ANALYSIS OF THE SITUATION OF CHILDREN IN CONFLICT WITH THE LAW IN TANZANIA

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EXECUTIVE SUMMARY

1. Introduction

In April 2011, the Ministry for Constitutional and Legal Affairs convened the Child Justice Forum – an inter-agency forum comprised of key national state and non-state actors mandated to develop recommendations and strategy for reform of the child justice system. In order to inform this strategy, the Ministry, in collaboration with UNICEF, initiated two comprehensive studies: an assessment of the access to justice system for under-18s, and an assessment of the juvenile justice system. The Coram Children's Legal Centre (a UK-based NGO) and the National Organisation for Legal Assistance (a Tanzanian NGO) were commissioned to undertake these studies. The scope and execution of the studies was overseen and guided by the Child Justice Forum.

This report represents the outcome and results of research into the juvenile justice system. The research covered: the extent and nature of child offending in Tanzania, along with the characteristics of child offenders and risk factors for children coming into conflict with the law; specialisation, capacity and coordination of juvenile justice institutions; children who are exposed to the criminal justice system, including treatment of children below the minimum age of criminal responsibility (MACR); arrest procedures and implementation of children's rights during arrest and police detention; diversion; the process and implementation of children's rights during charge and trial; the sentencing of children; the protection of the rights of children in detention; and rehabilitative support while children are in detention and support to reintegrate upon release.

The primary purpose of the study was to gain an understanding of the operation of the juvenile justice system, and to develop a series of recommendations for strengthening the juvenile justice system in Tanzania in protecting the rights of children who come into conflict with the law. The study will inform a juvenile justice strategy, which will be developed in consultation with the Child Justice Forum.

Prior to the commencement of the juvenile justice study, the Commission on Human Rights and Good Governance (CHRAGG) in Tanzania completed a comprehensive study on children in detention. Rather than duplicating CHRAGG's study, this report compliments the inspection report, focusing on the treatment and experiences of children at all other stages of the criminal justice system.

2. Methodology

The juvenile justice study initially involved a desk review, which analysed domestic laws and policies relating to children in conflict with the law in Tanzania against international juvenile justice standards. Quantitative and qualitative data was then collected on how the juvenile justice system operates in practice in Tanzania. This information was collected in 10 districts that were selected by researchers, including: Arusha, Dar es Salam, Dodoma, Kilimanjaro (Moshi Urban and Hai), Lindi (Lindi Urban and Nachingwea Districts), Mbeya, Morogogo (Wami Youth Prison), Mtwara (Mtwara Urban and Masasi Districts), Mwanza and Tanga.

Data was collected through a series of semi-standardised interviews and focus group discussions with juvenile justice professionals, including Police Officers (at all levels); Prosecutors (State Attorneys and Police Prosecutors), Magistrates, defence lawyers, Retention Home staff, Approved School staff, staff in adult prisons, Social Welfare Officers, Ward Tribunal members and staff at

relevant CSOs and NGOs. In total, 96 professionals were interviewed across the 10 research regions. A total of 192 children in conflict with the law were also interviewed across the 10 research regions. The majority of these children (170) were interviewed on a one-to-one basis, and the rest were interviewed in three focus group discussions. Interviews were also conducted with national-level representatives in relevant ministries, including: the Commission for Human Rights and Good Governance, Ministry for Health and Social Welfare, Ministry of Home Affairs (Commission for Prisons and Police), Chief Justice, Public Prosecutions, and the Department of Probation and Community Service.

Researchers additionally collected raw quantitative data from the log books and registries of police stations, Retention Homes and prisons in several of the research districts. The researchers experienced some difficulty collecting this data from most institutions, either because key information was not recorded (e.g. age or date of birth), or because researchers were denied access to registries or log books. Attempts to collect collated data at the national level were unsuccessful. It appears that data is not collected in a uniform, systematic way and that there is a lack of robust procedures to communicate data to the relevant central-level institution or Ministry.

Following the completion of a draft report, a series of consultation events were held in August 2011 involving front-line juvenile justice professionals across all relevant agencies in four regions: Arusha, Dar es Salam, Mbeya and Mwanza. Feedback from participants at all consultation events confirmed all of the report's main findings as accurate reflections of their own experiences and perceptions. The recommendations contained in this report derive from the analysis of report's authors, and the feedback collected at these consultation events.

3. Main Findings

3.1 Extent and nature of juvenile offending in Tanzania

- **By far the most common type offence for which children are arrested in Tanzania is theft and other minor property offences, including simple theft, pickpocketing and being in possession of stolen goods.** 50% of the children arrested in a 12-month period in the three police stations from which data was collected were arrested for suspected theft or for another suspected minor property offence.

- **Sexual offences were the second most common type of offence for which children were arrested**. 21% of children arrested in the three districts form which data was collected were arrested for sexual offences. A significant proportion of arrests for sexual offences were for statutory rape; that is, sexual conduct that is, in fact, consensual, but where one or both of the parties was below the age of consent at the time of the act. Parents are often the complainants in cases of statutory rape, and that the children themselves will be unhappy for the matter to be prosecuted. It appears that there are no guidelines setting out the circumstances in which the offence of statutory rape should be prosecuted and the circumstances in which there will be a presumption against prosecution, as this will not be in the public interest

- **A significant proportion of children are arrested for public disorder offences, such as vagrancy, loitering, touting or for 'disrupting passengers'.** 18% of all children arrested in a 12-month period in three police stations were arrested for these public disorder offences. These offences are often the result of poverty, lack of parental care and other socio-economic problems. They disproportionately affect vulnerable children, such as children living or working on the street.

- **Boys aged 15, 16 and 17 are most likely to come into conflict with the law.** The data collected from police stations indicates that boys in Tanzania are far more likely than girls to come into conflict with the law. It showed that, in a 12-month period, 89% of all children arrested were boys, and 11% were girls. The majority of girls were arrested for theft. This gender pattern of offending is unsurprising, and consistent with international research which demonstrates that, generally, rates of offending among boys are far greater than that of girls.

3.2 Risk factors for children coming into conflict with the law

Across all districts included in the study, poverty, a lack of parental care (including children who are orphans or who cannot live at home due to economic conditions or exposure to abuse), poor parenting or parental neglect are factors which expose children to a greater risk of coming into conflict with the law. The most significant risk factor was found to be lack of parental care. A significant proportion of children who were interviewed reported that they were not living with a parent/s. 75% of children who gave this information (76 in 102 children) reported that they had not been living with a parent prior to their arrest. Many of the child interviewees reported that either one or both of their parents had died. 52% of children who gave this information (34 in 69 children) reported that either one or both of their parents had died. This is significantly higher than the proportion of OVC nationally, which was found to be 17.6% in the most recent census. Often, these factors will lead children into situations which make them more 'visible' to police or more vulnerable to being exploited by adults, such as those children who are living on the street or children who are working.

Tanzania has not yet established an effective national child protection system, such as, for example, a foster care system. The lack of a properly functioning child protection system means that there are few mechanisms available to ensure that children who lack parental care are provided with the services and support that they require.

- **Poor educational attainment was also found to be a risk factor for children coming into conflict with the law.** 49% of children interviewed who gave this information (55 in 113) reported that they had either never been to school or had received some education but had not completed primary school.

3.3 Lack of specialised juvenile justice institutions

- **There are no designated police units or officers who deal specifically with children in conflict with the law.**

- **The law does not provide for specialist prosecutors or prosecution units to carry out the investigation and prosecution of cases which involve child suspects.** In practice, there is a specialised prosecutor attached to the Juvenile Court in Dar es Salam. Juvenile prosecutors have also been established in a number of other districts. In other districts, prosecutions of juvenile suspects are carried out by general State Attorneys. State Attorneys must cover a very wide range of different matters, including criminal, civil and constitutional cases. As a result, non-specialised State Attorneys have not developed the skills and knowledge required to carry out their work in compliance with juvenile justice standards. Also, State Attorneys have not developed any formal specialised procedures for processing cases involving child suspects.

- **Only one Juvenile Court has been designated, and as a result, the majority of children's cases will be heard in regular courts.** The Juvenile Court, in Dar es Salam, only sits from 7am – 9am, two days a week, and there is only one Resident Magistrate who sits on the Court. If the Magistrate is not there (e.g. if she is sick or on leave), the Court ceases to sit. The Court, therefore, has a low capacity for hearing juvenile cases.

- **There is a significant shortage of Social Welfare Officers (SW Officers) in most districts and there are no specialised SW Officers in any of the study regions, with the exception of three SW Officers that are attached to the Juvenile Court in Dar es Salam.** In all of the study regions, it was clear that there are currently an insufficient number of SW Officers to carry out all of their duties, including their duties under the Law of the Child Act (LCA) relating to children in conflict with the law. The lack of SW Officers has also made it very difficult for them to carry out their child protection and social welfare duties. This likely has the result of children in need of child protection services missing out on vital support and therefore becoming more vulnerable to coming into conflict with the law.

- **SW Officers appear to be unclear about their role in the juvenile justice system and about their duties under the LCA, with the exception of the three SW Officers attached to the Juvenile Court in Dar es Salam as well as those SW Officers forming the Child Protection District Teams in Hai, Magu and Temeke.** The primary role of the SW Officer relating to children in conflict with the law is widely conceived by professionals to be limited to producing social inquiry reports for the purposes of assisting magistrates to make sentencing decisions.

- **There is a lack of Retention Homes in Tanzania.** Currently, there are only five Retention Homes: in Arusha, Dar es Salaam, Mbeya, Moshi and Tanga regions. The lack of Retention Homes in other regions is one of the reasons cited by interviewees for children being committed to adult prisons while on remand.

- **Because there is only one Approved School to cater for children from all regions in Tanzania, many convicted children are not committed to this school; instead, they are imprisoned in ordinary prisons, in contravention of domestic law.**

3.4 Lack of knowledge of juvenile justice concepts and laws

- **Professionals in many of the study regions were found to have a very low knowledge of juvenile justice standards and domestic laws relating to children in conflict with the law.** This is likely to be a result of the lack of specialist units or professionals in criminal justice institutions who are trained to work specifically with children in conflict with the law. Many professionals had either not heard of the LCA at all or, if they had, did not have a detailed knowledge of its provisions, and most offices throughout the study regions did not have copies of the LCA. Professionals in most regions were still applying the repealed Children and Young Person Act, or other relevant criminal justice legislation, including the Criminal Procedure Act. Some professionals did not even have a good level of knowledge of child-specific provisions of the Criminal Procedure Act or Penal Code. For instance, some professionals (including police officers, state attorneys, primary court magistrates and district court magistrates throughout most study regions) did not know the minimum age of criminal responsibility.

  The consequences of the lack of specialist institutions and professionals and lack of knowledge of juvenile justice standards and relevant domestic legislation is that the children in conflict with the law are systematically exposed to having their rights violated at all stages of the criminal justice process. It also has the effect of exposing children who should not be processed through the criminal justice system (for example, children under the minimum age of criminal responsibility) to the system.

3.5 Lack of coordination among juvenile justice institutions

- **In all research regions, with the exception of Hai, there was a lack of coordination between different juvenile justice institutions and professionals, which appeared to impair the ability of the institutions to implement the LCA and of the system to respond effectively to children at risk of coming into conflict with the law and children who are in conflict with the law.** This appears to be caused in part, by a lack of specialised institutions or lack of specially trained professionals within criminal justice institutions, and a lack of clarity and understanding about the roles of different actors within the system.

3.6 Children unlawfully exposed to the criminal justice system

- **It appears that children below the age of criminal responsibility (which is 12, or 10 years, if it can be proved that the child had mental capacity) in some regions are being processed through the criminal justice system.** Data from admissions into three Retention Homes over a 12 month period shows that five children below the age of 10 were admitted into the Homes. Many of these children were detained for disorder or other minor offences. According to professionals, children below the minimum age of criminal responsibility (MACR) will sometimes be brought by parents or carers to the police station or primary courts. The reason for processing children who are below the MACR through the criminal justice system could, in part, be attributed to a lack of knowledge of juvenile justice laws, including a lack of knowledge of what the MACR is. It also appears to be caused by an absence of procedures or mechanisms of referral for children below the MACR.

- **Many children in conflict with the law may not know their age, and this appears to have left them open to age-related challenges by law enforcement officials, and possibly, to children being treated as adults in the criminal justice system, and being denied the special protections to which they are entitled.** It was found that most magistrates do not follow these procedures in order to establish age, and many "just guess."

- **Children who have not committed an offence, but have been misbehaving, for instance, truanting or loitering on the street, are being processed through the criminal justice system and can be placed in detention.** For instance, street children in Tanzania are at times rounded up, held in police detention, and then released some time later without charge. While attendance at Primary School to Standard Seven is compulsory for children, truanting is not a criminal offence. However, it appears that children in Tanzania are being processed through the criminal justice system and / or being placed in criminal detention facilities where they have been found to be truanting.

3.7 Rights violations during arrest and at the police station

- **Fabrication of allegations, particularly against vulnerable children, most notably, those without parental care and working children, was reported to be a problem.** It appears that, in these cases, Police Officers will, at times arrest and detain these children without carrying out any further investigation. They appear to take the statement of the complainant, arrest the child, hold him or her in police detention for a period and may then proceed to process the child through the criminal justice system. Some professionals reported that they suspected that the police accepted bribes in exchange for holding a child in detention in some cases. The allegation of case fabrications are supported by the very low number of guilty pleas that children enter at their initial hearings. Only 15% of children interviewed (15 in 102) reported that they had entered a guilty plea at their initial hearing.

- **Several children also reported having been arrested for one offence (e.g. a minor theft) and having a separate unrelated more serious offence 'pinned on them'.** A lack of legal representation for children at the police station and at the initial Court hearing means that these children may not be able to present solid arguments against their arrest and charge, even when their cases do not proceed to full trial, and may end up being caught up in the criminal justice system on the basis of very limited substantial evidence for a long period of time.

- **Arrest, detention and imprisonment of children is not being used as a last resort, in contravention of international law.** Some children were found to be spending long periods of time in police detention following the commission of very minor offences, such as minor theft and minor disorder offences.

- **Children are being held in police detention for prolonged periods of time, in contravention of international and domestic law.** According to both international and domestic law, a child should not be placed in police detention for longer than 24 hours. It was found that police do not always adhere to the 24 hour time limit on police detention. 79% of children

interviewed who reported the length of time they had spent in police detention (114 out of 145 children) were held beyond the 24-hour statutory maximum time limit, and 73% were held beyond 48 hours. A significant number of children were held for very long periods of time. Twenty-three children were held for between seven days and two weeks, and thirteen children reported being held for one month or more in police detention.

Police Officers who were interviewed reported that investigation at times takes a long time to conduct, particularly for more serious offences, and children are held in police detention until it is decided whether to lay charges. A lack of oversight and low awareness of the law among children also contribute to children being held beyond the 24 hour time limit in police detention.

- **Most children are not separated from adults in police detention, in contravention of international law.** Children in the study districts were generally detained in the same police cells as adult offenders. Many children reported that they were not mistreated by adult detainees, however, several children reported being slapped or hit, and one child reported an attempted sexual assault by an adult detainee.

- **Children reported that they were not permitted to see visiting family members while they were in police detention, in violation of international law.** Children in all research regions stated that parents were permitted to attend the police station in order to drop off food, but were not allowed to have any physical contact or communicate with the child.

- **Conditions in police detention do not meet international standards, and are very damaging to the health and wellbeing of children.** Many of the children interviewed complained of very poor conditions in police detention. Common complaints included that cells were very overcrowded, lacked proper ventilation, making it difficult to breathe, that there was a lack of mattresses and bedding and mosquito nets, cells were very dirty and unsanitary, with no proper toilet and facilities and no place to shower, and that there was a lack of food and water provided to children in some stations.

- **The interviews with children in conflict with the law indicated that there are a high number of incidences of police ill-treatment of child suspects.** 54% of children who gave this information (79 in 154 children) reported that they had been mistreated by the police. This typically involved physical violence or, less frequently, threats of physical violence. Several children reported being beaten so badly that they required hospitalisation. Usually, the physical violence was for the purpose of attempting to extract a confession from the child.

  Most children were not aware of how to complain about police ill-treatment, and some reported that they were afraid of the police and therefore, would not complain even if they knew the procedures. Several children who had complained reported that nothing had been done following their complaint.

The limited access that children have to lawyers or other professionals to assist them during police detention and monitor their treatment, along with the lack of any adults present during questioning appears to make children very vulnerable to mistreatment.

- **A high percentage of children reported forced or attempted forced confessions.** 47% of children interviewed who gave this information (49 in 104 children) reported that the police had forced or attempted to force them to sign a confession. Typically, this involved physical violence or threats of physical violence. Several children reported being made to sign a statement that they could not read.

- **Most of the children interviewed reported that they understood why they had been arrested; however, several children stated that the Police did not immediately inform them of the reasons for their arrest** and that they found out some days after the arrest, while in police detention and being questioned, or at the initial Court hearing during which charges were laid.

- **Nearly all of the children who were interviewed were not aware of their rights to a legal representative, or their rights to contact their relatives.**

- **Almost all children reported that no appropriate adult was contacted at the time of their arrest, or present during their questioning.** Only 8% of children who gave this information (13 in 154 children) reported that an adult was present at the station immediately following their arrest, and only 6% (9 in 154 children) reported that an adult was present during questioning. The adults present in these instances were family members. However, most of the family members were also the complainants. This is highly problematic. Children should have access to a lawyer and / or an independent appropriate adult during questioning. This adult should not be the complainant, even if the complainant is a parent.

- **None of the children who were interviewed reported having access to a lawyer at the police station and during questioning, and none reported having a SW Officer contacted following their arrest and present during their questioning.** Where parents are not available or cannot be contacted, Police Officers should immediately inform a SW Officer to ensure that an appropriate, independent adult is present at the station during a child's questioning. There appears to be a lack of understanding among SW Officers and Police Officers about the role of SW Officers in the juvenile justice system, and Police Officers may not feel that there is a need to contact a SW Officers, even when a child does not have any relatives present at the station. Where SW Officers are contacted, it may not be for the purposes of ensuring that a child has an appropriate adult present during questioning, but because a decision has been made not to lay charges.

  The exception to this appears to be Hai, in which Police routinely contact SW Officers when a child is arrested. This was attributed to the establishment of the Child Protection District Team, which appears to have improved coordination and cooperation between Police and SW Officers.

3.8 Lack of formal diversion

- **There is no clear power in law which allows children to be diverted out of the formal criminal justice system and referred to rehabilitative services and support, where required, in contravention of international law.** Nonetheless, researchers found that informal diversion is used in most regions, especially by the Police, and, in some regions, it is used fairly often. Police officers will generally attempt to provide mediation between families as an informal diversion measure. While informal diversion is generally a good practice and positive alternative to putting children through the criminal justice system, it should be focused on the best interests of the child and serve the public interest rather than being focused on mediating between families. Furthermore, according to several interviewees, some Police Officers request 'fees' from families to mediate disputes and ensure that children are not put through the criminal justice system. This is problematic, as again, it takes the focus away from ensuring a response that is in the best interests of the child, and may result in the child feeling forced to admit guilt.

  Of concern is that in Dodoma, it was reported that Police Officers are using extrajudicial corporal punishment as an alternative to putting children through the formal criminal justice system.

3.9 Laying charges

- **Almost all of the children who were interviewed (93%, or 121 in 130 children) reported that they had not received any legal assistance, including at the first initial hearing where charges were laid. Also, only 5 children in 130 reported that they had a SW Officer present during their initial hearing.** Children who reported that they had a SW Officer present during their hearing stated that they were able to speak to the SW Officer, and did not see the purpose of their presence in Court.

  A significant shortage of registered lawyers in Tanzania and lack of availability of lawyers, along with a lack of resources to fund legal aid in all cases involving children were the reasons cited by most professionals for children not having access to legal representation.

  Professionals confirmed that legal aid is only available for persons charged with murder (and, even then, only at the trial stage of proceedings). CSOs also provide some legal assistance during trial, but again, due to a lack of resources, only very few children receive representation, and legal representatives are usually only available during trial. Where lawyers are available, children may not know how to access them. Lawyers do not appear to be particularly proactive and do not frequently visit police stations or detention facilities, in order to identify children who are in need of legal advice, assistance or representation.

  A lack of available SW Officers was cited as the main reason why SW Officers do not attend children in Court. However, this is also probably exacerbated by limited cooperation between SW Officers and Police, and lack of knowledge in both institutions about the roles of SW Officers in the juvenile justice system.

  A lack of legal representation at these early stages can be highly problematic. With no legal representation or other appropriate assistance, children may be unable to understand the charges against them fully, and consequently be wrongly charged. Moreover, without legal

or other appropriate assistance, children may not be able to present solid bail arguments to the Court and may therefore serve time in detention on remand where this is not necessary.

- **Children on remand are being placed in pre-trial detention not only as a last resort, as required by international law.** According to data collected from three Retention Homes, it is clear that children who commit more minor offences are being denied bail. A large majority of children placed in detention on remand are suspected of having committed only minor offences: 47% of children in the three Retention Homes were suspected of theft or another minor property offence and 17% were in remand for 'disorderly conduct' offences or behaviour. This indicates that bail is being denied to children who commit offences that attract the option of bail.

  By far the reason most frequently cited by children and professionals for children being denied bail is due to them being unable to meet bail conditions. Common bail conditions reported by children that they could not meet included the need to have two sureties, the need to have a surety living in the town of arrest, and the financial amount set for bail. Many of the children were on remand as they simply could not meet these conditions. This has a disproportionate impact on children who do not have parents, children whose relatives are not living in the district of arrest, and children who are economically disadvantaged.

  In some cases, it was reported by professionals that parents refuse to post bail, as they are 'fed up' with their child, or are afraid that their child will run away and skip bail.

  It is likely that a lack of legal representation at the initial hearing at which bail is decided, as noted above, may lead to some children not being able to put forward solid bail arguments, and consequently being remanded to a detention facility.

- **A significant number of children are also held on remand in adult prisons in Tanzania.** Unsurprisingly, the reason for children being held in adult prisons in study regions where there are no Retention Homes (Lindi, Mtwara, Mwanza and Dodoma) was owing to the lack of an established Retention Home, so it was reported that children are instead referred to adult prisons. However, even in study regions where there are Retention Homes, children are also held on remand in adult prisons, despite all of the Retention Homes visited being under-capacity on the day of the visit. There appears to be no consistency or procedure used by Magistrates in making decisions to refer children on remand to adult prisons, and even children who have committed relatively minor offences, such as theft, were found to be serving remand in adult prisons.

  It appears that children are placed in adult prisons due to a lack of knowledge of the law among Magistrates, and a lack of acceptance that older children (16 and 17 year olds) should be treated as children in the criminal justice system.

  A lack of legal assistance at bail hearings is likely to cause children to be remanded to adult prisons. Where children do not have legal representation, there may be no one to put forward arguments to the Magistrates that a child should not be remanded to adult prisons.

- **Many children are spending excessive periods of time on remand, due to delays in the criminal justice system.** It was clear from the interviews carried out for this study with

children and professionals that children are spending longer than the statutory maximum of 60 days in police detention, depending on the nature of the offence.

Furthermore, even where Police reach the 60-day time limit and the magistrate orders that the charges are dismissed, some professionals and children reported that children may simply be re-arrested by Police for the same offence.

The reasons cited for the delays in processing cases included a lack of Magistrates; delays in carrying out investigations; lack of transport; problems ensuring witnesses and co-accused persons attend; and problems with coordination, such as missing files.

3.10 Trial

- **The majority of children do not have access to any legal assistance or representation during their trial and in preliminary proceedings.** Only children who are charged with murder have access to free legal assistance, and this appears to only be guaranteed at trial, and will not be available in preliminary hearings. Some of the children interviewed had been charged with murder, and had not had access to any legal assistance to help prepare their defence or to represent them at preliminary hearings. This is very problematic, and may result in wrong charges being laid, and in children being detained for very long periods of time where there is little evidence to hold them.

  Lack of legal or other appropriate assistance and representation will seriously impair a child's ability to access justice, as it creates an inequality between the state and the accused. Even very young children, such as those aged 12 and 13 years, appear in Court unrepresented and are expected to present evidence, examine and cross-examine witnesses, and so on. Even where Court procedures are modified to ensure that the process is 'child-friendly', without access to quality legal assistance and representation, children will not receive a fair trial.

- **SW Officers only rarely attend Courts in cases involving child suspects, and, where they did attend Court, children complained of them not assisting them in a meaningful way.**

- **Some children reported that parents and family are denied access to Court hearings, in contravention of international and domestic law. Due to the fact that the proceedings are held in camera, this appears to allow authorities to exclude parents from Court.**

- **In accordance with international and domestic law, it appears that cases involving child offenders will normally be held in camera; although it appears that in some Courts that 'in camera' means, in practice, that the matter will be heard in the Judge's chambers.** The chambers at the Juvenile Court is a small room with space for three chairs facing the Magistrate's desk and a bench along the side of the room that could sit another three persons. The Court room is currently used for storage. The Magistrate's chambers do not appear to be a suitable environment to hold a trial, in particular, as the room is not likely to accommodate a child's lawyer.

- **There are inconsistencies between Courts in the implementation of other international and domestic provisions on child-friendly proceedings.** Many children and professionals reported that Magistrates will make adjustments in cases involving children, such as ensuring that informal language is used, explaining procedures clearly to children, wearing less formal attire and even, at times, assisting children in cross-examining witnesses. However, this is not always the case, and the extent to which international norms are implemented will be dependent on each particular Magistrate or Judge. Some were reported to be quite cognisant of the need to modify the Court environment and proceedings in order to make them 'child friendly', but others did not appear to do so.

  Many children interviewed stated that they could understand what was going on in Court, and that they felt Magistrates made allowances for them and assisted them. However, interviews with some children demonstrated that, in the absence of legal and other assistance, the environment in some Courts could be very intimidating and not child-friendly. This will impair a child's ability to present a defence, and may result in unfair trials.

3.11 Sentencing

- **In the study regions, the lack of contact that children have had with SW Officers indicates that social inquiry reports are not routinely conducted and used to inform sentencing decisions.** This is likely to be caused by a lack of available, properly trained SW Officers in some regions. Interviews with professionals confirmed that in some regions, such as Arusha and Lindi, social inquiry reports are not routinely carried out.

- **Many of the professionals interviewed reported that it was not common to impose a custodial sentence on children, as other sentences, such as warnings, conditional discharge, fines and probation were thought to be more suitable.** However, where a child's parents are not alive, or live outside the district in which the child is sentenced, a probation order cannot be imposed as a child will be unable to carry it out.

- **Children are being placed in prison following conviction, in contravention of domestic law.** It appears that children are being sentenced to imprisonment owing to a lack of Probation Officers in some regions. Additionally, children are being sentenced to imprisonment because many children do not have proper addresses and have no parents, guardian or family to entrust them to.

- **Corporal punishment is being imposed on child offenders, in contravention of international law.** The LCA does not expressly prohibit the use of corporal punishment as a sentence. The LCA prohibits "torture, or other cruel, inhuman punishment or degrading treatment"[1] and does not explicitly provide for corporal punishment as a sentence of the Court. However, the Act does not prohibit judicial corporal punishment for child offenders or repeal the use of corporal punishment as a sentence, and the study found that corporal punishment is still imposed on children in practice.

[1] section 13

As corporal punishment does nothing to address the underlying causes of juvenile offending, it does not have the required rehabilitative purpose or effect that is required by international standards in the sentencing of child offenders.

3.12 Appeals

- **Children only very rarely lodge appeals against conviction or sentence.** Children will only tend to appeal where they have an advocate to assist them, so this is only really done following a conviction for murder (for which the state is obliged to ensure that a child has legal representation). Children are not always aware of their right to appeal, and it was found that Magistrates do not always explain this right to children.

3.13 Conditions and treatment of children in pre-trial and post-conviction detention

- **Children in adult prisons are not wholly separated from adults, in contravention of international law.** In several adult prisons that were visited, children were placed in a separate cell (e.g. in Arusha adult prison). However, children mixed with adults during the day and while being transported to Court. In other prisons, children and adults mix both during the day and at night. This was found to expose child detainees to risks of violence and sexual abuse by adult detainees.

- **Children in adult prisons are exposed to the risk of sexual and physical abuse.** Visits to adult prisons revealed some very concerning allegations by children of violence and abuse, including physical and sexual abuse. Some children also reported being beaten by adult detainees and being made to perform chores for adult detainees, such as washing their clothes. Most commonly, children reported that adult detainees subjected them to violence and abuse. Several children reported either being attacked at certain times, for example at night and / or during a power outage, or being made to perform sexual acts for adult detainees in exchange for food and hygiene products.

  There appears to be little protection provided to children from adult detainees. Night supervision, in particular is insufficient, as it often relies on the supervision by 'cell leaders' appointed from among the detainees.

- **Some of the children who were interviewed both in adult prisons and Retention Homes, reported that they share vehicles with adult detainees when they are transported to and from Court, and that some have been subjected to abuse.**

  Corporal punishment and physical violence, such as beatings using belts and abusive language was used as a disciplinary measure in some adult prisons. It was also found that solitary confinement or confinement to special cells was being used in some prisons.

- **The material conditions in adult prisons in Tanzania do not conform to international standards, and no special provision is made for child detainees.** Overcrowding is a big problem in most adult prisons. In Arusha Urban Prison, for example, there were 1,381 detainees, 15 of which were children. The capacity of the prison is 530. Sleeping accommodation is inadequate; cells are overcrowded and children reported that there is a

lack of mattresses and blankets, forcing some detainees either to share mattresses or sleep on the floor. Mosquito nets are not provided. Detainees also reported being locked into their cells for very long periods of time. Children were not provided with adequate clothing to suit the weather conditions.

Detainees do not eat three meals a day in adult prisons, and some reported that they only eat one meal a day, which is insufficient to meet nutritional requirements of child detainees. Detainees also reported that they lack hygiene items, including toothpaste, soap and so on.

In its assessment of children in detention, the Commission for Human Rights and Good Governance also found that girls are not provided with any special treatment while in detention. According to the CHRAGG report, girls are more likely to be mixed with adults (females) than boys while in detention. Furthermore, insufficient attention has been paid to ensuring that girls have access to sanitary napkins, brassieres and underpants.

- **Children detained in adult prisons do not have access to primary or secondary education, or other rehabilitative services either in the community or inside the prison.** The only exception to this is Wami Youth Prison in Morogogo. However, some prisons visited, including Masasi and Mtwara adult prisons, offer basic life-skills training. There also appears to be a lack of specialised counselling provided to child detainees.

- **While in most adult prisons, children may, in principle, receive visitors at least weekly, in practice many children do not receive visitors.** In most prisons, there are no dedicated visitors' areas in which children can talk to family members in private, and children must communicate through bars in the reception area.

- **While children in the Approved School receive a primary school education, no secondary education is provided. Children do not have access to vocational education or training.**

- **SW Officers in the Approved School have limited capacity to carry out rehabilitative activities.**

- **The material conditions in the Approved School are far better than in adult prisons. However, the conditions do not conform to international standards.** Bedding was found to be dirty and inadequate, and the school clothes provided appeared to be worn and dirty. They were also not warm enough for the winter season. There was a lack of hygiene supplies, and not all children had sufficient toiletries, including soap, toothbrushes and toothpaste. There is a concern that the Approved School will struggle to meet the needs of girls, who are due to start being referred to the institution once the new accommodation block has been completed.

- **Corporal punishment is officially used in the Approved School for cases of sodomy.**

- **While children are permitted to receive visits from family members on Saturdays and Sundays, the remote location of the Approved School, and the lack of means of the**

parents of many detained children, means that only around half of the children receive visitors, and even these children are not visited frequently.

- **Retention Homes do not get sufficient budgetary allocations from the Ministry for Health and Social Welfare to adequately support them.** All Retention Homes were reported to be understaffed, particularly by the number of SW Officers at each Home. SW Officers in some facilities were reported to be inadequately trained in juvenile justice issues. There was also reported to be a shortage of qualified medical personnel.

- **There was some evidence of violence and abuse by staff in one Retention Home.** In Moshi Retention Home, one child detainee reported that she had been the victim of an attempted rape by the night guard. The same night guard also reportedly used physical violence against some of the children. Following a complaint made by the girl who had been subjected to the attempted rape, the night guard was fired.

- **Corporal punishment is used in several Retention Homes, though not frequently, and in Moshi Retention Home, it was reported that staff use abusive language and collective punishment of children.** Other measures used to discipline children include warnings and requiring children to carry out extra chores.

- **While the material conditions in most Retention Homes were vastly better than in adult prisons, it was found that some of the buildings, particularly in Mbeya, were dilapidated with no basic services like health centres and classrooms. While children appeared to have adequate beds and bedding, there were no mosquito nets provided.**

- **Children are not provided with primary schooling in all Retention Homes, and cannot access secondary schooling in any of the Retention Homes.**

- **No aftercare services are provided to children departing any detention facilities, except to provide transportation to their home in some cases.** However, even where transport is provided, it appears that no one will follow up to see that the child arrived safely and are able to integrate back into their family and community.

4. Recommendations

1. Data collection

1.1 A standardised, central data collection system should be developed on juvenile justice.

Ideally, a central computerised system should be developed; however, this would at this time be very difficult to implement, owing to the lack of computing equipment in criminal justice institutions across the country. In the shorter term, a technical data collection consultant should be appointed to complete a thorough assessment of shortcomings of the current data collection systems and make recommendations for how an improved data collection system could be implemented. This should include the development of standardised data collection forms for the collection of raw data from district-level institutions, including police, state attorneys, Courts and

SW Offices. The relevant professionals would also require training on which data to collect and on how to complete the relevant forms. The data collection system should also include procedures for how the data is reported up to the regional and central levels, and how the data is collated and published at the central level. Consideration should also be given to developing regulations on the collection of data on children in conflict with the law.

2. Decriminalisation of certain offences

2.1 In order to give effect to international standards on juvenile justice, and to provide more effective and appropriate support to vulnerable children, the Government of Tanzania should consider amending domestic laws to decriminalise offences such as vagrancy and loitering. In the meantime, the Ministry of Home Affairs and the Director of Public Prosecutions should consider issuing guidance to instruct police officers and state attorneys not to arrest or charge children for specified disorder offences, including vagrancy, loitering, truancy and touting.

2.2 A protocol should be developed to ensure that children are not arrested and put through the criminal justice system for vagrancy, truanting, loitering or touting.

2.3 Police stations should create links to SW Officers, LGA and CSOs in the area who provide support and services to children living on the street or children without parental care. Referral mechanisms should be established, so that police refer children picked up for loitering, vagrancy or truanting to these services where appropriate.

2.4 The DPP should consider issuing guidelines setting out the circumstances in which there will be a presumption against prosecution in cases of statutory rape.

This could include a presumption against prosecution, for example, where both parties are over the age of 15, where both parties are children (under 18 years) and where the sexual conduct was, in fact, consensual. The guidelines should consider whether prosecuting the offence in set circumstances will be in the public interest.

3. Creating specialised institutions and professionals

3.1 The Ministry of Home Affairs should work to develop specialist units within the Police Service that deal exclusively with children in conflict with the law.

In light of the difficult backgrounds of many children who come into conflict with the law, as set out above, the Ministry of Home Affairs and the Ministry for Health and Social Welfare should consider building the capacity of police officers to provide a child protection response to children in conflict with the law where required. This could be achieved by developing a juvenile justice training module into the standard police industry training (the Police Academy), designating and training specialised police officers in each district, stationing a SW Officer (part-time or full-time, depending on the volume of cases) at each police station or post, and / or establishing a liaison police officer to maintain good links with SW Officers. In the short term, the police could also consider expanding the remit of the Gender and Children's Desks, which are being

established nationwide to be the first level response to children who are arrested for a criminal offence.

3.2 The Director of Public Prosecutions should work to establish specialised prosecutors in each district to exclusively prosecute juvenile cases.

3.3 It is recommended that the Chief Justice designate a separate or procedure Juvenile Court system into the current Court system.

Juvenile Courts could perhaps sit in existing structures, but on particular designated days or designated 'sessions' during each day or particular days of the week (e.g. from 7am – 10am). The Chief Justice should either both appoint and train specialised juvenile court magistrates in each district to sit on juvenile cases and / or develop a juvenile justice training module as part of industry training for all magistrates (see next paragraph).

3.4 The Chief Justice could work with the Institute of Judicial Administration, which provides continuing education for magistrates (Certificate of Law and Diploma in Law) to develop specialised courses for designated specialist magistrates in juvenile justice.

3.5 Appoint a sufficient number of SW Officers, specially trained in juvenile justice, to carry out their duties under the LCA and ensure that these children receive essential services and support and that their rights in the criminal justice system are not violated.

3.6 The roles of different type of SW Officers under the LCA should be clarified in regulations.

3.7 Training should be provided to designated SW Officers to ensure that they understand and are able to implement their obligations under the LCA. Training should also be provided to other juvenile justice professionals so that they enable the SW Officers to meet their obligations under the LCA.

3.8 Ultimately, the Ministry of Health and Social Welfare should ensure that Retention Homes are established in every region. However, this would require significant resources. In the medium-term, Retention Homes should be established in a number of regions with a relatively high number of children coming into conflict with the law.

3.9 A Child Protection District Team model should be adopted in each district to ensure that there is a coordinated response to juvenile offending.

4. Ensuring that children are not unlawfully exposed to the criminal justice system

4.1 The Ministry of Home Affairs and the Ministry of Health and Social Welfare should develop a protocol that establishes clarity for dealing with children under 12 years who engage in criminal behaviour. These children should not be processed through

the formal criminal justice system, but, where necessary, should receive social welfare support and services.

4.2 The Ministry of Home Affairs, Attorney-General and Chief Justice should consider developing guidelines for establishing age where there is any doubt. This should include a presumption that, where there is a doubt, until the age of the suspect is established, there should be a presumption that the suspect is a child.

4.3 The Ministry of Home Affairs and Ministry of Health and Social Welfare should develop a protocol for dealing with children who truant and children who are living on the street. The protocol should focus on ensuring that a social welfare / child protection approach is used in responding to the needs of these children.

5. Increased protection of rights of the child during arrest

5.1 A mechanism should be developed to ensure that children have access to legal or other appropriate assistance from the moment they are arrested, in order to help ensure that police officers do not detain them for longer than the 24 hours permitted in law, or, where police require more time, to ensure that this is only permitted if the Court grants permission.

Children do not necessarily need access to a registered lawyer from the moment of arrest. It is sufficient for children to be able to access an independent, appropriate adult, such as a parent, a SW Officer or a representative from a reputable CSO / NGO. The adult should be trained in issues facing children in conflict with the law and juvenile justice laws and procedures, and should be able to identify where police officers do not act in accordance with the law and do not ensure that the child's wellbeing is safeguarded. Police must be trained to ensure that they contact a lawyer / appropriate adult immediately following a child's arrest. Police should be trained to note, in writing, the name and contact details of the adult, when they were contacted and when they arrived at the station.

5.2 The Ministry of Home Affairs should work to improve conditions in police detention, ensure that police stations are regularly monitored and that children are ensured access to family members while in police detention.

