

**A CRITICAL ANALYSIS OF THE LAW OF THE CHILD ACT, 2009
ON THE PROTECTION OF CHILDREN AGAINST SEXUAL
VIOLENCE**

By

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**A Dissertation Submitted in Partial Fulfilment of the Requirements for the Award
of the Degree of Master of Laws (LLM) in Constitutional and Administrative law of
Mzumbe University.**

2016

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation paper titled, **A Critical analysis of the Law of the Child Act on the Protection of Children against Sexual Violence**, in partial fulfilment of the requirements for award of the degree of Masters in Constitutional and Administrative Law (LLM-CA) of Mzumbe University.

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DEDICATION

This work is dedicated to all children who are vulnerable and victims of sexual violence/abuses, perhaps one day your cries for respect and protection will be heard.

LIST OF ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child.
ACRWC	African Charter on the Rights and Welfare of the Child.
CRC	Convention on the Rights of the Child.
CROC	Committee on the Rights of the Child.
LGA	Local Government Authority.
SWO	Social Welfare Officer.
URT	United Republic of Tanzania.

ABSTRACT

For quite a long time children protection has been given less attention. As a result children are facing several violence and abuses including sexual violence. An era came when children protection began to be considered since children began to be treated as human beings in the community. That was propagated when the CRC and ACRWC came into force. Despite the fact that Tanzania has ratified these aforementioned instruments in 1991 and 2003 respectively, she took almost twenty good years since the ratifications of these instruments to enact the law specific for children. It was on the 4th November 2009 when the Law of the Child Act was enacted. The purpose of enacting this Act was to provide adequate protection to children against any form of violence including sexual violence, unfortunately child sexual violence and abuses are continuing to take place in Tanzania. The aim of this study is to critically analyse the adequacy of the Law of the Child Act in protecting children against sexual violence/abuse.

The researcher deployed both library and field research. Library research involved an analysis of the problem through text books, journals, articles, reports, statutes and other relevant materials available. The researcher further conducted a field research and collected data relevant to the study, where Babati District in Manyara region was opted as area of the study. Given the objective of the research, the targeted population was 48 respondents which involved State Attorneys, Police Officers, Magistrates, Advocates, Social Welfare Officers, Medical Doctors, children and parents/guardians.

Therefore, it is concluded that, the Law of the Child Act does not adequately provide protection to children against sexual violence, the institutions established under the Act are weak in guaranteeing comprehensive children protection against sexual violence and there are other factors hindering the implementation of the Child Act towards children protection against sexual violence. In concluding, possible solutions that can be used to solve this problem have been pointed out.

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REGIONAL AND INTERNATIONAL INSTRUMENTS:

The Convention on the Rights of the Child, 1989.

The African Charter on the Rights and Welfare of the Child, 19.

LOCAL LEGISLATIONS:

The Penal Code Cap 16 [R.E 2002].

The Law of the Child Act, No.21 of 2009.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

It is a cardinal principle that human beings need to be respected and protected from any form of violence, children also as human beings need to be protected from sexual violence. In Tanzania children are estimated to make 50.1% of Tanzanian population,¹ the protection against any form of violence to human beings in Tanzania is a fundamental right enshrined under Article 12 that all human beings are born free and are entitled to be respected and protected for the sake of their dignities.² Children protection at national level can be guaranteed only by enacting a comprehensive Child Law which will provide adequate protection to children against sexual violence. Children are among the vulnerable groups in Tanzania, and children are the most victims of sexual violence.³ This research attempted to make a critical analysis of the Law of Child Act No.21 of 2009 towards children protection against sexual violence. The topic was purposely selected due to the increasing public outcry against child sexual violence in Tanzania.

1.2 Background of the Study

It is the responsibility of every government to protect the fundamental rights and freedoms of its citizens (including children) and to ensure that the rule of law and justice prevails at all times.⁴ As in many Sub-Saharan African countries including Tanzania, the adoption of the Convention on the Rights of the Child of 1989(CRC) and the African Charter on the Rights and Welfare of the Child of 1990(ACRWC) have several ramifications in the construction and perception of childhood. Prior to this phenomenon, these countries had a common law approach towards disregarding the protection of children since the British colonial legal system did not consider children protection.⁵Historically speaking, children's

¹ Tanzania Human Rights Report, 2013, Dar es Salaam, Legal and Human Rights Centre at p. 178

² The Constitution of the United Republic of Tanzania of 1977

³ Tanzania Human Rights Report, 2012, Dar es Salaam, Legal and Human Rights Centre at p. 148

⁴ Skelton, A. (1998) "Children and the Law". A Paper presented in the World Children Rights Forum in Rome at p. 45 (Unpublished)

⁵ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.4

rights were not recognised under common law and the entire medieval society until around the 17th century. During this period the special nature of children was ignored and children were treated as miniature adults.⁶

In the early 20th century Polish pedagogue, Janusz Korczak opined that children are not made human beings, they are born human beings.⁷ Further developments in conceptualisation of childhood have resulted in the concept of protection of children as a primary aim under international and regional instruments.⁸

The first international instrument to recognise the rights of the children was the 1924 Geneva Declaration of the Rights of the Child. Strong initiatives were taken culminating in the 1990 Convention on the Rights of the child (CRC) and the World Summit for Children to call countries to sign and ratify the CRC. The rights enshrined in the CRC are comprehensive and commendable.⁹

The Convention on the Rights of the Child of 1989 (CRC) under Articles 2, 3(2) and 4 gives the State parties obligations to ensure that they protect children through legislative and administrative measures. Also the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) under Article 1 gives State parties an obligation to protect children in their respective jurisdictions.

It is estimated that worldwide, 150 millions of girl children and 73 millions of boy children have suffered different forms of child sexual violence.¹⁰ In Africa children are more vulnerable to sexual predators, and different forms of sexual predation in the community are increasing due to lack of comprehensive law and law enforcement. Forms of child sexual violence include child sex tourism, child pornography and the use of virtual images or sexually exploitative representations of children.¹¹

⁶Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.4

⁷ Ibid at p. 7

⁸ Ibid

⁹Michael, P. (2007). The theory of Human Rights, Cambridge University Press, New York at p.7

¹⁰Tanzania Human Rights Report , 2008 , Dar es Salaam, Legal and Human Rights Centre Human Rights Centre at pp. 7-11

¹¹The African Report on Violence against Children, 2014. The African Child Policy Forum at pp. 24-26

Tanzania like any other country in Africa and world in general faces the challenge of child sexual violence so to speak. However there are initiatives taken to address that challenge. Since mid-1990's Tanzania has developed national and sectoral policies to promote the welfare of children. It has ratified most major international human rights instruments on children and since then Tanzania has been working to improve the legislative and policy environment on children's rights.¹² For instance in 2008 the Child Development Policy was formed with the purpose of highlighting the need to protect children from any form of violence and proposed measure to promote child protection.¹³ Unfortunately much emphasis was put on the creation of policies rather than the enactment of the binding instruments like the Law of the Child Act.

Tanzania as a signatory member to both the CRC and ACRWC has taken measures to protect children against sexual violence/abuse. Though its Constitution doesn't provide for children's protection explicitly, it provides for general protection of human beings from any form of abuse through its Articles which enshrine fundamental human rights.¹⁴ Also the Penal Code under provisions 130(2) (e), 134, 138B, 139(1) (b), 141,142,154(2) and 156 provides for protection of children from sexual violence such as rape, abduction, sexual exploitation, procuring a child for prostitution, defilement, unnatural offence and indecent assault,¹⁵ though this Code is not a Child Law and it doesn't adequately protect children from sexual violence because there are no any institutional mechanisms outlined rather than punishments.

Prior to year 2009 Tanzania had no any law specific for children, children protection depended on other laws like the Penal Code to the effect that child protection and welfare was not of paramount consideration same like during colonial era. Some scholars have commented that the absence of a comprehensive child statute that would effectively protect

¹²Report on Tanzania Child Rights Status, 2013, Dar es Salaam, Tanzania Child Rights Forum at p. 1

¹³ Ibid at p. 2

¹⁴Articles 12 and 13(1) of the Constitution of the United Republic of Tanzania of 1977.

