement of a child under 18 years, illicit trafficking in drugs valued Tanzania shillings 10 million, money laundering, an act of terrorism, human trafficking.

For the majority of children, alternative sanctions should be used other than detention and the best interests of the child should be a primary consideration throughout the criminal justice process. However, as a matter of practice juvenile offenders are not treated cautiously and the law is not taken into consideration and when they do, the law is outdated, further there are funding challenges and a lack of knowledge among officials who handle child juvenile offenders.

There is also a problem of inadequate detention facilities for juveniles. In addition there are no trained policemen who specifically deal with children who come in conflict with the law. In Tanzania children are handled under the Police Gender and child desk which is not specific for children.

### **2.1.1 Police detention of child juvenile detainees for longer than 24 hours**

Legal assistance is rarely provided at police stations. (United Nations 2011). Legal aid is as matter of the court so as a matter of practice the lawyers appear in court.

The Lilongwe Declaration highlights the importance of “providing legal aid at all stages of the criminal justice process”. This includes investigation, arrest, pre-trial detention and bail hearings, in addition to trial and appeal processes.

The Lilongwe Declaration states that accused persons and detainees should have access to legal assistance upon arrest.

According to a study done in Tanzania by the Commission for Human Rights and Good governance in June CHRAGG (2011) it showed that the statutory 24 hour limit is not being observed and children continue to be held in police stations. Further children when arrested are not aware of the crime committed because the policemen do not inform.

According to Antieaut, the first essential of judicial fairness is that the person brought into court be given a clear understanding of the claims of society against him. (Antieaut 1961)

Studies have revealed that in practice police do not always adhere to the 24 hour limit on police detention. The CHRAGG 2011 study further revealed that 37% of the 179 children who were interviewed were held in detention in police stations for more than four days. Further another 33% were held between two and three days. (CHRAGG report pg 31-32). In addition, the study revealed, that 57 out of 179 (32%) of the children interviewed during inspection visits said that they had legal representation whilst they were held in police detention while 92 (51%) said they did not.

According to an SOS Village report (2012) findings revealed that children rights are highly violated when kept together with adults in detention or police custody. This amounts to degrading and inhuman treatment of these children when kept together with adults. Findings further revealed that children are treated badly while in detention. Children in detention, remand home stay for long time without being sent to court. Some of the detention homes are too small and can't accommodate the large numbers of children. They are also said to have poor hygienic conditions which are violation to children's rights.

### **2.1.2 Delay of child juvenile cases to be heard**

The CHRAGG report found that child juvenile detainees are being kept on remand for a period of two years especially for those charged with offences including murder, armed robbery. They are kept for this duration waiting for the hearing of their case. Some of the reasons given for the delay include; there might be the lack of transportation to bring the children to court from the remand homes, or when there is not enough evidence for the cases, investigations delay and the child cannot be brought to court, or another reason could be

adjournment of cases if there is no magistrate to adjudicate the case. It should be noted in most cases there is only one magistrate assigned to children's cases.

A study conducted by the Ministry of Constitutional and Legal Affairs (2012) indicated that investigation takes a long time to conduct especially for grave offences and in order for investigation to be completed the child offender is held either in police custody or the retention home.

Children were also not permitted to see family members during detention at the police which is in violation of international law. Conditions in police detention also did not meet international standards and are a health hazard to children.

### **2.1.3 Lack of awareness of legal aid services by child juvenile detainees**

According to UNICEF there is a need to access the justice system without being aware of one's legally protected rights and knowledgeable about the mechanisms available to claim those rights. (UNICEF, UNDOC 2011). In addition children in Africa live in impoverished areas and therefore find it difficult to access legal services and most of them are not aware of these services.

People may lack the knowledge and voice and the means to fulfil their rights because of challenges of poverty, disability, social status gender or technical barriers such as language distance to justice systems, corruptions or court technicalities. (UNDP 2013)

According to the MCLA 2012 report, the research found that people had no knowledge of their rights to be represented by a lawyer or their rights to contact their relatives on arrest.

None of the children interviewed had access to a lawyer during questioning and none reported having a social welfare officer during question. According to the CHRAGG 2011 report, a visit was made to the Upanga Retention Home and it was found that no child had had any form of legal representation or had the services of a lawyer.

Further according to Hamilton and Barnes (2011), half of the children interviewed admitted that it was difficult to get legal advice. The study further revealed that not all NGOs working

on children's issues had a copy of the Law of the Child Actor had been trained on its usage and the copies were not available in Kiswahili.

Children who have come into conflict with the law have extremely limited access to legal assistance. The children do not have access to bail because their parents cannot afford the high cost of legal fees and no access to a lawyer. In addition for legal aid providers they do not go to the in detention instead they wait to be approached. (Women's Legal Aid Centre (WLAC) 2012/2013).

The draft UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide that legal aid is an obligation for states and they should put a comprehensive legal aid system in place. International standards therefore require that a child has access to legal assistance at all times.

It is a well known fact that one who is not aware of their legal rights is unable to realise them and therefore vulnerable to abuse in the criminal justice system. There is need to ensure that child juvenile detainees are made aware of their rights.

#### **2.1.4 Lack of legal aid representation of child juvenile detainees**

The need for legal aid is particularly acute for the growing population of prisoners worldwide<sup>1</sup>. It is estimated that over nine million people are in prison worldwide Legal aid providers cannot reach all the children. International laws provide that a child should be afforded legal assistance throughout the justice system right from the arrest till they are arraigned in court and finally placed in a retention home.

Children who have been charged with murder usually have no access to any legal assistance in preparing their defence. Although legal aid is an essential element of the criminal justice system it still remains a huge challenge in Tanzania and the majority of children in conflict with the law receive no legal assistance at any stage of the criminal justice system right from the time of arrest.

---

<sup>1</sup> International Center for Prison Studies, World Prison Population List, <http://www.kcl.ac.uk/depsta/rel/icps/world-prison-population-list-2005.pdf>

Legal aid can be described to mean provision of legal advice and representation free of charge. It will be a challenge for child juvenile detainees to make an application to court to defend themselves against a criminal charge because they do not know how. This is especially a problem if they do not have legal representation or services of a lawyer especially free legal aid. Children often have limited resources. Children who do not have access to a lawyer are accompanied by a social welfare officer to court.

According to the report by the Ministry of Constitutional and legal Affairs 2013, it indicates that in many areas in Tanzania, justice for children does not conform to international standards. Court proceedings were found not able to meet international standards and were at risk of revictimising the child. The majority of children are without adequate access to justice. In addition, their rights are violated throughout the justice process. Studies have further showed there is limited legal aid, legal representation and other legal services offered to children in conflict with the law. A few stakeholders have ample knowledge of the law as they have limited access to the Law of the Child Act.

It should be noted that if people are aware of their rights and know how to access them then they are able to realise their human right and in addition of they are knowledgeable it enables them to access these rights easily. (UNDP 2013)

According to Penal Reform International, a legal aid program should be put in place for the purpose of ensuring that at all stages of the criminal process legal assistance is accessed during investigating, pre-trial detention, bail hearings, trials, appeals. This is meant to ensure human rights are protected. Penal Reform International (2007). The legal aid programme should also be devised to address child juvenile detainees to ensure that a person is able to immediately on arrest or detention access legal assistance or representation.

### **2.1.5 Capacity of the Ministry of Justice and Constitutional affairs to provide legal aid services to juvenile detainees.**

A report by the Child Justice forum 2013 (Tanzania has a strategy on child justice forum) found that there is a lack of special juvenile institution, a lack of knowledge and coordination among professionals dealing with juveniles on how to handle cases. In addition, child

juvenile offenders do not have access to legal representation or any assistance at the police station in preparation of their case or during court proceedings; Children continue to be mixed with adults during police detention.

There is need for officials who deal with children who come into contact with children to be properly trained and ensure that they are aware of international child rights standards and aware of the domestic criminal justice laws. Child juvenile offenders should be treated in child friendly manner at all stages of the proceedings including at the police station and throughout the trial until the cases is adjudicated upon.