5.3 The DPP should consider issuing guidance to all state attorneys to elaborate their duty to inspect police stations regularly.

This guidance should include: a checklist for monitoring, and the required frequency and duration of visits. It should include an explicit duty to identify the number of children held in the police station, the length of time they have been held, and whether the child has experienced any rights violations. The information from these visits should be referred up to the Office of the DPP for regular review.

5.4 The Ministry of Home Affairs should ensure that all Police Officers are trained on how to advise children of the reasons for their arrest and their rights on arrest. This should be logged in a police register and regularly monitored.

6. Diversion/Alternative Sentencing - Development of a community rehabilitation scheme

6.1 Community rehabilitation schemes should be established to which children can be referred as a diversionary measure, pre trial, or as an alternative sentence/part of a probation order. These schemes would focus on addressing the root causes of their offending and help children stay out of trouble. The experience of other countries has shown that such models positively impact the children and significantly reduce recidivism. In addition, the Government of Tanzania have a legal obligation to set up such diversionary and alternative sentencing measures under the commitments it made when it ratified the UNCRC and the ACRWC.

REDUCING THE USE OF DETENTION – EXPLORING OPTIONS FOR A COMMUNITY REHABILITATION SCHEME

A district or districts should be selected to pilot a model for the scheme. The following factors would need to be considered in its development:

- *Diversion - Which body / institution should have the power to divert children out of the formal criminal justice system and into the diversion project? The research indicates that the power should not rest with the police, but that other criminal justice institutions could be responsible for diverting children, for instance, state attorneys or magistrates (however, if children are to be kept out of the formal criminal justice system, it is preferable for them to be diverted before attending Court). The regional consultation event participants suggested that diversion panels be established, containing relevant juvenile justice professionals, which could be regularly convened to consider whether children should be diverted. However, this process is likely to lead to delays in the system, as panel members may not be available to meet to regularly discuss cases. The participants also discussed the possibility of making more use of community leaders in making diversion decisions and helping to implement diversion measures.*
- *Sentencing – there are limited sentencing options available – can any of the current sentencing options accommodate a referral to a community rehabilitation scheme? Could a probation order specify attendance at such a scheme? What would happen if the child did not attend the programme?*
- *What services and support should be available to children who are referred? The particular services and support should ensure that children are provided with tailored rehabilitative support required to address the root causes of their offending. It could include such services as counselling (individual and family counselling and peer counselling), family mediation, restorative justice, victim-offender mediation, educational assistance, vocational training, life skills training and so on.*
- *Should the project include a residential element? Given the fact that a significant number of children in conflict with the law are children living or working on the street or otherwise deprived of family care, would a community-only scheme reach the most vulnerable children who are in conflict with the law? (NB children who have a place to live should not be provided with residential support when they are attending the scheme)*
- *Under which body should the scheme be placed? Should it be a service provided by a Local Government Authority? Should it be a service that is commissioned by the Local Government*

Authority? If so, should the project be based in an existing institution (e.g. a Children's Home or NGO project) that already provides relevant services and support to children?

7. Ensuring legal assistance and representation

7.1 The Chief Justice should work on developing a mechanism to ensure that every child has access to free legal advice or other appropriate assistance from the time of arrest to the initial hearing, and right through to trial and sentencing.

8. Pre-trial detention

8.1 The Chief Magistrate and the Inspector-General of Police should consider issuing a directive to all Magistrates and Judges that it is not a requirement that children have a surety for the purposes of granting bail, and set limits on the type / amount of recognizance a child is required to enter into.

8.2 The Chief Justice should consider issuing a directive ordering all Judges and Magistrates in regions, in which Retention Homes are operating, not to remand children to adult prisons.

8.3 A procedure should be developed for expediting cases involving child offenders.

9. Sentencing

9.1 The Ministry for Health and Social Welfare should ensure that there are a sufficient number of SW Officers in each district and that they are properly trained to complete social inquiry reports.

9.2 A wider range of sentencing options should be made explicitly available to the Juvenile Court, including for example, community service orders, counselling, vocational training, educational supervision, restorative justice, foster care or guidance orders and so on.

9.3 The Chief Justice should consider issuing a directive to Judges and Magistrates that no child, under any circumstances, should be sentenced to imprisonment.

9.4 The LCA should be amended so that it explicitly prohibits the imposition of corporal punishment on children.

10. Children in detention

10.1 The government should ensure that the recommendations from the CHRAGG report[2] are fully implemented.

10.2 Police / Prison Officers should ensure that children are not detained with adults and while being transported to and from Court.

[2] CHRAGG Report, p. 39 – 42.

10.3 Aftercare services should be provided to children leaving all detention facilities, to ensure that they are safe and have the appropriate services and support to reintegrate back into their communities.

Staff from relevant detention facilities should establish links with relevant agencies, for instance, SW Officers and NGOs, and a plan should be developed for children prior to their leaving pre-trial or post-sentencing detention. The plan should set out the support and services that each child requires to ensure that he or she is able to reintegrate back into the community. The particular services and support made available should be adapted to the circumstances of each child, but could include, assistance in identifying an appropriate school, and support in ensuring admission into school, assistance in identifying and securing employment, assistance in identifying accommodation and, where children are returning to the family, social work with family members to ensure the smooth reintegration of the child back into the family environment. Other services could include assistance with transport to their accommodation, assistance to buy clothing and school items, the establishment of links with relevant service providers (e.g. street children projects etc.) and the provision of funding to ensure that the child has sufficient means to survive.

11. Development of a comprehensive strategy for reform

10.1 Efforts to bring the juvenile justice system into line with international standards and norms will require the commitment of a range of state and non state agencies working in a coordinated manner. It is important that agencies share a common vision of this process of reform, agree upon the specific steps that need to be taken, identify agency responsibilities for realising the reform process and set timelines so that that progress can be effectively measured. It is therefore proposed that the Child Justice Forum develops a strategy for juvenile justice reform.

10.2 This strategy will be useful in guiding the work of agencies, as well as a tool to generate additional donor funds – funding activities that are part of a wider reform movement is more attractive than funding isolated activities. This strategy can also be used to inform the development of the new Legal Sector Reform Programme, to ensure a more strategic and comprehensive approach to children and child justice reform is incorporated in the plan.

INTRODUCTION

The government of the United Republic of Tanzania ratified the UN Convention on the Rights of the Child (CRC) on 10 June 1991, and the African Charter on the Rights and Welfare of the Child (ACRWC) on 23 October 1998. In doing so, the government is obliged to undertake all necessary steps, including legislative, administrative and other measures to implement the rights contained in both Conventions,[3] including those rights provided to children in conflict with the law.

Tanzania underwent its periodic review by the UN Committee on the Rights of the Child (CRC Committee) in 2006. In its concluding observations, the CRC Committee, while recognising the efforts made by the government, including "the introduction of human rights education in the police and prison college's curricula", expressed concern at "the limited progress achieved in establishing a functioning juvenile justice system throughout the country." It expressed particular concern that "[c]hildren are in some instances detained in the same cells as adults, and those between the ages of 16 and 18 may not be afforded the same protection as younger children under the juvenile justice system."[4] The Committee made a number of recommendations to the government to bring Tanzanian juvenile justice policy, law and practice in conformity with international human rights law.

In 2010, the African Committee of Experts on the Rights and Welfare of the Child made the following concluding recommendations in relation to the implementation of juvenile justice standards in Tanzania:

> "The Committee urge the State Party to work on the Concluding Observations made by the UN Committee on the Rights of the Child aimed at improving the state of juvenile justice in its jurisdiction, by particularly enacting comprehensive provisions in the juvenile justice standards; allocating sufficient human and physical resources; and conduct regular training to juvenile justice personnel to ensure that juvenile justice is administered in consonance with best practices and international standards."[5]

While individual agencies have been taking steps to strengthen the child justice system, there is a recognition that these efforts in isolation will not bring about the changes needed to implement the recommendations of the CRC or the African Committee – there is a need for a coordinated effort for reform. In April 2011, the Ministry for Constitutional and Legal Affairs convened the Child Justice Forum – an inter-agency forum comprised of key national state and non-state actors mandated to develop recommendations and strategy for reform of the child justice system. In order to inform this strategy, the Ministry, in collaboration with UNICEF, initiated two comprehensive studies: an assessment of the access to justice system for under-18s, and an assessment of the juvenile justice system. The Coram Children's Legal Centre (a UK-based NGO) and the National Organisation for Legal Assistance (a Tanzanian NGO) were commissioned to undertake these studies. The scope and execution of the studies was overseen and guided by the Child Justice Forum.

[3] Article 4, CRC; Article 1, ACRWC

[4] UN Committee on the Rights of the Child, *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2, 21 June 2006, para. 69.

[5] African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Concluding Recommendations on the Republic of Tanzania Report on the Status and Implementation of the African Charter on the Rights and Welfare of the Child,* 2010, p. 9.

The juvenile justice study initially involved a desk review, which analysed domestic laws and policies relating to children in conflict with the law in Tanzania against international juvenile justice standards. Quantitative and qualitative data was then collected on how the juvenile justice system operates in practice in Tanzania. This information was collected in 10 districts that were selected by researchers, including: Arusha, Dar es Salam, Dodoma, Kilimanjaro (Moshi Urban and Hai), Lindi (Lindi Urban and Nachingwea Districts), Mbeya, Morogogo (Wami Youth Prison), Mtwara (Mtwara Urban and Masasi Districts), Mwanza and Tanga.

Data was collected through a series of semi-standardised interviews and focus group discussions with juvenile justice professionals, including Police Officers (at all levels); Prosecutors (State Attorneys and Police Prosecutors), Magistrates, defence lawyers, Retention Home staff, Approved School staff, staff in adult prisons, Social Welfare Officers, Ward Tribunal members and staff at relevant CSOs and NGOs. In total, 96 professionals were interviewed across the 10 research regions. A total of 192 children in conflict with the law were also interviewed across the 10 research regions. The majority of these children (170) were interviewed on a one-to-one basis, and the rest were interviewed in three focus group discussions. Interviews were also conducted with national-level representatives in relevant ministries.

Researchers also collected raw quantitative data from the log books and registries of police stations, Retention Homes and prisons in several of the research districts. The researchers experienced some difficulty collecting this data from most institutions, either because key information was not recorded (e.g. age or date of birth), or because researchers were denied access to registries or log books. Attempts to collect collated data at the national level were unsuccessful. A detailed methodology is appended to this report (Annex A).

Following the completion of a draft report, a series of consultation events were held in August 2011 involving front-line juvenile justice professionals across all relevant agencies in four regions: Arusha, Dar es Salam, Mbeya and Mwanza. The purpose of the events was to determine whether front-line professionals broadly agreed with the report's main findings and to facilitate front-line professionals feeding into the recommendations of the report. Feedback from participants at all consultation events confirmed all of the report's main findings as accurate reflections of their own experiences and perceptions. The recommendations contained in this report derive from the analysis of report's authors, and the feedback collected at these consultation events. A full list of participants involved in the consultation events is attached (Annex B).

The report represents the outcome and results of the desk review and field research. The research covered: the extent and nature of child offending in Tanzania, along with the characteristics of child offenders and risk factors for children coming into conflict with the law; specialisation, capacity and coordination of juvenile justice institutions; children who are exposed to the criminal justice system, including treatment of children below the minimum age of criminal responsibility (MACR); arrest procedures and implementation of children's rights during arrest and police detention; diversion; the process and implementation of children's rights during charge and trial; sentencing of children; the protection of the rights of children in detention; and rehabilitative support while children are in detention and support to reintegrate upon release.

Prior to the commencement of the juvenile justice study, the Commission on Human Rights and Good Governance (CHRAGG) in Tanzania completed a comprehensive study on children in detention.

CHRAGG has the mandate to visit prisons and places of detention or related facilities to assess and inspect conditions of persons held in detention.[6] In carrying out this study, CHRAGG undertook inspection visits to 65 detention centres around the country where children are held, including 30 prisons, 29 police stations, 5 Retention Homes and the one Approved School. CHRAGG's report focuses on conditions and treatment of children in detention.[7] Rather than duplicating CHRAGG's study, this report compliments the inspection report, focusing on the treatment and experiences of children at all other stages of the criminal justice system. However, to ensure that this juvenile justice study comprehensively deals with the situation of children in conflict with the law, the report highlights the key findings of the CHRAGG Report.

The primary purpose of the study was to gain an understanding of the operation of the juvenile justice system, and to develop a series of recommendations for strengthening the juvenile justice system in Tanzania in protecting the rights of children who come into conflict with the law. The study will inform a juvenile justice strategy, which will be developed in consultation with the Child Justice Forum.

1. CONTEXT: CHILDREN WHO COME IN CONFLICT WITH THE LAW IN TANZANIA

1.1 Children in Tanzania

According to the most recent Government census, the population of Tanzania in 2002 was 34,400,000 million people, of which 33.5 million (97.1%) were based on the Mainland and 982,000 (2.9%) were in Tanzania Zanzibar.[8] Over the last decade, Tanzania has experienced rapid population growth and the United Nations population division estimates that the population size has now reached over 45 million. Roughly fifty percent of these people are under the age of 18 years, and 44.2% are estimated to be under the age of 15.[9]

As the population has grown, so has the number of people living in extreme poverty.[10] Over the past decade, economic progress in Tanzania has been significant, with Gross Domestic Product (GDP) at an annual average rate of 7% (despite some deceleration following the 2008 global financial crisis) which is well above the sub-Saharan Africa average.[11] Despite this success, the evidence suggests that economic progress has not been "pro-poor", and has failed to lead to significant declines in

[6] Section 6 (1) (h) of the Commission for Human Rights and Good Governance Act No, 7 of 2001.
[7] Commission for Human Rights and Good Governance, *Inspection Report for Children in Detention Facilities in Tanzania*, June 2011 (herein referred to as 'The CHRAGG Report').
[8] The United Republic of Tanzania, 'Tanzania Census 2002', *Analytical Report*, National Bureau of Statistics, Ministry of Planning, Economy and Empowerment, Volume X, Dar es Salaam, August 2006
[9] United Nations Population Division, Department of Economic and Social Affairs. World Population Prospects: Population Division, Population Estimates and Projections Section <http://esa.un.org/unpd/wpp/unpp/p2k0data.asp> [last accessed: 8th July 2011]
[10] Ministry of Finance and Economic Affairs, United Republic of Tanzania, Research on Poverty Alleviation, 'Poverty and Human Development Report 2009', Mkukuta Secretariat, Poverty Eradication Division, Ministry of Planning, Economy and Empowerment, December 2009, p. xxii; UNICEF and the United Republic of Tanzania, ' Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p.3
[11] UNICEF and the United Republic of Tanzania, ' Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p.3

poverty rates.[12] Income poverty has only decreased marginally from 35.7% in 2000 to 33.6 % in 2007[13], and Tanzania has made little progress towards reducing extreme hunger and malnutrition.[14] Over one-third of all households in Tanzania today live below the basic needs poverty line of $1 per day, and nearly 20% live below the food poverty line.[15] Children and young people are disproportionately affected by poverty. In 2007 there were an estimated 6 million children aged 0 – 14 years living below the basic needs poverty line, and around three million children living below the food poverty line.[16]

In recent years the government has made significant strides towards improving the lives of children in Tanzania. Nevertheless, the analysis of a 2009 report conducted jointly by the Government of Tanzania, UNICEF, and Research on Poverty Alleviation (REPOA) found that a "substantial number of children [in Tanzania] are living in desperate conditions".[17] According to the report, 88% of children in Tanzania were found to suffer from severe deprivation in at least one of the following areas: health, nutrition, sanitation, education, information, shelter and water. The study found that deprivation was significantly worse for children who live in rural areas who were three times more likely than their urban peers to suffer from at least three types of severe deprivation, and eight times more likely to suffer from four or more.[18] According to the 2002 population census, almost 2 million children (roughly 10% of all children) were orphans.[19] Currently 17.6% of all children in Tanzania are classified as either orphaned or "vulnerable" (OVC).[20]

Pervasive poverty, low levels of education and poor health deny children opportunities to become integrated and productive members of society. Children and young people who lack education and employment opportunities are at increased risk of engaging in delinquent behaviour that leads them into conflict with the law. In recent years, the Government of Tanzania has made substantial efforts to improve children's access to education.[21] Nevertheless, whilst enrolment in school has increased, almost 99% of all children in Tanzania enrol in primary school, and 27% enrol in secondary school (up from 6% in 2002)[22], the evidence suggests that drop-out rates are also on the rise. For instance,

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[12] Ministry of Finance and Economic Affairs, United Republic of Tanzania, Research on Poverty Alleviation, 'Poverty and Human Development Report 2009', Mkukuta Secretariat, Poverty Eradication Division, Ministry of Planning, Economy and Empowerment, December 2009, p. xxii

[13] United Republic of Tanzania, *Millennium Development Goals Report Mid Way Evaluation (2000-2008)* <http://www.tz.undp.org/docs/MDGprogressreport.pdf> [last accessed: 8th June 2011] page 4, Ministry of Finance and Economic Affairs, United Republic of Tanzania, Research on Poverty Alleviation, 'Poverty and Human Development Report 2009', Mkukuta Secretariat, Poverty Eradication Division, Ministry of Planning, Economy and Empowerment, December 2009, p. xxii

[14] UNICEF and the United Republic of Tanzania, ' Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p.3

[15] The National Bureau of Statistics, UNICEF and REPOA, 'Childhood Poverty in Tanzania: Deprivations and Disparities in Childhood Well-being', Dar es Salaam, September 2009, p. viii

[16] Ibid, p.viii

[17] Ibid, p. x

[18] Ibid, p. 19

[19] The United Republic of Tanzania, 'Tanzania Census 2002', *Analytical Report*, National Bureau of Statistics, Ministry of Planning, Economy and Empowerment, Volume X, Dar es Salaam, August 2006

[20] Ibid, p.61

[21] Committee on the Rights of the Child, Concluding Observation: United Republic of Tanzanian, U.N. Doc. CRC/C/TZA/CO/2 para. 55

[22] UNICEF and the United Republic of Tanzania, 'Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p. x; Committee on the Rights of the Child, Concluding Observation: United Republic of Tanzanian, U.N. Doc. CRC/C/TZA/CO/2 para. 55

between 2007 and 2008 the percentage of school entrants who had completed seven years of schooling declined significantly in just one year from 78% to 65%.[23] Many stakeholders have expressed concern that in spite of increased government expenditure in education, the quality of education inputs and outputs is not improving.[24] Children do not necessarily leave school with the skills and knowledge that they require to enter the labour market. In any case employment prospects for young people in Tanzania are not promising. Each year half a million people enter the labour market to engage in poorly remunerated agriculture work and in the informal sector.[25]

Many children in Tanzania are living in difficult and, in some cases, desperate conditions which have a significant impact on their social and psychological development. In addition to suffering from poverty and social exclusion, the experience of many children and young people in Tanzania is one of abuse, exploitation and neglect.[26] Both within and outside family environments, a high number of children are subject to violence at the hands of adults, including parents and teachers, as well as older children.[27] Incidents of sexual abuse and rape are also reported to be high, although accurate and comprehensive statistics on gender-based violence are hard to find.[28] A recent study commissioned by UNICEF and published by Dar es Salam's Muhimbili University in collaboration with the US Centres for Disease Control and Prevention found that nearly three-quarters of girls and boys questioned had experienced some form of physical violence before reaching the age of 18. It also found that nearly three in every 10 girls and three in every 20 boys had experienced sexual violence, and that around 25% had experienced emotional abuse by an adult during childhood.[29]

The extent and nature of juvenile offending is influenced by the social, economic and cultural conditions in a country.[30] All of the factors set out above impact on children's vulnerability to coming into conflict with the law, and it is in this context that child and youth offending as well as the juvenile justice system in Tanzania should be analysed.

1.2 **Extent of offending by children**

Unfortunately, researchers were unsuccessful in their attempts to collect central-level data on the number of children coming into conflict with the law. Moreover, Tanzania is not included in the UN Office on Drugs and Crime Annual Crime Trends Survey. Researchers also faced difficulties collecting raw data from some juvenile justice institutions. It appears that data is not collected in a uniform, systematic way and that there is a lack of robust procedures to communicate data to the relevant central-level institution or Ministry. While researchers collected data on the number and types of

[23] Ibid, p. x
[24] Ibid, p. x
[25] Ministry of Finance and Economic Affairs, United Republic of Tanzania, Research on Poverty Alleviation, 'Poverty and Human Development Report 2009', Mkukuta Secretariat, Poverty Eradication Division, Ministry of Planning, Economy and Empowerment, December 2009, p. xxii; UNICEF and the United Republic of Tanzania, ' Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p.3
[26] UNICEF and the United Republic of Tanzania, ' Common Country Program Document for the United Republic of Tanzania (July 2011-June 2015)' < http://www.unicef.org/about/execboard/files/TANZANIA_CCPD_2011-2015_final.pdf> [last accessed: 8th July 2011] p. x
[27] Ibid, p. x
[28] Ibid, p. x
[29] Ref to VAC study
[30] United Nations, 'Juvenile Delinquency', in *World Youth Report* (2003), p. 193.

arrests of children from police log books in a very limited number of districts, this is not a sufficient sample to give an accurate estimation of the extent of juvenile crime nation-wide.

Collecting data on the extent and nature of juvenile offending and the characteristics of offenders is very important in ensuring that juvenile justice policies are based on robust evidence, which will ensure that these policies are more responsive to the Tanzanian context, and therefore more likely to be successful. It can help shape the right interventions in crime prevention and response. Data collection is also important in managing information relating to individual cases. This can help to monitor an individual child's progress through the juvenile justice system and that all key statutory timeframes are met.

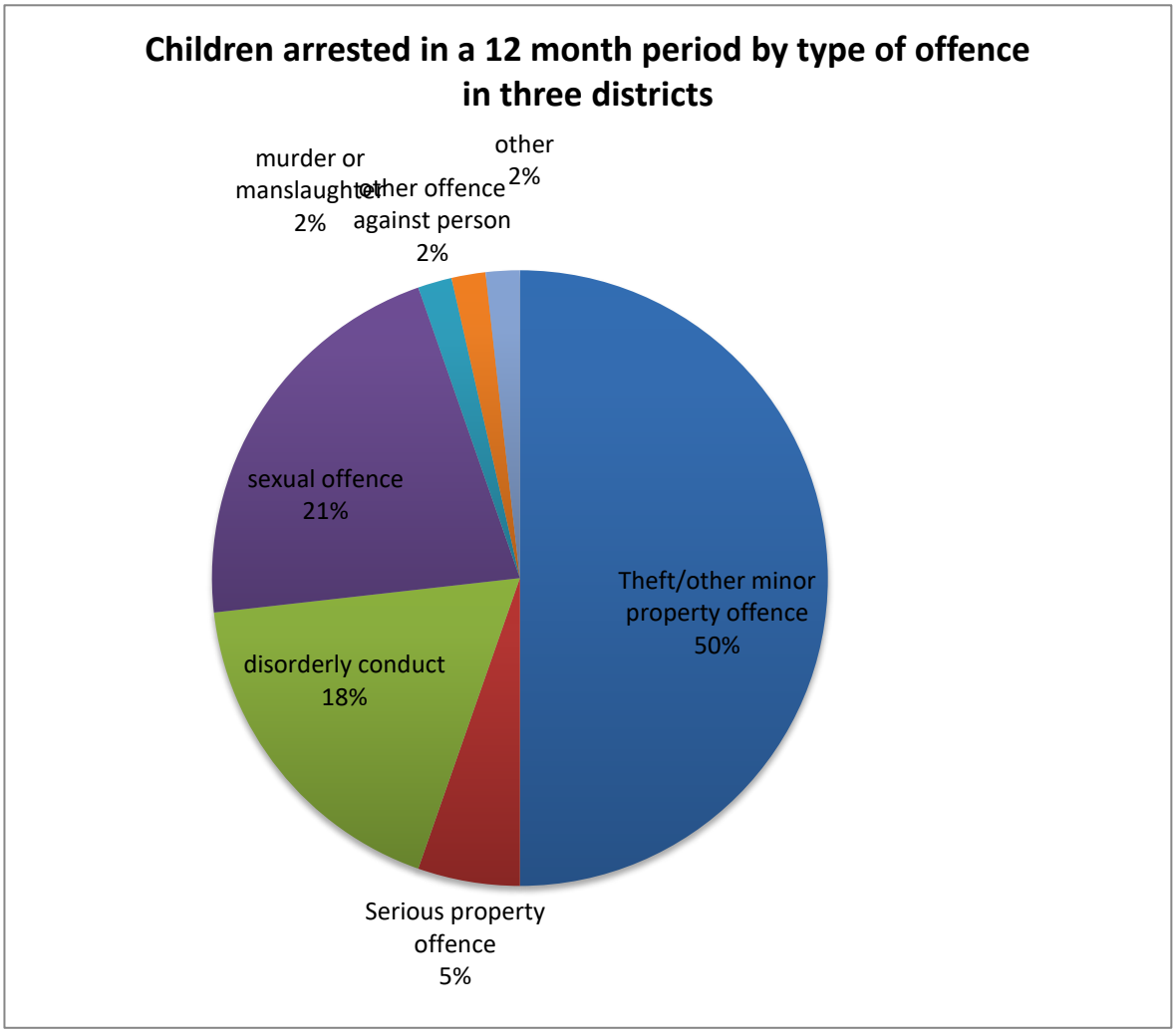
The Child Justice Forum should consider leading in the development of a standardised, central data collection system. Ideally, a central computerised system should be developed; however, this would at this time be very difficult to implement, owing to the lack of computing equipment in criminal justice institutions across the country. In the shorter term, a technical data collection consultant should be appointed to complete a thorough assessment of shortcomings of the current data collection systems and make recommendations for how an improved data collection system could be implemented. This should include the development of standardised data collection forms for the collection of raw data from district-level institutions, including police, state attorneys, Courts and SW Offices. The relevant professionals would also require training on which data to collect and on how to complete the relevant forms. The data collection system should also include procedures for how the data is reported up to the regional and central levels, and how the data is collated and published at the central level. Consideration should also be given to developing regulations on the collection of data on children in conflict with the law.

1.3 Types of offences for which children are arrested

Researchers sought to collect central level collated data and data from the entries in police log books in all of the sample regions on the number of children who were arrested in a 12 month period, disaggregated by age, gender and type of offence. Unfortunately, researchers were only able to collect quantitative data from the log-books of police stations in three of the study's ten regions: Lindi Urban, Dodoma Central and Tanga Urban Police Stations. This is quite a small sample. Researchers were unable to collect data on the extent and nature of offending by children at the national level.

Based on this sample, by far the most common type of offence for which children are arrested in Tanzania is theft or other minor property offences, as set out in Table E.

TABLE E: Children arrested by type of offence in a 12 month period



50% of the children arrested in a 12-month period in the three police stations were arrested for suspected theft or for another suspected minor property offence. Sexual offences were the second most common type of offence for which children were arrested: 21%. A significant proportion of arrests for sexual offences were for statutory rape; that is, sexual conduct that is, in fact, consensual, but where one or both of the parties was below the age of consent at the time of the act. It was noted by some juvenile justice professionals, for example, the Magistrate in the Juvenile Court in Kisutu, that parents are often the complainants in cases of statutory rape, and that the children themselves will be unhappy for the matter to be prosecuted. It appears that there are no guidelines setting out the circumstances in which the offence of statutory rape should be prosecuted and the circumstances in which there will be a presumption against prosecution, as this will not be in the public interest.

These findings were supported by the juvenile justice professionals who were interviewed in all regions. Virtually all reported that theft (e.g. pick pocketing, stealing, particularly of mobile phones) was by far the most common offence for which children were arrested in their district. These professionals also noted that sexual offences (in particular, rape) represented a significant proportion of all offences for which children are arrested. Most professionals also mentioned more serious property offences such as breaking, entering, stealing and armed robbery as being among the offences for which children are typically arrested in their district. Several professionals reported

that where children are arrested for more serious property offences, they are normally being 'used' by adults to commit these offences.

The data also indicates that a significant proportion of children are arrested for public disorder offences, such as vagrancy, loitering, touting or for 'disrupting passengers'. Juvenile justice professionals across most districts also mentioned that it is not uncommon for children to be arrested for disorder offences, such as "roaming around town", "using abusive language", and so on. This is a cause for concern. Offences such as vagrancy, loitering and truancy are often the result of poverty, lack of parental care and other socio-economic problems. They disproportionately affect vulnerable children, such as children living or working on the street. The UN Committee on the Rights of the Child has stated that these offences should not be criminalised but rather, dealt with through a State's child protection system, using measures that give "effective support to parents and/or caregivers and measures which address the root causes of this behaviour."[31] According to Article 56 of the Riyadh Guidelines: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

In order to give effect to international standards on juvenile justice, and to provide more effective and appropriate support to vulnerable children, the government of Tanzania should consider amending domestic laws to decriminalise offences such as vagrancy and loitering. In the meantime, the Ministry of Home Affairs and the Director of Public Prosecutions should consider issuing guidance to instruct police officers and state attorneys not to arrest or charge children for specified disorder offences, including vagrancy, loitering, truancy and touting. Police officers should receive training on juvenile justice standards, and a protocol should be developed to ensure that children are not arrested and put through the criminal justice system for vagrancy, truanting, loitering or touting. Police stations should create links to SW Officers, LGA and CSOs in the area who provide support and services to children living on the street or children without parental care. Referral mechanisms should be established, so that police refer children picked up for loitering, vagrancy or truanting to these services where appropriate.

The DPP should consider issuing guidelines setting out the circumstances in which there will be a presumption against prosecution in cases of statutory rape. This could include a presumption against prosecution, for example, where both parties are over the age of 15, where both parties are children (under 18 years) and where the sexual conduct was, in fact, consensual. The guidelines should consider whether prosecuting the offence in set circumstances will be in the public interest.

1.4 Characteristics of child offenders

The data collected from police stations indicates that boys in Tanzania are far more likely than girls to come into conflict with the law. It showed that, in a 12-month period, 89% of all children arrested were boys, and 11% were girls. Based on this data, the ratio of boys to girls offending in Tanzania is

[31] UN Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 9.

approximately 9:1. Again, juvenile justice professionals supported this finding, as they reported that boys are most commonly arrested in their regions.

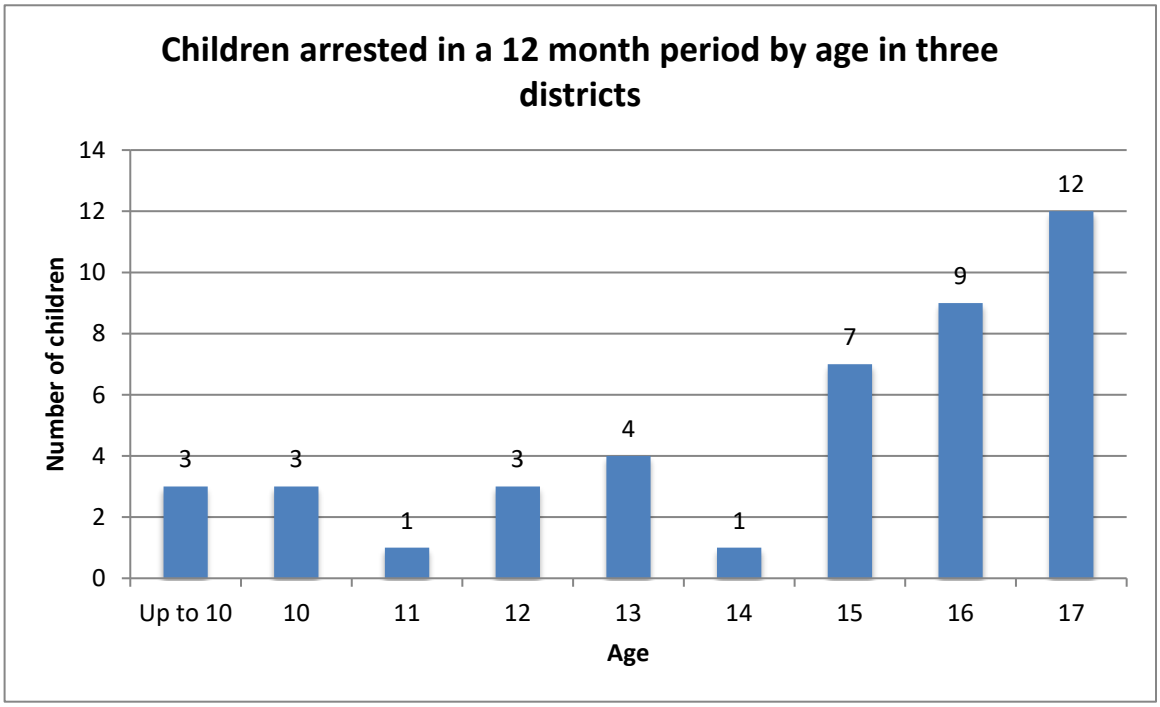
This gender pattern of offending is unsurprising, and consistent with international research which demonstrates that, generally, rates of offending among boys are far greater than that of girls.[32] There are thought to be a number of factors that explain why girls are less likely to offend than boys. Various factors encourage women and girls to conform more heavily to social norms that do not apply to men, and girls are generally subject to stronger family control than boys. Societies are generally less tolerant of deviant behaviour among girls than boys. In addition, norms of masculinity in many societies excuse or justify expressions of violence among men, making boys and men more likely to engage in violent offending behaviour.[33]

Despite the relatively small number of girls as compared to boys coming into conflict with the law in Tanzania, the unique needs of girls need to be considered and incorporated into any juvenile justice intervention, aimed at either preventing juvenile crime, or responding to individual offenders. The UN Committee on the Rights of the Child has warned states that, "[s]ince girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs."[34] Available research in other countries has demonstrated that the pathways for girls coming into conflict with the law are somewhat different to boys, and that different interventions are needed for girls. Girls who come into conflict with the law have been found to be more likely than boys to have been exposed to sexual abuse and troubled family relationships. They are also more likely than boys to have come from severely dysfunctional families.[35] Girls who offend may have faced problems that are unique to, or disproportionately affected by, their gender, such as sexual abuse, teenage pregnancy and unequal educational, vocational and employment opportunities.[36] Interventions must recognise and be responsive to the unique pathways of girls into offending, and to addressing their unique needs.

The data indicated that children aged 15, 16 and 17 are more likely to come into conflict with the law, as set out in Table F.

TABLE F: Children arrested by age in a 12 month period

[32] United Nations, 'Juvenile Delinquency', in *World Youth Report* (2003), p. 192.
[33] United Nations, 'Juvenile Delinquency', in *World Youth Report* (2003), p. 192 – 3.
[34] UN Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 40.
[35] See Siobhan M. Cooney, Stephen A. Small and Cailin O'Connor, 'Girls in the juvenile justice system: Toward effective gender-responsive programming', in *What works, Wisconsin – Research to practice issues*, Issue no. 7, January 2008.
[36] Barbara E. Bloom and Stephanie S. Covington, 'Effective gender-responsive interventions in juvenile justice: Addressing the lives of delinquent girls', *Paper presented at the 2001 Annual Meeting of the American Society of Criminology*, November 7 – 10 2001.



The data indicates that very young children are being arrested in Tanzania, including a number of children who are below the minimum age of criminal responsibility (12 years, or 10 years if mental capacity can be shown), which is a matter of concern.[37]

1.5 Risk factors for children coming into conflict with the law

Interviews with children in conflict with the law and with juvenile justice professionals indicated that, across all regions, poverty, a lack of parental care (including children who are orphans or who cannot live at home due to economic conditions or exposure to abuse), poor parenting or parental neglect are factors which expose children to a greater risk of coming into conflict with the law. Often, these factors will lead children into situations which make them more 'visible' to police or more vulnerable to being exploited by adults, such as those children who are living on the street or children who are working. Poor educational attainment was also found to be a risk factor for children coming into conflict with the law.

Lack of parental care or parental neglect

A significant proportion of children who were interviewed reported that they were not living with a parent/s. 75% of children who gave this information (76 in 102 children) reported that they had not been living with a parent prior to their arrest. Many of the child interviewees reported that either one or both of their parents had died. 52% of children who gave this information (34 in 69 children) reported that either one or both of their parents had died. This is significantly higher than the proportion of OVC nationally, which, as set out above, was found to be 17.6% in the most recent census.

Tanzania has not yet established an effective national child protection system, such as, for example, a foster care system.[38] The lack of a properly functioning child protection system means that there

[37] See Section 5.1.

are few mechanisms available to ensure that children who lack parental care are provided with the services and support that they require. This has the effect of double victimisation: due to the lack of a properly functioning child protection system, children without parental care are more likely to be at risk of coming into conflict with the law. Other children described being unable to live with their parents as their parents could not afford to feed them or pay their school fees, and they had had to leave their parent's home to find work. A lot of these children had moved from rural to urban areas to seek work.

It should be noted, however, that the sample of children was drawn from detention facilities, and included a lot of children who were in detention on remand. This, therefore, is likely to include a disproportionately high number of children without parental care than the total population of children in conflict with the law, as children without parental care are less likely to be released on bail.[39]

The majority of juvenile justice professionals also reported that poor parenting and neglect are a major cause for children coming into conflict with the law. This was consistent across all regions. A Primary Court Magistrate from Arusha, for example, stated that juvenile offending is mainly "due to poor child upbringing, parental neglect and not being careful." Where parents are living in poverty, children may offend out of economic necessity. The Juvenile Court Prosecutor reported that: "poverty is a cause for offending: difficult economic conditions create difficult living conditions, so children will be forced to offend." A Police Officer in Dodoma stated that a cause of children offending is the failure of parents to provide for their basic needs: "Most of the crimes committed by children are due to hunger for the surrounding communities are living in abject poverty."

A lack of parenting skills and parental guidance was reported by many juvenile justice professionals to be a contributing factor to children coming into conflict with the law. In Lindi, young pregnancies are reported to be common, and young parents are thought not to have the parenting skills and education to raise their children properly, with these children being more likely to engage in criminal behaviour.[40]

At times, parents become 'fed up' with children who are misbehaving and they bring them in to the police stations. A Police Sergeant from Arusha reported that: "Children coming from single parent families or children who are raised by guardians other than their parents mostly end up committing offences. At times, you would find that the parents are the ones bringing their children to the Police Station after they have failed with their upbringing."

A cultural shift away from 'community parenting' towards 'family parenting' was also identified by several professionals as being a cause of juvenile crime. Community members no longer feel they can discipline children or police their behaviour. A Prosecutor at the Juvenile Court in Dar es Salam reported that: "previously in Tanzanian society, there was 'community parenting', but now the prevailing view and culture is that individuals are only responsible for their own child", and that this contributed to an increase in deviant behaviour by children.

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[38] UN Committee on the Rights of the Child, *Concluding Observations: Tanzania*, CRC/C/TZA/CO/ 21 June 2006, para. 35 – 40.