¹⁵ The Penal Code, Cap 33, R.E. 2002

children's rights in Tanzania had for a long time before November 2009 exacerbated the worsening state of children's rights in Tanzania.¹⁶

In 2009 the Law of the Child Act was enacted to accommodate the requirements of International Legal frameworks on the protection of children. Before the enactment of the Law of the Child Act in Tanzania, children affairs were in worse situation than it is now because those laws were not enacted for the purpose of children. The enactment of the Law of the Child Act came to cover the lacunae that existed in Tanzania for many years.¹⁷

The Law of the Child Act has put the foundation on the protection of the children by stipulating the rights of children under Part II. Also the said law under Section 94 gives duty to Local Government Authorities to protect children from any abuse. Again Section 95 of the same Act gives members of the community a duty to report any infringement of children's rights. Moreover, Section 83 of the said Act prohibits sexual exploitation to children. Commonly, the very institutions and individuals that are supposed to protect children like teachers, police, and relatives are cited as the perpetrators of the violence or abuse.¹⁸

Despite all these efforts taken by Tanzanian government to enact the Law of the Child Act, violence against children still a serious problem in Tanzania, nearly 3 in 10 female children and approximately 1 in 7 male children in Tanzania have experienced sexual violence prior to the age of 18. The most common form of sexual violence experienced by both females and males before the age of 18 was sexual touching, followed by attempted sexual intercourse.¹⁹ Unfortunately most of the reported incidents on children sexual abuse are said to be done at home by close relatives, at school by teachers and at worship places by either priests or "maalimu".²⁰

¹⁶ Mashamba, C.J. (2009). The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at p. 13

¹⁷ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 40

¹⁸ Factsheet on Child Protection in Tanzania, 2010, Dar es Salaam, UNICEF at p. 2

¹⁹ Violence against children in Tanzania: Findings from a National Survey, 2009, Dar es Salaam, UNICEF at pp. 3-5

²⁰ Ndabahile V. (October 25, 2010). "Ukatili kwa Watoto washamiri Tanzania". Majira Newspaper, No.4359 at p.6

Though the members of the community have been given a duty to protect children, neighbours and strangers are the most frequently reported perpetrators of sexual violence that occurred prior to females turning 18 years of age. Dating partners and strangers were the most frequently reported perpetrators against males who experienced sexual violence prior to age 18. More than two thirds of females who had experienced sexual violence prior to age 18 reported that the perpetrator of at least one incident was older than they were at the time of the incident. Also, nearly 4 in 10 females who experienced sexual violence reported that the perpetrator of at least one incident was 10 years older than they were. Male children who experienced childhood sexual violence, the majority reported that the perpetrator of at least one incident was about the same age and 45% reported that the perpetrator of at least one incident was older.²¹

While the Law of the Child Act is on operation, recently statistics show that in 2010 about 6,493 girl children experienced sexual abuse, in 2011, 5,948 children reported to be sodomized, 2012 about 7,250 girl children experienced other forms of sexual abuse and in 2013, 863 children also experienced other forms of sexual abuse.²² Though in year the 2013 other forms of child sexual violence seemed to decrease, the situation child sexual violence in Tanzania is still a big problem since many incidences are being reported daily in Newspapers, radio stations and local televisions.

1.3 Statement of the Problem

The Law of the Child Act enshrines rights of children and lays down the foundation for a child protection system that obliges a range of bodies to prevent and respond to violence, abuse and exploitation of children as follows; Section 4(2) of the Law of the Child Act insists on the best interest of a child to be the primarily consideration in all actions concerning children. Also Section 9(1) of the same Act provides for right to life, dignity, respect, leisure, liberty and health for children, and parents, guardians and relatives are responsible to ensure the enjoyment of those rights, again Section 13(1) of the said Act prohibits degrading treatments to children, and institutions like Local government

²¹Violence against children in Tanzania: Findings from a National Survey (supra)

²² Mbezi, P. (2013) "Girl's child Protection against Sexual Abuse: Addressing some missing links in the Law". Open University law Journal, Volume 4.No.1:20-34 at pp.10-15

Authorities and Police are vested with legal duties under the said Act to ensure children's safety,²³ but there are no enforcement machineries like committees that have been established and empowered to monitor daily children protection tasks from Street (Mtaa) level to National level also the aforementioned institutions are just established without being instructed with specific separation of daily duties as children protection is concerned. Again the said Act has provided a lenient if not diluted punishment to perpetrators of child sexual violence. Therefore the implementation of children protection become difficult if not impossible to the effect that children are still sexual abused, and unfortunately the cries of these children to be treated with dignity and worth go unnoticed despite of the existence of the Law of Child Act No.21 of 2009.

The enactment of the Law of the Child Act, 2009 was a milestone event in Tanzania as this law tried to consolidate matters relating to children rights, however this has not been the case.²⁴ The African Child Policy Forum report of 2013 found Tanzania to be the least child-friendly country in the East African region. The report also shows that Tanzania's rank in child protection has fallen significantly since the year 2008.²⁵ For instance in 2012, 2013 and 2014 only reported rape incidents were 3074, 2965 and 2878 respectively.²⁶ Incidents of child sexual violence/abuse have continued to vitiate the situation of children's safety in the country, incidents of sodomy, defilement and rape to children have been reported frequently,²⁷ and possibly the gaps in the said Act contributed to the persistence of child sexual violence. It is for these reasons it may be argued that children protection against sexual violence under the law of Child Act is questionable to a great extent.

1.4 Objectives of the Study

(a) General objective.

- To examine protection of children against sexual violence/ abuse under the Law of the Child Act.

²³ Sections 94,95 and 96 of the Child Act,2009

²⁴ Tanzania Human Rights Report, 2013(supra) at p. 179.

²⁵ Ibid at p. 178

²⁶ Tanzania Human Rights Report, 2014(supra) at p. 179

²⁷ Taarifa kwa vyombo vya habari juu ya Hali ya Haki za Binadamu Tanzania kwa kipindi cha nusu mwaka Januari-Juni, 2015, Dar es Salaam, Legal and Human Rights Centre at p.3

(b) Specific Objectives

- To examine the effectiveness of the Law of the Child Act in protecting children against sexual violence/ abuse.
- To examine the strength of institutions established under the Law of the Child Act with regard to child protection against sexual violence/abuse in Tanzania.

1.5 Research questions

- How adequate is the Law of Child Act in protecting children against sexual violence/abuse in Tanzania?
- Does the institutional framework under the Law of Child Act guarantee children protection against sexual violence/abuse?
- What factors hinder the enforcement of the Law of the Child Act with regard to children protection against sexual violence/abuse?

1.6 Significance of the Study

- The study is useful since it will help stakeholders of child protection to formulate comprehensive mechanisms in protecting children against sexual violence/abuse in Tanzania.
- The study is useful because it has identified the defects available on the law of the Child Act with regard to children's protection against sexual violence therefore, the government will see the need of amending the Law of the Child Act to accommodate comprehensive children protection strategies.
- The study is useful because it adds values to the existing children rights jurisprudence and therefore, academic legal researchers will make use of it.

1.7 Literature Review

Literatures and writings covering some important aspects in this study have been reviewed. Though there are lots of literatures and writings on child protection (as human beings' rights), most of those materials have not sufficiently addressed the issue of sexual violence

against children, instead they have discussed other issues like child labour, early marriage and juvenile justice. However there are some materials which have tried to address the issue in discussion though in a slightly manner:-

Judge Lugakingira (as he then was), in the case of *Rev. Mtikila Versus Attorney General* provides that; fundamental rights are not gifts from the State, they are inherently in a person by reason of his birth and are therefore prior to the State and the law.²⁸ This authority used in this study to demonstrate that children being human their rights are there naturally therefore the State should protect them through legislations. With that notion the Law of the Child Act, 2009 was enacted to protect children against all forms of abuse/violence though the protection seems not to be accurately.