The challenges in faced by children in ensuring justice include:- There is only one juvenile court and as a result many of the children's cases are heard in regular courts, further still, other law does not provide for specific officials to carry out investigation and prosecution of cases involving child offenders. Another challenges is that there is no designated police officials to deal strictly with child who come into conflict with the law, for instance currently children's issues are handled by the Police Gender and Children's Desk at the police stations, there is a big shortage of Social Welfare Officers (SWOs), SWOs do not seem to be conversant with their role in the juvenile justice system, there are not enough juvenile detention facilities. In Tanzania only 5 Retention homes exist in 5 regions and many justice officials do not have knowledge about how to handle e juvenile offenders and are also not aware of the international standard. Social welfare officers are not accessible to most children to assist them during court proceedings. Social Welfare Officers have not been recruited in 40% of the districts.

Further the MCLA 2012 report reveals there is a significant shortage of lawyers coupled with not enough funds for legal aid in all cases of children who come into conflict with the law. It is a fact that persons charged with murder have availability of legal aid services during their trial process.

Although legal aid providers assist in provision of legal aid not all children have the opportunity to have legal aid for their cases. Child juvenile offenders are not aware of how to get the services of a lawyer.

Legal aid providers are not proactive enough to visit police detention facilities to find out if there are children who need their services.

The MCLA 2012 report further shows that there is a lack of coordination between professionals working on juvenile justice issues. This lack of cooperation becomes a barrier to the institutions implementing the Law of the Child Act and for the children in conflict with the law's realisation of their rights enshrined in the Act.

There is need to ensure that policemen who are trained on children's issues handle children's matters. There is need for training for child supporters to ensure assistance is provided at the police stations, and further paralegals should be used to ensure that these children are getting support during questioning at the police stations and during their detention at the police station. In addition there is currently only 5 detention homes in the whole of Tanzania and these include; Arusha, Dar es Salaam, Mbeya, Moshi and Tanga regions and there is only one approved school. Most children are not taken to the approved school but end up in prison.

In addition since majority of the cases by juvenile offenders are minor they are often tried in the magistrate courts where there is no legal representation required thus depriving them the chance to be represented by an advocate in primary courts proceedings. This may result in magistrates making improper decisions as described in the case of Republic v. Tatu Shabani (The Rural Primary Court in Morogoro Region; Criminal Case No.322 of 2003). In this Tatu was a pupil expelled from school for being pregnant and charged with an offence of refusing to attend school. Tatu however did not refuse to go to school and was acting to the order given for her not attend school. In this case had Tatu been represented by a lawyer the court would not have arrived at the conclusion that she had deliberately refused to attend school.

It is a fact that indeed, there is very minimal involvement of advocates as defence counsel in criminal cases in Tanzania.

However, the courts have been keen in ensuring that children are not sentenced to imprisonment but rather it should be used as a measure of last resort.

This was emphasized by Mzavas, J. (as he then was) in the case of Gabriel George v. R Criminal Appeal No.46 of 1976, High Court of Tanzania where states that; youthful offenders should not be sent to prison unless there is no alternative punishment.

This position was affirmed in the case of Republic v. Fideelis John (1988) TRL P.165 it was held that a young person below the age of 16 should not be sentenced to prison unless there is no alternative means of punishing them.

Furthermore, most magistrates are not keen in observing the legal principles of sentencing young offenders as observed also in the case of Republic v. Mohamed Abdullah (Criminal case No.116 of 1999). A nine year old child was charged with the offence of rape, and he was alleged to have had sexual intercourse with a five year old girl. The boy was convicted of rape and sentenced to life imprisonment.

Further, there is a need for prompt notification of arrest. A number of various international human rights instrument stipulate this right. Article 40(2)(b)(ii) of CRC provides for the right of a child to be informed promptly of charges against him on arrest. Article 9(2) of the ICCPR also refers to the same as well as Article 17 (2) of the African Charter on the Rights and Welfare of the Child.

The MCLA 2013 report further found that there are fabrications of allegations against the children who are without parental care. Police officers arrest and detain these children without further investigation. There have been reports that the police were suspected of accepting bribes sometimes in exchange for holding a child in detention.(MCLA 2013)

Article 37(b) CRC provides for detention being in conformity with the law while Rule 17 of the Beijing Rules adds to this provision by stating that detention should not be imposed unless it is a serious act of violence against another person. Section 119 of the LCA prohibits the imprisonment of a child.

Currently in Tanzania, there is only one juvenile justice court which exists with a separate building from ordinary courts in Tanzania and it is located at Kisumu. In the case of Mokamambogo v. Republic (1971) H.C.D.63, where the accused was a child and no evidence of the proceedings being held in a different place from an ordinary court room. It was held that a court hearing charges of children should sit in a different building or room from the ordinary sittings of the court.

In addition, one of the challenges facing the legal aid department under the Ministry of Justice and Constitutional affairs are the lack of enough funds. As a result of lack of funds the performance in delivering legal aid services has been inadequate and in addition the lawyers are overwhelmed with the bulk of cases and thereby compromising quality.

Further, access to justice remains problematic in Tanzania. According to the Danish Institute for Human Rights report (2011) One informant notes: "The situation of access to justice in Tanzania depicts a picture with many unpleasant features.



## **2.2 Legal framework**

### **2.2.1 Domestic legislation**

#### **2.2.2 The Constitution**

Article 13 of the Constitution of the United Republic of Tanzania of 1977 provides for equality before the law and it further provides for the right to fair trial. Children in detention are therefore protected by this Article in that they deserve a fair trial. However the opposite happens in reality, children are not given a free trial as there are a lot of tech during hearing, some cases are delayed because of technicalities like not enough evidence hence child juveniles are not afforded a fair trial.

Article 39 of the Draft Constitution of Tanzania 2013 provides for the rights of detainees and that a person has a right to be told why he or she has been arrested. However, this does not happen in reality, child juveniles are arrested by police and are detained without the children knowing what crime they have committed.

The 1977 Constitution talks about equality before the law and the right to a fair trial. This right is ensured in the law but in reality child juvenile detainees do not have access to a fair trial. Most of the cases are delayed to be heard and the fact that there is not enough evidence for the trial to commence it causes an unfairness in accessing justice.

#### **2.2.4 The Law of the Child Act 2009**

The Law of the Child Act of Tanzania is an important law regarding the rights of the child because it entails children's rights. However, the law of the Child Act 2009 does not cover all aspects of the criminal justice system. It however, stipulates that a child shall have the right to be represented in the Juvenile Court by an advocate.

Section 94 of the Law of the Child Act gives a duty to the local government authorities to promote the welfare of children.

Section 99(1) (f) Law of the Child Act 2009 provides for the right to of a child to representation by an advocate. It give children the right to free legal aid.

Section 101 provides for police bail where a child cannot immediately be brought before a Court. However, this is not the case in reality children are kept in police custody for many days because the police is still investigating and bail is not an option to child juvenile detainees in most cases.

Under Section 102, it requires that children are separated from adults while in police custody

Child juveniles are often detained with adults because there is not enough space at the police station; however this is discouraged by Section 102.

### **2.2.6 The Criminal Procedure Act 1985**

The Criminal procedure Act 1985 (which was amended in 1998) has limited provisions that are specifically provide for children. Section 33 of the Criminal Procedure Act provides if a person is detained in police facilities for investigation then his or her case should be reported to the court within 24 hours. This law is often violated and it's a matter of fact that children are held in police stations for longer than 24 hours.

Section 56(1) of the Criminal Procedure Act provides that parents of a child who has been arrested should be duly informed. However, this does not happen in reality children are not informed of why they are being arrested and often their parents are notified until a much later stage.

Section 310 of the Criminal Procedure Act provides a person shall be entitled to be defended by an advocate. This section gives a person the right to legal representation, in other words under this section child juvenile detainees are also entitled to free legal aid.

Section 225(4) (a) of the **Judicial Service Act** requires a magistrate or a judge to pronounce a judgement within 60 days. Child juvenile detainee's cases ought to be adjudicated within 60 days however, this is not the case in reality the cases delay and as will be shown in the findings of this paper, the cases take up to 2 years. This is therefore a violation of their rights.

Section 31(5) of the **Police Force and Auxiliary Service Act, Cap 322** provides for a police should ensure that a suspect is aware of his right to bail. Section 21(1) of the Criminal Procedure Act requires an accused person should be made aware of the reasons he/she is being arrested.

Child juvenile detainees are not informed of their right to bail nor are they informed of the offence they have committed when they are arrested.