[39] See section X

[40] Interviews with Detective Constable

Family separation and remarriages

Some of the children who were interviewed had run away from home or had been 'chased out' following their parents separating and remarrying. According to some of the juvenile justice professionals interviewed, parental separation was a risk factor to children coming into conflict with the law. For instance, the Social Welfare Officer in Charge of the Retention Home in Dar es Salam reported that: "following the death of a parent, the father may get another wife, who will be harsh with the child, causing them to run away. They may be denied food, clothes and so on, which causes family breakdown and results in the child leaving the family home." This in turn, may result in the child becoming vulnerable to being arrested. At times, these children would be arrested by a parent or extended family member.

> "I was living with my grandparents (my grandfather and step-grandmother), as my parents are separated and live in two different places. I had been living with my grandparents for a long time. I do chores for my grandparents, but when I get tired my grandmother complained to my grandfather, so I ran away to my aunt's house. My aunt chased me away from her home, and I didn't want to go back to my grandparent's place as my step-grandmother is still there. I don't like my step-grandmother as she falsely accuses me of things, like breaking stuff, and she tells my grandfather, who beats me with a stick. So I went to live on the street, and I have been cutting bananas from my grandfather's place and selling them. My grandfather ordered me to be arrested."
>
> *Boy, 16 years old, Arusha Retention Home*

Children living or working on the street

A high number of children who reported that they had not been living with a parent or parents prior to arrest had been living on the street (24%, or 18 in 76 children). 'Street children' may offend as a survival mechanism, as reported by some of the professionals that were interviewed. For instance, a Police Sergeant in Arusha reported that parents fail to provide for children and consequently a child departs from their home and goes to towns where they meet with street children and are negatively influenced and resort to criminal behaviour as a survival mechanism. In Arusha, it was reported that children arrive in town from rural areas to beg, and "if they don't get money from begging, they start stealing."[41] The Coordinator of the Saffina Street Children Network in Dodoma reported that: "most of these children have a very big problem with their families. When they came to the streets nobody cared for them, their lives became extremely difficult. They steal to sustain their lives and are condemned."

Children living on the street appear to be more 'visible' to police and more vulnerable to being arrested, not just for 'status offences' such as truancy or vagrancy but also for thefts and other more serious offences. Children living on the street in Dodoma reported being 'rounded up' by police along with a number of other street children, detained for a period of time, then released without charge. One child reported that a police officer had tried to extract a bribe from him in exchange for him being released. On another occasion, the same child, along with a number of other street children, was arrested as parliament was in session in Dodoma. Another street child reported being placed in police detention for 14 days following an 'arrest' for disorderly conduct. No charges were

[41] Interview with Social Welfare Officer in Charge, Arusha Remand Home

laid. During a focus group discussion with police officers in Dodoma, it was reported that: "crimes are largely committed by street children who do not have relatives living near here. As such, we are forced to detain them here [in the police station] without knowing what to do. Sometimes they commit only minor offences and cannot be taken to Court, for example, the offence of being idle and disorderly. We take them to make the town peaceful."

The interviews with children demonstrated how living or working on the street can make children very vulnerable to being arrested.

"I have been here for nine months. I was living on the streets in Arusha town when I got arrested. I am also illegitimate and had been raised by my mother until I was 7 years old, then I was taken to live with my grandparents. Last year, I had gone to live with my father for three months. He passed away, so I had to go back to my grandparents'. I have a habit of running away from my grandparents' home and coming to the city, because we did not have enough to eat at my grandparents', and I would come to town from the village to get money for food. I was arrested in the morning. I was going to fetch my friend who had been sleeping nearby when I was seized by a night guard of the shop near where my friend had spent the night, and was told that I had broken into and stolen from a store where the guard was posted. There were other children that had been rounded up by the guard as well. They took us to the police station."

16 year old boy, Arusha Retention Home

"I was living with my parents, but then my mother passed away. My father is still alive and lives in Moshi. I ran away from home when I was nine years old. My step-mother was cruel to me…I have been living on the street in Arusha for the past two years. I sold plastic bags and slept in a bus stand. I was standing on the street with some friends, and someone came and rounded us up and took us to the police station. We were charged with stealing a cart. The others ran away, and I was the only one that was caught. I stayed in police detention for one week."

16 year old boy, Arusha Retention Home

"I was at a bus stand selling nuts when police came and arrested me. I used to go to school but I stopped when I was in Standard 7. I came to find myself with no one to take care of me. My parents died a long time ago. I was staying with my grandmother. I was the one who took care of her."

16 year old boy, Lindi adult prison

"I don't know my father. I used to live with my mother, then I left Babati to go to Arusha. I was living on the street. I went to Dar…to pick up bottles for money and slept on the pavement. I saved money from selling the bottles, and tried to go home to visit my family. I didn't make it home. When I arrived in Arusha from Dar, I was tired and slept on the street. I woke up in the morning to find people around me. The night guard from a nearby shop had gathered all of the street children up. A shop near to where I was sleeping had been robbed at night. I didn't hear anything as I was so tired. The night guard called the shop owners. The shop guard accused four of the street children and we were all taken to the police station."

15 year old boy, Arusha Retention Home

Children living with their employers

16% of children who had not been living with a parent prior to arrest reported that they had been living with an employer. In nearly all of these cases, their employer was the complainant. Most of these children reported that their employer had either deliberately fabricated a case against them to avoid having to pay them, or that they had mistakenly thought the child had committed an offence, for instance, stolen money from the business. This is supported by the CHRAGG study, which found that:

> "Many children in conflict with the law are also child-workers. Most frequently boys are involved in selling scrap metals and plastic bottles, or they wash cars or act as porters for passers-by. Girls in detention are often domestic workers who have been accused of theft by their employers. It was asserted that these convictions are frequently based upon false witness evidence from their employees."[42]

Children who were interviewed for this study who were working and not being cared for by their parents before their arrest were found to be very vulnerable to coming into conflict with the law. Many of these children alleged that their employers had fabricated a case against them to ensure that they are placed in police detention to avoid having to pay them.

Arrests of child workers

"Before my arrest, I was living with my parents. My father died. He had been paying my school fees, so after he died I got a job, tending cattle. At the end of the month's work, I asked my employer to pay my salary. He made up that I raped his two year-old daughter. I don't even know his daughter. He took me to the police station and left me there."

17 year old boy, Arusha adult prison

"I was in Standard 6 in Moshi, but here in Tanga I'm working. My boss made up an allegation against me that I had stolen his pistol. He did this because I demanded my wages from him: 300,000 shillings, which was my annual salary due to me."

16 year old boy, Tanga adult prison

"I hail from Gairo in Morogoro region. I came to Moshi to work as a house helper. I was hired as a house girl in Soweto suburb, but my employer sacked me after three months work without any pay. I was later taken in by another person, who I stayed with for one month. One day in March 2011, while I was at home cooking, my employer started to complain that I had stolen 95,000 shillings from her, and a cell phone. I was taken to the police post."

16 year old girl, Moshi Retention Home

"I was employed as a house helper and worked for three months without pay. When I demanded my salary, I was promised to be given it in three days. On the third day I was told to wait. In the

[42] CHRAGG Report, p. X

evening after doing the house chores, I was surprised to hear that my employers accused me of rape. They beat me up and took me to the police station that night."

16 year old boy, Moshi Retention Home

"I was working in a shop when I was arrested. I was employed by an older woman as a shop attendant. I was living in the shop by myself. I was living with my parents prior to this in Rombo, but I left Rombo in January 2011 to come to Mariengo. My parents are poor and can't afford my school fees so I decided to leave to find work. The woman I work for found me at my relative's place in Mariengo and offered to pay me 25,000 shillings per month to work in her shop. At first I was reluctant, but my friend convinced me to do it. I have never been paid. I used to leave the shop at 7am every morning to farm my employer's property until 5pm, then I worked in the shop until midnight. I slept inside the shop. My employer sometimes brought me food, but not all the time. My employer came to me one morning and told me to go to the market to get stock for the shop. The next morning, she came back, counted money in the shop, did stocktaking and found she was 60,000 shillings short. She asked me where the money went and I said she must have taken it, but she denied this. She came back with her son who beat me up. He took me to the back of the shop and beat me all over with a big stick, asking me where I put the money. They then took me to the police station."

16 year old boy, Moshi Retention Home

"I have been accused of stealing stray eggs. I was employed by a businessman and one day, after asking for my pay, he arrested me. I did not commit this offence."

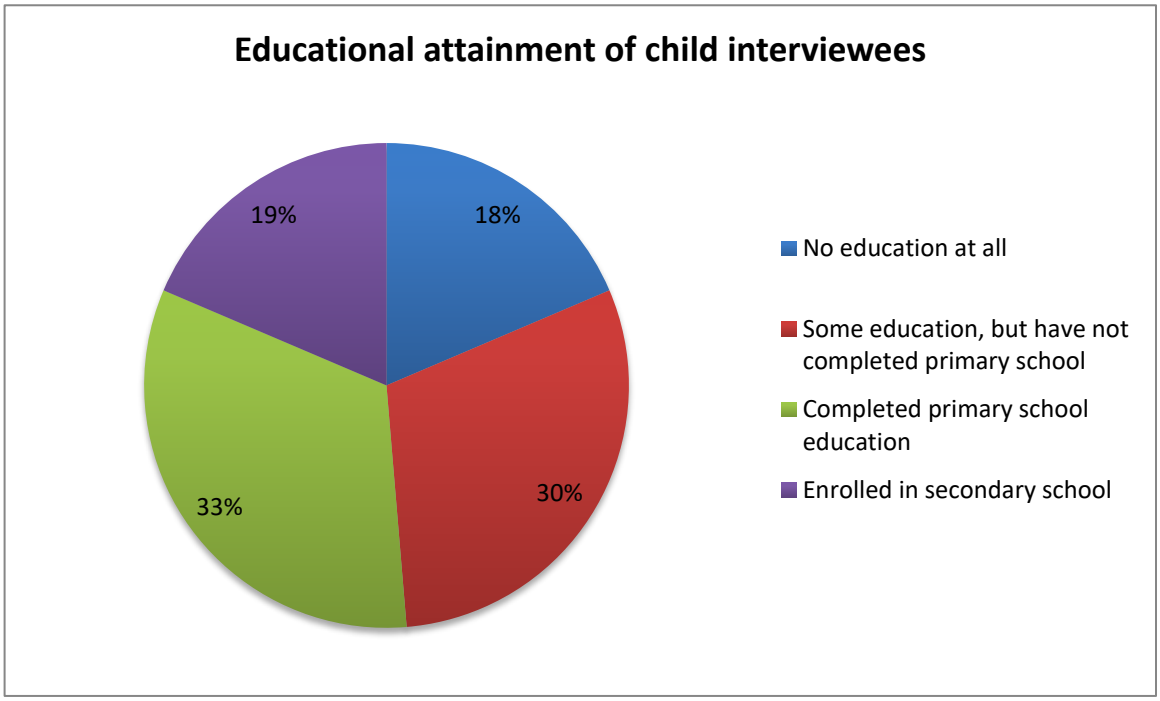
15 year old boy, Masasi adult prison

Lack of education

The data collected from child interviewees indicates that low educational attainment may also be a risk factor to children coming into conflict with the law. 49% of children who gave this information (55 in 113) reported that they had either never been to school or had received some education but had not completed primary school. Lack of education was identified by some of the juvenile justice professionals interviewed to be a risk factor to children coming into conflict with the law: "In a group of twenty children, you would find only two or three Standard Seven graduates. They end up on the streets without any means of livelihood."[43]

TABLE H

[43] Interview with Prisons Officer, Tanga Maweni Prison, 11 May 2011.



The data collected from children and juvenile justice professionals illustrates that children who are at risk of coming into conflict with the law tend to be very vulnerable. Many of the children interviewed were without parents, or had parents living quite a distance from where they were working; some had been 'taken in' by an adult to work as a domestic servant or farm hand, or were living on the street. Any programmes of reform of the juvenile justice system should consider how best to provide support and services for this very vulnerable group of children.

2. LEGAL FRAMEWORK

2.1 International legal framework

International standards governing juvenile justice systems and children's rights within these systems are well elaborated. The UN Convention on the Rights of the Child (UNCRC) contains several provisions which relate specifically to children in conflict with the law. Articles 37 and 40 are key provisions. Article 37 protects the rights of children who are arrested and detained and prohibits torture or cruel, inhuman or degrading treatment or punishment and illegal and arbitrary detention of children; and further provides that detention of children should only be used as a last resort and for the shortest appropriate period of time.

Article 40 sets out principles for a child rights compliant juvenile justice system and rights of children who are being processed through the criminal justice system. It provides for "the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

As the provisions of the CRC are interdependent and interrelated, other rights will be relevant to children who are at risk of or who have come into conflict with the law. In particular, according to the UN Committee on the Rights of the Child, Articles 2, 3, 6 and 12 will apply.

Article 2 prohibits discrimination in the enjoyment of rights in the CRC, and requires Governments to address the unequal enjoyment of rights. Article 3 requires Governments to ensure that, in all actions concerning children, their best interests shall be a primary consideration. Article 6 contains the right to life, survival and development, and Article 12 requires governments to respect the right of children, in all actions concerning them, to express their views and have these views taken into consideration. This includes a right to express their views in judicial proceedings.

The African Charter on the Rights and Welfare of the Child also applies to children in conflict with the law. Article 17 is a key provision, and contains principles on which juvenile justice systems must be based. It provides that "[e]very child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth which reinforces the child's respect for human rights and fundamental freedoms of others." It also contains due process guarantees and rights that must be available to all children who are in conflict with the law.

A number of other international instruments apply to children in conflict with the law. These include the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990, the UN Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules) 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990, and the Vienna Guidelines for Action on Children in the Criminal Justice System 1997. While, in contrast to the CRC, these instruments are not binding on Governments, they do evidence an international commitment to abide by their provisions, and they elaborate the obligations of Governments set out in the CRC to create a child rights compliant juvenile justice system, and ensure that the rights of children in conflict with the law are protected.

Other international instruments that apply to all persons in the criminal justice system when they are arrested, tried, sentenced and detained, will also apply to children. The International Covenant on Civil and Political Rights (ICCPR), is a key instrument, and contains rights to fair trial, prohibitions on illegal and arbitrary detention, provisions on treatment in detention and a prohibition on torture and cruel, inhuman or degrading treatment or punishment. While most of these standards are not specifically tailored to the unique needs and conditions of children,[44] they nonetheless provide fundamental safeguards and rights for children who are in conflict with the law.

2.2 **Domestic Laws**

Article 40(3) of the CRC requires states to promote the establishment of procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the criminal law. This requirement applies to the entirety of the juvenile justice system from the initial contact with the juvenile justice system until all involvement with the system ends. As stated by the CRC Committee, "[c]hildren differ from adults in their physical and psychological

[44] An exception can be found in Article 10(b) and (c), which provide that: "accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication" and "juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law."[45] Children, owing to their age and stage of development, are inherently more vulnerable than adults. They require specialised interventions, with specially trained staff to respond to their unique needs.

Tanzania does not have a separate, comprehensive set of legal provisions and procedures that apply specifically to children in conflict with the law. **The Law of the Child Act (LCA)**, which was passed in 2009, represents a significant development in establishing a separate criminal justice system for children, and it contains a number of provisions that specifically apply to children in conflict with the law. However, this Act does not cover all aspects of the criminal justice process, and is limited to establishing and regulating proceedings before the Juvenile Court, the application of custodial and alternative sentences, and regulating Approved Schools. The criminal justice system is also governed by a number of other laws that apply to adults and children alike.

The Criminal Procedure Act 1985 (which was amended in 1998) governs criminal justice procedures including arrest, investigation, release and police bail, the initiation and conduct of criminal proceedings, convictions, judgments and the execution of sentences. It contains a very limited number of provisions that specifically apply to children. Only one provision of the Criminal Procedure Act 1985 (relating to the protection of privacy of offenders during trials) has been explicitly amended by the LCA.[46] There appear to be a number of inconsistencies between the two laws, which need to be clarified. For instance, under the Criminal Procedure Act, a "child" includes those over the age of 16 years, while under the LCA, a "child" is a person aged under 18 years. It is unclear, in the event of an inconsistency between the two Acts, which provision should prevail.

The Penal Code 1945 establishes the age of criminal responsibility and identifies the acts considered to be criminal offences. The LCA has introduced a number of amendments to the Penal Code. Most significantly, the LCA has expressly amended s. 15 of the Penal Code by adding a subsection providing that "any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act 2009." However, the meaning of this provision is unclear. The LCA covers many areas and contains provisions that encompass juvenile justice and child protection. It is unclear whether this changes the minimum age of criminal responsibility in the Penal Code, which is 12 years, or 10 years if criminal capacity can be established.[47]

A number of other laws govern different aspects of the criminal justice system. These laws regulate criminal justice institutions (the police service,[48] prosecution service[49] and judiciary[50]); establish and regulate Courts;[51] govern sentencing;[52] and regulate the provision of legal aid.[53]

[45] UN Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 10.
[46] See s. 193 LCA
[47] See section X of this report.
[48] Police Force and Auxiliary Services Act 1955
[49] National Prosecution Service Act 2008; Office of the Attorney General (Discharge of Duties) Act 2005
[50] Judicial Service Act 2005; However, it should be noted that the Judicial Services Act, 2005, is likely to be repealed or amended by the Judicial Administration Act, 2010 which has been passed by Parliament.

3. SPECIALISED SYSTEM FOR CHILDREN IN CONFLICT WITH THE LAW?

In addition to specialised laws, a juvenile justice system requires child-specific institutional structures. International law requires that specialised units for children are to be established within the police, the prosecution, the judiciary, the Court administration and social services.[54] Juvenile Courts also need to be established (either as separate units or as part of existing regional/district Courts), as do specialised services such as legal aid, probation, counselling or supervision and, where necessary, facilities for residential care and treatment of children in conflict with the law.

3.1 Lack of specialised juvenile justice institutions

Tanzania has not yet established a specialised juvenile justice system. While the LCA establishes juvenile courts, in law, only one has been established in practice. Specialised detention facilities exist – five Retention Homes and one Approved School – but only have very limited geographical coverage; although the Ministry for Health and Social Welfare has plans to establish two additional Retention Homes , one in Mwanza and another in Selida. Specialised units, procedures and practices within most criminal justice institutions – police, social welfare, and Courts – have not been developed. A limited number of juvenile prosecutors have, however, been established.

Police

The **Police** are employed, under the Police Force and Auxiliary Services Act 1955, for the preservation of peace, maintenance of law and order and detection of crime, the apprehension and guarding of offenders and the protection of property.[55]

At the national level, the Police Force is under the command, control and administration of the **Inspector-General**,[56] an office that falls under the **Ministry of Home Affairs**. The Police Force is organised into Officer categories of seniority[57] and organised into regional and district level units.

The Police have powers and duties to arrest and investigate crimes committed by adult and child suspects alike. The law contains several powers and duties of Police Officers that apply specifically to children. However, contrary to international law, which requires that States establish specialised juvenile justice institutions, there are no specialised police roles or units, provided for in law, for children in conflict with the law. Nor have any specialised police officers dealt exclusively with child offenders been established in practice. A Police Headquarters Directive has established, on paper, Gender and Children Desks in all police administration regions, to deal with cases involving women and children. However, these have not been established, in practice, in all regions. In several of the study regions – Dar es Salam, Tanga, Arusha and Kilimanjaro, the police have established Gender and Children Desks in practice, coordinated by the Head of Women's' and Children's Affairs in the

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[51] Judicature and Application of Laws Act 1966 (jurisdiction of the High Court), Appellate Jurisdiction Act 1979 (which governs appeals to the Court of Appeal), Magistrates' Court Act 1984 (establishment, constitution and jurisdiction of the Magistrates' Courts), and Evidence Act 1967 (regulates the submission of evidence in criminal proceedings, other than in Primary Courts)

[52] Community Service Act 2004; Probation of Offenders Act 1947

[53] Legal Aid (Criminal Proceedings) Act 1992

[54] General Comment No. 10, Para. 92, 93 and 94.

[55] s. 5(1) *Police Force and Auxillary Services Act* 1955

[56] s. 7 and 8, *Police Force and Auxilliary Services Act* 1955

[57] Gazetted Officers, Inspectors, Non-Commissioned Officers and Constables: s. 4, *Police Force and Auxilliary Services Act* 1955

Ministry of Home Affairs. The Desks were established in 2007. Police officers who staff these Desks (OICs, Investigators, District Police Officers) have received one week of training, on women's and children's rights more generally. However, these Desks only appear to have very limited capacity to deal with children in conflict with the law. With the exception of the Gender and Children Desk in Hai, the Desks predominantly work with child and women victims of crime, particularly of sexual offences. They only very rarely work with child offenders. Standard non-specialised police constables, sergeants and investigators, even in regions in which Gender and Children Desks had been established, tend to be the officers that deal with child offenders.

Additionally, police officers had not developed any formal specialised procedures for interviewing and processing child offenders, though some individual officers reported that they felt it necessary to modify their behaviour somewhat when dealing with child offenders (e.g. by 'speaking in a more police tone' and so on).

The development of specialised police units / officers would allow for police who deal with children to have specialist knowledge of juvenile justice standards and domestic laws and would therefore help to ensure that children's rights are protected at the arrest, investigation and charge stage of the criminal justice process. It would also help to ensure that children in conflict with the law are dealt with by institutions that are aware of, and responsive to, their unique needs.

The Ministry of Home Affairs should work to develop specialist units within the Police Service that deal exclusively with children in conflict with the law. In light of the difficult backgrounds of many children who come into conflict with the law, as set out above, the Ministry of Home Affairs and the Ministry for Health and Social Welfare should consider building the capacity of police officers to provide a child protection response to children in conflict with the law where required. This could be achieved by developing a juvenile justice training module into the standard police industry training (the Police Academy), designating and training specialised police officers in each district, stationing a SW Officer (part-time or full-time, depending on the volume of cases) at each police station or post, and / or establishing a liaison police officer to maintain good links with SW Officers.

Prosecution

The prosecution of defendants is controlled by the **Director of Public Prosecutions**, who is appointed by the President.[58] Under the Constitution, the Director of Public Prosecutions has the power to "institute, prosecute and supervise all criminal prosecutions in the country."[59]

The Director of Public Prosecutions is under the control of the **Office of the Attorney General**, which is mandated to perform the functions of public prosecutions in accordance with the Constitution and any other written law; and control all criminal prosecutions in the country.[60] The Attorney General may appoint such number of State Attorneys as is necessary for the proper and effective performance of the functions of the National Prosecution Services.

[58] s. 59B, *Constitution*; s. 89(1) *Criminal Procedure Act* 1985
[59] s. 59B(2), *Constitution*
[60] s. 8(1), *Office of Attorney General (Discharge of Duties) Act* 2005

Prior to the enactment of the National Prosecution Service Act in 2008, prosecutions were carried out by Police Officers, except for in High Court cases, which were prosecuted by State Attorneys.[61] This Act ushered in the civilianisation of prosecutions, and State Attorneys currently carry out prosecutions in some District and Resident Magistrate Courts, though Police Officers continue to prosecute cases in most Primary Courts, and in districts where the district prosecution service is yet to be established. According to the interviews with Police Officers and State Attorneys, State Attorneys receive a police file following arrest and must decide whether to lay charges. If there is insufficient evidence to lay charges, Attorneys tend to refer the file back to the police for further investigation.

The Director of Public Prosecutions, in carrying out their duties, must have regard to: (a) the need for dispensing justice; (b) prevention and misuse of procedures for dispensing justice; and (c) the public interest.[62] The functions of the Director of Public Prosecutions are further elaborated in the National Prosecutions Service Act 2008. According to s.9(1), these include:

(a) To decide to prosecute or not to prosecute in relation to an offence;
(b) To institute, conduct and control prosecutions for any offence other than a Court martial;
(c) To take over and continue prosecution of any criminal case instituted by another person or authority;
(d) To discontinue at any stage before judgment is delivered any criminal proceeding brought to the Court by another person or authority;
(e) To direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously;
(f) To institute, conduct and defend criminal proceedings in Courts of law; and
(g) To take over an appeal, revision or application arising from private prosecution, whether as appellant, applicant or respondent.

Sections 16 and 24 of the National Prosecutions Service Act 2008 give powers to the Director of Public Prosecutions to coordinate the investigation of crimes and to do all things that are necessary to be done for the purpose of performing the functions of the National Prosecution Service, including coordination of criminal investigations.
The Act also provides that a Police Officer or the Officer of any other investigative organ in charge of any area or authority in respect of offences alleged to have been committed within that area to report to the DPP any of the following:

(a) An offence punishable with death;
(b) An offence in respect of which a prosecution is by law required to be instituted with the consent of the Director of Public Prosecutions;
(c) A case in which request for information is made by the Director of Public Prosecutions; and
(d) A case in which it appears to such Police Officer or the Officer of any other investigative organ that the advice or assistance of the DPP is desirable.[63]

[61] Interview with District State Attorney, Arusha
[62] s. 59B(4), *Constitution*
[63] Section 9 (4), *National Prosecutions Services Act*, 2008.

Under the National Prosecutions Service Act 2008, the Director of Public Prosecutions is also mandated to visit and inspect places of detention, including prisons, police stations and retention homes.[64]

The law does not provide for specialist prosecutors or prosecution units to carry out the investigation and prosecution of cases which involve child suspects. In practice, there is a specialised prosecutor attached to the Juvenile Court in Dar es Salam (see below). Juvenile prosecutors have also been established in a number of other districts. In other districts, prosecutions of juvenile suspects are carried out by general State Attorneys. State Attorneys must cover a very wide range of different matters, including criminal, civil and constitutional cases. As a result, non-specialised State Attorneys have not developed the skills and knowledge required to carry out their work in compliance with juvenile justice standards. State Attorneys have not developed any formal specialised procedures for processing cases involving child suspects, though some interviewees reported that they did, as a matter of course, modify their behaviour somewhat when examining children in Court, for example, by using "simple language", and ensuring that they are "non-adversarial."

The Director of Public Prosecutions should work to establish specialised prosecutors in each district to exclusively prosecute juvenile cases.

Judiciary

Article 107A of the Constitution provides that the Judiciary shall be the authority with final decision-making power in dispensation of justice in the United Republic of Tanzania.

In delivering decisions in both civil and criminal matters, Courts are called upon to observe the following principles:[65]

(a) impartiality to all without due regard to ones social or economic status;
(b) not to delay dispensation of justice without reasonable ground;
(c) to award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament;
(d) to promote and enhance dispute resolution among persons involved in the disputes; and
(e) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.

The **Judicial Services Commission** governs appointments of Judges and Magistrates in Mainland Tanzania. The Commission, which was established by the Constitution, consists of the Chief Justice, the Attorney General, a Justice of Appeal, the Principal Judge and two members appointed by Parliament.[66] The Commission advises the President on key judicial appointments, discipline and remuneration of Judges and Magistrates.[67] Its terms and mandate are further elaborated in the

[64] Section 16(4), National Prosecutions Services Act 2008
[65] Article 107A(2), *Constitution*
[66] Article 112, *Constitution*
[67] Article 113, *Constitution*

Judicial Service Act 2005. Under this Act, the **Chief Justice** is responsible for "carrying out the general administration of the judiciary."[68]

Juvenile Court

The Juvenile Court was established by the Law of the Child Act 2009 (LCA), "for purposes of hearing and determining child matters relating to children."[69] According to the LCA, the Chief Justice has the power to designate any premises used by a Primary Court to be a Juvenile Court.[70] A Resident Magistrate must preside over the Juvenile Court.[71]

The LCA provides that the Chief Justice shall publish rules to govern the procedure and the conduct of proceedings in the Juvenile Court. At the time of writing, the Chief Justice had not published such rules. However, the LCA provides the following conditions that must be observed in proceedings before the Juvenile Court:

(a) The Juvenile Court set as often as necessary;
(b) Proceedings shall be held in camera;
(c) Proceedings shall be informal as possible, and made by enquiry without exposing the child to adversarial procedures;
(d) A social welfare officer shall be present;
(e) A right of a parent, guardians or a next of kin to be present;
(f) The child shall have a right to next of kin and representation by an advocate;
(g) The right to appeal shall be explained to the child; and
(h) The child shall have a right to give an account and express an opinion.[72]

The Juvenile Court, when hearing a charge against a child shall, if practicable, unless the child is charged jointly with any other person not being a child, sit in a different building or room from that which the ordinary proceedings of the Court are held.[73]

The introduction of these provisions helps to implement international law, which requires States to develop specialised institutions and procedures for children in conflict with the law. The UN Committee on the Rights of the Child has recommended, in General Comment No.10, that States should establish Juvenile Courts.[74] Courts could be either in a separate court building or a courtroom in an existing building. If this is not feasible, the Court should be used as a Juvenile Court on certain days of the week to prevent children having to mix with adults accused of offences.

The Juvenile Court has the power to hear and determine criminal charges against a child, and also applications relating to child care, maintenance and protection.[75] The LCA provides that, "where, in the course of proceedings in a Court it appears to the Court that the person charged or to whom the proceedings relate is a child, the Court shall stay the proceedings and commit the child to the

[68] Article 5(a), *Judicial Service Act* 2005
[69] s. 97(1), *LCA*
[70] s. 97(2), *LCA*
[71] s. 97(3), *LCA*
[72] s. 99(1), *LCA*
[73] s. 98(3), *LCA*
[74] General Comment No 10, Para. 93.
[75] s. 98(1), *LCA*

Juvenile Court."[76] Therefore, in law, all cases involving child offenders in Tanzania should be heard in the Juvenile Court. In practice, however, only one Juvenile Court has been established, in Kisutu, Dar es Salam, and the capacity of the Court for hearing juvenile cases is very low. There is only one resident Magistrate who has been appointed to the Court, and she also works in another Resident Magistrates Court in Dar es Salam. The Court only sits from 7am – 9am, two days a week.[77] If the Magistrate is not there (e.g. if she is sick or on leave), the Court ceases to sit.[78] The Court, therefore, has a low capacity for hearing juvenile cases. However, the Magistrate appointed to the Juvenile Court reported that, should the volume of cases increase, the Chief Justice has advised that it is possible to appoint another Magistrate to the Court.

In the first five months of 2011, the Court had only completed eight full trials, and the Magistrate at the Juvenile Court reported that she only deals with four or five cases per week, though some weeks, this could be as low as two. According to the Juvenile Court Magistrate, she often dismisses cases before they reach full trial, or the case will be withdrawn by the prosecution. Cases may be dismissed by the Magistrate under s.225 of the Criminal Procedure Act 1985, which grants the Magistrate the power to dismiss charges where the prosecution has not sufficiently advanced the case. The Magistrate reported that she uses this power in around 80% of cases. Normally, a case will be dropped after the third or fourth appearance by the accused (following around two months on remand).

Commendably, the Court's Prosecutor and SW Officers will follow up on high profile cases involving child offenders to see where the child has been taken and ensure that the child is referred to the Juvenile Court. For example, recently, a case was reported in the media involving four boys who allegedly murdered a girl. The Juvenile Court Prosecutor has been calling around and trying to find out where the defendants have been taken.[79] It was also reported that an instruction has been issued to police officers in Dar es Salam to refer all cases involving child suspects to the Juvenile Court.[80]

The CRC Committee has recommended that the State should appoint specialised judges or magistrates to deal with juvenile cases.[81] There are no legal provisions in Tanzania which designate specialised judges or magistrates and require only specialised judges or magistrates to sit in hearings involving child suspects, and in practice, magistrates in all Courts sit on all criminal matters, and no specialist juvenile magistrates or judges have been established.

The Chief Justice, who has the power under the LCA to appoint Courts as Juvenile Courts, reported that he intended to appoint more Juvenile Courts in 2012. According to the Chief Justice, the options are to replicate the Juvenile Court in Dar es Salam (with separate buildings, separate personnel and so on) or build a specialist Juvenile Court system into the current Court structure (so that there are no specialised Courts but specialised procedures for dealing with child offenders (one that is fast tracked). It also needed to be considered whether to train specialist magistrates to deal

[76] s. 100(2), *LCA*
[77] Interview with Juvenile Court Prosecutor and SW Officers; interview with Juvenile Court Magistrate.
[78] Interview with CHRAGG
[79] Interview with Juvenile Court Prosecutor and SW Officers
[80] Interview with Juvenile Court Magistrate, date?
[81] General Comment No. 10, Para. 93.

only with juvenile cases, so that, instead of a special Court, there could be specialised magistrates who are specially trained and can dispose of cases more quickly.

It is recommended that the Chief Justice designate a separate or procedure Juvenile Court system into the current Court system. Establishing separate buildings would be very time consuming, and it is more important that the procedures and personnel are specialised in dealing with children. Juvenile Courts could perhaps sit in existing structures, but on particular designated days or designated 'sessions' during each day or particular days of the week (e.g. from 7am – 10am). The Chief Justice should either both appoint and train specialised juvenile court magistrates in each district to sit on juvenile cases and / or develop a juvenile justice training module as part of industry training for all magistrates (see next paragraph).

The Chief Justice could work with the Institute of Judicial Administration, which provides continuing education for magistrates (Certificate of Law and Diploma in Law) to develop specialised courses for designated specialist magistrates in juvenile justice. There are currently no specialised juvenile justice subjects offered by the Institute. This would ensure that all magistrates have an understanding of issues facing children in conflict with the law and laws and procedures relating to juvenile justice, which is important given the reported frequent transfer of magistrates between some districts.

The Chief Justice reported that there is a shortage of Resident Court Magistrates, who, under the LCA, must preside over Juvenile Court cases. He also reported that his office is currently developing a policy position, which will require all Primary Court Magistrates to be university graduates (currently this is not a requirement). He suggested that, when this policy change is implemented, it may be possible to designate Primary Court Magistrates as specialist juvenile court magistrates, and allow them to preside over Juvenile Courts. This would be a welcome development. It would ensure a greater coverage of Magistrates that are specialised to sit in Juvenile Courts, and would therefore reduce delays in disposing of juvenile cases.[82]

Other Courts

Currently, as noted above, juvenile cases are heard in other Courts in Tanzania, due to the lack of designated juvenile courts. Most juvenile cases will be heard in Primary Courts, which hear cases involving charges which attract a sanction of twelve months imprisonment or less, a fine not exceeding ten thousand shillings, and corporal punishment not exceeding 12 strokes. Cases involving more serious offences, like murder or rape, will be heard in the High Court.

The Magistrates' Courts Act 1984 establishes three types of courts: Primary Court, District Courts and Resident Magistrate Courts.

Primary Courts are established in every district and their jurisdiction is limited to matters within their district. [83] The Primary Courts have jurisdiction over a range of criminal matters, as specified in Schedule I of the Magistrates' Courts Act 1984, and have the power to impose the following sentences:

[82] See section X for findings on delays in the court system.
[83] s. 3, *Magistrates Court Act*

(a) Imprisonment for a term not exceeding twelve months;
(b) A fine not exceeding ten thousand shillings; and
(c) Corporal punishment not exceeding twelve strokes.[84]

A Primary Court Magistrate may confer a matter to the District Court for sentencing where the convicted offender is an adult and it is of the Magistrate's opinion that the case warrants a higher sentence than that able to be imposed by the Primary Court.[85] The Act, however, defines an 'adult' as a person aged over 16, so this provision would continue to apply to children aged 16 and 17. The Law of the Child Act 2009 has not expressly amended the provisions of the Magistrates' Courts Act.

According to Section 13 of the Magistrates' Courts Act, the language of the Primary Court shall be Kiswahili.

District Courts operate in each district and have original jurisdiction in civil and criminal matters, as well as appellate and revisional powers over the Primary Courts.[86]

The Chief Justice may, by order published in the Gazette, establish *courts of a resident magistrate* which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction in such areas as may be specified in the order.[87]

Both the District and Resident Magistrate's Courts can use either English or Kiswahili in hearing cases, however, all the proceedings must be recorded in English.[88]

The *High Court* was established by Article 108 of the Constitution. This court has both unlimited and inherent jurisdiction over matters of a criminal and civil nature as long as they are not provided for in any other laws.[89] The High Court also has the power to hear appeals against decisions made by the District Courts in the exercise of the District Courts.[90]

Article 117 of the Constitution establishes the *Court of Appeal* which is the highest Court of the Land. It has both supervisory and appellate powers over the High Court and courts subordinate thereto.

Social Welfare Officers

Social Welfare Officers (SW Officers) are employed by the **Ministry of Health and Social Welfare**, and are also employed by the Prime Minister's Office in Regional Administration and Local Government, through Central government and Local Government Authorities at regional and district level. As at June 2011, 89 out of 189 Local Government Authorities had employed SW Officers. Other Institutions like the police and prisons as well as the Community and Probation Service Agency under the Ministry of Home Affairs also employ social welfare officers for community and probation services.

[84] s.2(1), *Magistrates' Courts Act* 1984
[85] Article 3, Third Schedule: The Primary Courts Criminal Procedure Code, *Magistrates' Courts Act* 1984
[86] *Sections 21 and 22 of the Magistrates' Courts Act 1984*
[87] s. 5, *Magistrates' Courts Act* 1984
[88] s. 13 (2), *Magistrates' Courts Act* 1984
[89] Article 108(2), *Constitution*
[90] Article 25, *Magistrates' Courts Act* 1984

The roles and duties of SW Officers in relation to children in conflict with the law are set out in the LCA. According to the LCA, a Social Welfare Officer must be present in any criminal hearing in the Juvenile Court,[91] and may assist a child in the conduct of his or her case.[92] SW Officers work across the board, with adults, families and children alike, on a wide range of social welfare issues, like disability. However, the Act does not specify which SW Officers (i.e. those employed by the Ministry of Health and Social Welfare, those employed by the Prime Minister's Office or those employed by the Department of Probation and Community Service) are responsible for fulfilling each of these duties.

There do not appear to be any specialised SW Officers in any of the study regions, with the exception of three SW Officers that are attached to the Juvenile Court in Dar es Salam. In all of the study regions, from information obtained from SW Officers and other professionals interviewed, it was clear that there are currently an insufficient number of SW Officers to carry out all of their duties, including their duties under the LCA relating to children in conflict with the law. The Director of Human Rights at CHRAGG reported that: "the law requires SW Officers to help children, but they don't have the number of SW Officers to do the job properly and capacity is a big issue." This has resulted in children in conflict with the law not receiving the support from SW officers that they need and to which they are entitled under the law. For instance, in Lindi, a Detective Constable reported that: "SW Officers in Lindi are problematic. We are not sure if there is any. We heard that there is one here, but we don't call them because we don't see them." A Public Prosecutor at Nachingwea Police Station stated that: "SW officers are nowhere to be seen. I don't see any in Nachingwea. They give no assistance to juvenile offenders." A magistrate at Lindi District Court reported that: "Social Welfare Officers are not available. In my experience, I have only seen one Social Welfare Officer here. … Even this social welfare officer came here to see where a child will be detained."

The lack of SW Officers has also made it very difficult for them to carry out their child protection and social welfare duties. This likely has the result of children in need of child protection services missing out on vital support and therefore becoming more vulnerable to coming into conflict with the law.