According to **Ishay Micheline**,²⁹ human rights are held by individuals simply because they are part of the human species. These rights enjoyed equally by everyone regardless of sex, race, nationality and economic background, they are universal in content. Under this quotation Human rights are universal as well as the rights of children because they are human being. But this author has failed to demonstrate how children's rights should be protected under legal framework so as to secure children from sexual violence

According to **Anne Lawrence**, the maltreatment of children by adults has existed from time immemorial, and is recorded in the history of ancient societies all over the world. Child sexual abuse has had this long history and had also been acknowledged as unlawful for many decades. It was not until the 1960s that the issue began to gain widespread social attention. Legislation making smacking an illegal act would be useful only if there are effectively enforcement mechanisms.³⁰ The author however did not discuss the issue as to whether enacted legislation by itself can provide adequate protection to children an aspect that has been discussed on this study.

Chris Beckett argues that the protection of children should be enforced by enacting law(s) which provides adequate protection to children. He made reference to England and Wales

²⁸(1995) T.L.R. 31 at p. 49.

²⁹Micheline, I. (2004) *The History of Human Rights from Ancient times to the globalization Era*. University of California press, Ltd.London at p. 3

³⁰ Lawrence, A. (2004). *Principles of Child Protection*, 1st Edition Open University Press, London at p. 9

under the Children Act of 1989 which provides a checklist for the courts to use in determining what is for the child's best interests and, for the first time in English law, it specially states that delays in court proceedings is harmful to a child and should be avoided.³¹ Although the author has shown the role of the court in protecting children, he has not discussed the assurance of children protection against sexual violence/ abuse under the enacted legislation.

According to **Ron Haskins and Fred Wulczyn**, each year in the United States, nearly 900,000 children are physically harmed or neglected by their caretakers, and approximately 1,300 of them die. The United States took initiatives to combat children abuse by enacting Child Abuse Prevention and Treatment Act which provides for stiff punishment to perpetrators. Also police and Prosecution departments were trained to respond quickly on child abuse incidences.³² This authority lacks the link between the law enacted and the assurance of children's safety from sexual abuse.

According to UNICEF, despite the diversity of legal traditions, children protection from sexual abuse has been the traditional and familiar areas for legislative intervention. The recognition of children rights and their protection should be incorporated into legal systems to secure the assurance of children survivorship. Strong initiatives have to be taken to create adequate protection to children.³³

Alison Cleland,³⁴ in her study on how children can be protected from all forms of abuse suggested that a strong legal mechanism should be deployed to ensure safety to children. Also the author cemented that legal recognition of children protection should be a paramount priority to any State. The author makes a reference to Scotland that the Scottish government enacted the Protection of Children and Prevention of Sexual offences Act of 2005 which established the Child Prevention Committees to monitor child protection country wide. The law has made severe punishment to perpetrators to the effect children in

³¹Beckett, C. (2003). Child Protection: An introduction, 1st Edition, SAGE Publications, London at p. 23

³²Haskins, R and Wulczyn, F. (2007). Child Protection: Using Research to Improve Policy and Practice, Brookings Institution Press, Washington D.C at pp. 4-9

³³UNICEF, (2007). Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diversity Legal Systems, Cambridge University Press, New York at pp. 5-10

³⁴Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at pp. 10-20

Scotland are safe. This authority was useful to the researcher to make a critical comparative analysis with that of Tanzania where there is the Law of the Child Act.

Mashamba,³⁵ the author pinpointed some important issues on the protection of children in general, that the law should include the definition of a word ‘child’, “violence” and stipulates their rights, severe punishment to perpetrators and remedies to victims. This authority helped the researcher to develop this study on whether children are being adequately protected against sexual violence under the Law of the Child Act while the said law is silent on what amount to sexual violence.

Mashamba,³⁶ is of the opinion that the situation of children protection in Tanzania was much worse before the enactment of the Law of the Child Act in 2009 since rights of children and their protection were to be determined by other legislations. The author stipulates that slightly protection of children has emerged in Tanzania following the Law of the Child Act of 2009. Though this author has linked the international standards of children protection under the CRC and ACRWC with those found under the Law of the Child Act of 2009, he has failed to address whether those standards set under the CRC and ACRWC towards children protection against sexual violence have been incorporated under the Law of the Child Act and whether the said law guarantees children’s safety from being abused sexually.

Mbezi,³⁷ in her study noted that although the Law of the Child Act, 2009 provides for children protection the law does not assure adequate children protection against sexual abuse. She says, ‘it is arguable that the punishment is rather very lenient and non-detering as such not an incentive to compel the community to report any abuse of child rights to appropriate authorities, hence it can be taken like any other moral obligation’. Though the author demonstrates that the law does not put any legal obligation to the community to report the abuse to relevant authorities like Police, the author did not indicate whether the

³⁵ Mashamba, C.J. (2004). Using the law to protect Children’s rights in Tanzania: An unfinished business , National Organisation for Legal Assistance, Dar-es-Salaam at pp. 10-12

³⁶ Mashamba, C.J. (2009). The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at pp. 5-20

³⁷ Mbezi, P. (2013) “Girl’s child protection against Sexual Abuse: Addressing some missing links in the Law”. Open University law Journal, Volume 4.No.1:20-34 at pp. 10-15

authorities empowered to enforce the said law have implemented their duties to ensure children are free from sexual violence.

Stopler,³⁸ had an interview with victims who were below 15 years old; he found that most of the children in urban areas are involved in sex with adults for exchange of money. The study took place when the Law of the Child Act was already in operation. Also the author indicates that most of these perpetrators are old enough to be parents or guardians of the victims who should protect them instead of abusing them sexually. The author has tried to indicate that adults should engineer child protection, but he did not link that responsibility with the law of the Child Act.

Legal and Human Rights Centre,³⁹ analyses how children have continued to live in situations where their basic rights have continued to face serious abuse and violations. Children have continued to face sexual abuse in the hands of people who were supposed to be their care takers. In most cases the alleged perpetrators reported are the close members of the family including fathers and uncles. This report failed to connect the Law of the Child Act and children protection from sexual abuse nevertheless this authority has helped the researcher to identify the weakness on children protection in Tanzania.

Mohammed and Mashamba,⁴⁰ have used a comparative approach to studying legal systems relating to children protection in Kenya, Uganda and Tanzania, whereby respective child laws and practices in respect of protection of children's rights and welfare have been analysed in order to find out challenges, gaps and problems encountered and how they are addressed in the process. In Uganda, the main factors contributing to child sexual abuse are: child left alone with abuser, child sent on errand, child in care of child-minder and children found in risky environment such as streets, and the government has established response unities all over the country with the task of responding to information concerning child sexual violence. The Kenyan government has responded to child sexual violence by enacting the Counter Trafficking in Persons Act (2010), the Sexual Offences Act (2006)

³⁸ Stopler, L. Report on Child Sexual abuse and Child Sexual exploitation in Tanzania, 2009, Dar es Salaam at p. 20

³⁹ Tanzania Human Rights Report, 2013 (supra)

⁴⁰ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at pp. 6,303,314-325

and the Children Act (2001) which formulated special mechanisms to prevent and punishing perpetrators Unlikely Tanzania where the law of the Child Act does not provide for special mechanisms on preventing and punish perpetrators. Authors have indicated that Tanzania is a least in responding to sexual violence against children compared to Kenya and Uganda.

1.8 Research Design and Methodology

1.8.1 Research Design

Research design is a plan on how the study will be carried out. This is an analytical research, it tries to make a critical analysis of the law of the Child Act with regard to children protection against sexual violence/abuse. The researcher employed a simple survey design. Simple survey design refers to the collection and presentation of detailed information from several geographical areas nationwide.⁴¹ This design is preferable because it gives a researcher wide room of using information collected outside his area of study.