## **REGIONAL INSTRUMENTS**

### **2.2.1.5        *African Charter on the Rights and Welfare of the Child (ACRWC)***

The African Charter on the Rights of the Child was adopted by the Organisation of African Union in 1990 and entered into force in 1999.

Article 17(1) of the African Charter on the Rights and Welfare of the Child a child accused of infringing a penal law shall have the right to special treatment. Children are however in reality not given special treatment while in custody and they are subjected to inhumane treatment while in detention. Further, article 17 (2) (c) (iii) provides that minors should be afforded legal and other appropriate assistance.

However, child juvenile detainees are in reality not afforded legal assistance for their cases, as the provision above requires children deserve legal assistance in preparation of their defence but the majority of children cannot afford legal services and those who can access free legal assistance are limited.

ACRWC also provides that a criminal case against a child should be determined speedily.

### **2.2.1.6            *The African Charter on Human and Peoples' Rights (ACHPR)***

Article 6 of African Charter on Human and Peoples' Rights provides that no one should be deprived of their freedom or be detained arbitrary.

This law applies to child juvenile detainees as they have a right not to be arbitrary detained and should be brought before a reasonable time before a court of law. Child juvenile detainees however face delays and cases take long to be heard because of inadequacy in legal aid services.

The government is given an obligation under this charter to ensure that persons are afforded legal assistance and free legal assistance to those who cannot afford. However, child juvenile detainees do not receive adequate legal representation because the government has failed to deliver these services.

### **2.2.1.7            *The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol)***

The United Republic of Tanzania has signed the Maputo Protocol and the protocol promotes women's rights in relation to legal aid. Article 8 provides for access to justice and equal protection before the law. This article is relevant for the girl child who has come into conflict with the law. Girl child juvenile detainees are protected under this provision with the entitlement to have access to judicial and legal services including legal aid.

## **2.2.2 International Legislation**

Tanzania is a signatory to international and regional child rights instruments which guarantee the right to legal aid for children and has therefore committed itself to upholding the right to legal aid to legal assistance or other appropriate assistance for children. To some extent, free legal aid in criminal proceedings involving indigent persons is regulated under the Legal Aid (Criminal Proceedings) Act (Cap. 21 R.E.2002)

### ***2.2.2.1 UN Convention on the Rights of the Child (UNCRC)***

The Convention binds all countries that have signed and ratified it and Tanzania has signed and ratified it. The state parties are expected to send a report every two years, and then five years to the Committee on the Rights of the Child.

Article 3 of the Convention talks about the best interest principle of the child.

Article 37 (c) of the UNCRC provides that children be separated from adults. This provision discourages children from being kept together with adults this however is not the case for child juvenile detainees, during detention in police custody they are mixed up with adults.

Article 37 (d) UN Convention on the Rights of the Child provides for promptness to access legal assistance.

Under Article 40 (2)(b)(iii) the state is duty bound to ensure a fair trial and in the presence of legal assistance.

CRC Committee in General Comment No 10 has recommended that the period of pretrial detention before the child is charged (i.e. the period when the child is under investigation) should not exceed 30 days. This however does not happen in reality, children are kept in police detention while investigations are on-going for longer than 30 days.

A child is a person below the age of eighteen according to the Age of Majority Act Section 2 of cap 431. The Criminal Procedure Act Section 186(11) (b) (ii) provides that trials should be conducted in camera where an accused person is under 18 years of age. This law provides for children's cases to be conducted in camera and is relevant for child juvenile detainees because they are below the age of 18 years.

### **2.2.2.2            *UN Committee on the Rights of the Child (CRC)***

Article 3 talks about the best interests of the child principle. Article 12 requires the governments to take into consideration the views of children.

The UN CRC Committee, during its periodic review of the Tanzanian government, recommended that the government of Tanzania should see to it that children below the age of 18 have access to legal aid. (UN Committee on the Rights of the Child, Concluding Observations: United Republic of Tanzania, UNCRC/C/TZA/CO/2, 21 June 2006, para. 70)

### **2.2.2.3            *International Covenant on Civil and Political Rights (ICCPR)***

Tanzania has ratified the ICCPR on June 1976. Article 9(3) of the International Covenant on Civil and Political Rights requires that a person arrested be promptly brought before a court.

This however, does not happen in reality, child juvenile detainees are not promptly brought before a judge and this violates their right enshrined in this provision. This reiterated in Paragraph 4 of article 9 of the International Covenant on Civil and Political Rights.

This right is further emphasized by the Human Rights Committee that a person when arrested is required to be promptly brought before a judge or other officer authorised by law to exercise judicial power.

Article 10 (2) (b) requires that accused juvenile person must be separated from adults. This is far from reality in practice children are mixed up with adults while in police custody and sometimes it goes over a month.

Article 14 talks about the right to speedy trial and Article 14 (3) (b) of the ICCPR provides for the right to have facilities for preparation of one's defence.

This article provides for timely justice but this does not happen in reality, for child juvenile detainees justice is delayed because of they are still conducting investigations and this violates the rights of the detainee.

Article 14(3) (d) of the ICCPR provides that a child is entitled to free legal assistance if the parent does not have the sufficient means to pay the lawyer.

General comment no.10, CRC/C/GC 10 has recommended that such assistance be provided free of charge. This however, does not happen in reality, child juvenile detainees do not have free legal aid because the state cannot reach all the children who are in need of legal aid.

#### **2.2.2.4        *The Universal Declaration of Human Rights (UDHR)***

Tanzania ratified the Universal Declaration on Human Rights (UDHR) 1948;

Under Article 7 of the UDHR provides that all people are entitled to equal protection of the law, without any discrimination.

Article 11 (1) of the UDHR provides that anyone charged with a penal offence shall have the right to be presumed innocent until proved guilty.

The UDHR gives equal protection of all people including child juvenile detainees however, this does not happen in adjudication of cases, child juveniles are not given equal protection of the law and most of their rights are violated. Further some of the children when arrested are treated as if they are guilty of the offence before they are even tried by a court of law.

### **Other legislations**

#### **2.2.2.5        *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)***

According to Rule11 (b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty(Havana Rules) describes deprivation of liberty to mean any form of detention in imprisonment.

The rules talk about juveniles not being mixed up with adults in detention and their classification according to age, sex and type of offence committed. The further provide for specific principles that apply to all juveniles held in detention.

The rules also explain about various aspect includes physical environment and accommodation, medical care, education, recreations, religion, contact with the outside world, inspections and return to the community.

The Havana Rules recommend that children in detention are handled according to international standards and are detained for the shortest time possible.

They provide that children should be separated from adults. The Rules provide for establishments that reduce the negative effects of incarceration. The detention officials should be trained on how to handle the detainees in a child friendly manner.

#### ***2.2.2.6 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh)***

Rule 11, 12, 13 and 14 family should be given education about child in conflict with law and the duty is for the state to provide education, under rule 23 children and their families should be informed about the law and their rights also responsibilities under the law, as well as the universal value system include United Nations instruments

The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990; provide recommendations on children placed in detention.

Juveniles who are at a sensitive stage in development will be psychologically affected if removed from their homes and put in detention so for this reason international human rights instruments provide that it should there should be reduced deprivation of their liberty to a minimum.

#### **2.2.2.6 United Nations Standard Minimum Rule for the Administration of Juvenile Justice 1985 (Beijing Rules)**



Rule 26 (2) of the Beijing Rules provides that juveniles should be given meaningful activities to promote health and self respect.

Rule 10.1 of the Beijing Rules provides that a juvenile's parent ought to be notified on arrest of the child.

This however, does not happen in reality, parents of child juvenile detainees are not informed in time that their children have been arrested.

### **Soft law instruments**

The United Republic of Tanzania has committed herself to declarations and soft laws which are not legally binding but indicate the commitment of the nation to recognize and support human rights. These include; the Dakar Declaration, Lilongwe Declaration and Kyiv Declaration

**The Dakar Declaration** Dakar Declaration on the Right to a Fair Trial and Legal Assistance in Africa (1999) emphasizes the importance of access to justice as part of the right to a fair trial, and places the primary responsibility for ensuring legal aid in criminal cases on the government.

Section 1 of the **Lilongwe Declaration** on Accessing Legal Aid in the Criminal Justice System in Africa (2004) basically recognizes and supports the right to legal aid in criminal justice. The Lilongwe Declaration in Section 8 encourages provision of legal aid by lawyers. It recognizes that the legal profession has a responsibility for promoting legal aid services.