The Assistant Commissioner for Social Welfare in the Ministry of Health and Social Welfare supported this finding, and reported that, while there are SW Officers in every region, there is a resource problem, and there are not enough SW Officers available to carry out their duties properly. The Ministry is attempting to ensure greater coverage of SW Officers, and have recently employed more Officers and have plans to continue recruiting SW Officers. The Assistant Commissioner is currently meeting with universities to consider how best to ensure adequate coverage of SW Officers, and agreed on measures for improving the SW curriculum to improve capacity of SW Officers. He reported that there are also measures underway to place more SW Officers within LGAs.

Considering the very vulnerable background and situation of many children in conflict with the law, particularly for those who lack parental care, as set out above, it is essential that there are a sufficient number of SW Officers, specially trained in juvenile justice, to carry out their duties under the LCA and ensure that these children receive essential services and support and that their

[91] s. 99, *LCA*
[92] s. 108(2), *LCA*

rights in the criminal justice system are not violated. SW Officers have a vital role, both in preventing and responding to juvenile crime.

SW Officers interviewed for the study appeared to be unclear about their role in the juvenile justice system and about their duties under the LCA. The Resident Magistrate in Lindi, for instance, stated that "SW Officers are not available. In my experience, I have seen only one SW Officer here. They are not available. I think they don't know their role." According to the Assistant Commissioner for Social Welfare in the Ministry for Health and Social Welfare, under the old law (the Children and Young Person Act), the role of the SW Officer in relation to children in conflict with the law, was unclear, and, according to interviews with SW Officers, they do not appear to have a good level of knowledge of the LCA, apart from the three SW Officers attached to the Juvenile Court in Dar es Salam as well as those SW Officers forming the Child Protection Team in Hai, Magu and Tameke. The primary role of the SW Officer in relating to children in conflict with the law is widely conceived by professionals to be limited to producing social inquiry reports for the purposes of assisting magistrates to make sentencing decisions. **The roles of different SW Officers under the LCA should be clarified in regulations. Training should be provided to designated SW Officers to ensure that they understand and are able to implement their obligations under the LCA. Training should also be provided to other juvenile justice professionals so that they enable the SW Officers to meet their obligations under the LCA.**

Department of Probation and Community Services

The Department of Probation and Community Services are responsible for implementing non-custodial sentences. Originally falling under the Ministry for Health and Social Welfare, the Department has sat within the Ministry of Home Affairs since 2008. The role of the Department is to ensure that Probation Officers are stationed in Courts and that the Officers implement sentences and ensure that they are carried out by individuals who have received non-custodial sentences.

Detention facilities

There are two types of detention facilities specifically designated for children in conflict with the law: Retention Homes (pre-trial detention) and Approved Schools (post-sentencing detention). Both types of facilities are directly under the management of the Department for Social Welfare. According to the LCA, the **Commissioner for Social Welfare** is responsible for monitoring and supervising Approved Schools and Retention Homes. However, children, in practice, are held in detention in adult prisons.

<u>Retention (Remand) Homes</u>

Under the repealed Children and Young Persons Act[93] as well as under the LCA[94], children whose criminal cases are pending in courts should be remanded in Retention Homes[95] if they are not released on bail. The placement of children in Retention Homes, under the supervision of fit

[93] Section 7 of the Children and Young Persons Act, Cap. 13 R.E. 2002.
[94] Section 104 of the Law of the Child Act (2009).
[95] Under section 3 of the LCA, a "retention home" means a 'place where a child is safely accommodated while his case is being considered".

person(s) or in institution(s), under section 104 of the LCA, must be made by order of the Court, naming the institution. Subsection (2) of section 104 of the LCA provides that:

> "The child shall remain in the custody of that person or institution during the period mentioned in the order or until he is further dealt with in according to law and shall be deemed to be in legal custody during that period."

Currently, there are only five Retention Homes in Tanzania: in Arusha, Dar es Salaam, Mbeya, Moshi and Tanga regions. The lack of Retention Homes in other regions is one of the reasons cited by interviewees for children being committed to adult prisons while on remand.[96] Further Retention Homes may be established, by order, by the Minister for Social Welfare.[97] Currently, the Minister is planning to establish two more Retention Homes: in Mtwara and Mwanza.

Ultimately, the Ministry of Health and Social Welfare should ensure that Retention Homes are established in every region. However, this would require significant resources. In the medium-term, Retention Homes should be established in a number of regions with a relatively high number of children coming into conflict with the law.

Approved School

Approved Schools are also provided for under the LCA, and may be established, by order, by the **Minister of Health and Social Welfare**.[98] Where a child has been convicted of an offence which, if committed by an adult would have been punishable by custodial sentence, the Court may order the child to attend an Approved School.[99] However, the government has only established one Approved School at Irambo in Mbeya Region. The capacity of the school is 300 male children and 40 female children. Currently, no girls are held in the Approved School; however, the institution is planning to accept girls this year, following the renovation of the relevant dormitory wing. Due to there being only one Approved School to cater for children from all regions in Tanzania, many convicted children are not committed to this school; instead, they are imprisoned in ordinary prisons.

The Approved School teaches primary school lessons, following the National Curriculum. The Approved School also admits children from neighbouring villages, and children all study together. Secondary education is currently not provided.

The LCA provides for **Boards of Visitors** whose role it is to monitor each Approved School.

Prisons

Under the LCA it is prohibited for a child to be sentenced to imprisonment.[100] Section 120(1) of the LCA provides that: "Where a child is convicted of an offence which if committed by an adult would have been punishable by a custodial sentence, the Court [shall] order that child be committed to custody at an Approved School." However, the law is silent on the legality of committing children who are on remand to adult prisons.

[96] However, even in regions that have Remand Homes that are under capacity, researchers found a number of children in adult prisons on remand: see section 8.2.
[97] ss. 121 and 133, *LCA*
[98] ss. 121 and 133, *LCA*
[99] s. 120, *LCA*
[100] Section 119(a) of the LCA.

There are 126 prisons in Tanzania: 68 District Prisons, 46 Open Farm Prisons and 12 Maximum Security (Central) Prisons. There is a prison specifically designed to accommodate young people aged 16 – 21 (Wami Youth Prison in Morogogo). However, according to the LCA, children should not be sentenced to imprisonment, so Wami Youth Prison, according to law, should not be used to detain persons under the age of 18 years. Prisons, including Wami Youth Prisons, are under the control of the Ministry of Home Affairs.

Other relevant institutions

Local Government Authorities (LGA)

Section 94(1) of the LCA provides that a local government authority shall have a duty to safeguard and promote the welfare of the child within its area of jurisdiction. Furthermore, the local government authority shall have the duty to keep a register of most vulnerable children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children to grow up with dignity among other children and to develop their potential and self reliance. As set out above, some, though not all, SW Officers sit under the LGAs, and these SW Officers have a key role within the juvenile justice system. Programmes of juvenile crime prevention, and rehabilitation and reintegration programmes for children who offend, clearly fall within the mandate of SW Officers sitting within LGAs.

The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance was established under the Constitution,[101] and is a national human rights monitoring mechanism. The Commission has the power, inter alia, to: receive complaints in relation to violations of human rights; conduct inquiries on matters relating to infringement of human rights and violation of principles of good governance; if necessary, institute proceedings in Court in order to prevent violation of human rights or to restore a right that was caused by an infringement of human rights or violation of principles of good governance; and inquire into the conduct of any person concerned and any institution concerned in relation to the ordinary performance of his duties or functions or abuse of the authority of his office.[102] The Commissioner is therefore mandated to monitor, conduct inquiries and receive complaints in relation to criminal justice institutions.

In 2006, CHRAGG received a recommendation from the Attorney-General to conduct a public hearing / consultation into violations of children's rights. Following this report, a recommendation was made to develop a mechanism to better protect children's rights and this led to the creation of a Children's Desk within CHRAGG. The Children's Desk was established as a national contact to receive information and share experiences with other institutions. Three Investigation Officers were assigned to the Children's Desk.

CHRAGG has a mandate to inspect and monitor any detention facility at any time. In law, it has the power to do unannounced 'spot inspections', but in practice, as reported by the Director of Human Rights, it has to send information to the detention authority and get approvals prior to a visit, so it needs to inform the authorities first.

[101] Article 129, *Constitution*
[102] Article 130, *Constitution*

Inspections of all prisons / facilities are supposed to be carried out regularly. However, the Director of Human Rights reported that, in practice, they cannot do this. They inspect most facilities twice a year, but cannot make it to every prison.

National Criminal Justice Forum

The National Criminal Justice Forum was established under section 27 of the National Prosecution Service. Its functions include creating an opportunity for actors in the criminal justice to meet and discuss strategic issues involved in the administration of criminal justice.

3.2 Lack of knowledge of juvenile justice concepts and laws

Perhaps as a result of the lack of specialist units or professionals in criminal justice institutions who are trained to work specifically with children in conflict with the law, professionals in many of the study regions were found to have a very low knowledge of juvenile justice standards and domestic laws relating to children in conflict with the law. Many professionals had either not heard of the LCA at all or, if they had, did not have a detailed knowledge of its provisions, and most offices throughout the study regions did not have copies of the LCA. Professionals in most regions were still applying the repealed Children and Young Person Act, or other relevant criminal justice legislation, including the Criminal Procedure Act.

However, some professionals did not even have a good level of knowledge of child-specific provisions of the Criminal Procedure Act or Penal Code. For instance, some professionals (including police officers, state attorneys, primary court magistrates and district court magistrates throughout most study regions) did not know the minimum age of criminal responsibility, with some claiming that it is seven years.

The exceptions to this were the Prosecutor and SW Officers from the Juvenile Court, who clearly had a detailed knowledge of the provisions of the LCA, and reported that they applied this law. This, perhaps, demonstrates the importance of developing specialised juvenile justice professionals. In Hai, the two SW Officers interviewed were part of a multi-agency Child Protection Unit, developed as a pilot by the Department for Social Welfare and UNICEF, and had received copies of the LCA and training carried out by UNICEF. Police Officers who were specially designated and trained members of the Child Protection Unit were reportedly more likely to adhere to laws concerning children in conflict with the law. According to three SW Officers who were interviewed, “when Child Protection Team members from the Police are available, they observe the interviewing time limit [for children who have been arrested]. The Gender and Children Desk mainly caters for all cases and children are well treated. They have contributed so much in decreasing the rate of cases going to Court.”

The consequences of the lack of specialist institutions and professionals and the lack of knowledge of juvenile justice standards and relevant domestic legislation is that the children in conflict with the law are systematically exposed to having their rights violated at all stages of the criminal justice process. It also has the effect of exposing children who should not be processed through the criminal justice system (for example, children under the minimum age of criminal responsibility) to the system.

It is essential that specialist juvenile justice units and professionals in all criminal justice and social welfare institutions are developed and provided with training on international juvenile justice

standards, domestic laws and good practices for working with children in conflict with the law. Training modules should be developed and incorporated into relevant industry training. In addition, training should be provided to staff that currently hold key roles in the criminal justice system. Where specialist units / posts are developed within institutions, training should be provided to these professionals on issues relating to children in conflict with the law, juvenile justice principles, best practice and international and domestic laws. This would be more cost effective than attempting, initially, to train all professionals currently working in the criminal justice system.

3.3 Lack of coordination

In all research regions, with the exception of Hai, there was a lack of coordination between different juvenile justice institutions and professionals, which appeared to impair the ability of the institutions to implement the LCA and of the system to respond effectively to children at risk of coming into conflict with the law and children who are in conflict with the law.

The Chief Justice highlighted a lack of coordination among juvenile justice institutions as being one of the major problems that need to be addressed in the Tanzania criminal justice system. He reported that there is a lack of synergy between Courts, SW Officers, families and communities, and that ideally there should be a continuum of support available for children at risk and children who are in conflict with the law.

This appears to be caused in part, by a lack of specialised institutions or lack of specially trained professionals within criminal justice institutions, and a lack of clarity and understanding about the roles of different actors within the system. In most regions, for instance, Police Officers did not routinely contact SW Officers where children are arrested. The reasons given for this is a lack of SW Officers, and because the Police did not appear to understand the role of SW Officers in relation to children in conflict with the law.

In Hai, in which a multi-agency Child Protection Unit has been established, an effective inter-agency working relationship has reportedly been established, particularly between Police Officers and SW Officers. The Child Protection Team comprises representatives from SW Offices, police, magistrates, a probation officer, a health officer, an education officer, representatives from NGOs, two members from the junior council and a planning officer. SW Officers who were interviewed in Hai stated that since the establishment of the Child Protection Team, police contact SW Officers in every case involving a child, and SW Officers now have access to children who are placed in police detention. The Community Development Officer from the Hai Town Ward Tribunal, reported that they "have a good working relationship with both the SWOs and Police. This is attributed to the fact that we are members of the Child Protection Team."

A Child Protection Team model should be adopted in each region to ensure that there is a coordinated response to juvenile offending. Fostering links with relevant NGOs is also very important for Police and SW Officers, so that, for instance, children without parental care who are picked up for 'loitering' may be referred for necessary support and services, rather than detained and processed through the criminal justice system.

4. CHILDREN EXPOSED TO THE CRIMINAL JUSTICE SYSTEM

In order to comply with the CRC and the ACRWC, a juvenile justice system should cover all children who are alleged as, accused of or recognised as having infringed the penal law who are over the age of criminal responsibility, but under the age of 18.[103]

4.1 Minimum age of criminal responsibility (MACR)

Governments are also obliged to set a minimum age of criminal responsibility; that is, an age below which a child cannot be presumed to have the capacity to infringe criminal law. Article 40(3) of the CRC requires that States "shall seek to promote the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law". Similarly, the ACRWC provides that "there shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

Rule 4 of the Beijing Rules states that "in those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." In General Comment No. 10, the CRC Committee concluded that States parties should be encouraged to increase their minimum age of criminal responsibility. The Committee regarded 12 years as the absolute minimum age, and recommended that States continue to increase it to an even higher age level, for instance, 14 or 16 years.[104]

The minimum age of criminal responsibility in Tanzania is low compared to this international standard. The 'absolute' minimum age is ten years, as set out in the Penal Code. However, a child below the age of 12 years is not considered to be criminally responsible "unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission."[105] While this appears to offer protection to children between the ages of 10 to 12, as it provides a presumption that a child aged 10 – 12 years is 'doli incapax' (incapable of crime) and appears to place an obligation on the state to rebut this presumption. However, the CRC Committee has expressed concern about the practice of 'doli incapax' in its concluding observations on State party reports and in General Comment No. 10.[106] The Committee has stated that it "strongly recommends that States parties set a minimum age of criminal responsibility that does not allow, by way of exception, the use of a lower age."[107] The Committee, in its concluding observations on Tanzania in 2006, urged the government to "clearly establish the age

[103] Article 1 of the CRC defines a child as a person below the age of 18 years but recognises that majority can be attained earlier under certain jurisdictions. Regardless of the age of majority, Article 37(a) CRC maintains the prohibition on capital punishment and life imprisonment without possibility of release for offences committed by persons under the age of 18. Article 2 of the ACRWC states that a child is "every human being below the age of 18 years."

[104] General Comment No. 10, Para. 32 and 33.

[105] s.15 (2), *Penal Code*

[106] General Comment No. 10, para. 34: "*The Committee wishes to express its concern about the practice of allowing exceptions to a minimum age of criminal responsibility which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible*".

[107] General Comment No. 10, para. 34.

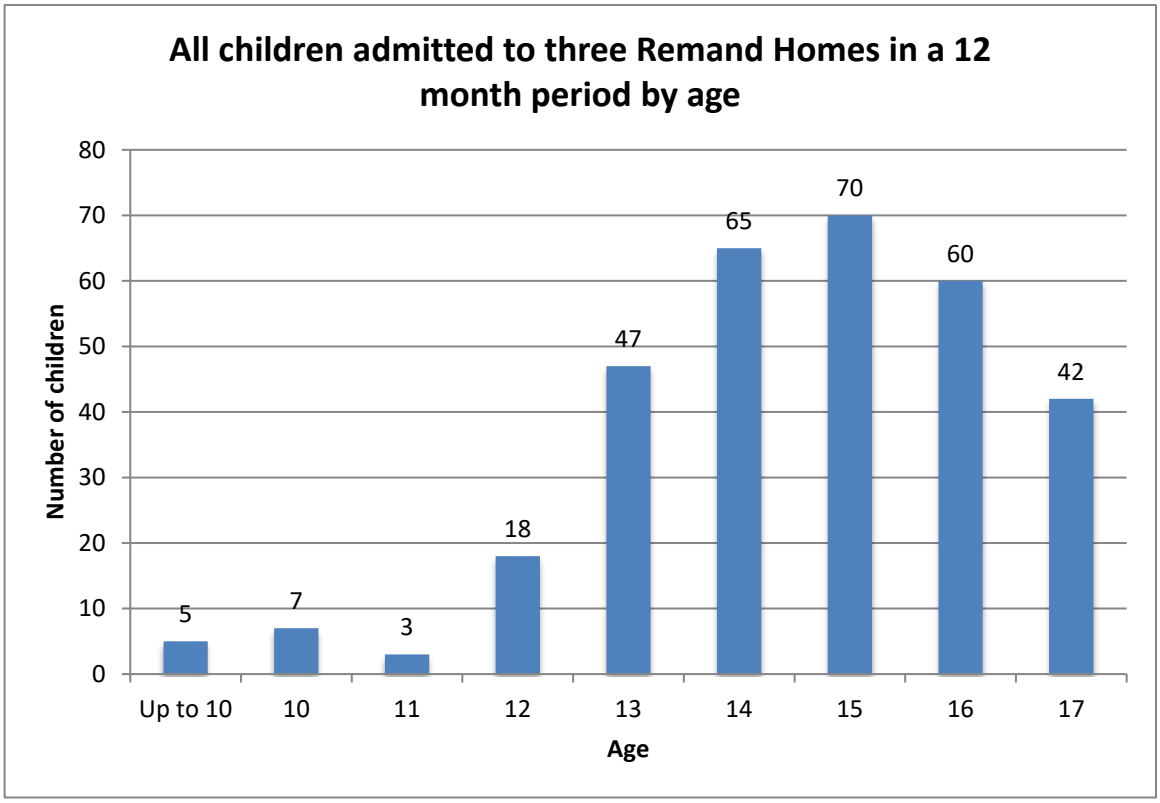
of criminal responsibility at 12 years, or at an older age that is an internationally accepted standard."[108]

The LCA has expressly amended s. 15 of the Penal Code by adding a subsection providing that "any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act 2009." However, the meaning of this provision is unclear. The LCA covers many areas and contains provisions that encompass juvenile justice and child protection. This amendment may only serve, therefore, to apply the juvenile justice provisions of the LCA to children in conflict with the law who are aged 10 – 12 years. This, in effect, does not absolve children aged 10 – 12 of criminal liability.

Treatment of children under the minimum age of criminal responsibility

In addition, in contravention of this provision, it appears that children below the age of criminal responsibility in some regions are being processed through the criminal justice system. Data from admissions into three Retention Homes over a 12 month period shows that five children below the age of 10 were admitted into the Homes. CHRAGG also found a number of children under the age of 10 years in the course of their study on children in detention: researchers reported that 27 out of 179 children interviewed during visits to detention centres stated that they were under 10 years old.[109]

TABLE I



[108] UN Committee on the Rights of the Child, *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2, 21 June 2006, para. 70(b).
[109] CHRAGG Report, p. 33.

Many of these children were detained for disorder or other minor offences. This included a child in Tanga Retention Home who was nine at the time of admission and had been arrested for theft, two children in Dar es Salam aged four and nine for 'disturbing passengers', and a child aged eight in Mbeya for vagrancy. According to professionals, children below the MACR will sometimes be brought by parents or carers to the police station or primary courts. A Primary Court Magistrate in Moshi, for instance, reported that: "The youngest child I dealt with was eight. Sometimes parents bring their child to court to ask whether they can be sent to the Approved School. In these cases, I need to establish which offence has been committed." The SW Officer in Charge at the Moshi Retention Home reported that "the youngest child detained in the Retention Home is a boy of nine years. He is being charged for use of abusive language against his mother, together with his brother. He is treated in the same manner as any other juvenile, despite him being below the minimum age of criminal responsibility."

As set out in Figure I, 10 children under the age of 12 were placed in the Retention Homes (most were arrested for theft). In practice, there appears to be no procedure for establishing capacity for children aged 10 – 12 years. This may have the effect of exposing children to the formal criminal justice system where they, in fact, have no criminal responsibility.

As noted above, the reason for processing children who are below the MACR through the criminal justice system could, in part, be attributed to a lack of knowledge of juvenile justice laws, including a lack of knowledge of what the MACR is. It also appears to be caused by an absence of procedures or mechanisms of referral for children below the MACR. Police Officers and Magistrates appear to be at a loss for what to do with children below the MACR who engage in criminal behaviour. In Mbeya, for instance, a Police Sergeant, who stated that the minimum age of criminal responsibility is seven, reported that the same procedure is followed for a child under the MACR who engages in criminal behaviour (arrest; interview; draft a charge; bring him before a court of law). One 12 year old child was found in police detention, having been arrested the night before. He had been taken to Court that morning, and the Magistrate did not lay charges as he was too young. The child was taken back to the police station and detained.

Furthermore, several professionals reported that children below the MACR who engage in more serious criminal behaviour will be detained for their own protection. That is, due to anger in the community over, in particular, more serious crimes. In these cases, Police Officers in some regions feel it is necessary to arrest a child below the MACR and process them through the criminal justice system. For instance, a Police Officer in Charge in Arusha stated that: "normally [we arrest children] from 10 years. However, due to the gravity of the offence and sentiments from the community, we sometimes arrest such children under 10 for very serious offences."

The Ministry of Home Affairs and the Ministry of Health and Social Welfare should develop a protocol that established clarity for dealing with children under 12 years who engage in criminal behaviour. These children should not be processed through the formal criminal justice system, but, where necessary, should receive social welfare support and services.

4.2 Upper age of juvenile justice system (age determination)

A specialised juvenile justice system should apply to persons up to the age of 18 years. Under the LCA, a child is defined as a person under the age of 18 years. However, the LCA does not

comprehensively cover all aspects of the criminal justice process, and provisions from other laws, including for instance, the Criminal Procedure Act, the Penal Code and the Magistrates' Courts Act, continue to apply to children in conflict with the law. Children are defined differently in some of these provisions, and many of these provisions have not been expressly repealed or amended by the LCA. It is therefore unclear which age limit applies, leaving children aged 16 and 17 at risk of being treated as 'adults' in the criminal justice system, in contravention of international law. The Criminal Procedure Act 1985, for instance, defines a 'child' as a person under the age of 16 years. The LCA has not expressly amended this provision of the Criminal Procedure Act, and it is unclear, in the event of an inconsistency between the two Acts, which provision should prevail.

In its most recent concluding observations on Tanzania, the CRC Committee urged the government to "ensure that children between the ages of 16 and 18 are not considered as adults and are afforded the same protection as younger children under the juvenile justice system."[110]

Many of the professionals who were interviewed stated that many children in conflict with the law may not know their age, and this appears to have left them open to age-related challenges by law enforcement officials, and possibly, to children being treated as adults in the criminal justice system, and being denied the special protections to which they are entitled. The rate of birth registration is low in Tanzania, particularly in rural areas. According to UNICEF, the rate of birth registration for under-5s in Tanzania is only 22% nationally, and in rural areas, it is only 16%.[111] Law enforcement authorities therefore require a robust process for determining a child's age, where there is any doubt.

According to international law, if there is no proof of age and it cannot be established that the child is at or above the minimum age of criminal responsibility, the child should not be held criminally responsible.[112] Section 114(2) of the LCA provides: "where the court has failed to establish the correct age of the person brought before it, then the age stated by that person, parent, guardian, relative or social welfare officer shall be deemed to be the correct age of that person." The LCA contains provisions for establishing a child's age where this is in doubt.

Section 113 provides:

> *(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person.*
> (2) *The court shall take such evidence at that hearing of the case which may include medical evidence and, or DNA test as is necessary to provide proof of birth, whether it is of a documentary nature or otherwise as it appears to the court to be worthy of belief.*

According to the Chief Justice, most magistrates do not follow these procedures in order to establish age, and many "just guess." This could result in children being processed through the adult criminal justice system. The Prisons Commissioner interviewed for this study reported that there are

[110] UN Committee on the Rights of the Child, *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2, 21 June 2006, para. 70(b).
[111] UNICEF, Tanzania, United Republic of, Birth Registration, 2000 – 2009, http://www.unicef.org/infobycountry/tanzania_statistics.html
[112] See General Comment No 10, Para. 35

currently a significant number of children detained in adult prisons who are wrongly thought to be adults.

Section 113 only applies to Courts. Police Officers in some regions appear to conduct age assessments where there is a dispute as to the age of a suspect. In Arusha, for example, two Police Officers stated that, where a child's age is uncertain, they will initially make an inquiry with the child's parents, and where the age is disputed, they will order a medical examination to be conducted (using a PF3 Form and referring the child to a hospital). This was also reported to be the case in Dodoma. However, in some regions, it appears that police will simply guess a child's age. It was reported in some regions that police officers at times deliberately misrepresent a child's age so as to avoid having to accord them extra protections. In Lindi, the Resident Magistrate reported that "Most juvenile offenders are not sure of their ages, but the police play a dirty game on them: they up-grade their age." This was also a finding made by CHRAGG in their recent study on children in detention, in which they reported that children in focus group discussions complained that Police Officers added years to their age to make them appear to be adults, or try to extract bribes to state that the person is under 18 years.[113] Robust age assessments should be conducted at the stage that the child is arrested, where there is any doubt over the child's age. This should be open to being reviewed by State Attorneys and Courts.

The Ministry of Home Affairs, Attorney-General and Chief Justice should consider developing guidelines for establishing age where there is any doubt. This should include a presumption that, where there is a doubt, until the age of the suspect is established, there should be a presumption that the suspect is a child.

4.3 Children who have not offended but are exposed to the criminal justice system

It was reported by some professionals that children who have not committed an offence, but have been misbehaving, for instance, truanting or loitering on the street, will be processed through the criminal justice system and can be placed in detention. As set out above,[114] street children in Tanzania are at times rounded up, held in police detention, and then released some time later without charge. In Dodoma, children who had been living on the street were interviewed. Six children reported having been rounded up and placed in police detention for six days. They were not charged with committing any offence, nor were they ever questioned. They were simply detained, then released six days later.

While attendance at Primary School to Standard Seven is compulsory for children, truanting is not a criminal offence. However, it appears that children in Tanzania are being processed through the criminal justice system and / or being placed in criminal detention facilities where they have been found to be truanting. The extent of this is difficult to determine; however, given the anecdotal reports of the juvenile justice professionals, it may affect a significant number of children. The professionals interviewed at Mbeya Retention Home stated that the most common 'offence' for which children are admitted to the Approved School is truanting. A SW Officer in Moshi explained that: "Truancy and absconding from school is common. For a child who truants, he or she will be

[113] CHRAGG Report, p. 33.
[114] Section 2.5

sent to Court: parents will complain to the police, and, as primary school (up to Standard Seven) is compulsory, children will be taken to court if they are truanting."

Children who have been taken to court for truanting may be placed in detention, as illustrated by two children interviewed at Moshi Retention Home.

"I was turned away from school as a result of non-payment of fees. Thus, my uncle vowed to send me to the Approved School. When I heard this, I ran away to my maternal grandmother, then my paternal grandfather came for me and promised that I won't be taken to the Approved School. Therefore, I returned after eight days, but then local militia came back and took me to the police for truancy. The trial was in chambers and my uncle was present. When a charge was read, I denied it and explained how I came to be arrested. My uncle pleaded with the Magistrate to send me to the Approved School...when I was asked how I felt, I said I refused to be taken there but all my relatives agreed to it and so on 26th January 2011, I was ordered to go to the Approved School for three years. I did not understand the procedure; however, I got the chance to cross examine my uncle. I was taken to the court lock-up. I was later called in and an order for the Approved School was read to me. I stayed in the Remand Home for two weeks before the hearing. However, I do not know when I will go to Mbeya. It has been three months since that order was issued."

15 year old, Moshi Retention Home

"The staff at my orphanage took me directly to court, not to the police station. When I was at court, my grandparents were there and they were asked to explain themselves. My grandparents and the staff of the orphanage said in court that I wasn't going to school. The magistrate asked me why I wasn't in school. They charged me with 'not going to school'. I was sentenced to go to the Approved School in Mbeya. I didn't really understand what the magistrate was saying."

12 year old boy, Moshi Retention Home

Children who do not commit crimes should not be processed through the formal criminal justice system, and should certainly not be placed in criminal detention facilities. The Ministry of Home Affairs and Ministry of Health and Social Welfare should develop a protocol for dealing with children who truant and children who are living on the street. The protocol should focus on ensuring that a social welfare / child protection approach is used in responding to the needs of these children.

4.4 Child asylum-seekers exposed to the criminal justice system

In Tanga, researchers interviewed 15 children who were detained in the adult prison for 'unlawfully entering the country.' Ten children were asylum-seekers from Ethiopia and five were asylum seekers from Somalia. They had all arrived by boat and were heading for South Africa. The children, aged between 15 and 17 years, had been arrested by immigration officers. They had spent one to two days in a police station before being taken to court and charged with unlawfully entering the country. Following the handing down of deportation orders, the asylum-seekers were detained in the adult prison in Tanga.

According to international standards, no child should be placed in detention, except as a last resort and for the shortest appropriate time.[115] Children who have arrived in Tanzania seeking asylum should not be passed through the criminal justice system and should not be placed in detention, except where this is absolutely necessary (for example, the child is assessed individually by an independent body and determined to pose a genuine, immediate security threat).[116] The treatment of this group of children is somewhat outside the scope of this paper; however, further investigation should be conducted into the procedures and treatment of asylum-seeking children in Tanzania, to determine whether their treatment is in accordance with international standards.

5. AT THE POLICE STATION

5.1 **Arrest**

According to the Criminal Procedure Act, arrests of children can be made in two ways:

Arrest with warrant

Article 13(1) of the Criminal Procedure Act provides that: "Where an information on oath is laid before a Magistrate, Ward Secretary or a Secretary of a Village Council, alleging that there are reasonable grounds for believing that a person has committed an offence", a Magistrate, Ward Secretary or the Secretary of the Village Council may: issue a warrant for the arrest of the person and for bringing him before a court to answer to the information and to be further dealt with according to law; or issue a summons requiring the person to appear before the court to answer to the information.

Arrest without warrant

Police officers, Magistrates or Private Persons may arrest without a warrant. According to s.14 of the Criminal Procedure Act, a police officer may, without a warrant, arrest:

(a) Any person who commits a breach of the peace in his presence;
(b) Any person who wilfully obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
(c) Any person in whose possession any thing is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;
(d) Any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or house breaking implement;
(e) Any person for whom he has reasonable cause to believe a warrant of arrest has been issued;
(f) Any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Tanzania which, if committed in Tanzania, would have been punishable as an offence, and for which he is, under the Fugitive Criminal Surrender

[115] UNCRC, Article 37(b)
[116] See Children's Legal Centre and UNICEF, *Administrative Detention of Children: A Global Report* (2011).

Ordinance or the Fugitive Offenders Act 1881, or otherwise, liable to be apprehended and detained in Tanzania;

(g) Any person who does any act which is calculated to insult the national emblem or the national flag; and

(h) Any person whom he suspects of being a loiterer in contravention of the provisions of the Human Resources Deployment Act, 1983

Any private person may arrest any individual who in his presence commits any of the offences referred to in this section.[117] Where a private person makes an arrest, the suspect must be handed to a police officer, taken to the nearest police station or, in the absence of either, the Ward Secretary or Secretary of the Village Council "without unnecessary delay."[118]

A significant number of children are arrested by private persons or community leaders / village executives. Of children interviewed who gave this information, 56% (88 in 161) were arrested by police, while the remaining 44% of children (73) had been arrested by others, typically complainants (a significant number of which were employers or relatives), local militia, village executives, guards and members of the community. This supports the finding made by CHRAGG in their study of children in detention.[119]

Grounds for arrest

As set out above, a significant number of children interviewed for this study were in a very vulnerable situation prior to arrest. Many were without parental care, and some were living with their employers or were living or working on the streets. Fabrication of allegations, particularly against this group of children, appears to be a problem. However, other children also reported having fabricated allegations made against them. This could be due, for example, to familial disputes. In Dodoma, for example, one 16 year old boy who was interviewed had been arrested for a sexual offence. He reported that he had been arrested by alleged victim's (who was a five year old girl) relatives. He stated that the allegations against him were false because the victim's uncle was indebted to the child, who conspired with the victim's mother and fabricated the case against him. A 17 year old boy interviewed in the Moshi Retention Home reported that:

> "I was stopped by a neighbour who accused me of stealing. He tied me with a rope and took me to the police. He told them to lock me up. The police did not ask anything, but beat me up with a club. That neighbour told the police that I had stolen from him. The neighbour had some personal grudges against my parents so he wanted to punish them through me."

The Primary Court Magistrate in Moshi reported that case fabrications tend to occur in relation to land inheritance disputes. Where children are trying to claim their right to inherit their family land and there is a conflict over this and the child is being difficult, the parent may bring the child to court. The parent may fabricate an allegation. In these cases, the magistrate reported that the child must be charged.

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[117] s. 16, *Criminal Procedure Act*

[118] s. 31(1), *Criminal Procedure Act*

[119] CHRAGG, Inspection Report for Children in Detention in Tanzania, p. 31: "47 out of 179 children interviewed (29%) in the detention facilities reported that they were arrested by the police and taken to the police station. However, 80 (45%) were taken to police stations by their parents or guardians on suspicion of having committed minor offences."

It appears that, in these cases, Police Officers will, at times arrest and detain these children without carrying out any further investigation. They appear to simply take the statement of the complainant, arrest the child, hold him or her in police detention for a period and may then proceed to process the child through the criminal justice system. Some professionals reported that they suspected that the police accepted bribes in exchange for holding a child in detention in some cases.

The allegation of case fabrications are supported by the very high number of guilty pleas that children enter at their initial hearings. Only 15% of children interviewed (15 in 102) reported that they had entered a guilty plea at their initial hearing. The Primary Court Magistrate in Moshi also reported that children "hardly ever" enter guilty pleas, perhaps only in one or two cases a year. This is exceptionally low, and would seem to indicate that there may be a level of case fabrication or arrests being made on very little evidence. The Magistrate and other professionals interviewed stated that many of the cases that proceeded to trial ended up in the child being acquitted, or being aborted as the complainant does not 'follow up' or 'loses interest'.

Concerningly, several children also reported having been arrested for one offence (e.g. a minor theft) and having a separate unrelated more serious offence 'pinned on them'.

"I am an orphan. Both my parents have passed away. I lived with my brother in Arusha. My brother found me a job making chips. One night, I was going home from work at 10pm. I got picked up by the police and taken to the station. I was picked up for loitering in the street. The police didn't tell me anything. They normally pick up street children. This was my first arrest and I was arrested with five other children. I stayed in police detention for two weeks, with one other person that was arrested on the same night. The police were trying to pin a crime on us. After staying in police detention for two weeks, we were taken to an interrogation room and told to sign a document. I didn't understand what was in the document. I don't know how to read. My friend told me that it said we stole a motorbike. My friend refused to sign the statement but he got beaten up, so I just signed it."

15 year old boy, Arusha Retention Home

"I was arrested on 6 October 2010 while going to demand money from a friend. I met with a woman who alleged that I had stolen her mobile phone. The local militia was called and they arrested me and took me to the police post. At the police post, I was told bail was open but I couldn't get a surety. To my surprise, after staying at the station for three weeks, I was connected with two charges of murder and armed robbery jointly with three other adults."

15 year old boy, Arusha adult prison

"I was arrested on 14 March 2011 while at Makumira by the village chairperson without telling me the offence I was being accused of. I was sent by the village chairperson, who had instructions to arrest me, since I was seen escaping arrest following an allegation of being in possession of narcotics. I escaped because my co-accused told me we would be tortured if we stayed at the police. While at the police station, I was severely beaten and was framed for a case of armed robbery. I stayed there for 12 days and was forced to sign a statement that had already been written."

17 year old boy, Arusha adult prison

"At first I remember I was arrested and accused of stealing a bicycle. After reaching the police station, the accusations changed to murder. I don't know about these accusations."

14 year old boy, Masasi adult prison

A lack of legal representation for children at the police station and at the initial court hearing[120] means that these children may not be able to present solid arguments against their arrest and charge, even when their cases do not proceed to full trial, and may end up being caught up in the criminal justice system on very flimsy grounds for a long period of time.

This highlights the importance of ensuring that children are immediately brought before a Court following arrest to either have charges formally confirmed or be released.

5.2 **Police detention and the right to be brought promptly before a judge**

According to international law, "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[121] There are no provisions in Tanzanian law which provide that children shall only be held in police detention as a last resort. The Criminal Procedure Act provides that a police officer may hold a person, including a child, under restraint in order to ask the person questions, or take other investigative action.[122] A child will be considered to be under police restraint (in police custody) "if he is in the company of a police officer for a purpose connected with the investigation of an offence and the police officer would not allow him to leave if he wished to do so."[123] Following arrest without warrant, a police officer must "without unnecessary delay, refer the suspect to the Court."[124]

Where children are placed in police detention, the CRC Committee has recommended that children should not be held in police detention "for longer than a maximum period of 24 hours."[125] Under the Criminal Procedure Act, a child may be held in police custody for 24 hours before he or she must be released or formally charged "unless the police officer in question reasonably believes that the offence suspected to have been committed is a serious one."[126]

Article 9(3) of the International Covenant on Civil and Political Rights requires that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power.[127] The UN Human Rights Committee has commented

[120] See section X
[121] Article 37(b), CRC
[122] s. 48(1), *Criminal Procedure Act*
[123] s. 5, *Criminal Procedure Act*
[124] s. 30, *Criminal Procedure Act*
[125] General Comment No. 10, para. 83.
[126] s. 64(1)(c), *Criminal Procedure Act*
[127] See also Article 5(3), ECHR: "*Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial*".

that the importance and the meaning of 'promptness' under Article 9(3) is that it brings "the detention of a person charged with a criminal offence under judicial control".[128]

Under the LCA, in most cases, a child who has been apprehended must be brought immediately to the Juvenile Court, and if this is not possible, the child must be released on a recognisance. Section 101 provides:

"Where a child is apprehended with or without a warrant and cannot be brought immediately before a Juvenile Court, the officer in charge of the police station to which he is brought shall –

(a) Unless the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years;
(b) Unless it is necessary in the interest of that child remove him from association with any undesirable person; or
(c) Unless the officer has reason to believe that the release of that child would defeat the ends of justice,

Release such child on a recognisance being entered into by himself or by his parent, guardian, or relative without sureties."

This imposes an obligation on Police Officers to bring a child who has been arrested 'immediately' before the Court. However, 'immediately' is not quantified, and, for children who fall within the three listed exceptions, there appears to be no obligation to ensure that the child suspect is brought promptly before a Court. The last two of these exceptions are quite vague and open to the use of significant police discretion.