1.8.2 Sampling Techniques and Sampling Procedure

1.8.2.1 Sample Design and Sampling Techniques

Sample design is a procedure or plan of how one will obtain or select a sample from a given population before data collection.⁴² The selection of respondents was based on simple random sampling. Simple random sampling is the technique where selection of individuals for the sample gives all the individuals in the population equal chances of being selected.⁴³ The selection was drawn from different categories of people which include Police Officers, Advocates, Magistrates, State Attorneys, children (victims of child sexual violence), Social Welfare Officers, Medical personnel and parents or guardians. The aim of selecting these respondents was to gather information and data relevant relating to children protection against sexual violence/ abuse under the Law of the Child Act.

⁴¹ Samy, T. (2005). Research Methods and Writing Research Proposal, Cairo University Press at p. 20

⁴² Msabila, D.T and Nalaila, S.G (2013). Research Proposal and Dissertation Writing, Nyambari Nyangwine Publishers, Dar es Salaam at p. 37

⁴³ Ibid at p. 39

1.8.3 Sample size

Sample is a small representation of a large whole.⁴⁴ The sample size in total was 48 consisting of the following groups; 8 Police Officers at the Gender Desk from Babati Police Station, 4 Magistrates from Babati District Court and Manyara Resident Magistrates' Court, 3 State Attorneys from Attorney General's Chamber in Manyara, 8 Advocates from reputable law firms in Manyara, 10 children from Babati Primary School and Kwaraa Secondary School, 10 parents or guardians, 2 Medical Doctors from Babati Town Hospital and 3 Social Welfare Officers from Babati Town and District Councils. Through this sample size, the researcher expected to gather sufficient information relevant to the study.

1.8.4 Source of Data

The researcher used both primary and secondary data. Primary data are data collected from the field while Secondary data are data collected from documents. Primary data were useful to this study since it revealed the extent to which the problem of the study exists. Secondary data were collected through articles, journals, books, reports, electronic data and other relevant materials thus helped the researcher to scrutinize what has been said by other researchers, and through them he addressed the existing loopholes and their practical solutions.

1.8.5 Data Collection Methods

In this study, the researcher collected data through questionnaires and interviews during primary data collection and documentary review during secondary data collection.

- a) **Questionnaire Survey Method.** This is the method of collecting data by preparing questions to respondents.⁴⁵ Questions for questionnaire method were distributed to selected respondents basing on their respective groups. For instance, Police Officers, Advocates, Magistrates and Social Welfare Officers were supplied with

⁴⁴ Msabila, D.T and Nalaila, S.G (2013). Research Proposal and Dissertation Writing, Nyambari Nyangwine Publishers, Dar es Salaam at p. 37

⁴⁵ Kothari, C.R. (1990). Research Methodology, 2nd Revised Edition, New age International Publisher, New Delhi at p. 17

research questions respectively for them to answer. The researcher opted for this method because it simplifies the process of data collection since it is cheap and more reliable.

b) Interview Method. This method of data collection involves presentation of questions orally.⁴⁶ The researcher met with victims of child sexual violence and other children, Parents/guardians, Medical Doctors for interview sessions respectively. Both face to face and telephone conversations were used to enhance interview sessions. Also the researcher used this method as an alternative way of reaching some respondents who were out of reach and where the Questionnaire method failed due to time limit and geographical challenges.

For the purpose of this study both structured and unstructured interview and questionnaires were used as more reliable methods of gathering information in the field study since the researcher had ability to control his respondents to focus on the research topic and giving a deeper insight.

1.8.5.1 Primary Data Collection

Primary data is data that collected from field study. The research used both questionnaires and interview in the field to collect data that was useful to the study. With questionnaires, the researcher prepared questions and distributed to his selected respondents for their response while for interview the researcher used both face- to -face and telephone means to gather information basing on the implementation of the Law of the Child Act towards the protection of children from sexual abuse. These methods were useful and more reliable since they saved time during data collection.

1.8.5.2 Secondary Data Collection

Secondary data means data that are already available.⁴⁷ Secondary data was collected through documentary analysis whereby published and unpublished materials like books,

⁴⁶Kothari, C.R. (1990). Research Methodology, 2nd Revised Edition, New age International Publisher, New Delhi at p. 17

⁴⁷ Ibid at p. 111

reports, newspapers and journals were analysed, all those aforementioned materials were obtained from the libraries of different organisations.

1.9 Data Processing and Analysis

The collected data were preliminary scrutinized, examined and sorted out before they were analysed. This assisted the researcher to determine whether the data collected tallied with the objective of the study. The researcher used both qualitative and quantitative methods to depict whether the Law of the Child Act adequately protects children against sexual violence/abuse.

The aforementioned methods involved summarizing the key findings including data that were collected through questionnaires, interview and documentary analysis. The collected data were broken into smallest meaningful units of information and thereafter placed into appropriate categories, also data were translated into symbols that are countable. Data were tabulated, coded, and classified, processes that made data analysis and interpretation useful. The statistical analysis was carried out electronically but since the study did not involve complex statistics, simple excel and Microsoft word programs were used.

1.10 Scope, Limitation and Delimitation of the Study

The study was only based on the area of the children protection against sexual violence/abuse under the Law of the Child Act. It did not discuss the protection of children against sexual violence/abuse under Criminal law perspective especially the Penal Code but references were made where necessary.

Considering the methods of data collection used in this study, there were some limitations since the information and statistics on children who are sexually abused are confidential, also having interviews with victims was very difficult, again the availability of other respondents was not an easy task to the effect that some information were not given on accurately manner, therefore this affected the study in the aspect of getting current statistics of child sexual violence since most of statistics are from previous years from 2010 to 2014. However, despite all the aforementioned challenges which faced this study, some of information and statistics were obtained through unpublished reports from organisations

like Save the Children, Plan International, Human Rights Centre and UNICEF situated in the Northern Zone (Arusha, Manyara and Kilimanjaro regions) and other respondents were reached through telephone conversations.

1.11 Area of the Study

The study was conducted in Babati district in Manyara region since it was not easy to conduct this study in the whole country due to time and resources factors. Babati district has been chosen to represent other parts of the country due to the fact that Babati district is among the districts in Tanzania which experiences several incidents of child sexual violence/ abuse.

1.12 Synopsis of the Study

This research work comprises of six chapters that of the following series of concepts and ideas:-

Chapter one is the general introduction of the study. It consists of the background of the study, statement of the problem, objectives of the study, research questions, literature review, research design and methodology, data processing and analysis, scope and limitation of the study and area of the study.

Chapter two is the conceptual framework of this research. On this chapter, a broader understanding of concepts, views, theories, principles relating to the children protection against sexual violence/abuse and its implementation under the Law of the Child Act.

Chapter three discusses the legal framework on children protection from sexual violence with much emphasis on the international legal framework, regional legal framework and municipal legal framework.

Chapter four critically analyzes the implementation of children protection against sexual violence under Law of the Child Act with main focus on institutional, monitoring mechanisms and statutory contextual deficiencies.

Chapter five is an analysis of field findings that were collected in the field. The collected data are opinions, answers and views from the selected respondents about how the Law of the Child Act assures/guarantees children's protection against sexual violence/abuse and its implementation.

Under chapter six, the researcher has summarized field findings and made general conclusions. In addition, the researcher has proposed the possible solutions to the problem relating to the study that has been proved to exist.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.1 Introduction

This chapter expounds basic concepts, views, theories, principles and experiences relating to children protection from sexual violence the focus being on its implementation under the Law of the Child Act No.21 of 2009. In addition, it provides the meaning and connection among the key concepts namely, the definition of a word child, children rights, the principles on children protection and sexual violence with its categories. It is so provided because without understanding these concepts at the beginning, the whole study on children protection from sexual violence in connection with the Law of the Child Act will be meaningless.

2.2 Meaning of the Word Child

The word child means any person below the age of eighteen years as per Section 4(1),⁴⁸ Article 2,⁴⁹ and Article 1.⁵⁰ These three legal instruments cured the legal debate that existed on the definition of the child. Therefore a child should be determined as any person below the age of eighteen, henceforth the protection of children against sexual violence has expanded because the meaning of a child has legally explicitly provided.