The **Kyiv Declaration** on the Right to Legal Aid, 2007, provides that the poor and vulnerable have a right to legal aid, and stipulates that the state has the primary responsibility for creating legal aid schemes. The Kyiv Declaration encourages governments to cooperate with other legal aid providers

### **CONCLUSION**

This Chapter was a review of the laws regarding children while some laws touched on issues affecting child juvenile detainees. The domestic laws reviewed the Constitutional right on a fair trial as well as laying out the right to free legal aid in criminal proceedings as stated in the Legal Aid (Criminal Proceedings) Act (cap 21 RE 2002). Further, international laws on access to justice revealed the rights of the child as enshrined in the Convention on the Rights of the Child and specifically dealt with the right to appropriate legal assistance of a child.

In my next chapter i will discuss the methodologies used in obtaining information during the field research. It will also discuss the research methods used in obtaining information.

## CHAPTER 3

### 3.1 Methodology and Research methods

During the course of this research study, two methods were involved, namely library based research and fieldwork. I conducted a general survey of the relevant literatures on the topic of juvenile detainees including textbooks, journals, articles and material from the Internet. I took into account the fact that the field of juvenile justice is a sensitive field of study. I discovered that Tanzania had ratified most of the international instruments concerning juvenile justice. As part of library based research I relied on these human rights instruments as well as national laws.

**Field work** conducted in Dar es Salaam city. During the course of the field work, scheduled interviews were undertaken with government officials, non-governmental legal aid providers, social workers at the retention home, Juvenile court social welfare officer, personnel at the Retention home, as well as children at the Upanga Retention home. These all deal with children in conflict with the law in one way or another.

My field work included a tour of the Upanga retention home which is located at Kisutu with the purpose of witnessing how juvenile justice is carried out, interviewing the children and seeing the conditions under which they are kept in the retention home. I also relied on research from legal aid providers who offer services to the children living in the retention home. I also made a visit to the Oyster bay police station and had a tour of the cells to see the living conditions for a child when they are in police custody.

#### 3.1.1 Grounded approach

I used the grounded approach throughout the research to understand the lived realities of the children. I was able to discover that the government has the mandate to ensure that all the rights enshrined in the Law of the Child Act that should be adhered to and further that the rights in the international instruments that are ratified by Tanzania should be upheld. However the opposite is happening in reality, children are detained for longer than 24 hours,

and children have no knowledge of legal aid assistance and do not receive any legal aid assistance especially from the government.

I interacted with the children on one on one interviews in order to understand what they have gone through since the time of arrest. I found that indeed most of their rights are violated while in police custody staying in unfit conditions for their health and for a period not less than 2 weeks and most of the time they are detained with adults. This method was very crucial for my research as it opened up an array of issues concerning these children's welfare and their rights.

I used the dung beetle method of collecting information where one government official I interviewed referred me to another. I was also able to visit a Social welfare officer at the Kisutu Juvenile Court who referred me to legal aid providers that they are working with. The legal aid providers were an eye opener informing me that they offer legal aid to children but they cannot reach all the children. The Women and Legal Aid Centre a legal aid provider, was providing court representation to the children in the retention home but TAWLA another legal aid provider does not provide court representation, they only offer legal advice and counselling to the children. This showed me that there is still a gap when it comes to legal aid provision in Tanzania.

### **3.1.2 Human rights approach**

The human rights approach enabled me to look at rights of the child from a human rights perspective. It is worth noting that Tanzania has ratified the international human rights instruments including the UN Convention on the Rights of the Child. This enabled me to see how the state is failing its obligations as children's rights are still being violated. I used the different human rights instruments related to children to investigate the ten children that I interviewed. This approach was useful to me as it gave me insights into the various human rights instruments that enshrine children's rights for instance the best interest of the child criterion which is the guiding principle of the Convention of the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

### **3.1.3 Actors and Structures**

I used this approach to interview my key informants who included government officials and non-governmental organisation from the Kisutu Juvenile Court, Ministry of Justice and Constitutional affairs, Ministry of Health and Social Welfare with whom i had a one-on-one interviews. Government officials were the main actors as they have the mandate to ensure these rights are realised by the children. My aim was to capture information on how children access legal aid services from the justice system in Tanzania starting from the time of arrest until they are brought before a court of law. I used actors to find out the length of time children spent in detention, if they have any legal aid assistance and how much knowledge do they have on legal aid providers in Tanzania. This approach was very useful to me as it gave me insights into the fact that children often go without legal aid assistance for a number of factors. I also used this approach to interact with government officials and NGOs to investigate if they work together in ensuring these children get their rights as enshrined in the Law of the Child Act of Tanzania.

### **3.1.4 Legal aid approach**

I used this approach to investigate if children have any access to legal aid assistance once they come into conflict with the law. For this case I interacted one on one with the children in the Upanga Retention home asking they if they had ever got any access to legal aid assistance during the trial of their cases. I also investigate further with the non-governmental organisations that are providing legal aid services to these children which provided me with information on how legal aid providers interact with these children. The approach was useful to me as I was able to interact with 17 people in total about legal aid assistance for child juvenile detainees

## **3.2 Research methods**

### 3.2.1 One on one interviews

Juvenile justice professionals were interviewed and these included, Police Officers, Government officials, including Ministry for Health and Social Welfare and Ministry of Justice and Constitutional Affairs, Lawyers from NGOS offering legal aid services to children in conflict with the law Retention Home staff, Social Welfare Officers from the Juvenile Justice Court. The children were interviewed on one to one basis. I was given a private room in which to talk to the children in private and each child was able to respond to the questions in a free environment to talk. I interviewed them one after the other in privacy. This method enabled me to collect the vital information regarding legal aid assistance to juvenile detainees.

**Table1: Key informants that were interviewed**

Person (s) interviewed	Sex
Child juvenile detention home (children)	7 male and 3 female
Officer in Charge, Retention Home Upanga	Male
Social Welfare Officer, Child Juvenile Court	female
Advocate, Women and Legal Aid Centre (WLAC)	Male
Assistant Commissioner, Juvenile Justice and Correctional Services, Ministry of Health and Social Welfare department	Male
Project officer, Tanzania Women Lawyers' Association (TAWLA)	Male
Head Legal Aid, Public services Division, Ministry of Justice and Constitutional Affairs	Female
Gender Desk Officer, Oyster bay Police Station	Female

### 3.2.2 Case study method

This method assisted me to focus my research on the main key informants. I focused my study on one Retention Home, the Upanga Retention Home, because I wanted to get the views of the children. The home has a total number of 31 children but I chose to focus on only 10 children with 7 boys and the only 3 girls that were in the retention home. This enabled me to trace the 10 children's experiences right from the time of arrest, through police detention and until they are brought before a court of law. I used the case study method because it would enable me to have a focus of my research on child juvenile detainees. I did this because if I focus on only 3 children I would be able to get a picture of what is happening to the rest of the children. I chose one retention home as my focus because I was not financially able to visit all the retention homes as there is only one retention home in Dar es Salaam and the rest are in other regions.

### 3.2.3 Observation

I carried out observations during site visits to find out about the treatment of children while in detention and to see the conditions under which the children are held at the police stations. I sought to discover how rights and duties are adhered to in connection with laws and regulations and international standards. I visited the Upanga Retention home and interviewed the children but also visited their rooms to have an idea of their accommodation to see if they are up to standard but I found they were unhygienic and congested. I also observed the extent to which children's human rights were being adhered to.

I further made a site visit to the Oyster Bay Police Station where I interviewed the Gender Desk officer who also gave me the opportunity to visit the police cells where children are withheld and I found that children are detained together with women in a very small space.

The impact of this on my research is that I was able to determine that children are held in unhygienic conditions in a very small space together with adults.

## CONCLUSION

This chapter aimed at discussing the methodologies used while in the field and the methods used in collecting data. It discussed on one one interviews which are crucial in ensuring the confidentiality of the children while being interviewed. I also used the grounded, human right and legal aid approach to obtain information as discussed in this chapter.

In the next chapter I will discuss the findings from the research, revealing the voices captured during the field research from child juvenile detainees, legal aid providers, the government as well as a representative from the juvenile court.