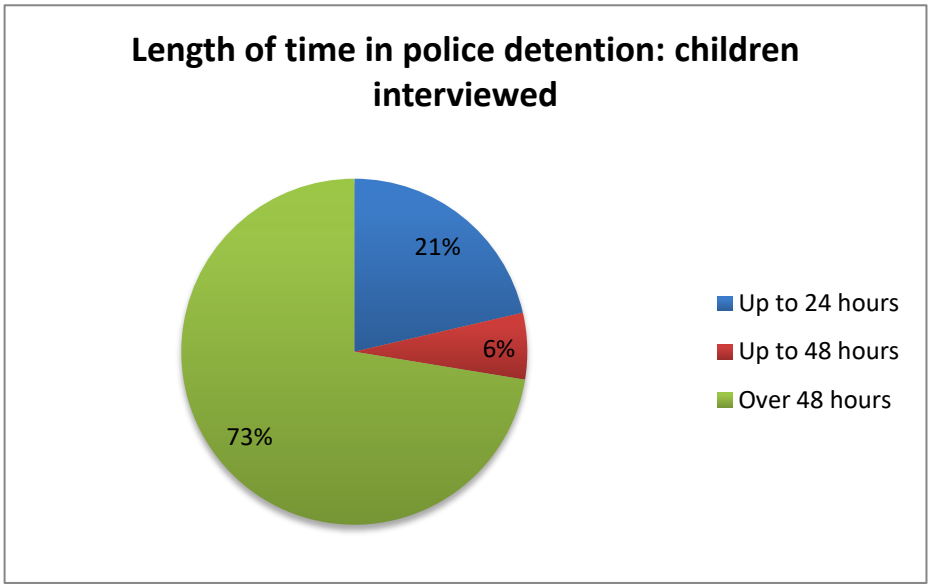
Length of time in police detention

In practice, it was found that police do not always adhere to the 24 hour time limit on police detention. This finding supports the research carried out by CHRAGG.[129] 79% of children interviewed who reported the length of time they had spent in police detention (114 out of 145 children) were held beyond the 24-hour statutory maximum time limit, and 73% were held beyond 48 hours.

TABLE J

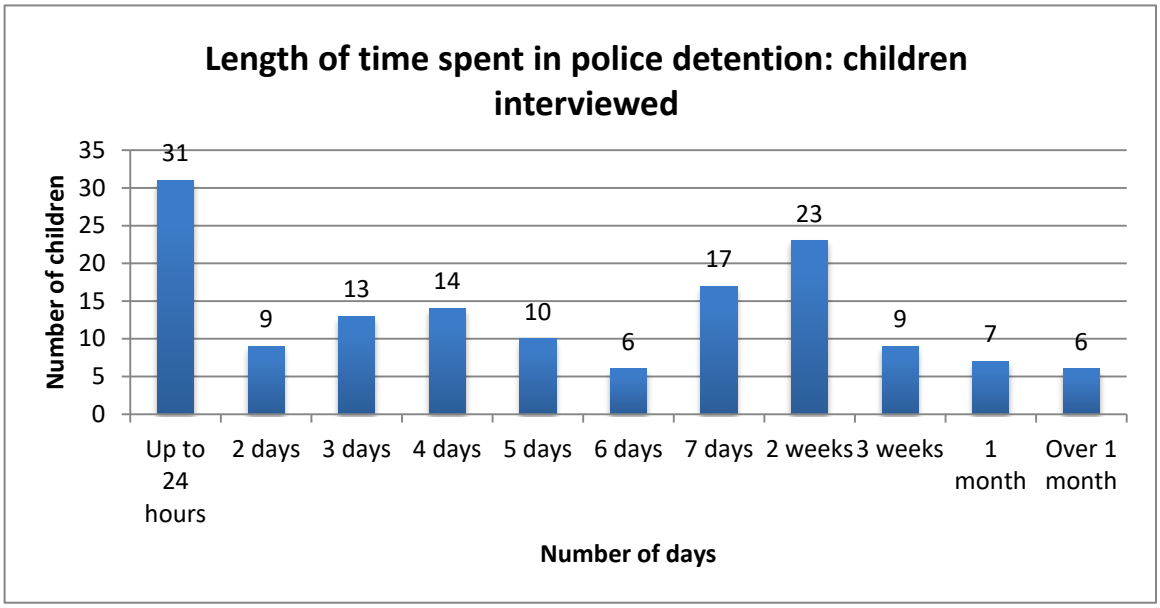
[128] Kulomin v. Hungary , Communication No. 521/1992,, UN Human Rights Committee. 22 March 1996 in UN Human Rights Committee, *Report of the UN Human Rights Committee*, 1997, General Assembly Official Records Fifty-first Session Supplement No. 40, A/51/40,((vol. II), p. 80, Para. 11.2.

[129] CHRAGG Report, p. 31 – 32.



As illustrated in Figure K, a significant number of children were held for very long periods of time. Twenty-three children were held for between seven days and two weeks, and thirteen children reported being held for one month or more in police detention.

TABLE K



Police detention was found to be particularly long in Arusha where 91% of children who gave this information reported that they were held in police detention for over 24 hours, and 76% of children reported that they were held for one week or more. Some of the professionals who were interviewed also reported that children routinely spend over 24 hours in police detention.

Police detention does not appear to be used as a last resort. Some children were found to be spending long periods of time in police detention following the commission of very minor offences. In Mbeya, for instance, one interviewee reported having spent two months in police detention, suspected of having committed a very minor theft and for truancy. In some cases, children will be held in police detention for purposes other than to conduct investigation or interrogations.

"I had been placed in the Approved School in Mbeya, but escaped and went to Mererani. My grandfather came to know my whereabouts, and so reported to the police who arrested me and brought me to the Social Welfare office. They said I was of-age, so they didn't want me. I was then detained at Himo Police for two weeks, and my grandfather did not turn up to take me (both my parents are dead). Then I complained to the Officer in Charge of the station about my being held unnecessarily, so they charged me with absconding from the Approved School. I was at Mererani Police Station for four weeks, then transferred to Himo for two weeks, and the Central Police Station for five days."

16 year old boy, Moshi Retention Home

"When I was brought to the prison, the warden refused to admit me unless I was fully recovered [from a police beating, which required hospitalisation]. So I spent almost a month at the police station until I recovered. I was then brought back to the prison."

17 year old boy, Tanga adult prison

Under the Criminal Procedure Act, where police officers want to hold a child suspect beyond the 24 hour time limit, they must apply to the Court for an extension. However, in practice, this does not happen, and most professionals reported that Police do not request extensions from Courts, but simply keep the child detained for the period considered necessary. As reported by the Resident Court Magistrates in Moshi: "If the time limit for police custody expires, Police need to make an application to the Court for an extension, but in practice, they just continue to hold them without formal approval." In Dodoma the Magistrates involved in the focus group reported that "it is common for the police to take three to four days in questioning the offenders...As we know, police have a time limit of 24 hours. However, they do not have tendency to seek extensions from Courts in case they want to interrogate longer than the allowed time." Police Officers involved in a focus group in Dodoma reported that "We do not consider the time limit. We detain the children until we satisfy our purpose." Even where Police do seek permission from a Court for an extension of time, it was reported that Courts routinely grant permission and, where they do not, Police will continue to hold a child in detention illegally. A State Attorney reported that "in practice it is not often for the police to seek this leave from Courts. To my experience, I have never heard the Court to deny extension of time to police when the same are availed for such orders. If the order is not granted normally police do remain with the suspect illegally."

It was unclear as to why some children are detained for such long periods of time. In some cases, children were questioned immediately following arrest, but were then kept in detention for a number of days or weeks before appearing before a Court. In other cases, children reported being questioned and providing a formal statement many days after arrest. One child in Arusha, who was detained for two weeks, reported being questioned and providing a statement only on the thirteenth day of detention. It was suspected, by some professionals and children, that police accept bribes from the victim or victim's families in order to keep a suspect detained.

Police Officers who were interviewed reported that investigation at times takes a long time to conduct, particularly for more serious offences, and children are held in police detention until it is decided whether to lay charges. A Police Investigator in Arusha, for example, stated that holding

children for only 24 hours is "not practical". A Police Sergeant in Arusha reported that "children are detained at the Station for the duration of 24 hours but at times they are detained for longer than that due to failure to complete investigation within time as some witnesses are uncooperative or have shifted residence without their neighbours finding out where they have shifted to." A Police Superintendant in Dodoma reported that, while they try their best to meet the 24 hour time limit, in serious cases, like allegations of murder, it is difficult: "sometimes [the crime] is committed in a very remote place. To take a suspect to the police station and draft a charge takes time."

A lack of oversight and low awareness of the law among children also contribute to children being held beyond the 24 hour time limit in police detention. Police officers frequently do not contact a child's parents, or a SW Officer on arrest, and lawyers are almost never present at police stations to assist children who have been arrested.[130] Almost all of the children interviewed reported that they did not know how long the police were permitted to detain them, nor how to make a complaint against a police officer.

As noted above, police officers do not make applications to the Court to request an extension of time to hold children in police detention. Therefore, there is no judicial review of police detention and no mechanisms available to children to ensure that they receive legal assistance and can judicially challenge a detention where it extends beyond the 24 hour limit.

A mechanism should be developed to ensure that children have access to legal or other appropriate assistance from the moment they are arrested, in order to help ensure that police officers do not detain them for longer than the 24 hours permitted in law, or, where police require more time, to ensure that this is only permitted if the Court grants permission. Children do not necessarily need access to a registered lawyer from the moment of arrest. It is sufficient for children to be able to access an independent, appropriate adult, such as a parent, a SW Officer or a representative from a reputable CSO / NGO. The adult should be trained in issues facing children in conflict with the law and juvenile justice laws and procedures, and should be able to identify where police officers do not act in accordance with the law and do not ensure that the child's wellbeing is safeguarded. Police must be trained to ensure that they contact a lawyer / appropriate adult immediately following a child's arrest. Police should be trained to note, in writing, the name and contact details of the adult, when they were contacted and when they arrived at the station.

<u>Lack of separation from adults</u>

The CRC,[131] the ACRWC[132] and the International Covenant on Civil and Political Rights[133] all require that where children are deprived of their liberty, States shall ensure that they are separated from adults, unless it is considered in the child's best interest not to do so.[134]

In Tanga, efforts were made to detain children in the female cell where this was not full, and several children reported being detained in an office in the police station, rather than mixing in a cell with

[130] See section X, below.
[131] Article 37(c) CRC.
[132] Article 17(b) ACRWC
[133] Article 10(3) CRC.
[134] *See also*, Rule 8(d), Standard Minimum Rules for the Treatment of Prisoners; Rule 26.3, Havana Rules.

adults. However, the vast majority of the children who were interviewed reported that they were detained with adults while in police detention. This supports findings made by CHRAGG who reported, following visits to 30 police stations, that only four had separate cells where children could be detained.[135]

Many children reported that they were not mistreated by adult detainees, however, several children reported being slapped or hit, and one child reported an attempted sexual assault by an adult detainee.

> "There were eight people in the cell and I was the only child. I couldn't sleep because it was so crowded. I couldn't even crouch down. Some detainees were nice, but some held me and started taking off my clothes and threatened to hurt me if I refused. I stood up so that they would stop, and I didn't sleep that night. In the morning, I asked the police if they would let me out of the cell. They let me out to clean the floor."
>
> *16 year old boy, Moshi Retention Home*

Lack of contact with family

Article 37(c) of the CRC specifically addresses this issue and provides: "Every child deprived of liberty … shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."

In contravention of this standard, children reported that they were not permitted to see visiting family members while they were in police detention. Children in all research regions stated that parents were permitted to attend the police station in order to drop off food, but were not allowed to have any physical contact or communicate with the child.[136]

Conditions in police detention

The Havana Rules provide that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.[137] This requires States to have regard to the need of children in detention for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.[138] Sleeping accommodation should consist of small dormitories or individual rooms and should be unobtrusively supervised.[139] There should be sufficient, clean bedding[140] and adequate sanitary facilities should be installed.[141] To the greatest extent possible, children should be allowed to wear their own clothes,[142]

[135] CHRAGG study, p. 11.
[136] Lack of contact with family members, and the absence of an adult more generally, during a child's questioning is also highly problematic. See section X for more detail.
[137] Rule31.
[138] General Comment No. 10, Para 89.
[139] Rule 33 Havana Rules.
[140] Havana Rules, Rule 33. Also see Principle 19 of the Standard Minimum Rules for the Treatment of Prisoners: "Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure cleanliness".
[141] Rule 34 Havana Rules. *Also see* Principle 15 of the Standard Minimum Rules for the Treatment of Prisoners
[142] Rule 36 Havana Rules.

and should be provided with storage facilities for their own personal items.[143] Adequate food and drinking water should be made available.[144]

In accordance with international standards, the Criminal Procedure Act contains a provision that all persons under police restraint shall be treated with humanity and respect for human dignity,[145] and that no person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment or punishment.[146] The police are also under an obligation to ensure that a detained person receives medical treatment when required and requested.[147]

However, many of the children interviewed complained of very poor conditions in police detention. Common complaints included that cells were very overcrowded, lacked proper ventilation, making it difficult to breathe, that there was a lack of mattresses and bedding and mosquito nets, cells were very dirty and unsanitary, with no proper toilet facilities and no place to shower, and that there was a lack of food and water provided to children in some stations.

"The Mbauda cell was very dirty and there was not enough ventilation. The Central Police Station was better, but it was also dilapidated. All the cells were very small and they accommodated about 30 – 40 people, while in actual fact, they were meant for 20 – 25 people. I was mixed up with adults. My relatives visited me, but they were only allowed to bring food. They were not allowed to talk to me."

16 year old boy, Arusha adult prison

"I was in police detention for nine days. The cell was bad – there was lice, and I wasn't allowed to go to the toilet. We were just told to go to the toilet in the cell. I couldn't even eat, because the conditions were so bad. The cell was overcrowded. It could only fit five, but there were 20 people in the cell. There wasn't even enough room for sleeping."

16 year old boy, Arusha adult prison

"No one contacted me and food was not ever given to me by the police, I just shared food with other detainees. The cell had about seven people in it, mostly adults. There was no mattress or bedding in the cell. We were made to sleep on the floor and there was no toilet. We would be taken to the toilet at 7am and 7pm."

16 year old girl, Moshi Retention Home

"I was locked up with adult offenders and in total, we were about 30 of us in that cell. I stayed at the police station for eight days. I was questioned only on the day I was being taken to Court. No one came to visit me at the station, and we were given food only once a day. Our cell was very packed, and there was no toilet and no bedding."

16 year old boy, Moshi Retention Home

[143] Rule 35 Havana Rules.
[144] Rule 37 Havana Rules.
[145] s. 55(1), *Criminal Procedure Act*
[146] s. 55(2), *Criminal Procedure Act*
[147] s. 55(3), *Criminal Procedure Act*

The Ministry of Home Affairs should work to improve conditions in police detention and ensure that police stations are regularly monitored and that children are ensured access to family members while in police detention. The DPP should consider issuing guidance to all state attorneys to elaborate their duty to inspect police stations regularly. This guidance should include: a checklist for monitoring, and the required frequency and duration of visits. It should include an explicit duty to identify the number of children held in the police station, the length of time they have been held, and whether the child has experienced any rights violations. The information from these visits should be referred up to the Office of the DPP for regular review.

5.3 Extent and nature of police ill-treatment of child suspects

Article 37(c) of the CRC prohibits the use of "torture or other cruel, inhuman or degrading treatment or punishment" of children. The LCA also provides that "a person shall not subject a child to torture, or other cruel, inhuman or degrading treatment, including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child."[148] Section 21 of the Criminal Procedure Act states that a police officer or other person shall not, in the course of arresting a person, use more force or subject the person to greater indignity than is necessary to make the arrest or to prevent the escape of the person after he has been arrested.

Worryingly, the research found that these provisions are not always adhered to in practice. The interviews with children in conflict with the law indicated that there is a high extent of police ill-treatment of child suspects. 54% of children who gave this information (79 in 154 children) reported that they had been mistreated by the police. This typically involved physical violence or, less frequently, threats of physical violence. Several children reported being beaten so badly that they required hospitalisation. Usually, the physical violence was for the purpose of attempting to extract a confession from the child. This supports the findings of the CHRAGG study; however, this research found a higher rate of police mistreatment of children.[149]

"I don't know why I was arrested; they beat me up so I had to admit the offence to avoid further beatings. They just asked me why I stole. When I told them I didn't steal anything they beat me up with a stick. Then they took me to the investigation officer who took my statement and told me that I will be taken to Court."

13 year old boy, Dar es Salam Retention Home

"I was arrested at Nyengedi village in Lindi. I was resting at home. The police told me that they were arresting me because two children in one village were missing and it's believed I am responsible for this. It is something to do with superstition...One day, there came two police officers (into my cell) with machine guns. They took me to a separate room and started to beat me so that I would say where the children are hidden."

Boy (unknown age), Lindi Urban Prison

"I was arrested on 18 July 2010 while at a reading camp with my friends who were in form six. I was later taken to the Police for my safety after some people accused me to have killed another student.

[148] s. 13(1) LCA

[149] The CHRAGG study found that 31% of children said that they had been beaten or treated badly whilst in police detention, while 59% said they had been treated fairly: p. 10.

I was asked if I know the deceased, and I said no. I was questioned under duress, as I was told I'd be electrocuted if I did not admit the offence. I was shown a pistol in order to be scared."

17 year old boy, Arusha adult prison

"During questioning, the police beat us and asked where we had hidden the money and goods and, if it wasn't us, then we had to say who did it. Three children were taken out of the cell and beaten up badly with a police baton and rubber from a tyre. I was hurt on the knees and couldn't walk properly until the next day. I didn't know how to make a complaint against a police officer, but even if I did, I would be worried that the police might make up a case against me and punish me."

15 year old boy, Arusha Retention Home

"I was arrested in 2009...the Police came and told me that there are cars which have been stolen, and I am connected to this. They asked me to take them to my brother and flat-mate, but they were away. They beat me up to the extent that they fractured my head and I was taken to hospital, where they demanded a Police Form PF3, so I was taken back to the Police Station. I spent five days in hospital and was then sent back to the Police Station."

17 years old boy, Tanga adult prison

"At the Police Station, I was asked to give a statement. I told them I was with some other people when I was rounded up. Those people had drugs with them but not me, and the Police asked for some bribes which those other people gave, but I could not. That is why I was taken to the Police. I was beaten up to the extent of losing consciousness and sustained other bodily injuries. I was taken to hospital to have my wounds dressed and to get medicine."

17 year old boy, Tanga adult prison

Most children were not aware of how to complain about police ill-treatment, and some reported that they were afraid of the police and therefore, would not complain even if they knew the procedures. Several children who had complained reported that nothing had been done following their complaint.

"One of the police officers slapped me and I was injured. I reported this to the magistrate who did not say anything."

16 year old boy, Lindi Urban Prison

"At Mango'la Police Post, I was beaten up by police. I reported this at the same Police Post, but no measures were taken."

17 year old boy, Arusha adult prison

"The police were very harsh. They beat me up with a rubber stick in the back and stomach. The officer took me out of the cell every hour and interrogated me. Every time, the officer would hit me with a stick. They tried to make me confess and tried to force me to sign a statement. The police didn't call anyone and didn't tell me I had a right to a lawyer or to have a Social Welfare Officer present. I did know my parents should be there though. I asked the police to contact them, but they

didn't. I eventually signed the confession on the nineteenth day of my detention, and then went to Court. I was questioned and beaten up every day of my 19 days in detention. I complained to the Magistrate about the police treatment when they took me to Court, but the Magistrate just gave the police a warning."

17 year old boy, Arusha adult prison

There appears to be a sense of a lack of accountability amongst police officers for their treatment of child suspects. As noted above, the lack of access children have to lawyers or other professionals to assist them during police detention and monitor their treatment, and the lack of any adults present during questioning[150] appears to make children very vulnerable to mistreatment.

The Ministry of Home Affairs and the DPP should ensure that police stations are regularly monitored (see recommendation in section 6.3, above) and that all allegations of police violence and other ill-treatment are properly investigated and officers held to account. Children should be guaranteed access to legal or other appropriate assistance at the police station to ensure that they are not subjected to torture or cruel, inhuman or degrading treatment or punishment (see recommendation in section 6.3, above).

5.4 Interrogation and investigation

Length of questioning

According to the Criminal Procedure Act, the maximum period available for interviewing a child suspect under police restraint is four hours.[151] However, this period can be extended where the basic period available for interviewing (four hours) has expired, but where the person has not been charged, and the police officer carrying out the investigation has "reasonable cause" to believe that it is necessary for the person to continue to be interviewed. In this event, the interview period can be extended to eight hours, or where, before the expiration of the basic or extended period, an application is successful sought from a Magistrate for the extension of the period. A Magistrate may extend this period "for such further period as he may seem reasonable" where he is satisfied that the person is in lawful custody, the investigation is being carried out as expeditiously as possible and it would be proper in the circumstances to extend the relevant period.[152]

The children who were interviewed reported that questioning by police generally fell within this time limit, with police questioning typically lasting from between 30 minutes and four hours.

Forced confessions

International law provides rules on the length and nature of police questioning of child suspects. Article 40(2)(b)(iii) of the CRC and article 14(3)(g) of the International Covenant on Civil and Political Rights (ICCPR) obliges states to ensure that children are not compelled to give testimony or to confess or acknowledge guilt. This means most obviously, that "torture or cruel, inhuman or

[150] See section X
[151] s. 50(1), *Criminal Procedure Act*
[152] s. 51(3), *Criminal Procedure Act*

degrading treatment in order to extract an admission of guilt or a confession constitutes a grave violation of the rights of the child."[153]

The research found an alarmingly high rate of forced or attempted forced confessions. 47% of children interviewed who gave this information (49 in 104 children) reported that the police had forced or attempted to force them to sign a confession. Typically, this involved physical violence or threats of physical violence.

"The police were beating me, and forcing me to agree with them and the offence. They forced me to put my signature on a statement. I had to agree because I was scared."

16 year old boy, Mwanza adult prison

"The police questioned me twice on the eleventh day after the arrest. My parents were absent both times. At first I was questioned by two police officers who hit me with a soda bottle on my knees and ankles and forced me to sign a fabricated confession. They said they would let me go if I admitted I was guilty."

14 year old boy, Arusha Retention Home

"At the Police Station, I was questioned and as I was denying it, the Police beat me up such that I could not resist any longer and conceded."

17 year old boy, Tanga adult prison

"At the police station, I was made to sit down, and was then taken to a female cell, with adult female detainees. I stayed from 3rd to the 12th of January, and was then taken to Court. The police did not tell me the charge. Instead, they threatened to beat me up so that I would confess. I admitted the charge, but repudiated my statement in Court."

15 year old boy(girl?), Moshi Retention Home

Several children reported being made to sign a statement that they could not read.

"The police did not tell me why I was being arrested. I was taken to Unga Limited Police Post, where I was beaten up and spent five days before being transferred to the Central Station for four days. I was forced to sign a long statement that I couldn't read. No one came to visit me at the police station."

15 year old boy, Arusha adult prison

"I was arrested in 2010 by Police Officers at 5am while I was coming home from clubbing. The Police asked where I was coming from and I told them 'from the club'. I was then taken to the Police Station and I stayed there for thirteen days. I was questioned a day before going to Court. I was being beaten and told to say the truth. I eventually signed the statement, but I did not read it."

16 year old boy, Arusha adult prison

[153] General Comment No. 10, Para. 56.

"I was arrested sometime in September 2010 while at home doing house chores. The local militia came to our home and told me that my friend had been killed and that I know the culprit. I was taken to Mbauda Police Station, where I was beaten up so that I would admit the offence, but I didn't. At the Central Police Station, I was also beaten up and forced to sign a statement I didn't make. I eventually signed the statement; though I was not given time to read it."

16 year old boy, Arusha adult prison

"At Duga [Police Post] I was asked my name, age, religion and place of abode, then the Police wrote other things and I was told to sign the document, which I did. I did not read what was written in the statement. At Duga, they even forced me to say that my age was 18 years. I protested, but I was not listened to, even in Court.

16 year old boy, Tanga prison

A mechanism should be developed to ensure that children have access to legal representation or other assistance from the moment of arrest, and that an appropriate adult is present during questioning (see recommendation in section 6.2, above).

5.5 Right to be informed of reasons for arrest and notified of rights

International standards contain the fundamental right that those who are arrested and/or charged must be informed of the reason for that arrest or charge. Specifically, Article 9(2) of the International Covenant on Civil and Political Rights provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest.[154] This right applies equally to children and adults.

The CRC does not specifically address the right to be informed of the reasons for arrest. However, Article 40 of the CRC does require that every child shall be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians.[155] Article 17(2)(c)(ii) of the ACRWC states that every child "shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used."

The CRC Committee in General Comment No. 10[156] defines 'promptly and directly' as meaning as soon as possible. Requiring the child and, where appropriate, his/her parents, to be informed is part of the overall requirement contained in Article 40(2)(b)(ii) of the CRC that legal safeguards should be fully respected.

The Criminal Procedure Act places an obligation on a person who makes an arrest to "at the time of the arrest, inform that other person of the offence for which he is arrested."[157] The Police Officer making the arrest must inform the suspect of the substance of the offence for which he is arrested. Section 23(2) also provides that "it is not necessary for him to do so in a language of a precise or technical nature."

[154] See also, article 5(2) ECHR; Article 17(2)(c)(ii), African Charter on the Rights and Welfare of the Child; and Article 7(4) American Convention .
[155] Article 40(2)(b)(ii) CRC.
[156] General Comment No. 10, Para. 47.
[157] s. 23(1), *Criminal Procedure Act*

The Criminal Procedure Act places a duty on Police Officers to issue warnings to all suspects. Sections 52 and 53 require police officers to issue the following warnings to a suspect under restraint before commencing any questioning: that the suspect may refuse to answer questions (but that an adverse inference may be drawn from this); the police officer's name and rank; the fact that the person is under restraint and the offence for which he or she is under restraint; and that he or she may communicate with a lawyer, relative or friend.

Most of the children interviewed reported that they understood why they had been arrested; worryingly, though, several children stated that the Police did not immediately inform them of the reasons for their arrest and that they found out some days after the arrest, while in police detention and being questioned, or at the initial Court hearing during which charges were laid. One 16 year old boy who was interviewed in Arusha Retention Home, for instance, reported that: "I had been standing on the street with friends, and someone came and rounded us up and took us to the police station...I didn't know why I'd been arrested. I only found this out when the charge was read out in Court."

Nearly all of the children who were interviewed were not aware of their rights to a legal representative, or to contact their relatives.

"On arrest the police didn't ask for my brother's contact details. After two weeks in police detention, I gave the police my brother's phone number. They just put me in a cell and didn't tell me what I was accused of. I assumed we were arrested because we were loitering in the streets."

15 year old boy, Arusha Retention Home

"A right to have a relative present during questioning was not explained to me. Nor was I visited by my relatives when I was in the police cell (for a total of two weeks and two days)."

17 year old boy, in Arusha adult prison

While many Police Officers claimed that they routinely informed children of the reasons for their arrest and their rights on arrest and during questioning, some Police Officers reported that they do not do so. In Dodoma, for instance, the Police Officers interviewed reported that they do not notify children of their rights on arrest. One Police Constable explained that: "we do not have time to explain the rights to children. Even when we explain or warn them, they do not use it."

The Ministry of Home Affairs should ensure that all Police Officers are trained on how to advise children of the reasons for their arrest and their rights on arrest. This should be logged in a police register and regularly monitored.

5.6 Access to legal assistance and right to an appropriate adult

Article 37 of the CRC provides that children shall have prompt access to legal and other appropriate assistance upon arrest. While international standards refer to the right to 'legal **or** other appropriate assistance,'[158] children should not be deprived of the right to have legal assistance simply because other assistance is available. Children should be granted time alone with their legal representative

[158] Art. 40(2)(b)(ii), CRC

before questioning commences to allow them to consult with their lawyer, to ask them questions and generally understand the situation they are in.[159]

While the CRC does not address the issue of 'free' legal aid, the ICCPR enshrines the right to free legal assistance for the child if he or she, or the parents, cannot pay for a lawyer.

As previously noted, section 53(c)(ii) of the Criminal Procedure Act places an obligation on police officers, prior to commencing questioning or any other investigative actions, to inform suspects that they may communicate with particular persons, including a lawyer, a relative or a friend.

However, this does not amount to a right for every child to have a lawyer present during questioning and to consult with a lawyer prior to being questioned. It also does not provide for free access to a lawyer where a child or his or her parent/s cannot afford to pay for legal assistance, in contravention of international law. The CRC Committee, during its most recent periodic review of the Tanzanian government, recommended that it "ensure that persons under 18 years of age in conflict with the law have access to legal aid."[160]

The CRC Committee in General Comment 10,[161] echoing Rule 10.1 of the Beijing Rules,[162] recommends that States explicitly provide in law for the maximum possible involvement of parents or legal guardians in the proceedings against a child.

Section 56(1) of the Criminal Procedure Act provides that "a police officer in charge of investigating an offence in respect of which a child is under restraint shall, forthwith after the child is placed under restraint, cause a parent or guardian of the child to be informed that he is under restraint and of the offence for which he is under restraint." However, a 'child' in this section means a person under the age of 16 years. This contravenes international law, which requires that parent/s must be notified where a person under 18 years is arrested. Additionally, the provision lacks specificity and, in the absence of regulations or a code, does not provide a sufficient guarantee as to the role of the parent/s at the police station.

Tanzanian law does not place a duty on a Police Officer to ensure that a parent or guardian is present during questioning of a child. It also does not specify the duty of the Police Officer and the rights of the parents to attend and participate, nor does it place an obligation on Police Officers to contact an alternative adult (for instance, a SW Officer) in the event that the child's parent/s or guardian/s cannot be contacted or cannot attend.

Worryingly, almost all children reported that no appropriate adult was contacted at the time of their arrest, or present during their questioning. Only 8% of children who gave this information (13 in 154 children) reported that an adult was present at the station immediately following their arrest, and only 6% (9 in 154 children) reported that an adult was present during questioning.[163] The adults

[159] See Art. 40(2)(b)(vii), CRC, and Professor Carolyn Hamilton, UNICEF and Coram Children's Legal Centre, *Guidance for Legislative Reform on Juvenile Justice* (2011), p. 45.
[160] UN Committee on the Rights of the Child, *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2, 21 June 2006, para. 70.
[161] Para 54.
[162] The Rule provides that "*upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter*".
[163] This conforms to the finding of the CHRAGG study: p. 37 – 8.

present in these instances were family members. However, most of the family members were also the complainants. This is highly problematic. Children should have access to a lawyer and / or an independent appropriate adult during questioning. This adult should not be the complainant, even if the complainant is a parent.

None of the children who were interviewed reported having access to a lawyer at the police station and during questioning, and none reported having a SW Officer contacted following their arrest and present during their questioning.

It was reported by children and Police Officers who were interviewed that, in some cases, parents were not contacted as children did not have their contact details. For example, a Police Constable in Mbeya stated that: "Police officers do contact parents, if a child has their phone number or knows the physical address of his parents or relatives. If a child does not have a phone number and a physical address of his parents or relatives, it becomes difficult [to contact them]." An Officer in Charge in Arusha stated that: "all our suspects do first report or are taken to the police station where they will be required to make a statement. In the case of children, some attempts are made to ensure that they get assistance from their parents or guardians. Admittedly, this is a very difficult venture especially when we do not have the contacts of their parents."

The CHRAGG study also made some findings on the obstacles to children's parents being contacted on arrest. Some children interviewed for the CHRAGG study reported that they had hidden their identities from the police or that they lacked proper addresses of their parents so could not pass these details onto police. It was also found that some children, on arrest, were asked to provide the police with their parent's contact details, but that very few were actually contacted, though parents were communicated with if they were "prominent people." There were also some allegations that police demanded bribes to facilitate communication with parents.[164]For street children, many of whom are OVCs, it may not be possible to contact their parents. As reported by a Police Prosecutor, "where a child under arrest has a parent, we often wait for him or her to come. The big problem is street children. They do not have parents or relatives here." Where parents are not available or cannot be contacted, Police Officers should immediately inform a SW Officer, to ensure that an appropriate, independent adult is present at the station during a child's questioning. However, as noted above, police do not routinely ensure this, and do not make efforts to contact SW Officers. This may be due, in some areas, to a lack of available SW Officers, as set out above.[165]

There appears to be a lack of understanding among SW Officers and Police Officers about the role of SW Officers in the juvenile justice system, and Police Officers may not feel that there is a need to contact a SW Officers, even when a child does not have any relatives present at the station. The Assistant Commissioner for Social Welfare stated that Police should contact SW Officers whenever a child is arrested. However, he reported that this is not yet implemented in practice, and that there needs to be better cooperation and communication between the SW Officers and Police. Police do not always communicate to SW Officers when a child has been arrested, and they must ensure that Police Officers have a better understanding of the role of the SW Officer in relation to children in conflict with the law. Police currently think it is solely their job to arrest, investigate and bring a child to Court. This was largely confirmed by district-level interviewees. For instance, a SW Officer in

[164] The CHRAGG Report, p. 16
[165] Section 4.1

Moshi reported that: "Police don't contact SW Officers when a child is arrested. They will only contact a SW Officer in the case of an abandoned child...there needs to be a change of attitude in the Police and Police need to be better informed about children's rights. SW Officers only get to know a child when they arrive at the Remand Home." A Police Investigator in Arusha reported that "SW Officers are not always called. We think it's not necessary to call them. Only parents are necessary."

Where SW Officers are contacted, it may not be for the purposes of ensuring that a child has an appropriate adult present during questioning, but because a decision has been made not to lay charges. A SW Officer in Dodoma reported that: "it is not often that the police to contact me. However, I have one or two examples where police called me to take the street children who were arrested and detained for some days. They failed to draft them a formal charge. Hence, they opted to call me in order to facilitate the return to their home. Otherwise, I do not directly get involved in criminal matters."

The exception to this appears to be Hai, in which Police routinely contact SW Officers when a child is arrested. This was attributed to the establishment of the Child Protection Team, which appears to have improved coordination and cooperation between Police and SW Officers. SW Officers in Hai reported that: "After establishing the Child Protection Team (CPT), most cases are being reported...Police do contact Social Welfare Officers whenever they arrest children. Even at village level, there are established contacts to report to the CPT and the message is relayed to a Social Welfare Officer. We are contacted when a child is already at the Police Post. This is done most often, especially after establishing the CPT in 2010. In every case involving a child we are normally contacted at anytime whenever there is a child in the station." However, it was noted that SW Officers are still not routinely present during questioning: "Police normally question children on their own and later we take our part."

It is imperative that a mechanism is established to ensure that children in conflict with the law have access to legal or other appropriate assistance on arrest (see recommendation in section 6.2, above). The impact of a lack of legal or other assistance on arrest and during questioning has been illustrated in the preceding sections: it tends to make children vulnerable to torture or cruel, inhuman or degrading treatment or punishment; children may feel compelled to sign a statement they cannot read or understand; it makes children vulnerable to other rights abuses and violations of law (e.g. holding children beyond maximum 24 hours without Court permission, questioning beyond time limit permitted in law, and not understanding reasons for arrest). Ensuring police officers contact a lawyer or other appropriate adult immediately on arrest of a child will help to make sure that children who should not be exposed to the criminal justice system are not held in the criminal justice system for prolonged periods, for example, street children who have not offended, children below the MACR, children who are truanting.

6. DIVERSION

The CRC requires States to develop procedures that allow children to be dealt with without resorting to judicial proceedings or a trial ('diversion'), wherever appropriate and desirable, providing that human rights and legal safeguards are fully respected.[166] The CRC Committee has stated that such

[166] Article 40(3)(b), CRC; *see also* Rules 6 and 11 of the Beijing Rules.

approaches avoid stigmatisation, have good outcomes for children and society, and are proven to be more cost-effective than initiating criminal proceedings.[167]

While not labelled as such, the LCA appears to allow Court-ordered diversion. Section 111(1) of the LCA provides that, "where a child admits the offence and the Juvenile Court accepts its plea or after hearing the witnesses the Juvenile Court is satisfied that the offence is proved, the Juvenile Court shall convict the child and then, except where the circumstances are so trivial as not to justify such procedure, obtain such information as to his character…"

This appears to allow the Resident Magistrate of the Juvenile Court the discretion to divert a case out of the formal criminal justice system where circumstances are sufficiently trivial. However, this may not strictly amount to 'diversion', as is appears to follow the requirement that the Magistrate first convict the child. In practice, it appears that Magistrates are not using this power as they feel they are not empowered to dismiss a case where there is sufficient evidence, on the ground that the matter is trivial. For instance, a Primary Court Magistrate in Arusha reported that "we do not have the power to dismiss cases even if they are very trivial." The meaning of this provision needs to be clarified. State Attorneys reported that they have the power to decide not to prosecute a case on public interest grounds. This could, perhaps, allow a prosecutor to decide not to prosecute a case involving a child offender where it would be in the public interest to divert the child out of the criminal justice system. However, it is unclear what will satisfy this element, and there appears to be no detailed guidance instructing Prosecutors in which cases they have the power to decide not to prosecute on public interest grounds. Other than these provisions, Tanzanian law does not provide for the power of criminal justice institutions to divert children out of the formal criminal justice system. This is contrary to international law and best practice. The CRC Committee recommends that the law contain specific provisions indicating in which cases diversion is possible, and set out the powers of the police, prosecutors and/or other agencies to make decisions in this regard.[168]

Nonetheless, researchers found that informal diversion is used in most regions, especially by the Police, and, in some regions, it is used fairly often. In Arusha, for instance, diversion is used, though infrequently, by Police Officers through informal mediation. A Police Investigator reported that: "we can let children off on trivial offences. Sometimes we involve parents and suggest for mediation rather than [putting children through] a Court process." According to an Officer in Charge, children can be 'let off' following an informal discussion with parents though this is not common. Rarely children are referred to local government leaders to try and mediate the case, but this is only used in trivial, 'non-contentious' cases. In Tanga, a Regional Crimes Officer stated that "if a child has committed a minor offence, then they are let off with a warning."

In Dodoma, a Police Superintendent reported that "if a child has parents or relatives, we often take steps to call them to settle the problem in relation to the child. Most of the disputes are reconciled amicably. Very few cases are taken to Court. We feel that, if there is no interest in charging a child we will let him off." In Lindi, a Police Prosecutor reported that "only approximately 20% of juvenile cases end up in a trial. This is because most of them are finalised by mediation by the Police." Similarly, in Dar es Salam, according to the Juvenile Court Prosecutor and SW Officers, around 20% - 30% of juvenile cases get resolved through police mediation and do not come to the Courts.

[167] Ibid., Para. 25.
[168] General Comment No. 10, Para. 27.

While informal diversion is generally a good practice and positive alternative to putting children through the criminal justice system, it should be focused on the best interests of the child and serve the public interest rather than being focused on mediating between families. According to several interviewees, some Police Officers request 'fees' from families to mediate disputes and ensure that children are not put through the criminal justice system. This is problematic, as again, it takes the focus away from ensuring a response that is in the best interests of the child, and may result in the child feeling forced to admit guilt. It appears only to serve the interests of Police Officers.