2.3 Children as Vulnerable Group

Vulnerable group means a group of people which is considered to be more at risk of being abused easily.⁵¹ Children are among of vulnerable groups since they are highly exposed to more risks of being abused sexually.⁵² Children should be given more priority in the enjoyment of their fundamental rights because they are weak to enforce them on their own.

⁴⁸ Law of the Child Act, 2009

⁴⁹ African Charter on the Rights and Welfare of the Child (ACRWC), 1990

⁵⁰ Convention on the Rights of the Child (CRC), 1989

⁵¹ Tanzania Human Rights Report, 2013(supra) at p. 164

⁵² Ibid

2.4 Children's Rights

The rights of children are a relatively new consciousness in human rights discourse. Until recently children were not supposed to have any rights. Today, increasingly, children's rights are considered human rights to be promoted and protected by legal regimes, both internationally and nationally.⁵³

Children's rights are those rights, which are inherent in them and are to be enjoyed only by them. Children's rights are recognized globally and regionally as separate and distinct from general human rights. Children's rights are now defined and protected in the Convention on the Rights of the Child which defines universal rights for children despite of nations, socio-economic, religious and cultural perceptions of childhood, and the role of the child in family and society at large.⁵⁴

The rights of the children recognised in the Convention are therefore based on universal human values, part of which is a response to the moral imperative produced by the tragic situation of children in some countries, or of some categories of children. The universality of the rights of the children do not mean that those rights should be interpreted and implemented abstracted from their context. Due account must be taken of the importance of the traditions and cultural values of each specific people for the protection and harmonious development of the child.⁵⁵

Children have rights like any human being though their rights are somehow exclusive due to the fact that children are among the special groups in the society. Children have the following rights; right to life, right to live free from any discrimination, right to be protected and respected, right to name and nationality, right to health, right to education and right to dignity just to mention few.⁵⁶ If children are sexually abused then the aforementioned rights are violated too.

⁵³ Shivji, I, Majamba, H, Makaramba, R and Maina, C. (2004). Constitutional and Legal System of Tanzania, A Civil Sourcebook. Mkuki na Nyota Publishers Ltd, Dar es Salaam at p. 157.

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at pp. 29-35

2.5 Child Care and Protection

The term child protection is used to describe a set of usually government-run services designed to protect children and encourage family stability. UNICEF uses the term child protection to refer to preventing and responding to violence, exploitation and abuse against children including commercial sexual exploitation, trafficking, child labour and harmful tradition practices, such as female genital mutilation and child marriage.⁵⁷

The concept of a state sanctioned child welfare system dates back to Plato's Republic.⁵⁸ Plato theorized that the interests of the child could be served by snatching children from the care of their parents and placing them into state custody.⁵⁹ Usually the responsibilities are stated within an Act of Parliament, this then empowers the government department or agency to provide services in the area and intervene into families where child abuse or other problems are suspected. The government agency that manages these services has various other names in different countries, for example child and family services or children's aid.⁶⁰

2.6 Children Protection System

This is a comprehensive and sustainable approach to preventing and responding to violence against children, comprising the set of laws, policies, regulations and services required across all social sectors, especially social welfare, education, health, security and justice.⁶¹ Child protection system(s) aims to address violence/abuse against children, to strengthening response on child abuse (sexual abuse inclusive) and to enable government to develop comprehensive national wide children's protection.

⁵⁷ Mashamba,C.J. (2009) .The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at p. 63

⁵⁸ Ibid at p. 64

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Plan International, (2012). Child Protection Programming: Thematic Review on Child Protection, New Image Publishers, New York at p. 7

2.7 Principles on Children Protection

There are four general principles which have to be observed to enhance the whole process of protecting children for their better well-being. These principles are;

a) The Best Interests of the Child.

This principle provides that in all actions, policies and decision making which affects children the best interest of children should be taken as primary consideration. Philip Alston refers to this principle as the lens through which all other rights are viewed.⁶² When it comes to formulation of mechanisms of child protection, the best interest of a child should be considered at first sight.

b) Non-discrimination Principle.

This principle requires that all rights to be recognised for each child in the jurisdiction without discrimination on any ground. Non-discrimination is a principle which is complimented by the principle that all people are equal before the law, and are entitled to equal protection of the law without any discrimination.⁶³ In the aspect of child protection against sexual violence this principle is applicable at large so as to put all children at equal level since all children need protection.

c) Survival and Development Principle.

Article 6 of the CRC guarantees the child the fundamental right to life, upheld as universal human rights principle in other instruments, and to survival and development to the maximum extent possible. The Convention emphasises the key role of parents and the family for children development and the state's obligation to support them. The state can take positive measures designed to protect life of children by combating all harmful environments against children.⁶⁴ With that notion there is a necessity of ensuring that

⁶² Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 18.

⁶³ Shivji, I, Majamba, H, Makaramba, R and Maina, C. (2004). Constitutional and Legal System of Tanzania, A Civil Sourcebook. Mkuki na Nyota Publishers Ltd, Dar es Salaam at p. 163.

⁶⁴ Ibid at p. 164.

children are living to friendly environments which do not accommodate perpetrators so that children may survive with dignity.

d) Child Participation Principle

Another equally fundamental principle of the CRC is participation of children in decision-making or in actions concerning their rights and welfare. The principle sets out that children should be listened to on any matter or decision which concerns or affects them, and their views should be given due consideration in accordance with their age and maturity and safety.⁶⁵

2.8 Child Abuse Reporting Procedures

Reporting of child abuse involves taking the appropriate procedure so that the child is able to access healthcare and the perpetrator is brought to book. In Tanzania, cases of abuse are often reported to duty bearers, including the village government office, Most Vulnerable Children's committee, legal aid agencies, social welfare officers or to the police (via gender and children's desk). Depending on the nature of the abuse, the victim can be sent to the health centre for medical attention and check-ups and then later the case is taken to court.⁶⁶

2.9 Sexual violence/abuse against children

Sexual Violence means any sexual act that is perpetrated against someone's will and encompasses a range of offenses, including a completed non-consensual sex act like rape, attempted non-consensual sex acts, abusive sexual contact like unwanted touching and non-contact sexual abuse like threatened sexual violence, exhibitionism, and verbal sexual harassment.⁶⁷

Child sexual abuse involves forcing or enticing a child to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical

⁶⁵ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 22.

⁶⁶ Save the Children, (2012). Desk Review and Analysis of Literature on Child Protection System in the Eastern Africa Region (Unpublished) at pp. 37-38

⁶⁷ Violence against children in Tanzania: Findings from a National Survey, 2009, Dar es Salaam, UNICEF at pp. 15-20

contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or in watching sexual activities, using sexual language towards a child or encouraging children to behave in sexually inappropriate ways.⁶⁸ Children can be sexually abused in different categories as follows;

i. Rape

Rape is committed when a male person has intercourse with a female person without her consent. Rape to children is committed when male adults having sexual intercourse with female person under the age of majority. It is a cardinal principle that a female person under the age of majority cannot give such consent.⁶⁹

ii. Sodomy

Sodomy consists of penis penetration to one's anus. Sodomy to children is committed when male adult penis penetrates the anus of a child.⁷⁰

iii. Involving children in pornography materials

Child pornography means the production of nude photos or films by involving children. Adults are abusing children by involving them in the production of nude materials like indecent photography.⁷¹

iv. Trafficking of Children

This means to any behaviour which facilitate the entry into transit through residence in or exit from any territory for the purpose of sexual exploitation. It is irrelevant whether force is used or the child has been misled.⁷²

⁶⁸ Scottish Government, (2010). "National Guidance for Child Protection in Scotland" (Unpublished) at pp. 10-25

⁶⁹ Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at p. 169

⁷⁰ Ibid

⁷¹ Ibid at pp. 176-178

⁷² Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at p. 185

v. Internet “Chatrooms”

The internet present particular opportunities for those who wish to abuse children. The conversations and language used by adults contain sexual explicit contents may lead to grooming. The purpose of grooming is to enable an abuser to get the child to trust him with the ultimate goal of persuading the child to agree to sexual activity.⁷³ Therefore sexual conversations with children on internet amount to children sexual abuse which inflicts their best interests.

vi. Unwanted touching

This happens where a perpetrator touched the child against his or her will in a sexual way like kissing, grabbing and fondling, but did not try to force him or her to have sexual intercourse.⁷⁴

vii. Sexual intercourse for female and male child

This includes someone penetrating a female’s vagina or anus with his penis, hands, fingers, mouth, or other objects, or penetrating her mouth with his penis. While for male child includes penetrating a male’s anus with his penis, hands, fingers, mouth, or other objects, or penetrating his mouth with his penis.⁷⁵

2.10 Gender biased under the Penal Code

Gender bias simply means a state of favouring one gender. Rape and other sexual offences under the Penal Code do exclude liability to female personnel to mean that female personnel cannot commit sexual offences against male personnel. For instance under chapter 15 of the Penal Code where offences against morality are established, most of criminal liability concerning those offences are vested to male personnel while in actual sense female personnel also do abuse male children sexually.