## CHAPTER 4

### FINDINGS

“There is no keener revelation of a society’s soul than the way in which it treats its children”

-Nelson Mandela former President of South Africa

This chapter intends to reveal the voices of the children who are affected by the lack of legal aid as well as the views of government officials and legal aid providers who provide the legal aid in reality. I wanted to get the views of role players in ensuring that child juvenile detainees get access to legal aid in Tanzania. Most of the voices were the children who gave me their experience from the time of arrest up to their stay in the retention home. I interviewed them on their view of legal aid assistance and if they had received any. I interviewed 7 boys and the only 3 girls that were staying in Upanga Retention Home. The chapter also reveals the views of the conditions while in police custody as well as the views of the Gender Desk Officer at the Police station where these children are held. It intends to show that children’s rights are being violated right from the time of arrest until they are brought to court to answer their case.

My assumptions for this study were:- Child juvenile detainees cases take long to be heard because of inadequacy in legal aid services, Child juvenile detainees do not receive adequate legal representation and when they do it is of poor quality because it’s a free service, Child juvenile detainees in retention homes are not aware of legal aid services offered by NGOs, Children are being held in police stations for longer than 24 hours before being brought to Court because they lack legal representation.

**Child juvenile detainees’ cases take long to be heard because of inadequacy in legal aid services.**

*“I have a case of armed robbery; I did not commit the crime. I was selling CDs and police jamii just showed up and arrested me. I am friends with the robbers and the police are still investigating the case. The other co-accused is in an adult prison. There is delay in this case because I am accused along with two adults. My case is taking longer because of this”*

Section S. 45 and S.46 of the Judicial Service Act require a Magistrate or Judge to pronounce a judgment within 60 days. Therefore, a child is required to be tried other than in some cases, within 60 days, and s.103(2) of the Law of the Child Act further provides that in any offence other than homicide, the case shall be disposed of by the court on that day.

I found that some cases take too long and children have been kept in the retention home even after completion of their case. In one incident the case of theft of two million shillings the case had been on-going for two years and she was still staying in the retention home.

*“My case has been in court for years now and it has been completed but i am still being held in the remand home because there is no transport for me to leave the retention home”. Upanga Retention home, 27<sup>th</sup> October 2016*

Other cases keep being postponed in court so children stay longer than one year on remand. There are also delays to cases because according to one incident, the child aged 16 was convicted along with 2 adults so collecting evidence took a long time which means he stays in the retention home for a long period of 2 years. The reasons for delay in hearing cases included investigation is still on-going, not enough witnesses have been gathered for the case.

*“I was working as a house maid and a child of 3 years fell in a well between 10.00am and 11.00am and died and I was accused of intentionally killing the child. My case has taken over year because they say they are still looking for evidence.”*

### **Lack of enough quorum to hear cases**

Cases take long to be heard and this might be because it requires a quorum for a case to be heard which includes a judge, social welfare officer, plain clothed police man and most cases one is missing and therefore the case cannot proceed. A shortage of magistrates also caused a problem of delays of children’s cases. Further, the Juvenile Court in Kisumu sits with only one Magistrate from 7am – 9am, Monday to Friday and the magistrate also has to attend to other cases.

*“I have been in this retention home for a long time, because my case keeps being postponed and it is usually because the magistrate is busy with other cases so I am told my case has been postponed”.*

Another issue is if not enough witnesses have been gathered the case may be postponed.

*“My case keeps being postponed because there are not enough witnesses in court so I have been in this retention home for many months because they are still collecting witnesses for my case”.*

### **Nature of the Case**

A Social welfare officer at the retention home admitted that;

*“Children’s cases take long to be heard and for those cases such as murder which are unbailable they stay in for a longer period. Some cases also take long because because there are usually delays in collecting evidence “Upanga Retention home 29<sup>th</sup> October 2015*

### **Lack of witnesses**

There are also delays in getting witnesses together and for instance in rape cases doctors do not come in time. Robbery and murder cases also typically take a longer time. In murder cases the post mortem may take as long as 3 to 4 years. Homicide cases also take particularly longer than others.

*“I am accused of murder and my case has taken long to be heard because there are no witnesses”*

### **Technical issues**

There also technical issues that lead to lateness. In some instances witnesses also do not coming in time. Some of the children admitted as follows;

*“Yes cases delay to be heard, I have been in detention for 1 year and in my case there has not been enough evidence collected for my cases to carry on so am still in waiting”Upanga Retention Home, 27<sup>th</sup> October 2015*

*“I was a sales boy at Kimara when i was accused of raping a young girl at 10.00am. My case has taken long to be heard and has been on-going in court for 1 year now”*

*Upanga Retention Home, 27<sup>th</sup> October 2015*

The cases therefore take longer than expected because of the investigation machinery being slow. In addition, children with co-accused cases usually experience more delays with their cases.

There are excessive delays in justice as admitted by one child;

*“My case has taken 2 years on trial every time my case is called it is adjourned because they are not enough witnesses or they are still collecting evidence; am accused of theft of 2,000,000 shillings. I was also held in a police station for one month before I was brought to this retention home.”*

I also found that most of the children have stayed in detention for a long time for being accused of stealing minor things. Another finding is that most detained children cases were not instituted at the Kisumu Juvenile Court but at the District Courts or primary Courts. In the case of children with cases in the primary and District Courts they are only provided with legal information, legal advice and coaching but no court representation.

### **Only one juvenile Court**

There is only one juvenile court in Tanzania and it is located in Dar es Salaam the Court cannot handle all the child juvenile cases so it causes delays of cases. In addition there is only one magistrate who handles children’s cases so this is the cause of slow trials leading to children keeping in retention homes for longer periods. According to one legal aid provider, he noted that,

*“Yes, there is currently one juvenile court in Dar es Salaam and another one is still in construction in Mbeya. Legal representation is only available to juvenile detainees in Dar es Salaam and not in other regions where there are neither juvenile courts nor remand homes.”*

A social welfare officer interviewed admitted that children with cases in the primary courts do not get any representation because advocates are not allowed in the primary courts.

In interrogating a social welfare on why the children do not get legal representation she informed me that,

*“There are lawyers who represent a child in court so they have legal representation. However, they cannot reach all the children”*

#### **4.2 Lack of adequate legal representation for child juvenile detainees**

Article 37(d) of the CRC that a child shall have the right to prompt access to legal assistance.

Article 40 (2) (b) (ii) further provides that every child shall have legal or other appropriate assistance in the preparation and presentation of his or her defence.

According to the interviews, 8 out of 10 children admitted they were not aware of legal representation as they always appeared in court on their own. (However in some instances these were cases in the primary court where one does not require representation). One of the children admitted that;

*“I am not aware of any legal representation as i appeared in court on my own in the Kibaha District Court “Upanga Retention Home, 27<sup>th</sup> October 2015*

Furthermore, 5 out of 10 children were not aware of other legal representation save for one legal aid provider an NGO called Women and Legal Aid Centre (WLAC).

Some children in the retention home admitted they had never received any form of legal representation. In other instances, legal aid providers provided counseling and legal advice and not court representation. Others admitted that there is some legal assistance once your case is at the Kisumu Juvenile Court where there are lawyers who assist with the court representation. 2 out of 10 informed that there is no legal aid because the contract with legal aid service providers expired especially the lawyers who were assisting with their cases. However during the course of the research I found that the contract had been renewed. One of the children interviewed informed me that;

*“I must admit there is not enough legal representation as there are not enough lawyers and i have never heard of any NGOs giving legal aid since i came to this retention home. I personally have a case of armed robbery because i stole clothes from a shop but i have no representation in court”*

Some of the children did not receive any legal representation for their cases and admitted that their cases also take long to be heard because they do not have a lawyer. The children also informed that for some cases that are in the Juvenile Court they have representation of a lawyer.

In practice, legal assistance and representation is only available for free to defendants accused of murder and capital offences, such as treason. A number of legal aid providers provide their services but these services are not enough to go around the whole country, there is also shortage of lawyers and the ones available offer their services in big cities like Dar es Salaam

In addition, court sessions where there is no juvenile court sometimes function as other ordinary courts, normal court procedures are followed regardless the nature of the case and parties. This puts children at a disadvantage as the child will easily be intimidated and cannot respond as they would in a juvenile court which is child friendly.