Very worryingly, in Dodoma, it was reported that Police Officers are using extrajudicial corporal punishment as an alternative to putting children through the formal criminal justice system. During a focus group discussion with Police Officers, it was reported that: "The police try very hard to reduce these cases. They mediate with the parties, warn a child not to repeat the crime and, on several occasions, Police have beaten the children with sticks or slapped them with their hands as punishment and allow them to go."

Formal diversion measures should be developed, which focus on the best interests of the child, and address their needs and causes of their offending, and accord children the rights to which they are entitled in international and domestic law. While the power to divert children out of the criminal justice system is not formally available to Police Officers, some Police Officers currently feel that it is within their power to let children off with a warning or through the use of mediation. However, according to the Chief Justice, for a formal police diversion scheme to work properly, the power must be clearly defined in law. The DPP could provide guidance on the meaning of 'public interest', which could explicitly allow Prosecutors to divert children out of the criminal justice system where it is in the public interest to do so. Magistrates may already have this power under the LCA, as set out above; however, this provision is unclear. The Chief Justice reported that Magistrates could indeed use the LCA to decide not to lay charges where the matter is trivial, even where there is enough evidence to lay charges. However, Magistrates may be encouraged to use this power where it is clearly defined in law, and where they feel that children are able to get access to support and services that would meet their needs and address the reasons for their offending. The Child Justice Forum should lead in the development and implementation of a formal Police and / or Magistrate diversion model.

A district or districts should be selected to pilot a model diversion scheme. Options for the establishment of a model diversion project should be developed, and the following factors should be considered in the development of the model diversion scheme:

- **Which body / institution should have the power to divert children out of the formal criminal justice system and into the diversion project? The research indicates that the power should not rest with the police, but that other criminal justice institutions could be responsible for diverting children, for instance, state attorneys or magistrates (however, if children are to be kept out of the formal criminal justice system, it is preferable for them to be diverted before attending Court). The consultation event participants suggested that diversion panels be established, containing relevant juvenile justice professionals, which could be regularly convened to consider whether children should be diverted. However, this process is likely to lead to delays in the system, as panel members may not be available to meet to regularly discuss cases. The participants also discussed the possibility**

of making more use of community leaders in making diversion decisions and helping to implement diversion measures.

- **What services and support should be available to children referred for the diversion project? The particular services and support should ensure that children are able to access the right, individually tailored rehabilitative support required to address the root causes of their offending. It could include such services as counselling (individual and family counselling), family mediation, restorative justice, victim-offender mediation, educational assistance, vocational training, and so on.**
- **Should the project include a residential element? Given the fact that a significant number of children in conflict with the law are children living or working on the street or otherwise deprived of family care, would a community-only scheme reach the most vulnerable children who are in conflict with the law?**
- **Should the project be based in an existing institution (e.g. a Children's Home or NGO project) that already provides relevant services and support to children?**

6. LAYING CHARGES

Under the Criminal Procedure Act, formal charges may be laid by a magistrate following a complaint, whether the suspect is arrested with or without a warrant,[169] or by a police officer formally drawing up a charge.[170] In most study regions, in practice, State Attorneys are responsible for drawing up charges to present to the Court, except in Primary Courts, in which case Police Officers will draw up charges to be laid by a Primary Court Magistrate.

As noted above, in the case of a child suspect, according to the LCA, the child must be brought, immediately following arrest, to the Juvenile Court.[171] However, owing to the lack of designated Juvenile Courts in Tanzania, in practice, children are brought before other Courts for charges to be formally laid. Once a suspect is presented before a Magistrate, the Magistrate shall cause a formal charge to be drawn up, containing a statement of the offence with which the accused is charged (unless the charge is signed and presented by a police officer). At this initial hearing, the Magistrate will also make an order to grant a child bail or commit a child to pre-trial detention.

The Magistrates' Courts Act (Primary Courts Procedure Code) and the Criminal Procedure Act contain provisions on bail which apply to children and adults alike. Section 16 of the Magistrates' Courts Act grants the Courts the power to release a suspect who has been charged on bail. Under the Criminal Procedure Act, a person who is placed in custody may, at any time, "request a police officer for facilities to make an application to a magistrate for bail and, if he does so, the police officer shall, within twenty four hours, or within such reasonable time as it is practicable after he makes the request, bring him before a Magistrate."[172]

6.1 <u>Access to legal or other assistance at initial hearings</u>

[169] s. 128(1), *Criminal Procedure Act*
[170] s.131 – 132, LCA
[171] s. 101, LCA
[172] s. 67(3), *Criminal Procedure Act*

Article 40(2)(b)(ii) of the CRC and article 17(c)(iii) of the ACRWC provide that the State shall ensure that every child shall be provided with "legal or other appropriate assistance in the preparation and presentation of his or her defence." Children should have legal representation from the moment of arrest, at the initial hearing at which charges are laid and in preparation and presentation of his or her defence. ECOSOC Resolution 1997/30 (Guidelines for Action on Children in the Criminal Justice System) emphasises the importance of having a group of professionals, including lawyers, able to provide legal and other assistance to children: "Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, … and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice."[173] The CRC Committee recommends that this assistance be free of charge and acknowledges that it does not need to be legal under all circumstances.[174]

Almost all of the children who were interviewed (93%, or 121 in 130 children) reported that they had not received any legal assistance, including at the first initial hearing where charges were laid. Only 5 children in 130 reported that they had a SW Officer present during their initial hearing. Children who reported that they had a SW Officer present during their hearing stated that they were able to speak to the SW Officer, and did not see the purpose of their presence in Court. For instance, a 13 year old boy interviewed at Dar es Salam Retention Home stated that: "The Social Welfare Officer didn't tell me anything...he was just asked by the Magistrate where to take me and he said I should be taken to the Retention Home...I haven't seen him since then." The juvenile justice professionals interviewed confirmed this lack of legal and other assistance at the initial hearing and during other proceedings.

A significant shortage of registered lawyers in Tanzania and lack of availability of lawyers, along with a lack of resources to fund legal aid in all cases involving children were the reasons cited by most professionals for children not having access to legal representation. The Chief Justice reported that there is a real lack of legal representatives in Tanzania. In order to provide legal representation in Court, lawyers must be registered. At the moment, there are only 1,713 registered advocates on the roll, which is a very low number. In Kenya, by contrast, there are 6,000 on the roll.

Professionals confirmed that legal aid is only available for persons charged with murder (and, even then, only at the trial stage of proceedings). CSOs also provide some legal assistance during trial, but again, due to a lack of resources, only very few children receive representation, and legal representatives are usually only available during trial. Where lawyers are available, children may not know how to access them. Lawyers do not appear to be particularly proactive and do not frequently visit police stations or detention facilities, in order to identify children who are in need of legal advice, assistance or representation.

A lack of available SW Officers was cited as the main reason why SW Officers do not attend children in Court. However, this is also probably exacerbated by limited cooperation between SW Officers and Police, and lack of knowledge in both institutions about the roles of SW Officers in the juvenile justice system. The Head SW Officer in Moshi, for instance, stated that: ""for those being taken to the Court from the Police, the Police may not inform the SW Officers, so they can't accompany the

[173] Vienna Guidelines,, Para. 16.
[174] General Comment No. 10, Para. 49.

children in Court." He also noted that: "SW Officers don't have transport available to attend rural Courts."

A lack of legal representation at these early stages can be highly problematic. With no legal representation or other appropriate assistance, children may be unable to understand the charges against them fully, and consequently be wrongly charges. Moreover, without legal or other appropriate assistance, children may not be able to present solid bail arguments to the Court and may therefore serve time in detention on remand where this is not necessary. **The Chief Justice should work on developing a mechanism to ensure that every child has access to free legal or other appropriate assistance from the time of arrest to the initial hearing, and right through to trial and sentencing. Moreover, other juvenile justice actors such as NGOs should devise programs to ensure that they provide legal and other forms of assistance from the initial through to the last stages of criminal processes to children in their respective areas.**

Ensuring access to legal assistance at these early stages could have the effect of saving 'downstream' costs. Magistrates and Courts are one of the most expensive components of the criminal justice system. The earlier cases are disposed of, the greater the saving to the public purse.

7. PRE-TRIAL DETENTION

International law strictly limits the circumstances in which children can be placed in detention either after being charged and awaiting trial or while under investigation pre-charge. Such detention is only permitted as a measure of last resort, for the shortest appropriate period of time and only in exceptional circumstances.[175] Whenever possible, pre-trial detention should be avoided, and judges should consider alternative measures, such as bail, close supervision, care or placement with a family or in an educational setting or home.[176] If it is decided for the child to be formally charged and stand trial, the Court or other competent official or body should, without delay, consider the issue of release.[177]

7.1 **Use of pre-trial detention: a last resort?**

According to the LCA, police officers must release all children on recognisance following charge, where they cannot be brought immediately before the Juvenile Court. However, there are several exceptions to this: in the case of homicide or any offence punishable with imprisonment for a term exceeding seven years; where it is necessary in the interests of the child to remove him from association with any undesirable person; and where the police officer has reason to believe that the release of the child would defeat the ends of justice.[178] These exceptions are quite broad, and allow significant discretion on the part of police officers in deciding whether or not to release a child who has been charged. Where authorities are concerned about children associating with particular people or absconding, conditions should be imposed on children, such as regular reporting to police officers or prohibitions on attending particular places or seeing particular people, rather than causing the child to be placed in detention, as detention must only be used as a last resort, according

[175] *See* Article 37(b),CRC; Rule 17, Beijing Rules; Rule 2, Havana Rules.,.
[176] Rule 13.1 and 13.2, Beijing Rules.
[177] Rule 10, Beijing Rules.
[178] s. 101, LCA

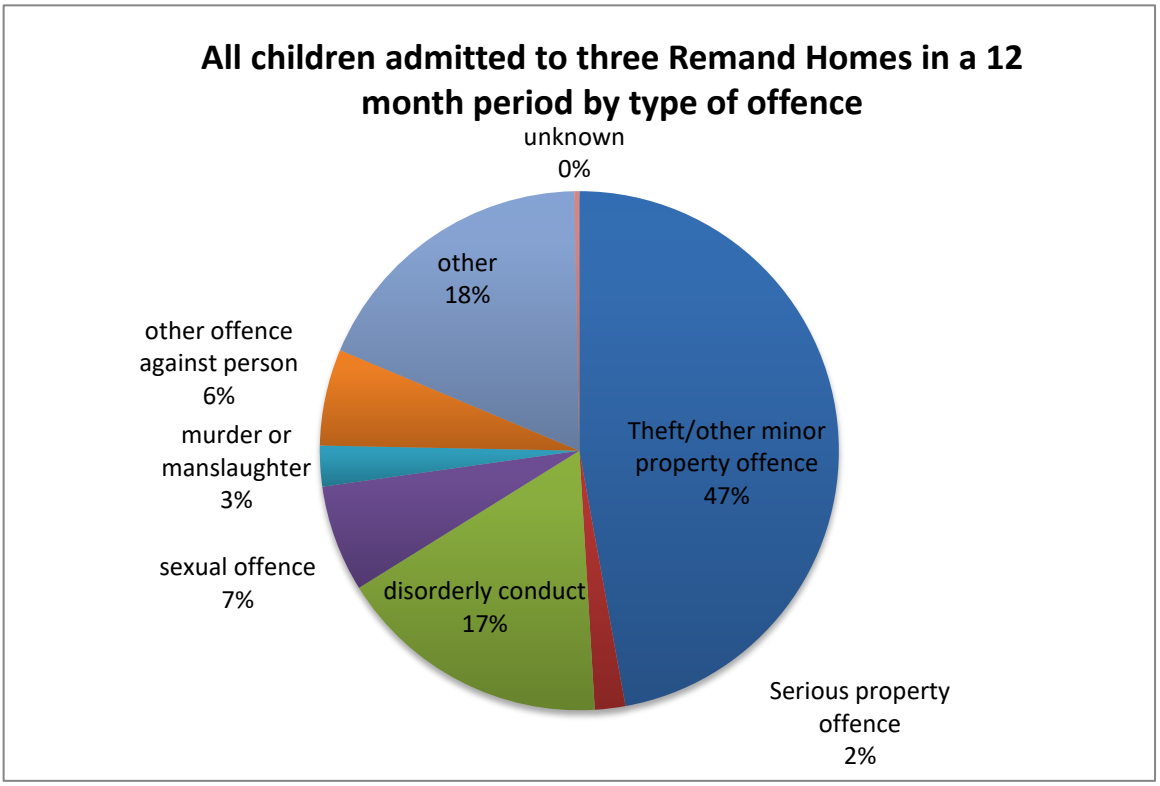
to international law.[179] The LCA does not contain any provisions on bail of children who do not have a parent or guardian.

According to the Criminal Procedure Act, where the person arrested is under the age of fifteen years,[180] that person may be released after his parent, guardian, relative or any other reliable person has entered into a recognisance on his behalf.[181] The police officer must inform a suspect of their right to bail under the Criminal Procedure Act.[182] However, this section only applies to children under the age of fifteen years, in contravention of international law, and in contradiction to the LCA, it does not impose a duty on police officers to consider bail, but rather a power or discretion.

It is difficult to determine the rate at which children are committed to remand compared to the rate at which children are placed on bail without data from the Courts. However, according to the juvenile justice professionals interviewed, the majority of children are released on bail, and remand detention will only be used as a last resort (e.g. where the child has been convicted of a serious offence). Some offences in Tanzania are 'non-bailable' under the Criminal Procedure Act, and it appears that this is being applied, rather than the LCA, which somewhat limits the offences or circumstances for which children must be remanded in detention. For these offences, including murder, manslaughter and armed robbery, for instance, Magistrates will not grant bail.

However, according to data collected from three Retention Homes, it is clear that children who commit more minor offences are being denied bail.

TABLE K: CHILDREN IN RETENTION HOMES BY TYPE OF OFFENCE



[179] Article 37(b), CRC
[180] This section has not been amended notwithstanding the coming into force of the LCA.
[181] s. 64 (3), *Criminal Procedure Act*
[182] s. 64(5), *Criminal Procedure Act*

Figure K shows that a large majority of children placed in detention on remand are suspected of having committed only minor offences: 47% of children in the three Retention Homes were suspected of theft or another minor property offence and 17% were in remand for 'disorderly conduct' offences or behaviour. This indicates that bail is being denied to children who commit offences that attract the option of bail.

By far the reason most frequently cited by children and professionals for children being denied bail is due to them being unable to meet bail conditions. This was also reported in the CHRAGG report on children in detention.[183] Common bail conditions reported by children that they could not meet included the need to have two sureties, the need to have a surety living in the town of arrest, and the financial amount set for bail. Many of the children were on remand as they simply could not meet these conditions. This has a disproportionate impact on children who do not have parents, children whose relatives are not living in the district of arrest, and children who are economically disadvantaged. The Director of Human Rights at CHRAGG also reported that, at times, Police Prosecutors inflate the amount set for bail in order to extract a bribe from the child.

For children who are living or working on the street and do not have relatives nearby, imposing these bail conditions means that the majority of street children who are arrested will be placed in detention. According to the Coordinator of SSN in Dodoma, the organisation works with SW Officers and Police to provide logistical support to ensure that children get bail (for example, finding relatives who can be sureties).

In some cases, it was reported by professionals that parents refuse to post bail, as they are 'fed up' with their child, or are afraid that their child will run away and skip bail.

It is likely that a lack of legal representation at the initial hearing at which bail is decided, as noted above, may lead to some children not being able to put forward solid bail arguments, and consequently being remanded to a detention facility.

Under s. 101 of the LCA, a police officer in charge of a station may grant bail in all but three listed exceptions, under a recognisance entered into by himself or his parent, guardian or relative, but there is no requirement, under this provision, for a child to have a surety. **The Chief Magistrate and the Inspector-General of Police should consider issuing a directive to all Magistrates and Judges that it is not a requirement that children have a surety for the purposes of granting bail, and set limits on the type / amount of recognizance a child is required to enter into.**

7.2 **Where do children serve pre-trial detention?**

The LCA provides that, where a child is not released on bail and instead is remanded or committed for trial before the Court, the Juvenile Court has the power to order that child be handed over to the Commissioner for Social Welfare, or any other fit person, or to any institution to be named. Such order shall require the child to remain in such 'custody' up until when there is a reverse order and it shall be deemed that such a child is in legal custody.[184]

[183] CHRAGG Report, p. 39.
[184] s.104, LCA

While the LCA does not explicitly prohibit children from mixing with adults while in detention on remand and consequently from being remanded to adult prisons, according to international law, where children are remanded into custody, they should be held in separate facilities to adults, [185] with specialised child-centred staff, policies and practices. They should also be held separately from convicted children.[186]

As noted above, there are currently five Retention Homes in Tanzania (in Dar es Salam, Moshi, Arusha, Tanga and Mbeya), which exclusively hold children who are awaiting trial only. However, a significant number of children are also held on remand in adult prisons in Tanzania. CHRAGG found 441 children being accommodated in 29 adult prisons in the course of their study.[187] The Assistant Prisons Commissioner reported that placing children in adult prisons is a huge problem that needs to be addressed as a matter of urgency.

In the adult prisons visited in the course of this study, children were not wholly separated from adult detainees, and mixed with adults during the day in and transport vehicles. This, it was reported, resulted in abuse against some of the children interviewed, most notably in Tanga adult prison, in which a significant number of children reported that sexual abuse by adult detainees was widespread. The conditions in adult prisons in Tanzania do not meet international standards,[188] and children have no access to education or other activities in prisons.[189]

Unsurprisingly, the reason for children being held in adult prisons in study regions where there are no Retention Romes (Lindi, Mtwara, Mwanza and Dodoma) was owing to the lack of an established Retention Home, so it was reported that children are instead referred to adult prisons. As noted above, the Ministry of Health and Social Welfare reported that the Ministry has plans to establish Retention Homes in two other regions soon, and an additional two will be established over the next five years in Singida (central Tanzania) and Kagera (North-western Tanzania).

However, even in study regions where there are Retention Homes, children are also held on remand in adult prisons, despite all of the Retention Homes visited being under-capacity on the day of the visit. For instance, on the day of visit to Arusha adult prison, there were 15 children (including three 15 year olds; two 16 year olds; and ten 17 year olds) being held on remand, despite the fact that the Arusha Retention Home was under capacity. There appears to be no consistency or procedure used by Magistrates in making decisions to refer children on remand to adult prisons, and even children who have committed relatively minor offences, such as theft, were found to be serving remand in adult prisons.

It appears that children are placed in adult prisons due to a lack of knowledge of the law among Magistrates, and a lack of acceptance that older children (16 and 17 year olds) should be treated as children in the criminal justice system. Even the Magistrate in the Juvenile Court will send children to adult prisons on remand, and the Prosecutor interviewed for this study reported that the Magistrates orders for a significant number of children to be referred to adult prisons (including two

[185] Article 40(3) CRC; Rule 13.4 Beijing Rules
[186] Article 10(2) ICCPR
[187] CHRAGG Report, p. 42.
[188] See CHRAGG Report
[189] See also CHRAGG Report. The exception is Wami Youth Prison, however, this prison is only used for post –sentencing, and not pre-trial, detention.

in the past two months). The Juvenile Court Prosecutor in Dar es Salam reported that children will be placed in adult prisons on remand where there is a perceived security risk. That is, where children look a bit bigger and are older, for instance 17, it is perceived to be undesirable that they mix with younger children. The Prison Officer in Arusha also reported that "it is a matter of security. The remand home is only for simple cases. It will depend on the physique of the child. If the child is big, he will be sent to prison. It states on the Court order that the child has to be remanded to prison. The Magistrate will decide whether to remand the child to the prison or remand home. To make the decision, the magistrate will consider the child's size."

A lack of legal assistance at bail hearings is likely to cause children to be remanded to adult prisons. Where children do not have legal representation, there may be no one to put forward arguments to the Magistrates that a child should not be remanded to adult prisons.

"My committal order says that I must be remanded to the prison, not the remand home. I asked the magistrate to commit me to the remand home, but the magistrate refused. The prosecutor asked for me to be committed to the prison, and the magistrate agreed with the prosecutor, but I don't know why."

17 year old boy, Arusha adult prison

"The Court ordered me to go to the Retention Home, but the police took me to an adult prison on the pretext that I would escape from the Remand Home. I stayed there for three months, until one day when I went back to Court and complained to the magistrate about my being taken to an adult prison, I was transferred to the Remand Home."

17 year old boy, Arusha Retention Home

"I wanted to be taken to the Retention Home, and asked the magistrate to send me there. The magistrate refused to listen to me and said I was 17 and therefore old enough to be taken to prison."

17 year old boy, Arusha adult prison

"I was referred to the adult prison for my remand. I protested about my age, but the magistrate said she could not ascertain my age."

16 year old boy, Tanga adult prison

The Chief Justice should consider issuing a directive ordering all Judges and Magistrates in regions in which Retention Homes are operating not to remand children to adult prisons.

7.3 Length of time in pre-trial detention: Delays in the criminal justice process

As noted above, international law severely limits the circumstances in which children can be placed in detention either after being charged and awaiting trial or while under investigation pre-charge. Such detention is only permitted as a measure of last resort, for the shortest appropriate period of time and only in exceptional circumstances.[190]

[190] *See* Article 37(b),CRC; Rule 17, Beijing Rules; Rule 2, Havana Rules.,.

The ICCPR, the CRC and the ACRWC all require that an individual charged with a criminal offence shall be brought to trial within a 'reasonable' period of time and that delay should be avoided.[191] The various international instruments all use slightly different terms, but the essence of the provisions is that there should be no delay.

While it is clear that pre-trial detention should only be used as a last resort and only for 'the shortest appropriate period' of time, there is no definition of what is meant by an 'appropriate period.' However, the CRC Committee in General Comment No 10 has recommended that the period of pre-trial detention before the child is charged (i.e. the period when the child is under investigation) should not exceed 30 days.[192]

Under section 15 of the Primary Courts Criminal Procedure Code, no persons shall be remanded:

(a) in prison custody for more than fifteen days at any one time;
(b) in custody in a lock-up for more than seven days at one time; or
(c) in the custody of any other person or place for longer than is necessary to hold him and convey him to a prison or lock-up and, in any event, for longer than seven days at any one time.

It was reported that reviews of pre-trial detention, in accordance with this provision, do not always occur in practice. This was primarily attributed to a lack of transport to ensure that children get to Court, and a lack of available magistrates.[193]

The maximum time period that a case can be adjourned for, according to the Criminal Procedure Act, is 60 days,[194] but this can, in exceptional circumstances, be extended to two years.[195]

Section 103 of the LCA requires the police officer not to bring a child to the Court unless investigation has been completed or the offence is one that requires committal proceedings. Thus, where a child is brought before the Juvenile Court for any offence other than homicide, the case shall be disposed by that court on that day.[196] The LCA does not provide a time limit for the disposition of homicide cases. This, in effect, imposes a strict time limit for the disposition of all juvenile cases except for homicide. However, there are no provisions which set a maximum limit on the time between formal charges being laid and the commencement of a trial. This contravenes international law, and could mean that children spend a very long period of time in pre-trial detention, without the possibility of bringing a legal challenge against the detention, while investigations are being carried out.

The CHRAGG report also found that: "[c]hildren who are charged with major offences like murder and armed robbery are often spending more than 2 years in detention facilities pending the hearing

[191] *See* Article 40(2)(b)(iii), CRC; Article 14(3)(c), ICCPR; Article 6(1), ECHR; Article7.1(d), African Charter.; Article 17(2)(c)(iv), African Charter on the Rights and Welfare of the Child,; Article 8, American Convention; Rule 20:1, Beijing Rules; and Para. 23, Vienna Guidelines.

[192] General Comment No. 10, Para. 83.
[193] For more detailed information, please see section X (delays).
[194] section 225(4)(a)' s.45 – 46 of the Judicial Service Act require a Magistrate or Judge to pronounce a judgement within 60 days.
[195] Section 255(4)(c) Criminal Procedure Act
[196] *Section 103 (2) of the LCA*

of their cases. Children charged with minor offences spend shorter times in pre-trial detention, but often longer than 60 days permitted."[197] It was clear from the interviews carried out for this study with children and professionals that children are spending longer than the maximum of 60 days in police detention, depending on the nature of the offence. The SW Officer in charge of Moshi Retention Home, for instance, stated that "The duration of the detention of a child in the remand home mostly depends on the nature of the offence. Those who are charged with serious offences such as murder, rape or armed robbery, stay much longer at the Home than the ones who are charged with say, theft. Those ones mostly stay longer than three months." The Magistrates interviewed in Dodoma reported that "normally, cases take from 9 months to 2years."

Even where Police reach the 60-day time limit and the Magistrate orders that the charges are dismissed, some professionals and children reported that children may simply be re-arrested.

"On 26 March 2011, I appeared in Court and a charge of armed robbery was read to me, together with one adult. I denied the charge…I have been to Court five times. The last time I went the charge was withdrawn, however, I was immediately arrested and charged before another Magistrate for house breaking. I complained to the Magistrate and was told to write a complaint letter to that effect. I want to write that letter but I don't know how to go about it."

17 year old boy, Arusha Retention Home

"After four months of going to Court, our case was dismissed and we were released, but we were re-arrested immediately and charged again with armed robbery."

17 year old, Tanga adult prison

The reasons cited for the delays in processing cases included a lack of Magistrates; delays in carrying out investigations; lack of transport; problems ensuring witnesses and co-accused persons attend; and problems with coordination, such as missing files.

Shortage of Magistrates

The Chief Justice reported that there is a lack of human resources, which causes delays in the criminal justice system: "there are still 350 Magistrates needed in Tanzania. Currently, some Magistrates have to cover 2 Courts that are 100kms apart." Lack of available Magistrates is a particular problem in rural areas, as reported by the Director of Human Rights at CHRAGG. However, even in District Courts in urban areas, there appear to be a lack of Magistrates. The State Attorney in Lindi reported that: "in the District Court, we only have three Magistrates. Sometimes you find one will be on leave, and cases are adjourned." For cases heard in the Juvenile Court, as mentioned above, the Court only sits with one Magistrate from 7am – 9am, Monday to Friday. According to the Juvenile Court Prosecutor: "there is a problem with delays. For example, one boy has been on remand for 3 years (on bail), on a sexual offence charge. He was charged when he was 14 and is now 16 and the case still hasn't been heard."

Delays in conducting investigations

[197] CHRAHH Report, p. 40

Delays in carrying out Police investigations was another reason cited for delays in processing cases, according to interviews with children and professionals.

> "I always attend Court but they keep on saying that the investigation is yet to be complete as the file is still with the RCO office. I once asked them when the investigation will be completed. They say they don't know."
>
> *14 year old boy who has been on remand in Masasi prison for two years (charged with murder)*
>
> "I always go to Court when my case comes for mention, and I am always told that the investigation is still pending."
>
> *14 year old boy who has been on remand in Masasi prison for two months (charged with drug possession)*

According to the Juvenile Court Prosecutor in Dar es Salam, delays are caused as: "the police need to visit the crime scene to collect evidence and there are no funds available for them to do this. They don't have transport. They don't get support from the communities – for example, no one wants to come forward and be a witness, and people don't cooperate)." A State Attorney in Arusha stated that: "there are a lot of problems with investigations – shortcomings in technology and expertise. It is difficult to get forensic evidence. DNA evidence is usually missing." According to interviewees, there is only one location for DNA evidence to be tested in Tanzania: The Office of the Chief Chemist in Dar es Salam. The Office has reportedly become an executive agency, so even government departments have to pay to do evidence testing. According to the Prison Officer interviewed in Arusha, it can take up to five years to get results from DNA testing.

Witnesses and co-accused: ensuring attendance

According to professionals, there are problems in ensuring that witnesses, including complainants, attend Court, and this causes matters to be adjourned. For example, a State Attorney in Dodoma reported that: "attendance of witnesses is one of the core problems in prosecution. The Court has to pay the witness. However, the Courts have always been complaining of a lack of funds for that matter. This also causes delay." The Prosecutor in the Juvenile Court in Dar es Salam stated that: "there are challenges getting witnesses to Court, and sometimes investigations take so long that witnesses move out of Dar. The main problem is the investigators and doctors don't show up. There is often a need to ask Magistrates to issue an arrest warrant to compel them to show up to Court."

Delays may also be caused where children have adults who are co-accused and they fail to attend Court.

The interviews with children in conflict with the law also indicated that problems in ensuring attendance of witnesses cause delays in their cases.

> "I have been in prison for about one and a half months. The matter is pending in Court because the complainant is nowhere to be seen. He does not come to Court."
>
> *14 year old boy in Nachingwea adult prison*

"I have had my case mentioned five times, but no witnesses have shown up, not even the complainant. Every time it goes to Court, the prosecutor will say that the witness couldn't attend Court that day as they have other things to do, and the Magistrate will set another Court date. I keep complaining at my mention dates that the case should be dismissed, but they keep adjourning the case. I also know that, if the case is dismissed, I can just be arrested again. I have heard of this happening. You need your parents to pay a bribe to police so they will have the case dismissed."

15 year old boy, Arusha Retention Home

"I have been to Court for more than three mentions. The public prosecutor always says that no witness has attended court and the Magistrate just adjourns the case."

16 year old boy, Arusha adult prison

"On 29 August 2010, I was arraigned in Court and charged for armed robbery....I have attended seven mentions as the investigation was incomplete. After the investigation was complete, the preliminary hearing was conducted after four consecutive times [adjournments]. Witnesses have not attended in Court on these four occasions when the case was set for hearing. It is now coming for hearing on 9 May 2011."

15 year old, Arusha Retention Home

"My case is in 'Maji ya chai' primary Court, which is far away from the Remand Home, so sometimes we're not taken to Court, or when we are taken, my co-accused (who is an adult in the adult prison) is not there, so the case does not proceed."

15 year old boy, Arusha RH

Lack of transport

A lack of transport to ensure children get to Court was also cited as a cause for delays, particularly in rural areas. According to the SW Officer in Charge of Moshi Retention Home: "for those children who are charged in Primary Courts located in remote areas, the Police (who pick the children up from the Home and take them to Court) fail to pick them up and the children miss their Court dates."

"To date, I have not been able to appear before the Magistrate at Ruangwa District Court. I was supposed to appear on 28/04/2011, but the vehicle was not there to pick us up. So I don't know when the matter will come for mention again. The charge has not been read to me to date."

17 year old boy, Nachingwea adult prison

"I was charged for murder and robbery jointly with three others who are adults. The case has been dragging on for more than six months in Court. The investigation for the murder case is incomplete, whereas for armed robbery it is, and still no witnesses have turned up. On 2 May, I was supposed to go to Court and was not taken. I complained to the manager who made a phone call and was told the vehicle was out of fuel."

15 year old boy, Arusha Retention Home

"Today was my Court day, but I've not been taken and when I asked, I was told the car has no fuel. This case is dragging unnecessarily. I have been to Court almost ten times, but even the preliminary hearing has not been conducted."

16 year old boy, Arusha Retention Home

"Since being in prison I have had four mentions. I was supposed to go to Court today, but the vehicle that was going to take me was being serviced. I will go back to Court in 16 days."

17 year old boy, Arusha adult prison

"I have been here for one month…The charge was read over to me and I pled not guilty. The charge was that I had stolen my grandmother's employee's phone. My case was adjourned. I have not been to Court since being brought here. The police have not come to collect me. I hear it is due to the fact that the vehicle needs repair."

14 year old boy, Tanga Retention Home

Coordination problems

Matters appear to be adjourned even in the case of simple mistakes by professionals and lack of coordination and organisation among juvenile justice institutions. Several children reported that their cases had been delayed as the prosecutor had not collected the file from the Police or that the file had been lost.

"On the first mention on 11/4/2011 I was informed that the police file for my case had been lost. Also, when I went to Court on 9/5/2011, I was again told that the file had not been retrieved."

15 year old boy, Dodoma adult prison

"So far, I have been to Court for six mentions. At my last mention, the prosecutor asked for another date, as he didn't have the police file with him on the day. The prosecutor has still been unable to get hold of the police file. The Magistrate says that if the police have still not given the prosecutor the file by the next mention date, he will dismiss the case."

17 year old boy, Arusha adult prison

According to the Chief Justice, the Ministry has made a commitment to ensure that all cases are disposed of within two years. This is commendable, and it is hoped that this will be implemented as soon as possible. However, in order to comply with international law, it is essential that cases involving child suspects are expedited, and resolved as quickly as possible. **A procedure should be developed for expediting cases involving child offenders, addressing all of the causes for delay of cases, set out above.**

8. PRE-TRIAL PROCEEDINGS AND TRIAL

Many of the elements that make up a fair trial apply to both children and adults. These include the right to be presumed innocent, the right to be informed promptly of charges against him or her, the right to have the charges determined without delay by a competent and impartial judicial body, the

right to legal counsel or other appropriate assistance, the right not to be compelled to give testimony or to confess guilt, the right to confront witnesses and the right of appeal.

In addition to the rights shared by adults, children also have the right to support from an adult or guardian and the right to privacy.

8.1 **Access to legal and other appropriate assistance**

Article 40(2)(b)(ii) of the CRC and Article 17(c)(iii) of the ACRWC provide that the State shall ensure that every child shall be provided with "legal or other appropriate assistance in the preparation and presentation of his or her defence." The CRC Committee recommends that this assistance be free of charge and acknowledges that it does not need to be legal under all circumstances.[198]

ECOSOC Resolution 1997/30 (Guidelines for Action on Children in the Criminal Justice System) emphasises the importance of having a group of professionals, including lawyers, able to provide legal and other assistance to children: 'Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, … and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice'.[199]

Section 99(1)(f) of the LCA contains the right of the child to: "next of kin and representation by an advocate." However, this provision does not require that legal assistance be provided free of charge where necessary, as required by international law.

Section 3 of the Legal Aid (Criminal Proceedings) Act provides that:

> "where in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be."

However, this provision does not amount to a right to free legal assistance for every child offender who requires it. Additionally, the law contains no provisions which guarantee that a child and his or her legal representative are being given adequate time and facilities to prepare for his or her defence, as required by international law,[200] and that communications between the child and their legal representative should be confidential.[201]

Section 108(2) of the LCA provides that, "in all proceedings against a child, where the parents, guardian, relatives or social welfare officer attend, any one of them may, with the prior consent of the Court, assist the accused child in the conduct of his case and, in particular, in the examination and cross-examination of witnesses."

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[198] General Comment No. 10, Para. 49.
[199] Vienna Guidelines,, Para. 16.
[200] General Comment No. 10, Para. 50.
[201] Article 40(2)(b)(vii), CRC; General Comment No. 10, Para. 50.

This assistance will be vital for many children, however, under the LCA, the assistance of parents, guardians, relatives or social welfare officers is at the discretion of the Court. This assistance will not always be able to replace the need for a specialised legal professional to provide assistance and representation to a child.

As noted above, almost all of the children who were interviewed (93%, or 121 in 130 children) reported that they had not received any legal assistance in order to help prepare their defence or legal representation at any of their Court hearings, including the initial hearing at which charges were laid, right through to the trial and sentencing. Only a very small number of children, as set out above, had a SW Officer present during any proceedings, from the initial hearing right through to and including trial.

Only children who are charged with murder have access to free legal assistance, and this appears to only be guaranteed at trial, and will not be available in preliminary hearings. Some of the children interviewed had been charged with murder, and had not had access to any legal assistance to help prepare their defence or to represent them at preliminary hearings. This is very problematic, and may result in wrong charges being laid, and in children being detained for very long periods of time where there is little evidence to hold them.

"I was arrested at Rahoda…I was playing with other boys, using sticks. A friend of mine failed to defend the stick. It hit him on the head and he fell down. He was taken to hospital and on the following day he died…The police told me what my charge was, but I didn't easily understand him…the Magistrate helped me know the charge. At Court, I was told not to say anything."

14 year old boy, Lindi prison

"I was arrested after being suspected of killing the husband of my aunt. I remember I was living with my aunt at her home. However, one day the husband of my aunt gave me work to burn a stick in order to make it strong. Unfortunately that stick got burnt completely. The husband of my aunt started to beat me with a stick. I took the stick he was beating me with and I hit him. He was injured. He was taken to hospital by his relatives. He stayed in hospital for nine days, then he died…they took me to Kondoa Police Station….the police officer told me my charges, but could not easily understand him until I was taken to Court. I had no lawyer. The Magistrate told me the charge. I was told that I am not supposed to say anything at that stage."

16 year old boy, Dodoma prison

"They [the Police] did not tell me why they arrested me. I have never been in a position to ask for reasons for my arrest…when I went to Court, I was told by the Magistrate that I had committed murder; that I picked up a big stone and threw it at a woman who died on the spot…I was, on that day, playing with other kids. Then one kid was slapped by one of the other kids. The kid was beaten and went home to tell his mother. He said it was me who slapped him. His mother then came and started to beat me. I was beaten seriously by this mother. Then I became mad and picked up a big stone and hit his mother with it. She died a few minutes later. I am sure it was me who caused this death, but she started it…I don't remember anything on the Court charge sheet. I have been to Court many times. The Magistrate, every time I go there, reads the charge sheet for me and

adjourns the matter. The Court explained the charges and I understood. I don't have a lawyer in Court. I pleaded guilty because I did this offence."

12 year old boy, Lindi prison

SW Officers only rarely attend Courts in cases involving child suspects, and, where they did attend Court, children complained of them not assisting them in a meaningful way.

"We do not see a Social Welfare Officer at Court. She just takes some notes but has never spoken to me...we need the SW Officer to do her job and help us out in Court."

16 year old boy, Arusha Retention Home

"I normally see a SW Officer in Court, but he does not help or assist me in any way. My relatives do come for the case, but are not allowed to go inside the Court room while proceedings are underway."

17 year old boy, Arusha Retention Home

"I don't feel like the SW Officer helps me. She has never spoken in Court and so far, four witnesses have been on the stand. I have been to Court so many times in the past eight months – every two weeks. Sometimes I am given a short adjournment, and sometimes the SW Officer will cause the case to be adjourned as she will not show up. If she is not there, the case will not proceed. The prosecutor will say that no witnesses are available."

15 year old boy, Arusha Retention Home

Children reported that even parents and family are denied access to Court hearings, in contravention of international and domestic law.[202] As the proceedings are held in camera, this appears to allow authorities to exclude parents from Court.

Lack of legal or other appropriate assistance and representation will seriously impair a child's ability to access justice, as it creates an inequality of arms between the state and the accused. Even very young children, such as those aged 12 and 13 years, appear in Court unrepresented and are expected to present evidence, examine and cross-examine witnesses, and so on. Even where Court procedures are modified to ensure that the process is 'child-friendly', without access to quality legal assistance and representation, children will not receive a fair trial.

Children who were interviewed demonstrated the negative impact of lack of legal or other appropriate assistance in Court proceedings.

"No one helped prepare my case and I had to argue before the judge. It was very difficult, because the other co-accused persons had a good knowledge of the law compared to me. Also, I had no

[202] In Article 40(b)(iii), the CRC provides for the presence of a child's parents or guardians in judicial proceedings unless it is considered not to be in the best interests of the child, taking into account his or her age or situation. In accordance with this standard, section 99(1)(e) of the LCA contains "a right of a parent, guardians or a next of kin to be present" at Juvenile Court proceedings.

experience speaking before the Court. I did not get any help at the trial…the police officer was like a lion when asking me questions."