⁷³Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at pp. 172-174

⁷⁴Violence against children in Tanzania: Findings from a National Survey, 2009, Dar es Salaam, UNICEF at p. 14

⁷⁵Ibid at p. 15

2.11 Conclusion

This chapter sheds light on the whole context of children protection from sexual violence under the Law of the Child Act. It has pin-pointed the theories and concepts on sexual violence against children. This chapter doesn't deal with the legal framework on children protection from sexual violence rather it generally shows the package of children protection from sexual violence. The legal framework on children protection from sexual violence in connection with the Law of Child Act shall be discussed on the coming chapter.

CHAPTER THREE

THE LEGAL FRAMEWORK ON PROTECTION OF CHILDREN AGAINST SEXUAL VIOLENCE/ABUSE

3.1 Introduction

This chapter highlights the protection of children against sexual violence/abuse under the legal framework. On this discussion the main focus will be on International legal framework, Regional legal framework and Municipal legal framework towards children's protection against sexual violence/abuse. The examination is based on how the aforementioned legal frameworks ensure and assure children protection from sexual violence.

3.2 Protection of the Children under International Legal Framework

In November 1989, 41 years after the Universal Declaration of Human Rights (UDHR) was adopted in 1948 by the United Nations (UN) General Assembly, the first ever binding children's rights instrument was adopted by the same UN General Assembly, and that is the Convention on the Rights of the Child (CRC).⁷⁶ The UN system for the protection of children's rights is embedded in the general human rights protection mechanism as well as through the specific children's rights protection mechanisms under the CRC, 1989.⁷⁷ For purpose of this study only the CRC will be the major focus under this part though other UN Human Rights Treaties will be discussed in the slightly manner.

Before the CRC came into force, there had been several expressions of international concern about the welfare of children.⁷⁸ The first expression was manifested in the Declaration of Geneva, which was made in 1923 when the Council of the newly established

⁷⁶ Mashamba, C.J. (2009). The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at p. 1

⁷⁷ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.10

⁷⁸ Mashamba, C.J. (2004). Using the law to protect Children's rights in Tanzania: An unfinished business, National Organisation for Legal Assistance, Dar-es-Salaam at pp.4-5

non-government organisation, Save the Children International Union, adopted the Declaration, containing five points pertaining to the rights of the child.⁷⁹

The Declaration was endorsed in 1924 by the fifth Assembly of the League of Nations. Upon its formation in 1945, the UN went through this Declaration and in 1948 the UN General Assembly approved a slightly expanded version of that text which led to the adoption of a new Declaration containing ten basic principles of child welfare and protection in 1959.⁸⁰ It is important to note that the 1959 Declaration served as the springboard for the initiative to draft the CRC. The Government of Poland proposed to the UN Commission for Human Rights in 1978 when it presented an initial text based on the Declaration, to have a special international instrument on the rights of the child. The idea was that the convention would be adopted in 1979, the International Year of the Child. However, it was not until 1989 when that idea of having a Child's Rights Convention materialized.⁸¹

3.2.1 Mechanisms on Children's Protection under the CRC

The CRC represents a very comprehensive compilation of children-specific rights. It covers both the traditionally classified civil and political rights on the one hand, and economic, social and cultural rights on the other.⁸² The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography defines each respective term of the document's title and criminalizes the sale of children, including delivering or accepting a child for sexual exploitation, transferring of organs, and forcing labour. This Optional Protocol also prohibits the use of children in prostitution or pornography, criminalizes the possession or distribution of child pornography, and the improper inducing of consent as a means of adoption. Also the CRC contains a comprehensive listing of obligations that states are prepared to recognize towards the child.⁸³ Under the CRC, States Parties have the

⁷⁹ Mashamba, C.J. (2004). Using the law to protect Children's rights in Tanzania: An unfinished business, National Organisation for Legal Assistance, Dar-es-Salaam at pp. 4-5

⁸⁰ Ibid

⁸¹ Ibid at p. 5

⁸² Ibid at p. 20.

⁸³ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 17

following legal binding obligations towards the protection of children against sexual violence/abuse;

States Parties are obliged to recognize, respect and protect children's rights, and to ensure the rights set forth in the present Convention are enjoyed by each child within their jurisdictions without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁸⁴ For the purpose of this study, this fundamental legal duty imposed to States has its meaning in the aspect of children's protection because with recognition, respect and protection of children's rights, children are now said to be protected from any form of violence including sexual violence because States are now obliged to issue and assure children's safety.

State Parties in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, are obliged to consider the best interests of the child, and States are obliged to frame social welfare institutions which shall be responsible for the care and protection of children.⁸⁵ Much emphasis is put on the formulation of strong social institutions within States' jurisdictions for the sake of protecting children from any form of violence including sexual violence

States Parties are obliged to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.⁸⁶ For the purpose of children's protection against any form of violence, States are obliged to enact laws specific for children's protection and to take appropriate administrative strong measures to effect their enforcements.⁸⁷

⁸⁴ Article 2 of the Convention on the Rights of the Child, 1989

⁸⁵ Article 3 *ibid*

⁸⁶ Article 4 *ibid*

⁸⁷ Article 4 *ibid*

States Parties are bound to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.⁸⁸ Children's protection against sexual violence is cross-cutting issue which needs the collaboration with parents and guardians. Therefore, States are obliged to enforce parental responsibility on children's protection against sexual violence/abuse.

States Parties are bound to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials.⁸⁹ Since child sexual exploitation is a world problem, States are bound to enter into international co-operations to fight child sexual exploitation. For instance, Tanzania has ratified several bilateral and multilateral agreements on elimination of child sexual exploitation.

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.⁹⁰ For the purpose of restoration of child's dignity, victims of child sexual violence/abuse are required to be given medical and psychological treatments, and States are imposed with that legal duty.⁹¹

⁸⁸ Article 18 of the Convention on the Rights of the Child, 1989

⁸⁹ Article 34 *ibid*

⁹⁰ Article 39 *ibid*

⁹¹ Article 39 *ibid*

3.2.2 Monitoring Mechanism for the Implementation of Children's Protection by States under the CRC

Under the UN human rights protection mechanism, each of the core human rights instrument has a treaty monitoring body.⁹² Traditionally, treaty bodies are independent bodies of experts, who are elected from amongst nationals of the States Parties to the respective international human rights treaty.⁹³ These treaty bodies usually referred as committees, States Parties are obliged to submit initial reports to the committees on the steps they have taken to implement the rights recognised by the treaty within one or two years of the entry into force of the treaty and to be followed by regular periodic reports every two to five years.⁹⁴