A small number of children admitted to receiving legal representation from legal aid providers.

As I interviewed the officer in charge of the retention home, he informed me that the Children have legal representation although the contract with the previous contractor has expired; at that time they were in the process of renewing the contract. The Contract is with a legal aid provider called the Women and Legal Aid Centre who are supported by UNICEF.

#### **4.3 Lack of knowledge on legal aid services offered to juvenile detainees**

Children in Upanga retention home were not aware of any legal aid services offered by legal aid providers although some have had a visit from one NGO the Women and Legal Aid Centre (WLAC). Others have never heard of any legal aid providers. Some admitted they were aware of support of UNICEF and some lawyers who come to give legal assistance. Others admitted that there is only one representative who represents some of their cases but that is not the case for every child in the retention home.

*“There is a representative from WLAC who assists some of us by representing us at the Kisutu Juvenile Court”. Upanga Retention Home, 28<sup>th</sup> October 2015*

In addition, the children interviewed were not aware of any legal aid services offered and have never heard of them. They admitted as follows;

*“I have never heard of any organization that provides legal aid to children “Upanga Retention Home, 28<sup>th</sup> October 2015*

*“NGOs come and listen to the cases but do not offer any help”. Upanga Retention home, 28<sup>th</sup> October 2015*

The children generally showed a lack of knowledge of legal aid services being offered to child juvenile detainees. 8 out of 10 children interviewed have never heard of any legal aid providers offering them assistance of legal representation in court.

The officer in charge of the Retention home informed me that there are some legal aid providers who approach the children only to give them legal advice and counseling but they do not represent them in court. Therefore as a matter of fact children are not aware of legal aid providers because there is only one legal aid provider that is providing services to the Upanga retention home.

Further according to one service provider on whether children have knowledge on legal aid services offered by NGOs, he stated that,

*“Not all. In places where there are no remand homes child juvenile detainees are not aware of legal aid services. Some of the children kept in remand homes are aware because they get frequent services offered by NGOs and paralegals as they often visit the children in the centres. However not all children are aware.”*

Children may have been approached by some organizations such as TAWLA but do not offer the children, court representation but rather have offered counselling and observe proceedings in court. Social counselling is also offered by the department of social welfare. Psycho-social advice is also offered. Some children are given a non-custodial sentence where they are allowed to serve their sentence at home.

The legal profession in Tanzania mainland has not adopted an information or outreach strategy, and little is done in practice to inform the public of the legal aid services provided by lawyers (Danish Institute for Human Rights, 2011).

However it should be noted that efforts have been made by the Ministry of Justice and the TLS to inform Tanzanians on the Legal Aid Day. This however, is still not sufficient to send information to all who need legal aid services.

#### **4.4 Detention of children in police stations for longer than 24 hours before being brought to court**

Article 37(b) of the CRC provides detention of a child by police should be used as a last resort.

In Tanzania the procedure for arrest of offenders is regulated by the Criminal Procedure Act, 1985 (CPA). Section 12 of the CPA prohibits forceful and arbitrary arrest.

Further, Article 9(3) of the ICCPR also provides promptness in bringing an accused person before a court within 24 hours.

Children admitted to personally being detained in police custody for one week. Others stayed one month without any help before appearing to court and being transferred to the detention home. Others spent 3 weeks while others stayed one month and 4 days in police custody. More interviewed revealed they had stayed 2 months, 2 weeks and 20 days at the police station.

*“Yes, I stayed in police custody for one month before I was transferred to the retention home “Upanga Retention home, 27<sup>th</sup> October 2015*

*“I have stayed in police custody for one month and 4 days in police custody before being released and being brought to this retention home.”*

According to the officer in charge of the Upanga retention home he admitted that;

*“All the children that have stayed in the retention home have been withheld in police custody for more than 24 hours. This is due to the delay to provide evidence by the DPP’s case, enough to bring the matter to a court of law.”*

Section 101 of the Law of the Child Act provides that;

Where a child is apprehended and cannot be brought before a juvenile court, that child shall be released unless it is a case of homicide.

Detaining children in police custody for more than 24 hours has been happening due to procedural requirements. The law requires that a charge should be filed against the child before the court only when investigation is complete. So when the child is brought at the police station, and there is no retention home nearby, the child may stay at the police station for many hours or days. One of the children interviewed informed me that;



*“Yes i have stayed beyond 24 hours in police custody. I stayed for 9 days while others have stayed for 2 months “Upanga Retention Home, 27<sup>th</sup> October 2015*

The officer in charge of the retention home informed me that all the children that have stayed in the retention home have been withheld in police custody for more than 24 hours. This is due to the delay to provide evidence by the DPP’s case, enough to bring the matter to a court of law.

The Social Welfare at the retention home further informed that;

*“Children are held in police stations for a long time and do not observe the 24 hour rule. This is usually to gather evidence on the case before submitting the file to the DPPs’ office “Upanga Retention home, 29<sup>th</sup> October 2015*

Children’s cases are handled by the Police Gender and Children Desk which handles other cases other than children. There are no specific police officers to handle children’s cases while in police custody and ensure that they are treated in accordance with the law.

Section 33 of the Criminal Procedure Act 1985 provides that an officer in charge report within 24 hours to the nearest magistrate of persons arrested. However, according to Maganga 2005 this law is often violated either deliberately or out of lack of awareness of the law. Further, according to the Criminal Procedure Act a child is required to be brought as soon as practicable before the court.

According to Section 67 (2) of the Criminal Procedure Act provides that a person charged with an offence fails to be granted bail the person shall be brought before a magistrate. This relevant to child juvenile offenders because they are often kept in police custody and are not granted bail.

Section 53 of the Criminal Procedure Act, 1985 requires the arresting police officer to identify his/her name and rank to the arrested person. The research found that police officers do not identify themselves to the children they are arresting.

Article 9(2) of the ICCPR, provides that anyone arrested should be informed of the reasons of arrest. This article is also relevant to children.

Article 40 (2) (b) (ii) CRC and Article 9(2) ICCPR require that a child should be informed of the charges against him or her. Section 53 CPA also obliges the police officer to inform the person arrested of his or her rights.

The children interviewed complained to me that they were not aware of why they had been arrested and were retained by the police men without informing them of the reasons for arrest.

The research further revealed that while in police custody, parents or guardians are not notified of their children's arrest and detention. Parents are often unaware of their children's arrest and are unable to communicate with their parents as a result, children remain in detention for longer periods of time than is necessary and or/receive custodial sentences because they were unable to communicate with their parents. It also becomes difficult for these children to benefit from their right to bail.

Rule 10.1 of the Beijing Rules provides that a child's parents should be notified of their arrest and further General Comment 10 of the CRC provides that parents should be involved in the proceedings. Further, Section 56(1) of the Criminal Procedure Act provides that the police investigating a crime against a child to inform the parent.

As mentioned earlier, the legal aid provider revealed that withholding children in detention for a period longer than the statutory 24 hours has been happening due to procedural requirements. In addition if there is no retention home nearby, the children are likely to be held at the police station until investigations of their case is complete.

Other reasons for delay include:

- Intentional delays by police officers
- Absence of defined referral network/system/mechanism
- Ignorance of the law by police officers
- Corruption

According to the field research undertaken, I found that child juvenile detainees are kept in police custody for longer than the statutory 24 hour limit. Children are likely to stay in police detention for longer periods and most commonly held together with adults.

As the court rightly stated in this case, Republic V. Njama Zuberi (1985) TLR 241 a boy

Aged ten years was charged with murder and held where there were no facilities to keep juvenile offenders. The accused had been living with his parents who were willing to look

after him but the police refused. The Court held that he be released from custody where he is likely to associate with adult offenders and other undesirable influences.”

#### 4.5 Role of the government in providing legal aid

The department of Public legal services under the Ministry of Justice and Constitutional Affairs has three sections; that is; dealing with public complaints, legal services and legal aid which was separated from the Attorney General’s Chambers. The legal aid section has the following duties;

- To coordinate and regulate the provision of legal aid
- To carry out research on provision of legal aid services and advise
- To prepare framework, standards, guidelines and criteria for provision of legal aid to the needy and indigent and monitor and evaluate their expectations
- To scrutinize requests for legal aid and advise
- To develop and operationalise a scheme for efficient and proper functioning of legal aid provision
- To educate the public on legal aid services.