Boy, arrested when he was 13 years old, suspected of armed robbery

"No one helped me to prepare for my sentencing hearing. I managed to argue my case before the Magistrate. It was difficult because I was scared of the Magistrate and the Court itself. I was all alone at the sentencing hearing."

14 year old boy, Mbeya Retention Home

"During the hearing, I argued the case myself. No one helped me on this. I did not know what to do and the Court did not help me at all."

17 year old boy, Nachingwea prison

"I was scared at the stand. I had no Social Welfare Officer nor a lawyer attending me in Court. I felt that I was not given the opportunity to get my views across."

15 year old boy, Arusha Retention Home

"I was taken to the District Court on the sixth day after my arrest and charged with rape and abduction. I pled not guilty. I was scared, because I was not aware of the offence I was being charged with. There was no SW Officer in Court and I was not represented by a lawyer...I have been in prison for eight months. My case is at the prosecution hearing stage. I do not feel that I can properly examine the witnesses…I am currently serving a sentence for two months for having been found guilty of contempt of court after having laughed out loud during Court proceedings."

16 year old boy, Tanga adult prison

As noted above, the government should work to ensure all children receive legal or, in some cases, other appropriate assistance from the moment of arrest, at the initial hearing, during pre-trial proceedings and at trial and sentencing hearings.

8.2 Child-friendly procedures

Article 12 of the CRC provides that all children who are capable of forming their own views have the right to express their views freely in all matters that affect them, and that these views should be given due weight in accordance with the age and maturity of the child. In addition to this general right, article 12 CRC and article 4(2) ACRWC provide that, when a child is the subject of any administrative or judicial proceedings, he or she has the right to be heard directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[203]

Article 99(1)(h) of the LCA provides that "the child shall have a right to give an account and express an opinion" in Juvenile Court proceedings. Article 11 of the LCA contains the 'right of opinion'. It states that "A child shall have a right of opinion and no person shall deprive a child capable of

[203] See also Beijing Rules, Rule 14(2).

forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being."

In order for a child to take part in proceedings in a meaningful manner, the child must be able to understand the trial procedure and take an active part in defending him or herself. To help enable the child's understanding of and participation in the proceedings, the Court environment should be child-friendly The CRC Committee stated in General Comment 10 that:

> "A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified Courtroom procedures and practices."[204]

In accordance with this, section 99 of the LCA provides a range of requirements for the conduct of proceedings in the Juvenile Court, including:

- The Juvenile Court to sit as often as necessary;
- Proceedings shall be held in camera;
- Proceedings shall be informal as possible, and made by enquiry without exposing the child to adversarial procedures;
- A social welfare officer shall be present;
- A right of a parent, guardians or next of kin to be present;
- The child shall have a right to next of kin and representation by an advocate; and
- The right to appeal shall be explained to the child.

When hearing a case against a child, a Juvenile Court is obligated to explain in a simple language the particulars of the alleged offence. Thereafter a child shall be asked to make a statement on whether he has a cause to show why he should not be convicted. Upon making a statement and if it amounts to a plea of guilty the Court may convict him.[205]

The LCA also introduces civil law elements into the Juvenile Court's examination and cross-examination procedures, presumably in order to make these proceedings less adversarial and more 'child-friendly'. Where a child does not enter a plea of guilty, or where the Court does not accept the child's statement as amounting to a plea, "the Court shall proceed to hear the evidence of the witnesses for the prosecution."[206] At the close of the evidence of each witness, the Juvenile Court is permitted to "put to the witnesses such questions as appears to be necessary or desirable, either for the purpose of establishing the truth or the facts alleged or to test the credibility of the witnesses."[207]

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[204] General Comment No. 10, Para 46. See also Rule 14, Beijing Rules.
[205] Sections 105, 106 and 107, LCA
[206] s. 108(2), LCA
[207] s. 109, LCA

In accordance with international law[208] and the LCA,[209] it appears that cases involving child offenders will normally be held in camera; although it appears that in some Courts, for example, the Juvenile Court in Kisutu, that 'in camera' means, in practice, that the matter will be head in the Judge's chambers. The chambers at the Juvenile Court is a small room with space for three chairs facing the Magistrate's desk and a bench along the side of the room that could sit another three persons. The Court room is currently used for storage. The Magistrate's chambers do not appear to be a suitable environment to hold a trial, in particular, as the room is not likely to accommodate a child's lawyer.

There are inconsistencies between Courts in the implementation of other international and domestic provisions. Many children and professionals reported that Magistrates will make adjustments in cases involving children, such as ensuring that informal language is used, explaining procedures clearly to children, wearing less formal attire and even, at times, assisting children in cross-examining witnesses. However, this is not always the case, and the extent to which international norms are implemented will be dependent on each particular Magistrate or Judge. Some were reported to be quite cognisant of the need to modify the Court environment and proceedings in order to make them 'child friendly', but others did not appear to do so.

Many children interviewed stated that they could understand what was going on in Court, and that they felt Magistrates made allowances for them and assisted them. However, interviews with some children demonstrated that, in the absence of legal and other assistance, the environment in some Courts could be very intimidating and not child-friendly. This will impair a child's ability to present a defence, and may result in unfair trials.

"I don't know anything on my charge sheet. I used to go to Court every 14 days. Every time, the Magistrate adjourned the case. I pled not guilty to the charge sheet because I did not commit the offences…No one assisted me in the conduct of my case. Even the Magistrate was not in my favour. No one was there for me during the hearing. The police forced me to confess. I was even beaten to force me to accept the charges…I think the sentence was not fair. No one was there for me. The Magistrate never spoke to me."

16 year old boy, Lindi adult prison (convicted to three years imprisonment for rape and theft)

"I was taken to Court a week after questioning (by the police). At Court, the charge was read over to me. I pled not guilty...I felt incapable of speech while I was on the stand. I felt disorientated. The Magistrate did not speak to me. I did feel that I would have had the opportunity to get my views across had I been in the right mindset to do so. I was informed of my right to bail, but my parents were not aware that I was being taken to Court."

14 year old boy, Arusha Retention Home

"When I went to Court, the charge was read out. I was asked whether I had stolen the cart. I pled not guilty and was then brought to the Remand Home. I got an idea about how the proceedings would work as I watched what happened at the mentions prior to mine. At the other hearings (I have had three mentions) I don't feel like justice was done. The complainant has only shown up at

[208] Article 40(2)(b)(vii) CRC provides that a child has the right '*To have his or her privacy fully respected at all stages of the proceedings*'.
[209] Section 99(b) LCA

the first hearing. I try to complain to the Magistrate, but the Magistrate doesn't listen to me properly and doesn't give me the chance to speak and get my views across. I go back to Court every 14 days and the mention lasts not more than two minutes. The Magistrate always just reschedules another date. I try to argue with the Magistrate, but he says he doesn't want to hear complaints from me. I haven't had anyone there to help me."

16 year old boy, Arusha Retention Home

"At Court I was charged with murder, but the Court told me it would be manslaughter. Bail was not explained to me. I did not get any assistance from a lawyer or social welfare officer. I think I understood my case, though I'm not sure whether the charge is murder or manslaughter [researchers discovered it was murder]."

15 year old boy, Arusha adult prison

"I did not understand the procedures. Although the language used was Kiswahili, which I understand, the Magistrate did not fully explain the proceedings to me."

16 year old, Arusha adult prison

"In Court I do not get any assistance either by a lawyer or SW Officer. I am informed that I will get such assistance when my case goes to the High Court for a hearing, but not at this committal stage…sometimes I do not understand the proceedings due to the use of legal jargon by both the Court and the prosecutors."

17 year old boy, Arusha Retention Home (on murder charge)

"I pleaded guilty to the charge of being in possession of marijuana...Despite the fact that I have pleaded guilty, I do not understand the proceedings in Court."

15 year old boy, Arusha Retention Home

"The Magistrate does listen when I speak, but I don't get the chance to speak. The others in Court [co-accused] will argue with the Magistrate for a closer Court date, and there won't be time for me to speak, because the police will usher everyone out of Court before I get the chance...I haven't complained about not being taken to the Remand Home. I don't get the time in Court to make this complaint, as there are so many others that speak on the Court days. I don't get the chance to speak as I'm only a child."

16 year old boy, Arusha adult prison

"My case was conducted in chambers. An old man had been the one who asked whether or not I had wounded the child who took the watch. I said I did but as I tried to explain why I did, I was told to wait. I felt like I could not get my views across. I did not have my right to bail explained to me."

13 year old boy, Tanga Retention Home

"At the Primary Court, the charge was read over to me and I pled not guilty. I was confused with the surroundings. The case was conducted in chambers and the Magistrate dressed in plain clothes, [but] I felt I wasn't accorded the opportunity to get my views across."

16 year old, Tanga adult prison

"At Court I felt bad, as I had never been on the stand. I did not get the chance to defend myself."

17 year old boy, Tanga adult prison

9. SENTENCING

According to international law, States should have a variety of sentencing measures available to ensure that children are dealt with in a manner that is appropriate to their well-being, proportionate both to their circumstances and the offence, takes into account their age and is such as will promote their re-integration and the child's assuming a constructive role in society.

Measures that should be contained in the legislation are to be found in Article 40 CRC and include care, guidance and supervision orders, counselling, probation, foster care, educational and vocational training programmes and other alternatives to custody.[210]

9.1 Making sentencing decisions

The Beijing Rules require that in all cases, except those involving minor offences, there should be a social inquiry report before a sentence is handed down.[211] Social inquiry reports should include the family background of the child, the child's current circumstances, including where the child is living, with whom, the child's educational background and health status, as well as the circumstances surrounding the commission of the offence and the child's understanding of the offence. When sentencing decisions are made, international law requires that the best interests of the child shall be the / a primary consideration,[212] the response should be proportionate to the child's circumstances and the offence,[213] and the purpose of sentencing should be re-integrative and constructive and not punitive.[214]

The LCA does not contain a requirement that social inquiry reports be developed and considered before making sentencing decisions. It also does not clearly set out the principles on which sentencing decisions should be made, besides providing that the Magistrate should 'deal with the case in the best interests of the child.'[215] However, section 111(1) of the LCA requires a Magistrate of the Juvenile Court, following the conviction of a child to, "obtain such information as to his character, antecedents, home life, occupation and health as may enable it to deal with the case in the best interests of the child, and may put to him any question arising out of that information," and section 112 allows the Court the discretion to require the attendance of a child's parent, guardian, relative or social welfare officer, following a child's conviction. These provisions, where properly implemented, will help to ensure that a sentencing decision is made which takes account and is responsive to the circumstances and needs of each child.

[210] Article 40(4), CRC. See also Rule 18(1) Beijing Rules.
[211] Rule 16, Beijing Rules.
[212] Article 4, ACRWC; Article 3, CRC
[213] Article 40(4), CRC
[214] Article 40(1), CRC
[215] s. 111(1), LCA

In the study regions, the lack of contact that children have had with SW Officers indicates that social inquiry reports are not routinely conducted. This is likely caused by a lack of available, properly trained SW Officers in some regions. This finding was also made in the CHRAGG report.[216] Interviews with professionals confirmed that in some regions, such as Arusha and Lindi, social inquiry reports are not routinely carried out. However, in cases before the Juvenile Court in Dar es Salam, it was reported that social inquiry reports are routinely completed and are normally taken into account in the Magistrate's sentencing decisions. The Community Services Officers and Probation Officer in Dodoma also reported that they carry out social inquiry reported in cases involving child offenders. However, there have been times where the Magistrate has disregarded their recommendations. The Primary Court Magistrate in Moshi also reported that he can compel SW Officers to carry out social inquiry reports, and that these reports, when presented, are helpful and normally inform his sentencing decision. Rehabilitative measures must be prioritised over punitive measures, such as fines, which are seen as ineffective at addressing the root causes of offending and at reducing recidivism.

The Ministry for Health and Social Welfare should ensure that there are a sufficient number of SW Officers in each district and that they are properly trained to complete social inquiry reports.

9.2 Use of non-custodial sentences

The CRC and the UN Minimum Standards and Norms of Juvenile Justice place States under an obligation to develop a range of non custodial measures, including both social and/or educational measures,[217] as an alternative to deprivation of liberty, and ensure that these dispositions are available and effective.

Sections 116, 118 and 119 of the LCA provide for a number of non-custodial sentencing measures which can be applied to children. These include:

- A conditional discharge on his entering into recognisance, with or without sureties;
- To be of good behaviour during such period not exceeding three years as specified in the order but if a child has demonstrated good behaviour then that child shall be presumed to have served the sentence;
- A supervision order (under the supervision of a parent, guardian, relative or social welfare officer);
- Fine, compensation or costs;[218]
- Absolute discharge;
- Repatriation to their home or district of origin if it is within Tanzania; and
- To be handed over to the care of fit person or institution willing to undertake such care.

A child may also be committed to an Approved School. However, this is, in effect, a custodial sentence. A custodial sentence includes any sentence which involves the deprivation of a child's liberty. Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at

[216] CHRAGG Report, p. 44.
[217] Article 40(4), CRC; Tokyo Rules.
[218] *Such orders shall be made against a parent, guardian, or relative*

will, by order of any judicial, administrative or other public authority.[219] Thus, placement at the Approved School - a residential centre where a child cannot leave when he or she chooses - must be considered as deprivation of liberty and therefore cannot be viewed as a 'non-custodial sentence'.

It is difficult to ascertain the extent that non-custodial sentences are imposed on children without access to data from the Courts. However, many of the professionals interviewed reported that it was not common to impose a custodial sentence on children, as other sentences, such as warnings, conditional discharge, fines and probation were thought to be more suitable. According to the Prosecutor and SW Officers at the Juvenile Court in Dar es Salam, "probation orders are the most common order imposed. This ensures that the child remains with his or her family, which is better. Under a probation order, parents can also be supervised and worked with." Probation orders are considered appropriate for the offences most frequently committed by children, as reported by the Department for Probation and Social Welfare, including simple theft, intimidation, using abusive language, fighting and so on. However, it was reported by the Department for Probation and Community Service that where a child's parents are outside the region in which the probation office is, a probation order cannot be imposed as it cannot be carried out. If there are no appropriate services to refer a child to, it may be that a probation order cannot be handed down.

Probation Orders are currently implemented by the Department of Probation and Community Service, which sits in the Ministry of Home Affairs. This Department was formed in 2008, and formerly, probation orders were implemented by the Ministry for Health and Social Welfare. A probation order commonly involves a reporting requirements (typically to report to a probation officer ever two weeks or every month) and, where necessary, a rehabilitation element, for example, drugs counseling. The probation officer may refer an offender to other services in order to satisfy the requirements of the order. They can refer children to services including schools, hospitals, organisations offering counseling and so on. However, it was reported that, in Tanzania, there are a lack of appropriate facilities and services for many offenders. A lack of Probation Officers and SW Officers in some regions may impair the ability for Courts to impose non-custodial sentences, such as Probation Orders and Conditional Discharge. According to the interviewees at the Department of Probation and Community Service, there are only 120 Probation Officers country-wide and they currently operate in 12 out of 35 regions.

A wider range of sentencing options should be made explicitly available to the Juvenile Court, including for example, community service orders,[220] counselling, vocational training, educational supervision, restorative justice, forster care or guidance orders and so on. This would help to ensure a response to the child's offending which is more flexible and capable of adapting to the unique needs and circumstances of each child. The government should ensure that there is a suitable number of SW / Probation Officers in each district.

9.3 Custodial sentences

Article 37(b) of the CRC states that children can only be deprived of their liberty and receive a custodial sentence, if this is done in conformity with the law, as a last resort and for the shortest appropriate period of time. The CRC requires that detention must not be used as a punishment.

[219] Rule 11(b), Havana Rules.
[220] Community service orders may be imposed under the *Community Services Act* 2002.

Rather, it should be used to work intensively and therapeutically with children in order to reintegrate them into society.

Section 119(1) of the LCA enshrines this principle into domestic law. It provides that "a child shall not be sentenced to imprisonment." In law, this means that children cannot be placed in adult prisons.

In practice, it is clear that children are being placed in prison following conviction. However, the extent of this is not clear. It appears that children are being sentenced to imprisonment owing to a lack of SW Officer and Probation Officers in some regions. As found in the CHRAGG report, "Courts are sentencing children to custody because many of them have no proper addresses and have no parents, guardian or family to entrust them to. Consequently, children are given custodial sentences because of their family background, rather than due to the seriousness of their offence or the need for them to be detained."[221]

The Chief Justice should consider issuing a directive to Judges and Magistrates that no child, under any circumstances, should be sentenced to imprisonment.

9.4 **Prohibited sentences**

The CRC, the International Covenant on Civil and Political Rights, regional human rights instruments[222] and the UN Minimum Standards and Norms of Juvenile Justice all contain limitations on the sentences that may be imposed. On a broad level this means that judges or Courts cannot order sentences that may involve torture or other cruel, inhuman or degrading treatment or punishment. Capital punishment and life imprisonment without possibility of release are specifically prohibited for children in all circumstances and would fall within the definition of cruel, inhuman or degrading treatment or punishment if ordered.

Capital punishment and life imprisonment without the possibility of release

Article 37(a) CRC, Article 6(5) of the International Covenant on Civil and Political Rights and Rule 17.2 of the Beijing Rules all prohibit the use of capital punishment for crimes committed by persons below the age of eighteen years.

Article 37(a) CRC also prohibits the use of life imprisonment without any possibility of release for children. The CRC Committee has strongly recommended that all forms of life imprisonment for children should be abolished.[223]

Under section 26 of the Penal Code, the sentence of death cannot be meted against a person who was under the age of eighteen at the time of the commission of the offence. The prohibition on imposing imprisonment as a sentence on a child means that children will not be sentenced to life imprisonment without parole.

There was no evidence that Magistrates are imposing either of these sentences in the study regions.

[221] CHRAGG Report, p. 44.
[222] European Convention on Human Rights; African Charter; African Charter on the Rights and Welfare of the Child; Arab Charter; American Convention.
[223] General Comment No 10, Para 77

Corporal punishment

The CRC Committee has stated that the use of any form of corporal punishment as a sentence would be contrary to Article 37 of the CRC and should be strictly forbidden by States.[224]

In contravention of this, corporal punishment may be imposed on children as a sentence. The Corporal Punishment Ordinance 1930 allows for the administration of corporal punishment in instalments. Under Article 8 of the Ordinance, children may be given up to 12 strokes and the punishment may be inflicted in an open courtroom. According to professionals interviewed, children will firstly be ordered to undergo a medical examination and be pronounced fit for the punishment before the corporal punishment is administered. The punishment will be carried out under the supervision of a Magistrate.

Unfortunately, the LCA has not expressly prohibited the use of corporal punishment as a sentence. The LCA prohibits "torture, or other cruel, inhuman punishment or degrading treatment"[225] and does not explicitly provide for corporal punishment as a sentence of the Court. However, the Act does not prohibit judicial corporal punishment for child offenders or repeal the use of corporal punishment as a sentence.

The CRC Committee noted the use of corporal punishment on children during its last periodic review of Tanzania and called on the government to "prohibit all forms of corporal punishment for persons under the age of 18 years in penal institutions."[226]

Some Magistrates reported that they do not sentence children to corporal punishment as they "do not believe in it", or did not think it was effective. However, corporal punishment is still imposed in some study regions. The interviewees from the Department of Probation and Community Service reported that corporal punishment is used against children as it is 'quick and easy'. **According to international standards, corporal punishment should not be imposed on children, and the government work to amend the LCA so that it explicitly prohibits the imposition of corporal punishment on children.** Corporal punishment does nothing to address the underlying causes of juvenile offending, and does not have the required rehabilitative purpose or effect that is required in the sentencing of child offenders.

10. APPEALS

It was reported that children only very rarely lodge appeals against conviction or sentence. According to State Attorneys in Dodoma and Arusha, for example, children will only tend to appeal where they have an advocate to assist them, so this is only really done following a conviction for murder (for which the state is obliged to ensure that a child has legal representation). Children are not always aware of their right to appeal, and it was found that Magistrates do not always explain this right to children.

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[224] General Comment No 10, Para. 71, states: "*The Committee reiterates that corporal punishment as a sanction is a violation of … Article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment*". (*See* UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8).

[225] Article 13

[226] UN Committee on the Rights of the Child, *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2, 21 June 2006, para. 70(c).

11. CONDITIONS AND TREATMENT OF CHILDREN IN PRE-TRIAL AND POST-CONVICTION DETENTION

According to international standards, the primary purpose of placing a child in conflict with the law in detention must be the reintegration of the child and his/her assuming a constructive role in society[227]. In order to achieve this, the government should ensure that '*[j]uveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development*'.[228]

As noted above, CHRAGG's recently completed study on children in detention forced heavily on the conditions and treatment of children in detention. The CHRAGG report found that the treatment and conditions in which children are held in pre-trial detention and following conviction breached many international standards and domestic provisions, particularly for children who are being held in adult prisons. The research carried out for this study confirmed CHRAGG's main findings.

Aside from Police Stations, children in Tanzania were found to be detained in the following facilities:

- In the five Retention Homes that are currently operational (in Arusha, Dar es Salam, Mbeya, Moshi and Tanga);
- In the Approved School (in Mbeya); and
- In adult prisons.

11.1 Children in adult prisons

There are 130 prisons in Tanzania: 85 district prisons, 35 open prisons and nine central prisons. There is also a prison for young people aged 18 – 21 (Wami Youth Prison in Morogogo). As noted above, according to domestic law, children should not be sentenced to imprisonment.[229] Where children are ordered to serve pre-trial detention, they should be committed to a Retention Home, rather than an adult prison, to ensure that they are wholly separated from adults and from convicted prisoners. Despite this, children are clearly being held in adult prisons, both pre-trial and following conviction and sentencing. CHRAGG has estimated, based on data collected during their study, that there are approximately 1,400 children being held in adult prisons in Tanzania.[230]

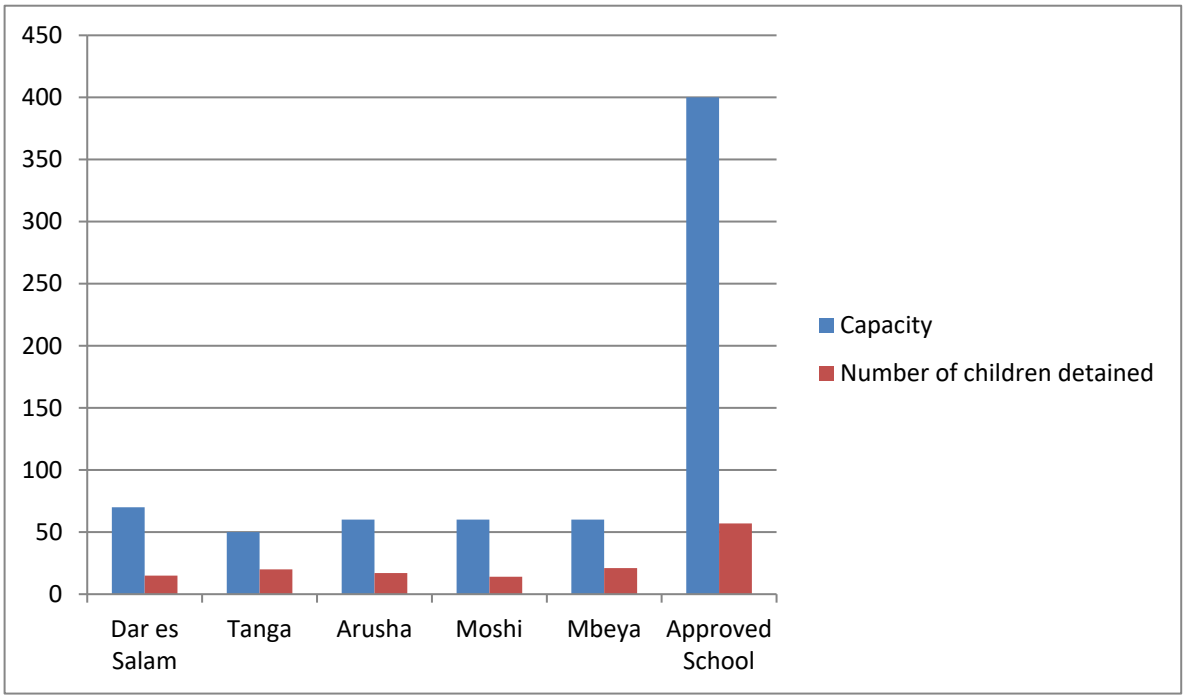
During visits carried out for this study, researchers found a significant number of children detained in adult prisons in all project areas (including regions in which there are Retention Homes and in Mbeya, where there is a Retention Home and an Approved School). This is despite the fact that all Retention Homes and the Approved School were under capacity at the time of the visits. According to data from February 2011, Retention Homes and the Approved School are at times significantly under capacity.

TABLE L: Juveniles in Retention Homes and Approved School as of 1st February 2011

Name of Facility	Capacity	Number of Juveniles per Facility

[227] Rule 26.1, Beijing Rules, provides: *"The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society."*
[228] Rule 26.2, Beijing Rules.
[229] S.119(1) LCA
[230] CHRAGG Report, p. vii

	Girls	Boys	Total	Girls	Boys	Total
Dar Es Salaam Remand Home	10	60	70	3	12	15
Tanga Remand Home	10	40	50	0	20	20
Arusha Remand Home	10	50	60	0	17	17
Moshi Remand Home	10	50	60	1	13	14
Mbeya Remand Home	10	50	60	6	15	21
Mbeya Approved School	100	300	400	0	57	57
Total	**150**	**550**	**700**	**10**	**134**	**144**



Children should not be placed in adult detention facilities, either pre-trial or post-sentencing. There are no special facilities, provision or specially trained staff for child offenders in adult prisons and they are an unsuitable environment for children.

Lack of separation from adults

The CRC,[231] the ACRWC[232] and the International Covenant on Civil and Political Rights[233] all require that where children are deprived of their liberty, States shall ensure that they are separated from adults, unless it is considered in the child's best interest not to do so.[234]

In several adult prisons that were visited, children were placed in a separate cell (e.g. in Arusha adult prison). However, children mixed with adults during the day and while being transported to Court. In other prisons, children and adults mix both during the day and at night. This was found to expose child detainees to risks of violence and sexual abuse by adult detainees.

[231] Article 37(c) CRC.
[232] Article 17(b) ACRWC
[233] Article 10(3) CRC.
[234] *See also*, Rule 8(d), Standard Minimum Rules for the Treatment of Prisoners; Rule 26.3, Havana Rules.

Abuse and violence against children

The government is obliged, in international law, to take all appropriate legislative, administrative and educational measures to ensure that all children are protected from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or maltreatment, or exploitation, including sexual abuse.[235] This applies to children in detention.

In contravention of this provision, visits to adult prisons revealed some very concerning allegations by children of violence and abuse, including physical and sexual abuse. This was also found by CHRAGG, which reported that "[s]ome serious allegations of violence, abuse and sexual assault were made by children interviewed during inspection visits."[236]

In Arusha, for example, several children complained of acts of violence and sexual abuse by adult detainees, and of being made to do chores for adult detainees.

"When I was new [to the prison] I used to get beaten up. I complained and those inmates were punished, and since then I have been in peace. But it is not safe to be inside this facility because the adult remandees and convicts are found to be seducing the young ones."

17 year old boy, Arusha adult prison

"I was 'seduced' but complained to the Prison Officer in charge. I did not know how to complain, but I was informed by my peers on how to go about it."

16 year old boy, Arusha adult prison

"The adults beat us up if we don't do their chores. I have been beaten up by an adult remandee when I refused to do chores for him."

16 year old boy, Arusha adult Prison

Some children detained at Masasi Prison also reported being beaten by adult detainees and being made to perform chores for adult detainees, such as washing their clothes.

Very disturbingly, incidences of sexual abuse by adult detainees appear to be particularly widespread in Tanga adult prison. Several children reported either being attacked at certain times, for example at night and / or during a power outage, or being made to perform sexual acts for adult detainees in exchange for food and hygiene products.

"We only have two meals a day. We have porridge at 7.00am and ugali at 10pm. The meals are not enough. The living conditions in this prison are too harsh. I am compelled to accept immoral things being done to me, even being an adult detainee's sexual plaything to be able to get food and other provisions such as soap, toothpaste and a toothbrush."

[235] Article 19, CRC.
[236] CHRAGG Report, p. 26.

17 year old boy, Tanga adult prison

"There is a tendency for adult prisoners to offer some food to juveniles in order to allure them for sex, and they end up having unnatural sexual relationships which transmit sexual diseases."

17 year old boy, Tanga adult prison

"There is a lot of abuse going on in the cell. For instance, a lot of seduction and unnatural affairs are going on in adult cells. I was once about to be sexually attacked. I complained, and that person was punished by being sent to solitary confinement for seven days, but he is still living in the same cell after he finished serving solitary confinement."

17 year old boy, Tanga adult prison

"Since I came here yesterday, at night the power went out, and someone in our cell attempted to have sex with me. I got up and started to fight with him and fellow inmates helped me out."

16 year old boy, Tanga adult prison

Some of the children who were interviewed both in adult prisons and Retention Homes, reported that they share vehicles with adult detainees when they are transported to and from Court, and that some have been subjected to abuse. Transportation of remandees from prisons to Courts are under the management of the police service, with the exception of Dar es Salam and Pwani regions, in which this transportation is managed by the prisons department.

"We need our own vehicle to transport us to Court, rather than having to share the police or prison vehicle with adult remandees. Being coupled with adult offenders causes problems. Some children are defiled and the adult offenders use bad language."

16 year old boy, Arusha Retention Home

"When I am transported to Court, there are so many remandees in the prison bus. Sometimes, the children are beaten up and the adult prisoners smoke weed. I complain, even to the Magistrate, but the Magistrate hasn't done anything."

17 year old boy, Arusha adult prison

"We urgently need a motor vehicle for juvenile inmates so as not to mix us with adults who are always aggressive and violent."

17 year old boy, Arusha Retention Home

There appears to be little protection provided to children from adult detainees. Night supervision, in particular, is insufficient, as it often relies on the supervision of 'cell leaders' appointed from among the detainees.

According to CHRAGG's report, some children also identified prison officers as subjecting them to violence and abuse.[237]

Police / Prison Officers should ensure that children are not detained with adults and while being transported to and from Court.

Disciplinary measures and use of force

The CRC Committee has recommended that the use of flogging, corporal punishment or other violent measures as a punishment or a mode of discipline within the child justice system should be prohibited. Such measures must be regarded as amounting to cruel, inhuman or degrading treatment.[238]

CHRAGG's report found, in contravention of international law, that corporal punishment and physical violence, such as beatings using belts and abusive language was used as a disciplinary measure in some adult prisons, as reported by children in Tukuyu Prison, for example. It was also found that solitary confinement or confinement to special cells was being used in some prisons, for example, in Karanga, Maweni and Segerea Prisons.

Poor material conditions

The Havana Rules provide that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.[239] This requires States to have regard to the need of children in detention for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.[240] Sleeping accommodation should consist of small dormitories or individual rooms and should be unobtrusively supervised.[241] There should be sufficient, clean bedding[242] and adequate sanitary facilities should be installed.[243] To the greatest extent possible, children should be allowed to wear their own clothes,[244] and should be provided with storage facilities for their own personal items.[245] Adequate food and drinking water should be made available.[246]

The material conditions in prisons in Tanzania do not conform to these standards, and no special provision is made for child detainees. Overcrowding is a big problem in most prisons. In Arusha Urban Prison, for example, there were 1,381 detainees, 15 of which were children. The capacity of the prison is 530.

[237] CHRAGG Report, p. 26.
[238] Report on the twenty-fifth session, U.N. Doc. CRC/C/100, 2000. p. 131.
[239] Rule31.
[240] General Comment No. 10, Para 89.
[241] Rule 33 Havana Rules.
[242] Havana Rules, Rule 33. Also see Principle 19 of the Standard Minimum Rules for the Treatment of Prisoners: "Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure cleanliness".
[243] Rule 34 Havana Rules. *Also see* Principle 15 of the Standard Minimum Rules for the Treatment of Prisoners
[244] Rule 36 Havana Rules.
[245] Rule 35 Havana Rules.
[246] Rule 37 Havana Rules.

Sleeping accommodation is inadequate. Cells are overcrowded and children reported that there is a lack of mattresses and blankets, forcing some detainees either to share mattresses or sleep on the floor. Mosquito nets are not provided. Detainees also reported being locked into their cells for very long periods of time. For instance, in Isanga prison, detainees are locked into their cells from 3pm until 6am the following morning. In Lindi Urban Prison, detainees are locked in from 4pm each day until morning.

In the CHRAGG study, it was reported that children were not provided with adequate clothing to suit the weather conditions. Children detained in prisons in colder climates, for example, in Iringa, Bukoba, Moshi and Manyara, were reported to have insufficient clothing and were shivering during interviews.[247]

Detainees do not eat three meals a day in prisons, and some reported that they only eat one meal a day, which is insufficient to meet nutritional requirements of child detainees. Detailees also reported that they lack hygiene items, including toothpaste, soap and so on.

CHRAGG also found that girls are not provided with any special treatment while in detention. According to the CHRAGG report, girls are more likely to be mixed with adults (females) than boys while in detention. Furthermore, insufficient attention has been paid to ensuring that girls have access to sanitary napkins, brassieres and underpants.[248]

Lack of education and rehabilitative activities

Children in detention facilities who are of compulsory school age have the same right to education as a child in the community. [249] Rule 38 Havana Rules requires that education should be provided outside the detention facility in community schools wherever possible. Whether education is provided at a school, or inside the detention facilities, it should be delivered through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty.

Every child should also have the right to receive vocational training in occupations likely to prepare him or her for future employment[250]and, if possible, be given the opportunity to work in the local community to enhance the possibility of finding suitable employment after release.

Operating Rules or Regulations should set out the right of every child to exercise and recreation, including access to adequate space, provisions and equipment for these activities.[251]

Children detained in adult prisons do not have access to primary or secondary education, either in the community or inside the prison. The only exception to this is Wami Youth Prison in Morogogo. However, some prisons visited, including Masasi and Mtwara adult prisons, offer basic life-skills training. There also appears to be a lack of specialised counselling provided to child detainees.

In Wami Youth Prison, which is for convicted young men aged 18 – 21 (though, on the day of the visit, one 16 year old boy was found), professional teachers are employed to work in the prison. This

[247] CHRAGG Report, p. 29.
[248] CHRAGG Report, p. 33.
[249] Articles 28 and 29 CRC.
[250] Rule 42, Havana Rules.
[251] Rule 47 Havana Rules.

includes prison officers and civilian teachers employed by the Ministry of Education and Vocational Training or Vocational Education Training Authority. Detainees can receive primary education, which follows the national curriculum, as well as vocational training. Classes are provided inside the prison. On completion of relevant courses, detainees will receive certificates from Vocational Education Training Authority or a certificate issued by the prison authority. Children can also perform work, which is unpaid, for example gardening and other practical tasks.

Lack of contact with family and the outside world

Article 37(c) of the CRC provides that 'Every child deprived of liberty … shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances'. Children should also be permitted to maintain contact with "friends and other persons or representatives of reputable outside organisations."[252]

While in most prisons, children may, in principle, receive visitors at least weekly, in practice many children do not receive visitors. According to CHRAGG's report,: "in practice many children rarely if ever see their family while detained, as children are often held in facilities far from their homes and their families and friends cannot afford the time and money to travel."[253] Additionally, in most prisons, there are no dedicated visitors' areas in which children can talk to family members in private, and children must communicate through bars in the reception area.

Complaints mechanisms

In adult prisons, it appears to be common practice to appoint a cell leader, or 'Nyapara', to provide immediate supervision of detainees. Cell leaders receive individual complaints and can forward these to the Officer-in-Charge for adjudication. Researchers found that children had used these procedures in some prisons, and had been pleased with the outcome. However, as pointed out by CHRAGG, "there is no defined appeal procedure for when a prisoner is aggrieved with the decision of the Officer-in-Charge of the prison."[254]

11.2 The Approved School

The LCA provides for the establishment of Approved Schools in section 222(1). To date, only one Approved School has been established: at Irambano, Mbeya. This Approved School was established in 1937, following the enactment, in the same year, of the Children and Young Persons Act. It was initially set up at Kazima area in Tabora region. In 1954, it was shifted to Mkono wa Mara in Morogoro region until 1958, when it was shifted to Malindi, Mbweni area in Zanzibar. In 1970, it was relocated to Irambo, Mbeya region, where remains to date.

The school has been located in several different Ministries over the years, firstly within the Prisons Department and later under the Department of Education before being placed under the Department of Health and Social Welfare.

[252] Rule 59, Havana Rules.
[253] CHRAGG Report, p. 31.
[254] CHRAGG Report, p. 35.

The facility is set on a 76 acre site, and is about a 45 minute drive from Mbeya town. It is set up to represent an African village, rather than a penal institution, and consists of a number of different buildings spaced well apart from each other. The buildings include: a school; an administration block; a large dining room; a kitchen, which is quite dilapidated; a separate dorm area, with about six refurbished dorms and three that had not been refurbished, with a quadrangle in the middle, which could be locked (there is a separate girls dormitory being finished, which is separate from the boy's area, which can be locked; a large playing field next to the school; buildings used as a church and a mosque; staff quarters; and other unused buildings.

The capacity of the school is 340 children: 300 males and 40 females. The dormitory for girls has been completed but it was not open at the time of this interview. There were only 50 male children at the school on the day researchers visited, and this was attributed to lack of funding for transporting children already ordered by Courts to be at the school from all over the country. It was reported that children from regions in which there are Retention Homes are most likely to be referred to the Approved School. However, children are also referred to the Approved School in other districts/regions (Tabora/Igunga District, Ruvuma/Tunduru District, and Iringa/Njombe District) apparently due to the presence of more active SW officers in these regions. Children are detained in dormitories. Each dormitory has a capacity for 20 children, and at the time of the visit by CHRAGG, there were 8 – 10 children in each dormitory.

There were 21 members of staff working at the Approved School at the time of the visit. These included: seven primary school teachers (who are employed by the District Education Department); two nurses and one clinical officer (who are employed by the District Council); four SW Officers; three technicians; one agricultural assistant; one office attendant; and three watchmen / guards.

Perhaps largely owing to the fact that the Approved School is set up as a specialist facility for children, conditions are far better than they are in adult prisons. However, there are a number of concerns that the researchers and the CHRAGG report found.

Education and rehabilitation activities

All of the 50 children detained at the Approved School were attending school at the time that the researchers visited the facility. The children can complete primary schooling at the Maadilisho Primary School, which is located around 300 meters from the male dormitory. Child detainees study with children from the nearby village, which aids their chances of reintegrating following their discharge from the Approved School. Children also get the opportunity to participate in sports and leisure activities, including football, snooker and card games both at the school and in the community. They can also watch television programmes and videos.

However, the education provided in the Approved School is limited to primary school education. There are currently no vocational classes or training available.