The reports also include sufficient legal statistical and other accurate information that may be useful for the Committees in gaining a comprehensive impression of the human rights situation and implementation of the relevant treaty at the domestic level.⁹⁵ In this arrangement, the duty of the treaty monitoring bodies is to critically examine the state reports in public sessions and issue concluding observations and recommendations for the relevant states and publish them in their annual reports. After that States are expected to pay heed to these recommendations and give an account of their state of implementing in the follow-up report. Non- governmental Organisations also play an important monitoring role in this, particularly, at the national level.⁹⁶

The implementation of the CRC is monitored by the Committee on the Rights of the Children (CROC) as established under Article 43(1) of the CRC.⁹⁷ The CROC is comprised of eighteen experts of high moral standing and recognised competence in the field covered by the Convention.⁹⁸ These experts are elected by States Parties from among their nationals

⁹² Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 25

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid at p. 26

⁹⁸ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 26

who serve in their personal capacity.⁹⁹ In electing the members to the Committee, regard should be had to equitable geographical distribution as well as to the principal legal system.¹⁰⁰ The tenure of members of the Committee is four years with possibility of re-election. The CROC meets in Geneva- Switzerland three times per annum (January, May and September) for a period of three weeks per each session.¹⁰¹

State Parties are obliged to submit to the Committee through the Secretary- General of the UN reports on the measures they adopted which give effect to the rights recognised herein and on the process made on the enjoyment of those rights. The periodicity for state reporting is two phased: (1) within two years of the entry into force of the Convention for the State Party concerned; and (2) thereafter every five years.¹⁰² Each signatory State is required to file a report on the domestic situation of child protection against any form of violence and the way forward for future child protection measures. Through report requirement, States do put much emphasis on policy and legislation measures to ensure domestic child protection.

The contents of a report should comply with the requirements outlined under Article 44(2) that reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention on the country concerned.¹⁰³

3.2.3 Protection of Children's Rights in Other UN Human Rights Treaties.

Children's rights are also protected in the context catalogue and guaranteed in the international human rights instruments like the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of Forms of Racial Discrimination (CERD) and the Convention against Torture and Other

⁹⁹ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 26

¹⁰⁰Ibid at p. 26

¹⁰¹ Ibid at p.25

¹⁰²Ibid

¹⁰³Article 44 (2) of the Convention on the Rights of the Child, 1989

forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT).¹⁰⁴ These international human rights instruments form the international normative framework for children's rights and some of these instruments also contain certain child specific rights which amplify their relevance for children's rights protection.¹⁰⁵ All these instruments have treaty bodies which oversee the implementation of the respective treaties at the municipal level.¹⁰⁶ These aforementioned instruments do work together with the CRC on the assurance of children's safety from sexual violence.

3.3 Protection of the Children under Regional Legal Framework

Africa is the only continent with a regional treaty on the rights of the child, namely the African Charter on the Rights and Welfare of the Child (ACRWC) that was adopted by the Organization of African Unity (OAU) in July 1990,¹⁰⁷ but entered into force on November 29th, 1999. The ACRWC was adopted to provide for a specific and comprehensive mechanism for the protection and promotion of children's rights and welfare at the African regional level.¹⁰⁸

The adoption of the ACRWC was a significant historical milestone that manifested the need for legal protection of children in an African context.¹⁰⁹ It was a further step in this regard, following the promulgation of the Declaration of the Rights and Welfare of the African Child in 1979. The Declaration was adopted by the Assembly of Heads of State and Government of the OAU at its 16th Ordinary Session. Before the adoption of the ACRWC, the OAU Secretariat also had recognised and streamlined various children's rights in its programmes including child trafficking and child abuse. African states were also committed to international children's rights in terms of both ratification and implementation of the CRC.¹¹⁰

¹⁰⁴ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 27

¹⁰⁵ Ibid at p.27

¹⁰⁶ Ibid

¹⁰⁷ Mashamba, C.J. (2004). Using the law to protect Children's rights in Tanzania: An unfinished business, National Organisation for Legal Assistance, Dar-es-Salaam at p.7

¹⁰⁸ Mohammed, H and. Mashamba, C.J. (Supra) at p.48

¹⁰⁹ Ibid

¹¹⁰ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.49

The OAU was replaced by the African Union (AU) in 2002. As of January 2013 only 46 out of the 53 AU member states had ratified the ACRWC. The adoption of the ACRWC means that African states have an obligation to implement two international children's rights instruments concurrently.¹¹¹

3.3.1 Children Protection under the ACRWC

The ACRWC outlines the fundamental legal basis for children's protection from abuses and other forms of neglected;-

Protection of Privacy. The Charter outlines that no child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.¹¹²

Protection from child abuse and torture: States Parties are required to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.¹¹³

Protection from sexual exploitation: States Parties are bound to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices, the use of children in pornographic activities, performances and materials.¹¹⁴

Members to the Charter are obliged to observe the Charter and to take all necessary measures to ensure the enforcement of the Charter in their respective countries in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to

¹¹¹ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.49

¹¹²Article 10 of the African Charter on the Rights and Welfare of the Child, 1990.

¹¹³Article 16 ibid

¹¹⁴Article 27 of the African Charter on the Rights and Welfare of the Child, 1990.

the provisions of this Charter.¹¹⁵ This Charter (ACRWC) covers the child protection in the African context compared to the CRC which covers children protection at global perspective, therefore the ratified States should confine on African taboos.

3.3.2 Procedural Framework for Monitoring the Implementation of the ACRWC

The ACRWC's implementation is monitored by a special treaty body known as the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).¹¹⁶ The ACERWC was established in 2001 in accordance with Part II of the ACRWC, it has mandate to receive and comment on state reports submitted periodically. Also the ACERWC has mandate to receive and consider individual communications and conducts ad hoc missions and onsite visits of states considered to be violating their treaty obligations.¹¹⁷

The ACERWC is composed of 11 independent members of high moral standing, integrity, impartiality and competence in matters pertaining to the rights and welfare of the child. These members serve in their personal capacity and are elected from amongst national member states, and their tenure is five years non-renewable.¹¹⁸ The ACERWC works with stakeholders including those who are not members to the ACRWC, inter-governmental organisations, specialized institutions and Civil Society Organisations.¹¹⁹ State Parties are bound by the ACERWC to submit reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights: (a) within two years of the entry into force of the Charter for the State Party concerned: and (b) and thereafter, every three years.¹²⁰

Furthermore, the ACERWC has mandate to undertake investigations on violations of children's rights in any AU member state. The Charter also states that the Committee may resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, and request the States Parties to give any information relevant to the

¹¹⁵ Article 1 of the African Charter on the Rights and Welfare of the Child, 1990.

¹¹⁶ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 50

¹¹⁷ Ibid

¹¹⁸ Ibid at p. 51

¹¹⁹ Ibid at p. 52

¹²⁰ Article 43 of the African Charter on the Rights and Welfare of the Child, 1990

implementation of the Charter and may also resort to any appropriate method of investigating the measures that the State Party has adopted to implement the Charter.¹²¹

All in all, the mandate and work of the ACERWC is very important to the realization of children's rights and welfare in the African context.¹²² This is given further impetus by Article 46 thus the Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Union, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.¹²³

3.4 Children protection under Domestic Legal Frameworks

The Government of the United Republic of Tanzania (URT) is committed to the protection and promotion of human rights (including children's rights) as defined by the Constitution of the United Republic of Tanzania of 1977, the Universal Declaration of Human Rights of 1948, and other regional and international instruments.¹²⁴

The URT has signed and ratified many regional and international human rights instruments, and has taken concerted steps toward domesticating them,¹²⁵ but for the purpose of this study the URT has ratified the following instruments;

(a) Protocol to prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime of 2000.

(b) Convention on the Rights of the Child of 1989 and its Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography of 2000.

¹²¹ Article 45 of the African Charter on the Rights and Welfare of the Child, 1990

¹²² Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 52

¹²³ Ibid

¹²⁴ The United Republic of Tanzania, (2013) "National Human Rights Action Plan 2013-2017". Ministry of Constitutional and Legal Affairs, Dar es Salaam at p. 2

¹²⁵ The United Republic of Tanzania, (2013) "National Human Rights Action Plan 2013-2017". Ministry of Constitutional and Legal Affairs, Dar es Salaam at p. 2

(c) African Charter on the Rights and Welfare of the Child of 1990

(d) African Youth Charter of 2006.