The Commission for Human Rights and Good Governance was established under the Constitution. In 2006 CHRAGG received a recommendation from the Attorney General to conduct a consultation into violations of children’s rights. This led to the creation of a children’s desk

A task force was formed in 2010 including members of the central government, academia and civil society. These included the Attorney General’s Chambers, Legal Aid Committee of the University of Dar es Salaam, Tanganyika Law Society (TLS), Tanzania Women Lawyers’ Association (TAWLA), Women’s Legal Aid Centre, and the Legal and Human rights Centre (LHRC). The Open University and the University of Dar es salaam both run legal aid clinics providing legal information and legal advice and the University of Dar es Salaam provides legal representation. However these services may prove to be costly as the TLS requires the person to be earning below the minimum wage before legal aid can be granted as the criteria for receiving legal aid. This however proves to be an obstacle for those who cannot afford it as it is based on the level of income of the applicant because there is still an amount that needs to be paid.

Although attempts have been made by the government to improve the provision of legal aid services they have still faced failure because what is on ground is that children are not receiving legal aid assistance. For example, the Retention Home that was my focus of research had never had any government intervention to provide legal aid to the children living in that home. In addition, the services of the government are still not up to international standards and as i have mentioned before children and still being treated in inhuman and degrading treatment at police stations where they are held in detention for long hours.

In addition, according to the concluding remarks of the Committee the government of Tanzania has not fully complied with the obligations of the CRC and this includes improper administration of juvenile justice system. (Maganga C 2005)

According to Hamilton and Barnes (2011), the government has the following obligations in ensuring access to justice for children; legal advice, representation, a right to consult with his or her lawyer. Further according to the Draft UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 9, the Government has a responsibility under its international commitments to allocate necessary and sustainable resources to the legal aid system.

The only statutory body in Tanzania offering legal aid Tanzania is the Tanganyika Law Society (TLS) statutory body (regulated by the Tanganyika Law Society Act 2002) and is a body representing advocates. The Tanganyika Law Society is the main body under the Legal Sector Reform Programme mentioned earlier and is responsible for establishing a Legal Aid Secretariat to manage funds and select NGOs who provide legal aid in Tanzania.

The TLS has reported a small number of children applying for legal aid services. The TLS has established a pro bono system, where lawyers are in principle obliged to offer legal advice and representation free of charge. Furthermore, clinics have been established by NGOs, where in-house staff, consisting mostly of jurists and paralegals (but also a limited number of lawyers), provide a variety of legal aid services. In addition, other than the state-funded criminal legal aid scheme, there are 2 key categories of legal aid providers existing in Tanzania mainland. The first category relates to institutions whose main objective is legal aid. These include legal aid clinics connected to higher learning institutions, such as the School of Law of the University of Dar es Salaam. The second category includes institutions including TLS. Legal aid providers in this category include full-time in-house employed

lawyers, jurists and paralegals, private lawyers who are recruited for specific tasks and lawyers offering pro bono services on an ad hoc basis in connection with the programmes established by these organisations. (Danish Human Rights Institute 2011). There is no national policy or bill on legal aid in Tanzania mainland

The government has outsourced its duties to provide legal aid to legal aid providers through the legal aid secretariat, however, there are still obstacles in children realising their right to free legal aid in Tanzania.

Retention home officials informed me that the department of social welfare has the capacity to handle the children in Dar es Salaam except in other regions. This remains a challenge for children who are outside Dar es Salaam who can't get legal aid services. Some of the barriers for children in accessing legal aid include; lack of knowledge by the children that their rights have been violated and one could get legal assistance for the crime committed. Further there are few legal aid services that target children. Children are not aware of how to get access to legal representation Children are withheld in police stations without any legal assistance being offered. As a result, most children in conflict with the law go through proceedings without any legal advice or representation. (Hamilton and Barnes 2011)

I found that the department of social welfare did not have the capacity to handle the children as they faced a number of challenges like not enough staff or not enough resources to run the retention home. The department of social welfare does not have the capacity to give services to the children kept in remand homes although the officials admitted they had the capacity. They may have the ability to take care and nurture the children in remand homes but do not have enough resources to afford legal expertise for all the children in the retention home. Only a few children living in the retention home get the services of a lawyer. According to the Officer in Charge of the Retention Home,

*“The retention home continues to receive children even if it has reached capacity if the number is big we make the necessary adjustments like adding mattresses. We have a capacity to taken in 50 people but even if the number is bigger we will follow the order of the court”*

There are still as a matter of fact many challenges being faced by the government in ensuring all children access legal aid. I found that on ground it is the non-governmental organisations that are the key players in providing legal aid services to children.

Finally, the government has failed in its role of providing free legal aid services to children in Tanzania because by outsourcing the function to a legal aid secretariat that is composed of legal aid providers a number of challenges are faced by legal aid providers like a shortage of lawyers or not enough resources to reach all the children in Tanzania in conflict with law who require free legal aid. International standards of human rights are not being adhered to in reality and the conditions under which these children are kept right from police arrest up to when they appear before court and further in the retention home, amount to torture.

Article 37(a) of the CRC provides that a child should be subjected to degrading treatment.

This mirrors the provision in Article 7 ICCPR, Article 5 of the ACHPR and Article 16 of the ACRWC. Torture is clearly prohibited under national law too. Article 13(6) (e) of the 1977 Constitution, prohibits torture. However, the reality on ground is that children are being subjected to inhuman and degrading treatment while in detention in police cells and this amounts to torture. The government has failed in its role of ensuring that children are not subjected to inhumane and degrading treatment or ensuring that they afford free legal aid services.

## CONCLUSION

This chapter dealt with the voices of the child juvenile detainees who are living in Upanga Retention home. It is clear from the above discussion the lack of access to justice for these children who are on remand. The majority of them have never had access to a lawyer and have not received any legal aid. The government has failed in its role of providing free legal aid services as clearly their services have not been reached by the majority of the children interviewed.

In the light of this the next chapter will seek to discuss the recommendations to improve the access to legal aid services by child juvenile detainees.

## CHAPTER 5

### 5.0 CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 CONCLUSION

Children in conflict with the law in Tanzania have limited access to legal aid services throughout the justice system. The majority of the children are unaware of their rights and their entitlements to the law right from the time of arrest. There is need to strengthen the legal framework to make legal aid accessible to children in retention homes. Although the government has taken positive steps in realising the rights of children, there are still violations going on in regarding to children accessing justice in Tanzania. The Law of the Child Act has also a progressive law in realising the rights of children but the Act is not being implemented to the full. The main obstacles to children's access to justice have been laid out in this research paper. The challenges include:- lack of enough magistrates to adjudicate children's cases, lack of legal advice and representation in court, lack of knowledge by children of legal aid services provided, there is only one juvenile court in the whole country so it causes delays of cases. Tanzania also lacks specialised systems for juvenile justice for instance although a Police Gender and Children's Desk was introduced it's not specific for children and the police who handle children's cases are not trained on juvenile matters. Further ensuring access to justice for child juveniles requires a multi-disciplinary approach involving ministries, administrative, judicial and executive bodies, lawyers, social workers, paralegals, civil society organisations, communities, parents and children themselves. All these should function well together to ensure that a child's best interest is considered first and fore most.

According to the research findings in relation to my assumptions, it can be concluded that child juvenile detainees' cases take long to be heard because of inadequacy in legal aid services. Further, child juvenile detainees do not receive adequate legal representation and when they do it is of poor quality because it's a free service. In addition, it was can be said that child juvenile detainees living in retention homes are not aware of legal aid services offered by legal aid providers. More so, the research found that children are being held in police stations for longer than 24 hours before being brought to Court because they lack legal representation. Lastly, the Ministry of Justice and Constitutional Affairs does not have the capacity to provide legal aid services to child juvenile detainees because this role has been

outsourced to legal aid providers who face a number of challenges in delivering legal aid services.

## **5.2 RECOMMENDATIONS**

Although the government has made some efforts towards improving the juvenile justice system in the country, the research has showed there are still problems in the system that are weak and need to be improved to achieve the minimum standards set in the international instruments. There is further a need to update the existing legislations to international standards.

There is need to appoint more Magistrates in the juvenile court in order to speed up the trials of child juvenile detainees. There should be specialised training on the Convention on the Rights of the Child. There is further need to ensure that the judiciary has up to date information about children living in Retention Homes, to ensure that children are not withheld for a long time during the course of their trial.