In addition, only one of the SW Officers is a qualified social worker, and he carries out a range of other activities, including administration, procurement and accountancy. The other SW Officers are para-social workers, and they have limited capacity to conduct rehabilitative work with the detainees. It was reported that they are not equipped to follow up the rehabilitative work that the qualified social worker commences with the children.

Material conditions

While the dormitories were renovated last year, with new bunk beds and bedding supplied, the CHRAGG visit found that the bedding was not in a satisfactory state. Beds were found to be broken, and sheets were dirty. The large grass area outside the dormitory had some garbage strewn on it and there was no place to sit and relax there.

Children had school and personal clothing, but the school clothes provided appeared to be worn and dirty. They were also not warm enough for the winter season, and children appeared to be shivering during the interviews with CHRAGG researchers. Some children did not have shoes. The clothing was dirty and appeared not to be washed very frequently.

There was a lack of hygiene supplies, and not all children had sufficient toiletries, including soap, toothbrushes and toothpaste.

Disciplinary measures

It was reported during the CHRAGG visit, that punishments for violating rules commonly includes doing chores, like cleaning and clearing the outside area. However, corporal punishment is officially used for sodomy, in which case, two to three strokes of a cane are administered. It was reported by some children that the night watchman will informally cane them up to 70 times when they are found wandering around an area that they should not be in.

Contacts with the outside world

While children are permitted to receive visits from family members on Saturdays and Sundays, the remote location of the Approved School, and the lack of means of the parents of many detained children, means that only around half of the children receive visitors, and even these children are not visited frequently.

11.3 Retention Homes

Conditions and treatment of children in Retention Homes was found to be far better than for children in prisons. Researchers did, however, identify several matters for concern.

Staffing and capacity

It was reported that the Retention Homes do not get sufficient budgetary allocations from the Ministry for Health and Social Welfare to adequately support them. All Retention Homes were reported to be understaffed, particularly by the number of SW Officers at each Home. In Arusha Retention Home, for example, there was reportedly supposed to be 14 members of staff, but there were only five staff members at the time of the visit (the SW Officer in Charge, two unqualified health attendants, and one night guard).

SW Officers in some facilities were reported to be inadequately trained in juvenile justice issues. There was also reported to be a shortage of qualified medical personnel.

Some evidence of violence and abuse

In Moshi Retention Home, one child detainee reported that she had been the victim of an attempted rape by the night guard. The same night guard also reportedly used physical violence against some of the children. Following a complaint made by the girl who had been subjected to the attempted rape, the night guard was fired. It was also reported by some children in Moshi Retention Home that some members of staff (though not the SW Officer in Charge) used abusive language and at times used collective punishment against the children. It was also reported that corporal punishment is used in several Retention Homes, though not frequently.

Material conditions

While the material conditions in most Retention Homes were vastly better than in adult prisons, it was found that some of the buildings, particularly in Mbeya, were dilapidated with no basic services like health centres and classrooms. While children appeared to have adequate beds and bedding, there were no mosquito nets provided.

Lack of education provision and other rehabilitative activities

In some Retention Homes, like Dar es Salam, children are provided with Primary education, which follows the national curriculum. Children can sit their primary school matriculation examination at a community school. However, in other Homes, like Arusha, for example, children are not provided with any formal education. They can, however, do ad hoc lessons provided by volunteers covering a range of topics, for instance, English language and HIV/AIDS awareness. There is a shortage of teachers, text books and exercise books in all Retention Homes.

None of the Retention Homes offer secondary schooling.

CHRAGG set out detailed recommendations for key justice bodies to address the challenges raised in the report.[255] The government should ensure that the recommendations from the CHRAGG report are fully implemented.

Aftercare

Rule 79 of the Havana Rules requires States to ensure that all children in detention benefit from "arrangements designed to assist them in returning to society, family life, education or employment" following release from detention. According to Rule 80: "Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community."

In contravention of these rules, it was found that no aftercare services are provided to children departing any detention facilities, except to provide transportation to their home. However, even where transport is provided, it appears that no one will follow up to see that the child arrived safely and are able to integrate back into their family and community.

[255] CHRAGG Report, p. 39 – 42.

Aftercare services should be provided to children leaving all detention facilities, to ensure that they are safe and have the appropriate services and support to reintegrate back into their communities. Staff from relevant detention facilities should establish links with relevant agencies, for instance, SW Officers and NGOs, and a plan should be developed for children prior to their leaving pre-trial or post-sentencing detention. The plan should set out the support and services that each child requires to ensure that he or she is able to reintegrate back into the community. The particular services and support made available should be adapted to the circumstances of each child, but could include, assistance in identifying an appropriate school, and support in ensuring admission into school, assistance in identifying and securing employment, assistance in identifying accommodation and, where children are returning to the family, social work with family members to ensure the smooth reintegration of the child back into the family environment. Other services could include assistance with transport to their accommodation, assistance to buy clothing and school items, the establishment of links with relevant service providers (e.g. street children projects etc.) and the provision of funding to ensure that the child has sufficient means to survive.

12. THE WAY FORWARD

In January 2012, the Tanzanian government is due to submit its periodic report to the UN Committee on the Rights of the Child. During its last periodic review, the UN Committee expressed concern that the government had not yet developed a juvenile justice system that functions in accordance with international law and protects the rights of children in conflict with the law. The adoption of the Law of the Child Act is a significant development in ensuring that children in conflict with the law are guaranteed fundamental rights and safeguards, and this is an achievement to be highlighted at the government's next periodic review.

However, the LCA has not yet been properly translated into practice. The report found that the juvenile justice system in Tanzania does not currently operate in accordance with international law, and that children are at grave risk of having their rights violated at every stage of the juvenile justice process. The system does suffer from a lack of resources and funding. However, this cannot excuse the level and extent of rights violations currently experienced by children in conflict with the law.

A number of recommendations have been made throughout the report. It is hoped that the government will act to operationalise the recommendations in this report, in time for its next periodic reporting to the UN Committee on the Rights of the Child.

1. <u>Recommendations</u>

1. Data collection

1.1 A standardised, central data collection system should be developed on juvenile justice.

Ideally, a central computerised system should be developed; however, this would at this time be very difficult to implement, owing to the lack of computing equipment in criminal justice institutions across the country. In the shorter term, a technical data collection consultant should be appointed to complete a thorough assessment of shortcomings of the current data collection systems and make recommendations for how an improved data collection system could be implemented. This should include the development of standardised data collection forms for the

collection of raw data from district-level institutions, including police, state attorneys, Courts and SW Offices. The relevant professionals would also require training on which data to collect and on how to complete the relevant forms. The data collection system should also include procedures for how the data is reported up to the regional and central levels, and how the data is collated and published at the central level. Consideration should also be given to developing regulations on the collection of data on children in conflict with the law.

2. Decriminalisation of certain offences

2.1 In order to give effect to international standards on juvenile justice, and to provide more effective and appropriate support to vulnerable children, the Government of Tanzania should consider amending domestic laws to decriminalise offences such as vagrancy and loitering. In the meantime, the Ministry of Home Affairs and the Director of Public Prosecutions should consider issuing guidance to instruct police officers and state attorneys not to arrest or charge children for specified disorder offences, including vagrancy, loitering, truancy and touting.

2.2 A protocol should be developed to ensure that children are not arrested and put through the criminal justice system for vagrancy, truanting, loitering or touting.

2.3 Police stations should create links to SW Officers, LGA and CSOs in the area who provide support and services to children living on the street or children without parental care. Referral mechanisms should be established, so that police refer children picked up for loitering, vagrancy or truanting to these services where appropriate.

2.4 The DPP should consider issuing guidelines setting out the circumstances in which there will be a presumption against prosecution in cases of statutory rape.

This could include a presumption against prosecution, for example, where both parties are over the age of 15, where both parties are children (under 18 years) and where the sexual conduct was, in fact, consensual. The guidelines should consider whether prosecuting the offence in set circumstances will be in the public interest.

3. Creating specialised institutions and professionals

3.1 The Ministry of Home Affairs should work to develop specialist units within the Police Service that deal exclusively with children in conflict with the law.

In light of the difficult backgrounds of many children who come into conflict with the law, as set out above, the Ministry of Home Affairs and the Ministry for Health and Social Welfare should consider building the capacity of police officers to provide a child protection response to children in conflict with the law where required. This could be achieved by developing a juvenile justice training module into the standard police industry training (the Police Academy), designating and training specialised police officers in each district, stationing a SW Officer (part-time or full-time, depending on the volume of cases) at each police station or post, and / or establishing a liaison police officer to maintain good links with SW Officers. In the short term, the police could also consider expanding the remit of the Gender and Children's Desks, which are being established nationwide to be the first level response to children who are arrested for a criminal offence.

3.2 The Director of Public Prosecutions should work to establish specialised prosecutors in each district to exclusively prosecute juvenile cases.

11.4 It is recommended that the Chief Justice designate a separate or procedure Juvenile Court system into the current Court system.

Juvenile Courts could perhaps sit in existing structures, but on particular designated days or designated 'sessions' during each day or particular days of the week (e.g. from 7am – 10am). The Chief Justice should either both appoint and train specialised juvenile court magistrates in each district to sit on juvenile cases and / or develop a juvenile justice training module as part of industry training for all magistrates (see next paragraph).

11.5 The Chief Justice could work with the Institute of Judicial Administration, which provides continuing education for magistrates (Certificate of Law and Diploma in Law) to develop specialised courses for designated specialist magistrates in juvenile justice.

11.6 Appoint a sufficient number of SW Officers, specially trained in juvenile justice, to carry out their duties under the LCA and ensure that these children receive essential services and support and that their rights in the criminal justice system are not violated.

11.7 The roles of different type of SW Officers under the LCA should be clarified in regulations.

11.8 Training should be provided to designated SW Officers to ensure that they understand and are able to implement their obligations under the LCA. Training should also be provided to other juvenile justice professionals so that they enable the SW Officers to meet their obligations under the LCA.

11.9 Ultimately, the Ministry of Health and Social Welfare should ensure that Retention Homes are established in every region. However, this would require significant resources. In the medium-term, Retention Homes should be established in a number of regions with a relatively high number of children coming into conflict with the law.

11.10 A Child Protection District Team model should be adopted in each region to ensure that there is a coordinated response to juvenile offending.

4. Ensuring that children are not unlawfully exposed to the criminal justice system

4.1 The Ministry of Home Affairs and the Ministry of Health and Social Welfare should develop a protocol that establishes clarity for dealing with children under 12 years who engage in criminal behaviour. These children should not be processed through the formal criminal justice system, but, where necessary, should receive social welfare support and services.

4.2 The Ministry of Home Affairs, Attorney-General and Chief Justice should consider developing guidelines for establishing age where there is any doubt. This should include a presumption that, where there is a doubt, until the age of the suspect is established, there should be a presumption that the suspect is a child.

4.3 The Ministry of Home Affairs and Ministry of Health and Social Welfare should develop a protocol for dealing with children who truant and children who are living on the street. The protocol should focus on ensuring that a social welfare / child protection approach is used in responding to the needs of these children.

5. Increased protection of rights of the child during arrest

5.1 A mechanism should be developed to ensure that children have access to legal or other appropriate assistance from the moment they are arrested, in order to help ensure that police officers do not detain them for longer than the 24 hours permitted in law, or, where police require more time, to ensure that this is only permitted if the Court grants permission.

Children do not necessarily need access to a registered lawyer from the moment of arrest. It is sufficient for children to be able to access an independent, appropriate adult, such as a parent, a SW Officer or a representative from a reputable CSO / NGO. The adult should be trained in issues facing children in conflict with the law and juvenile justice laws and procedures, and should be able to identify where police officers do not act in accordance with the law and do not ensure that the child's wellbeing is safeguarded. Police must be trained to ensure that they contact a lawyer / appropriate adult immediately following a child's arrest. Police should be trained to note, in writing, the name and contact details of the adult, when they were contacted and when they arrived at the station.

5.2 The Ministry of Home Affairs should work to improve conditions in police detention and ensure that police stations are regularly monitored and that children are ensured access to family members while in police detention.

5.3 The DPP should consider issuing guidance to all state attorneys to elaborate their duty to inspect police stations regularly.

This guidance should include: a checklist for monitoring, and the required frequency and duration of visits. It should include an explicit duty to identify the number of children held in the police station, the length of time they have been held, and whether the child has experienced any rights violations. The information from these visits should be referred up to the Office of the DPP for regular review.

5.4 The Ministry of Home Affairs should ensure that all Police Officers are trained on how to advise children of the reasons for their arrest and their right on arrest. This should be logged in a police register and regularly monitored.

6. Diversion/Alternative Sentencing - Development of a community rehabilitation scheme

6.1 Community rehabilitation schemes should be established to which children can be referred as a diversionary measure, pre trial, or as an alternative sentence/part of a probation order. These schemes would focus on addressing the root causes of their offending and help children stay out of trouble. The experiences of other countries have shown that such models positively impact the children and significantly reduce recidivism. In addition, the Government of Tanzania have a legal obligation to set up such diversionary and alternative

sentencing measures under the commitments it made when it ratified the UNCRC and the ACRWC.

REDUCING THE USE OF DETENTION – EXPLORING OPTIONS FOR A COMMUNITY REHABILITATION SCHEME

A district or districts should be selected to pilot a model for the scheme. The following factors would need to be considered in its development:

- *Diversion - Which body / institution should have the power to divert children out of the formal criminal justice system and into the diversion project? The research indicates that the power should not rest with the police, but that other criminal justice institutions could be responsible for diverting children, for instance, state attorneys or magistrates (however, if children are to be kept out of the formal criminal justice system, it is preferable for them to be diverted before attending Court). The regional consultation event participants suggested that diversion panels be established, containing relevant juvenile justice professionals, which could be regularly convened to consider whether children should be diverted. However, this process is likely to lead to delays in the system, as panel members may not be available to meet to regularly discuss cases. The participants also discussed the possibility of making more use of community leaders in making diversion decisions and helping to implement diversion measures.*
- *Sentencing – there are limited sentencing options available – can any of the current sentencing options accommodate a referral to a community rehabilitation scheme? Could a probation order specify attendance at such a scheme? What would happen if the child did not attend the programme?*
- *What services and support should be available to children who are referred? The particular services and support should ensure that children are provided with tailored rehabilitative support required to address the root causes of their offending. It could include such services as counselling (individual and family counselling and peer counselling), family mediation, restorative justice, victim-offender mediation, educational assistance, vocational training, life skills training and so on.*
- *Should the project include a residential element? Given the fact that a significant number of children in conflict with the law are children living or working on the street or otherwise deprived of family care, would a community-only scheme reach the most vulnerable children who are in conflict with the law? (NB children who have a place to live should not be provided with residential support when they are attending the scheme)*
- *Under which body should the scheme be placed? Should it be a service provided by a Local Government Authority? Should it be a service that is commissioned by the Local Government Authority? If so, Should the project be based in an existing institution (e.g. a Children's Home or NGO project) that already provides relevant services and support to children?*

7. Ensuring legal assistance and representation

7.1 The Chief Justice should work on developing a mechanism to ensure that every child has access to free legal or other appropriate assistance from the time of arrest to the initial hearing, and right through to trial and sentencing.

8. Pre-trial detention

8.1 The Chief Magistrate and the Inspector-General of Police should consider issuing a directive to all Magistrates and Judges that it is not a requirement that children have a surety for the purposes of granting bail, and set limits on the type / amount of recognizance a child is required to enter into.

8.2 The Chief Justice should consider issuing a directive ordering all Judges and Magistrates in regions in which Retention Homes are operating not to remand children to adult prisons.

8.3 A procedure should be developed for expediting cases involving child offenders.

9. Sentencing

9.1 The Ministry for Health and Social Welfare should ensure that there are a sufficient number of SW Officers in each district and that they are properly trained to complete social inquiry reports.

9.2 A wider range of sentencing options should be made explicitly available to the Juvenile Court, including for example, community service orders, counselling, vocational training, educational supervision, restorative justice, forster care or guidance orders and so on.

9.3 The Chief Justice should consider issuing a directive to Judges and Magistrates that no child, under any circumstances, should be sentenced to imprisonment.

9.4 The LCA should be amended so that it explicitly prohibits the imposition of corporal punishment on children.

10. Children in detention

10.1 The government should ensure that the recommendations from the CHRAGG report[256] are fully implemented.

10.2 Police / Prison Officers and SW Officers should ensure that children are not detained with adults and while being transported to and from Court.

10.3 Aftercare services should be provided to children leaving all detention facilities, to ensure that they are safe and have the appropriate services and support to reintegrate back into their communities.

Staff from relevant detention facilities should establish links with relevant agencies, for instance, SW Officers and NGOs, and a plan should be developed for children prior to their leaving pre-trial or post-sentencing detention. The plan should set out the support and services that each child requires to ensure that he or she is able to reintegrate back into the community. The particular services and support made available should be adapted to the circumstances of each child, but could include, assistance in identifying an appropriate school, and support in ensuring admission into school, assistance in identifying and securing

256 CHRAGG Report, p. 39 – 42.

employment, assistance in identifying accommodation and, where children are returning to the family, social work with family members to ensure the smooth reintegration of the child back into the family environment. Other services could include assistance with transport to their accommodation, assistance to buy clothing and school items, the establishment of links with relevant service providers (e.g. street children projects etc.) and the provision of funding to ensure that the child has sufficient means to survive.

11. Development of a comprehensive strategy for reform

11.1 Efforts to bring the juvenile justice system into line with international standards and norms, will require the commitment of a range of state and non state agencies working in a coordinated manner. It is important that agencies share a common vision of this process of reform, agree upon the specific steps that need to be taken, identify agency responsibilities for realising the reform process and set timelines so that that progress can be effectively measured. It is therefore proposed that the Child Justice Forum develops a strategy for juvenile justice reform.

11.2 This strategy will be useful in guiding the work of agencies, as well as a tool to generate additional donor funds – funding activities that are part of a wider reform movement is more attractive than funding isolated activities. This strategy can also be used to inform the development of the new Legal Sector Reform Programme, to ensure a more strategic and comprehensive approach to children and child justice reform is incorporated in the plan.

ANNEX A: DETAILED METHODOLOGY

Research for the study commenced in February 2011 and was carried out by researchers from the Coram Children's Legal Centre (CCLC), an international children's rights organisation based in the UK, and the National Organisation for Legal Assistance (NOLA), a national organisation with headquarters in Dar es Salam and a number of other offices around the country. The CCLC initially conducted a scoping visit to Tanzania during which CCLC researchers met with researchers at NOLA to map the juvenile justice system and start developing the research methodology.

Researchers from NOLA and the CCLC then completed a desk review of international juvenile justice standards and relevant Tanzanian juvenile justice laws. The purpose of this was to measure the domestic legal system against international standards and identify any gaps in implementation of key international juvenile justice standards. It also informed the development of research tools.

The CCLC then completed the methodology for carrying out field research, in consultation with NOLA and UNICEF. The purpose of the field research was to examine how the juvenile justice system operates in practice and to what extent and how children's rights are implemented and protected at all stages of the criminal justice process. The methodology included quantitative and qualitative methods.

NOLA selected ten regions in which to carry out the research, including: Arusha, Dar es Salam, Dodoma, Kilimanjaro (Moshi Urban and Hai), Lindi (Lindi Urban and Nachingwea Districts), Mbeya, Morogogo (Wami Youth Prison), Mtwara (Mtwara Urban and Masasi Districts), Mwanza and Tanga. The regions were selected to ensure access to relevant juvenile justice institutions and professionals (NOLA offices are located in almost all of these regions), and to ensure good geographical coverage across the country in order to allow for examination of any variation in findings across diverse regions.

Field research was conducted in April and May 2011 by CLC and NOLA researchers. Prior to the commencement of the field research, NOLA researchers received a three-day training provided by the CCLC and senior staff in NOLA. Training covered the domestic and international legal framework, the background and purpose of the study, methodology and the nature of qualitative and quantitative data, interview techniques, ethics and training on the data collection tools.

a. Quantitative data

Researchers attempted to collect collated data at the central levels from the Ministry of Home Affairs (Police), Court Registry and the Prisons Commission, on the extent of juvenile offending and the characteristics of child offenders, and to examine how children pass through the criminal justice system and measure the treatment of children at different stages in the criminal justice system. However, the researchers have not yet received data from national level representatives.

Researchers also attempted to collect raw data from registries / log books in police stations, prosecutor's offices, Courts (of all levels), retention homes, the approved school and prisons. Data

tables were developed for each institution in order to ensure standardisation across regions.[257] Researchers were only able to collect a limited amount of raw quantitative data. Researchers collected data from the log-books of police stations in three of the study's ten regions: Lindi Urban, Dodoma Central and Tanga Urban Police Stations, of all children entered onto the relevant log or register over a 12 month period. They also collected data from the registers of five detention facilities: retention homes in Dar es Salam, Mbeya and Tanga; Wami Youth Prison in Morogogo, Mpwapawa Prison, Kongwea District prison, Butimba Prison, Isanga Central Prison in Dodoma and Tanga Urban Prison. At some institutions, researchers were denied access to log-books and registers altogether, or children were not able to be identified, as age or date of birth of detainees were not recorded. Even in these regions in which researchers were able to access data, they were not able to record data against all fields, as this information was simply not recorded by the institution. These problems were also reported by a Chief Inspector and Directors of Human Rights at CHRAGG, who identified, in particular, records at police stations, which do not always record the age of suspects to be a significant problem.[258]

b. Qualitative data

Researchers also carried out a number of semi-standardised interviews with juvenile justice professionals and children who were in conflict with the law. Fourteen questionnaires were developed to ensure a level of standardisation in data collected across regions. Children in conflict with the law were accessed in detention facilities across the ten study regions. The vast majority of children were interviewed on a one-to-one basis (or with two researchers). Interviews were conducted either entirely in Kiswahili or in English with translation to / from Kiswahili. A total of 170 children were interviewed individually. An additional 22 children were involved in three focus groups. This was due either to time constraints, making it difficult to interview all children separately, or because the circumstances of the children were very similar (as was the case with two of the groups of children, who were all asylum-seeking children who arrived in Tanzania in the same vessel and were arrested at the same time). Table A contains information on the number of children interviewed at each institution and in each of the study's regions.

TABLE A: Interviews with children

District	**Institution and number of children interviewed**
Arusha	Arusha Retention Home: 22 Arusha Prison: 13 Police Station: 1
Dar es Salam	Kiwehede Children's Home: 2 Dar es Salam Retention Home: 5
Dodoma	Safina Street Children Network: 14 Dodoma Urban Police Station: 1 Isanga and Kongwa Prisons: 27

[257] Fields form the data tables are recorded in Annex A.
[258] Interview with Director of Human Rights and Principal Inquiry Officer, CHRAGG, 14 April 2011.

Kilimanjaro	Moshi Retention Home: 19
Lindi	Lindi Urban Prison: 5 Nachingwea Prison: 4 Child on bail (living at home in Lindi): 1
Mbeya	Mbeya Retention Home: 17 Mbeya Approved School: 6 (but 2 had not been through criminal justice system)
Morogogo	Wami Youth Prison: 5 (one individual; one focus group discussion with 4 children)
Mtwara	Lilungu Prison: 7 (in one focus group discussion) Masasi Prison: 7
Mwanza	Butimba Central Prison: 8,
Tanga	Tanga Retention Home: 4 Tanga Urban Prison: 13 individual interviews; one focus group with 10 children; one focus group with 5 children
TOTAL	**170 children (one-to-one interviews)** **22 children (in 3 focus group discussions)**

Of the 170 children with which researchers carried out one-to-one interviews, 152 (90%) were male and 18 (10%) female. This sample corresponds with the gender breakdown of all children arrested in a 12-month period by police in the three study regions in which researchers were able to collect data.[259]

The following tables set out the age of the interviewees at the time of their arrest, and the types of offences for which they were suspected, charged or convicted.

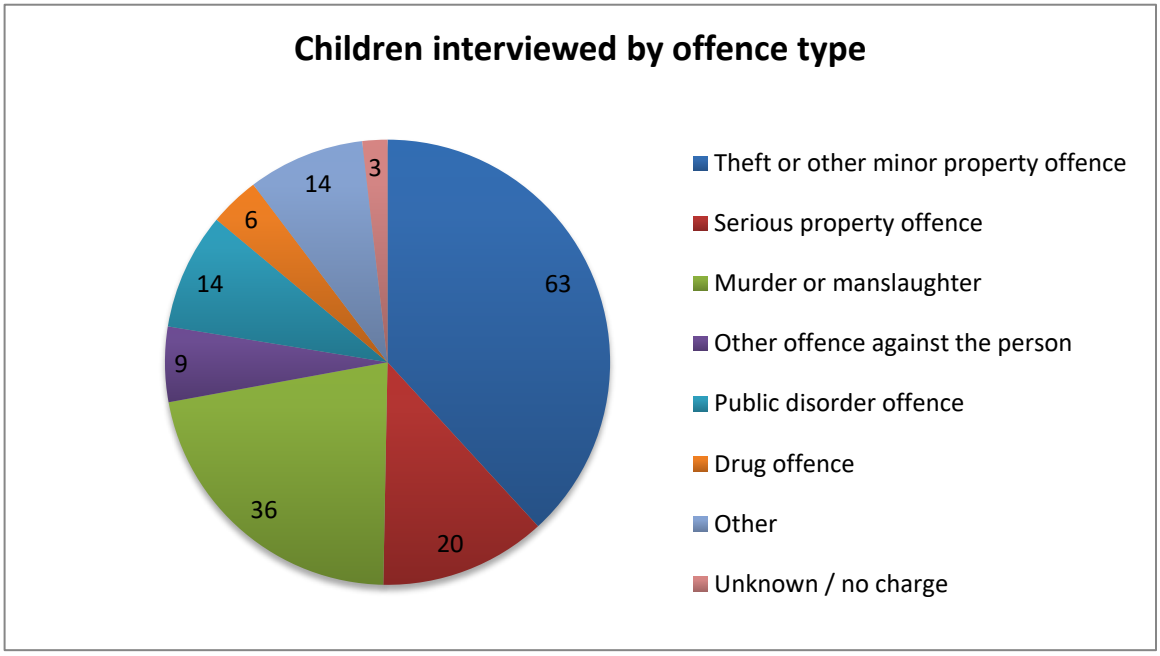
FIGURE B: Children interviewed by age

Children interviewed by age	
Age	**Number of children interviewed**
0-10	2
10	1
11	1

[259] See section 1.4.

12	6
13	15
14	22
15	37
16	44
17	40
Unknown	2

FIGURE C: Children interviewed by offence type



Again, this roughly corresponds with the age breakdown of all the children arrested in a 12-month period by police in the three study regions.[260] However, the sample of children interviewed disaggregated by type of offence (Table C), includes a greater proportion of children who are suspected, charged or convicted of murder or manslaughter than the police data has shown.[261] This is perhaps unsurprising, as the sample was constructed largely from children who were detained in retention homes, prisons and the Approved School. One would expect to see a higher proportion of children who had committed more serious offences from a sample drawn from children in detention on remand (as opposed to those who had been released on bail)[262] or those serving a custodial sentence.

Researchers also carried out a number of semi-standardised interviews with juvenile justice professionals in each study regions. Separate questionnaires were developed for: police (for all levels of police officers); prosecutors (State Attorneys or police prosecutors); Magistrates; defence lawyers; retention home staff; Approved School / prisons staff; social welfare officers; ward tribunal members; and staff at CSOs. Interviews were carried out on a one-to-one or two (researchers)-to-

[260] See section 1.4.
[261] See section 1.5.
[262] According to the Penal Code, murder and armed robbery are non-bailable offences.

one basis, or as a focus group discussion. Table D contains information on the interviews that were completed.

TABLE D: Interviews with district-level juvenile justice professionals

District	Institution	Juvenile justice professionals interviewed
Arusha	Police	• Regional Crimes Officer • Corporal • Criminal Investigation Department Officer • 4 Former Police Prosecutors (one interview) • OCS, Arusha Urban Police Station • Sergeant, Records Department, Arusha Urban
	Prosecution	• State Attorney
	Courts	• Primary Magistrate in Charge of Mambroso Primary Court
	Detention facilities	• SW Officer in Charge, Arusha Retention Home • SW Officer, Arusha adult prison
	CSOs / NGOs	• Legal and Human Rights Centre
Dar es Salam	Courts	• Magistrate,[263] Prosecutor and three SW Officers, Juvenile Court
	Detention facilities	• SW Officer in Charge, Dar es Salam Retention Home
	CSOs / NGOs	• Women's Legal Aid Centre
Dodoma	Police	• Assistant Superintendant of Police / OCS, Dodoma Urban Central Police Station • Police Constable, Dodoma Urban Police Station • Inspectors, Dodoma Urban Central Police Station (four in one interview)
	Prosecutions	• State Attorney (Prosecutor) • State Attorney in Charge, District Court
	Courts	• Primary Court Magistrates (three in one interview) • Resident Magistrate in Charge
	SW Office	• SW Officer in Charge, Regional Commissioner's Office (Regional Secretariat) • SW Officer, Dodoma Municipal Council • SW Officer, Dodoma Rural (Bahi District)
	CSOs / NGOs	• Coordinator, Saffina Street Children Project
Kilimanjaro	Courts	• Resident Magistrate in Charge and three Resident Magistrates, Moshi Resident Magistrate Court (one interview)

[263] The Juvenile Court Magistrate was interviewed as part of a separate but related study on access to justice. The transcript of this interview was shared with the author of this report.

		• Primary Court Magistrate, Moshi Urban
	SW Office	• Head of SW Office, Moshi Courts
	Detention facilities	• SW Officer in Charge, Moshi Retention Home
	SW Office	• Three SW Officers / Child Protection Team, Hai SW Department (one interview) • Three SW Officers, Hai
	Ward Tribunal	• Community Development Officer and Secretary (one interview)
Lindi	Police	• Detective Constable, Lindi Urban
	Prosecution	• State Attorney in Charge, Lindi Urban • Public Prosecutor, Nachingwea Police Station
	Courts	• Resident Magistrate in Charge, Lindi Urban
	Detention facilities	• Prison Officer, Lindi adult prison • Prison Officer, Nachingwea Adult Prison
Mbeya	Police	• Regional Police Commander • Assistant Superintendant of Police, Mbeya Urban • Police Constable, Mbeya Urban • Two Sergeants, Mbeya Urban
	Prosecutions	• 2 State Attorneys
	Courts	• District Registrar, High Court • Judge, High Court • Primary Court Magistrate, Mbeya Urban
	Detention facilities	• Four SW Officers, Approved School
Morogogo	Detention facilities	• 2 Staff at Wami Youth Prison (one interview)
Mtwara	Police	• 15 Police Constables / Sergeants, Mtwara (one interview)
	SW Office	• SW Officer, Mtwara Mikindani Municipal Council
Mwanza	Police	• Deputy Regional Investigation Officer, Mwanza Central Police • Investigations Officers (2), Mwanza Central Police Station
	Prosecutions	• Prosecutor, Attorney-General's Office
	Courts	• Resident Magistrate in Charge
	SW Office	• SW Officers (2), Mwanza City Council • Para-social worker, Mwanza City Council (Institute of Social Welfare and Intra-Health) • SW Officer, Magu District Council
	CSOs	• ADILSHA (1 member of staff and 3 volunteers
	Prisons	• Prison Officer, Masai adult prison
Tanga	Police	• Police Officer, Gender and Children Desk, Tanga Urban Central Police Station • Regional Crimes Officer, Tanga Urban Police Station

	Prosecutions	• 2 State Attorneys (one interview)
	Courts	• 2 Resident Magistrates (one interview)
	Detention facilities	• Prison Officer, Admissions, Tanga Maweni adult prison
TOTAL INTERVIEWEES		**Police: 38; Prosecutions: 11; Courts: 21; Detention facilities: 14; SW Offices: 9; CSOs/NGOs: 3**

In order to collect information on national-level policies and reform initiatives, institutional capacities, and a greater understanding on the operation of the system, unstructured interviews were conducted with the following persons from national-level bodies:

- Director of Human Rights and Principal Inquiry Officer, Commission for Human Rights and Good Governance;
- Assistant Commissioner for Social Welfare, Ministry of Health and Social Welfare;
- Assistant Commissioner, Commission for Prisons, Ministry of Home Affairs;
- Chief Justice, Judiciary;
- Head of Women and Children's Affairs, Police, Ministry for Home Affairs; and
- Director of Public Prosecutions.
- Assistant Director, Department of Probation and Community Service

ANNEX B: LIST OF PARTICIPANTS INVOLVED IN CONSULTATION EVENTS*MWANZA*

	NAME	**INSTITUTION / ORGANISATION**
1	EUNICE NYANDA	NGUVUKAZI
2	ZEPHANIAH TIBWAKAWA	TANZANIA PRISON SERVICE
3	ANNA THOR	RAILWAY CHILDREN
4	MARY GATAMA	RAILWAY CHILDREN
5	JAMES LUBADANJA	TCRC
6	MWANAID SAID	POLICE GENDER BASE
7	JOSEPH NCHAMA	CID POLICE
8	DICKSON MAYALE	CMA
9.	JOSEPH MWAMI	CENTRAL POLICE
10.	NEEMA MWAKASEGE	SWO
11.	SUZANA KIDIKU	POLISI JAMII
12	ANNA .A.NGUSA	SWO
13.	EUBERTINA MUSIBA	ADILISHA
14	ALBERT K. KAKENGI	CHRAGG
15	DAVIS JUSTINE	SWO
16	EVARISTA M. SHIRIMA	COMMUNITY SERVICE OFFICER
17	EMMANUEL G. NJUU	RESIDENT MAGISTRATE
18	PIUS HILLA	STATE ATTORNEY
19.	RWEKAZA MAGNUS	COMMUNITY SERVICE DEPARTMENT
20	ANNASTAZIA MATIKU	COMMUNITY SERVICE DEPARTMENT
21	REGINA KAJARA	COMMUNITY SERVICE DEPARTMENT
22	JOVITHA MLAY	KIVULINI
23	BENEDICT M. WAKULYAMBA	RCO's OFFICE
24	JOHANES EMMANUEL	FOUNDATION KARIBU

25	AISHA MTUMWA	FARIJIKA

MBEYA

	NAME OF PARTICIPANT	**INSTITUTION/ ORGANISATION**
1	DAWSON MWAIJANDE	POLICE
2	ALOYCE ANTONY	POLICE
3	NDIMBWELU MWALUKASA	POLICE
4	EDWARD MWITA	POLICE
5	BENSON R. LUKA	POLICE
6	ALICE M. MKASELA	PRIMARY COURT/ MAGISTRATE
7	DOROTH SAMKY	REMAND HOME/ SOCIAL WELFARE OFFICER
8	JUVATUS MINZI	PRIMARY COURT/ MAGISTRATE
9	DAUD KABANDA	REMAND HOME/ SOCIAL WELFARE OFFICER
10	ONESMO KIWANGO	REMAND HOME/ SOCIAL WELFARE OFFICER
11	DAWATH TWEVE	REMAND HOME
12	ALICE MWANTANJI	PRIMARY COURT/MAGISTRATE
13	BWIRE N. MAKENENA	APPROVED SCHOOL/ SWO
14	FLAVIAN S. MBAWALA	APPROVED SCHOOL/ SWO
15	SHABAN O. MUNGI	APPROVED SCHOOL/ SWO
16	LUGANO T. MWAKILASA	ATTORNEY GENERAL'S OFFICE/ STATE ATTORNEY
17	MUSTAFA MJEMA	APPROVED SCHOOL/ HEAD OF THE SCHOOL
18	SEIF M. KULITA	RM'S COURT / RESIDENT MAGISTRATE
19	APIMAKI MABROUK	ATTORNEY GENERAL'S OFFICE/ STATE ATTORNEY
20	GRIFFIN MWAKAPEJE	ATTORNEY GENERAL'S OFFICE/ STATE ATTORNEY
21	CATHERINE GWALTU	ATTORNEY GENERAL'S OFFICE/ STATE ATTORNEY
22	ALLY A. NZOWA	BAKWATA

23	SHABANI SINAHELA	BAKWATA
24	SABINUS MALIMA	ROMAN CATHOLIC CHURCH
25	GREEN MWAIJANDE	MORAVIAN CHURCH
26	IBRAHIM ZUBERI	BAKWATA
27	RAMADHANI SEIF	BAKWATA
28	MWAKA NDERE MBWIGA	MORAVIAN CHURCH

ARUSHA

	NAME	**INSTITUTION/ORGANIZATION**
1	MARY LUGOLA	POLICE DESK
2	FREDRICK MBISE	MKOMBOZI
3	PHIDELIS NG'ASI	CID-ARUSHA
4	ESTHER S. MSOKA	CDO-HAI
5	MARTHA MAHUMBUGA	RESIDENT MAGISTRATE-HAI
6	THEOPISTA MALLYA	POLICE-CID
7	SHEDRACK MEMBI	K.BARAZA
8	MUSSA IBRAHIM	BAKWATA
9	HAPPY E KIMARO	POLICE HAI
10	SALOME ZEPHANIA	CSO-HAI
11	AMUNI-RUTH LEMA	KIWAKUKI-HAI
12	MICHAEL MAHLINDI	SWO-HAI
13	MIRIAM MATINDA	LHRC
14	MILLEN MAKUNDI	SWO-AMC
15	SOPHIA	WIA
16	E.A NJIRO	A.G CHAMBERS
17	J.MOKIWA	UNICEF/ISW-CP

18	SIMON B. PANGA	SOCIAL WELFARE (RWO)
19	GIDION B. KAKULU	GEREZA KUU ARUSHA
20	WOLFGANG V. KIMARO	MOSHI RETENTION HOME
21	ANTHONY VALLERIAN	MOSHI RETENTION HOME

DAR ES SALAAM

	NAME	**INSTITUTION**
1	CARITAS MUSHI	LAW REFORM COMMISSION
2	CHRISTINA KAMILI	TANLAP
3	DEVOTHA KISSOKA	KISUTU JUVENILE COURT
4	SABAS MASSAWE	DOGODOGO CENTRE
5	ASHA MBARUKU	KISUTU JUVENILE COURT
6	JUSTA MWAITUKA	KIWOHEDE
7	JACQUILINE WAYA	WILDAF
8	BENJAMIN KALUME	WLAC
9	ISAACK KANGURA	PRISONS
10	FORTUNATA KITACESY	LEGAL AID COMMITEE
11	PILI MANDE	OCS-CENTRAL POLICE
12	THECLA KITAJO	TEMEKE POLICE STATION
13	FLORA MTARANGA	KINONDONI MAGISTRATE COURT
14	KEREGEKO,K	OUT LAC
15	RACHEL HARVEY	UNICEF
16	HAPPINESS NYANGE	DSW
17	MARGARETH MINJA	REMAND HOME
18	AWADH HAJI	POLICE

19	MARK MULWAMBO	AG CHAMBERS-DSM HQ
20	CHAYA MLAKI	AG CHAMBERS-JUVENILE COURT
21	BADI AHMED	DSW
22	DERECK RUGINA	DSW
23	EPITHANIA MFUNDO	CHRAGG
24	JULIUS G MGODOLLAH	MCDGC