Children's cases need to handle children's cases expeditely and ensure periodic reviews of children's cases. There should be a mechanism that ensures access to legal representation for children who have come into conflict with the law.

As it is a fact that lacking legal representation in juvenile criminal court proceedings has greatly led to the violation of the rights of the children, there is therefore a need to establish a legal aid scheme for juveniles that is functional.

The government needs to ensure that they develop a mechanism that every child gets access to legal aid and gets free legal advice or other appropriate assistance from the time of arrest through the initial hearing to the time of trial and sentencing. As was discovered during this research children do not have any information either about legal aid services or why they are being arrested.

Since there is poor knowledge about children's rights and there is a lack of general information about legal aid providers, there is need to develop a national information package that will ensure communities get information on legal aid services so parents can on behalf of their children request legal aid. Further it should ensure the package is widely



available for the public to access and be made widely available to the community. Information should be circulated on how to access legal aid providers. This information should be shared through schools, the radio and television and newspapers. Further, information should be made available through police stations, retention homes, in courts and at the approved schools.

The government needs to strengthen their cooperation with legal aid providers/non-governmental organisation who offers legal assistance to children who are in conflict with the law in order to facilitate their access to legal help during their court trial. The government currently has a task force of a few legal aid providers who offering legal aid services.

There is need to improve on the provision of information by legal aid providers to the community, this will ensure that community members are aware of their services and be able to access legal representation when required.

There is need to put in place a mechanism that ensures that children have legal access to while they are in police custody after being arrested. This will assist in ensuring that children are not detained at the police station for longer than 24 hours which is the statutory time.

Police officers should be provided training on child rights issues and especially the Law of the Child Act and be trained on friendly methods of dealing with children.

The Government needs to comply with article 37 (c) of the CRC Convention and article 17 (2)(b) of the ACRWC, which recommended that the Government should establish separate detention facilities at police stations for juveniles and increases the number of retention homes and approved schools throughout the country for the best interest of juveniles.

There is need to review the law which restricts legal aid to other criminal offences than capital offences (murder and treason) to allow legal aid to extend to other offences too.

The Ministry of Home Affairs needs to work to improve the conditions in police detention to ensure that they are up to international standards and are regularly monitored and ensure that the rights of children are not violated while in detention.

The government should work to develop special units within the police that deal exclusively with children who come in conflict with the law other than the Gender and child police desk which serves both women and children and is not specifically meant for children.

There is further need to build the capacity of police officers for child protection response for children in conflict with the law. There is need for a trained liaison police officer at each police post equipped to handle children's cases and who maintains good links with social welfare officers.

Children should be allowed access to family members while in detention and the conditions at the police station should be standard with child offenders being detained separately from adults.

There is need for the Social Welfare Department in the Ministry of Health to improve its capacity to provide facilities for juvenile detainees and acquire adequate equipment and facilities according to international standards.

The Social Welfare department should provide allocate enough resources to ensure that children are transported from the Retention Home to Court, so that their cases are reviewed and dealt with within the statutory time limits. There have been reported delays of children living in the retention home for lack of transportation.

The Ministry of Health and Social Welfare should ensure that retention homes are established in every region as there are currently only 5 retention homes in 5 regions.

The Ministry of Health and Social Welfare should ensure that there are enough social welfare officers in each region as they are currently not enough social welfare officers in each region.

There is need to ensure that there enough prosecutors in each district exclusively to prosecute juvenile cases. This will assist in speedy trials and ensuring that a child is accorded their right to a fair trial and hearing.

Social welfare officers should be appointed specially trained in juvenile justice to carry out the duties as laid out in the Law of the Child Act 2009 to ensure that child juvenile detainees get the necessary support and their rights in the criminal justice system are not violated.

Social welfare officers should be trained on their obligations under the Law of the Child Act 2009 to ensure that they understand. This will enable them to implement their obligations under the Act.

Children under the age of 12 who come into conflict with law should not be exposed to the criminal justice system. The Ministry of Health and Social Welfare together with the Home

Affairs should develop a protocol for dealing with such children to avoid exposing them to the justice system.

The Tanzania government should put in place a mechanism where advocates take up pro bono cases specifically for children's cases. There is need to create incentives to increase the number of lawyers offering legal aid services.

In addition, the government could build up a well designed legal aid country wide programme which will develop a legal aid network for legal aid providers. The current task force that works with a selected number of legal aid providers is not sufficient to cover the whole country. It should also establish a fund to provide grants to legal aid providers including non-governmental organisations and these can be raised from donor agencies.

The Ministry of Justice and Constitutional affairs should develop a mechanism where children who come into conflict with the law are given free legal assistance right from the time of arrest to when they appear before a court of law as not all children currently access the legal aid programme by the Ministry of Justice and Constitutional Affairs.

## Bibliography

Antieaut C 1961, *Constitutional rights in Juvenile Courts*, Cornell Law Quarterly, vol 46, spring 1961

Child Trends (2014) *Juvenile detention* available at <http://www.childtrends.org/?indicators=juvenile-detention> accessed on 26<sup>th</sup> February 2016

Danish Institute for Human Rights (2011) *Access to Justice and Legal Aid in East Africa A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors*, Copenhagen

Hamilton C and Barnes R (2011) *Assessment of the Access to Justice System for under -18s in Tanzania*, Colchester, UK ,Coram Children's legal centre

International Federation of Women Lawyers (FIDA) (1986) *Proceedings and papers of a Symposium "Society and The Child"*, Fourth Dimension Publishers, Enugu, Nigeria

Institute for Security Studies (ISSAfrica), (2009) *Failing young offenders, Juvenile Justice in Sierra Leone, Tanzania and Zambia*, in ISS Policy Brief Nr 08, September 2009)

Lang O (1976), *Access to Justice*, Chitty's Law Journal, Vol 24, Issue 1 (January 1976)

*Legal assistance for children in conflict with the law* available at <http://www.oijj.org/legal/situation.php?c=1&p=173> accessed on 26<sup>th</sup> February 2016

Legal Services Facility (2012) *Baseline Survey on Tanzania Mainland and Zanzibar for Legal Services Facility*, Dar es Salaam, Tanzania

Maganga C (2005) *Administration of Juvenile Justice In Tanzania A study of its compatibility with International Norms and Standards* (Un published), A dissertation submitted in partial fulfilment of the requirements for the Degree of LL.M in International Human Rights Law, Lund University, Sweden

Penal Reform International (2007), *Access to Justice in Africa and Beyond, Making the rule of law a reality*, Bluhm Legal Clinic of the Northwestern University School of Law Chicago, Illinois

SOS Children' Village Tanzania (2012) *Status of Children in Tanzania*

Tanzania Ministry of Constitutional and Legal Affairs (2012), *Analysis of the situation of children in conflict with the law in Tanzania* (2012)

Tanzania Ministry of Constitutional and Legal Affairs (2013), *Child Justice, A Five year strategy for progressive reform 2013-2017*

Tanzania Commission for Human Rights and Good Governance (CHRAGG) (2011), *Inspection Report for Children in Detention Facilities in Tanzania*

Tanzania Law Reform Commission (1994) *Report of the Commission on the law relating to children in Tanzania*

Tanzania Women Lawyers Association (2012), *Children in Detention Manual; Discussing the rights of children in detention and those in child labour*, Dar es Salaam

Women's Legal Aid Centre (2012/2013), *Legal Aid Programme for Children in Conflict with the law*, Women's Legal Aid Centre), Dar es Salaam

UNICEF (2009) *Child Protection and Justice- Justice for children* available at [http://www.unicef.org/tanzania/6908\\_10616.html](http://www.unicef.org/tanzania/6908_10616.html) accessed on 26th February 2016

UNICEF, *Juvenile Justice* available at <http://www.unicef-irc.org/publications/pdf/digest3e.pdf> accessed on 29th February 2016

UNICEF, UNDOC(2011), *Child friendly Legal Aid in Africa*, Dakar

UNDP (2013) *Rule of law and access to justice in Eastern and Southern Africa*, UNDP Adis ababa, Ethiopia

United Nations (2011) *Access to legal aid in criminal justice systems in Africa: Survey Report*, United Nations Office on Drugs and Crime, Vienna