Tanzania like any member state to these international and regional instruments is bound to fulfil the recommendations on protecting children from sexual violence. The URT has taken significant steps towards the protection of children like other human beings.

3.4.1 Children Protection under the URT's Constitution of 1977

The Constitution of the United Republic of Tanzania as amended in 1984 via Act No. 15 codified the principles of fundamental natural rights into the constitution, these fundamental natural rights were codified into the Tanzanian constitution through the Bill of Rights.¹²⁶ The URT's Constitution guarantees the fundamental natural rights as outlined from Article 12-29 where there are basic rights and duties.¹²⁷ The URT's Constitution does not directly protect children's rights rather it indirectly protects the basic rights and fundamental freedoms of every person in general terms including children, therefore children are entitled to all the rights and freedoms set out in Articles 12 to 24.¹²⁸

3.4.2 Other Legislative and Policy Mechanisms in Protecting Children

Tanzania has undergone extreme measures in protecting children from sexual violence as its obligation under international and regional instruments which she ratified. Through that spirit, Tanzania enacted the Penal Code, Cap 16 which covers sexual offences including sexual violence against children. Again, further step was taken when the Penal Code failed to deal with problems of sexual offences adequately, the Sexual Offences Special Provision Act, 1998 (SOSPA) was enacted and incorporated in the Penal Code in 2002. The amendments introduced by SOSPA were to cure existing discrepancies in the Penal Code and related penal laws which give protection to children from sexual violence.¹²⁹

¹²⁶ Mandopi, K. (2014) "Constitutional Protection of Child natural rights in Tanzania and South Africa: a comparative analysis". Open University law Journal, volume.5, No.1:75-83 at p. 78

¹²⁷ The Constitution of the United Republic of Tanzania, 1977

¹²⁸ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 65

¹²⁹ Mbezi, P. (2013) "Girl's child protection against sexual abuse: addressing some missing links in the law". Open University law Journal, Volume 4.No.1:20-34 at p. 1

Moreover, the Government has taken much action in protecting children from sexual violence by making policies like the Child Development Policy (2008) and the National Plan of Action for the Prevention and Eradication of Violence against Women and Children (2001-2015) plus several policies on the welfare of the children.¹³⁰ Also in 2011 the Government launched the Violence against Children Survey. This survey has stimulated development of National Prevention and Response Plans aimed at building a comprehensive national child protection system to prevent and respond to all forms of violence and abuse against children.¹³¹ Again, in 2009 the Government enacted the Law of the Child Act which implements Tanzanian's obligation under both the CRC and ACRWC by establishing the rights granted to children, streamlining and reforming the legal system to more effectively protect these rights.¹³²

3.4.3 The Historical Overview on the Enactment of the Law of the Child Act in Tanzania

Tanzania ratified the CRC in June 1991 and ratified the ACRWC in 2003 without any reservations, meaning that Tanzania has undertaken to bring her domestic legislation in line with all the provisions of these instruments.¹³³ The recommendations of the UN Committee on the Rights of the Child (the CRC Committee) emphasizing that State Parties shall ensure that all domestic pieces of legislation concerning children are fully compatible with the provisions and principles of the CRC.¹³⁴

In respect to Tanzania, the CRC Committee, in its concluding observations in respect of the country's initial report of 1998 and the second periodic report of 1998-2003, was concerned with the lack of a clear time frame for Tanzania to finalize the consultative process and enact the Children's Act.¹³⁵ On her second periodic report to the CRC Committee, Tanzania reported that it was undertaking legislative review and collecting views of stakeholders including children through the national White Paper for the purpose

¹³⁰ The United Republic of Tanzania, (2013) "National Human Rights Action Plan 2013-2017". Ministry of Constitutional and Legal Affairs, Dar es Salaam at p. 59

¹³¹ Ibid at p. 58

¹³² Ibid

¹³³ Mashamba, C.J. (2009) The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at p.12

¹³⁴ Ibid

¹³⁵ Ibid

of enacting the Children's Act.¹³⁶ However, Tanzania took some good years to take legislative review and action until 4th November 2009 when the Law of the Child Act was enacted by the Parliament,¹³⁷ and assented to by President Jakaya Kikwete (as he then was) on 20th November 2009.¹³⁸

3.4.4 The State of Children Protection against Sexual Violence/abuse Prior and After the Law of the Child Act

The absence of a comprehensive child statute that would effectively protect children's rights in Tanzania had for a long time before November 2009 exacerbated the worsening state of children's rights in Tanzania.¹³⁹ Prior to the law of the Child Act, children's protection against sexual violence/abuse was governed by the Penal Code. The Penal Code is the principal law governing sexual offences in Tanzania, it embodies provisions which establish offences against morality under chapter XV and the punishment provided thereof.¹⁴⁰ The Penal Code however was not enacted specifically for children's protection to the effect that it doesn't provide sufficient protection to children, and Tanzania was bound by the CRC and ACRWC to enact a law specific for children.

The Law of the Child Act is an important piece of legislation that provides for protection of the children. This Act was specifically enacted for protection of the child, to reform and consolidate laws relating to children, stipulate rights of a child, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of a child.¹⁴¹ Recently, the Government has amended the Education Act Cap 352 by adding Section 60A which prohibits the impregnation of a primary or secondary pupil.¹⁴² The punishment to however contravene that provision is thirty years imprisonment.¹⁴³ The researcher viewed that, this amendment of the Education Act Cap

¹³⁶ Mashamba, C.J. (2009) The Justice Review Special Commentary on the Tanzanian Law of the Child Act 2009, Volume 8 no.2.2009, National Organisation for Legal Assistance, Dar es Salaam at p.12

¹³⁷ Ibid

¹³⁸ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 84

¹³⁹ Mashamba, C.J. (2009) (supra) at p. 13

¹⁴⁰ Mbezi, P. (2013) "Girl's child protection against sexual abuse: addressing some missing links in the law". Open University law Journal, Volume 4.No.1:20-34 at p. 23

¹⁴¹ Ibid at p. 24

¹⁴² Section 22 of the Written Laws (Miscellaneous Amendments) Act No.2/2016

¹⁴³ ibid

352 protects only school children (pupils) from sexual violence since it prohibit the impregnation of school children and left non-school children unprotected, and this has no significant difference as children protection against sexual violence is concerned prior and after the enactment of the Law of the Child Act since children protection still taken for granted.

3.4.5 The Mechanisms Enshrined under the Act to Enhance Children Protection against Sexual Violence/abuse.

The law of the Child Act provides mechanisms for the protection of children against sexual violence/abuse as follows;

a) Incorporation of children rights in the Act

Children's rights are incorporated under the Law of the Child Act to meet the standards recommended under the CRC and ACRWC so as to ensure adequate children's protection in Tanzania;-

i. Best Interest of the Child

In Tanzania after the enactment of the law of the Child Act, all issues concerning children are given first priority. The law provides that, the best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, court or administrative bodies.¹⁴⁴ By requiring that all issues concerning children in Tanzania shall be given first priority, children's protection against sexual abuse is given much attention.

ii. Right to Non-Discrimination

In protecting children against sexual violence/abuse all children have the same status regardless of any thing and all children are required to be protected. It is stipulated under the law that all children have the same status,¹⁴⁵ therefore, initiatives taken to protect children should not discriminate children.

¹⁴⁴Section 4(2) of the law of the Child Act

¹⁴⁵Section 5 *ibid*

iii. Right to Survival and Development

Children have the right to survive and to develop their potential in every respect including their personality, talents and abilities. That right cannot be enjoyed without having a legal framework which will assure the enjoyment of such right.¹⁴⁶ In corresponding to that, children's right to survive and develop is guaranteed under the Act as that no person shall subject a child to torture, or other cruel, inhuman punishment or degrading treatment including practices which dehumanize or lead injurious to the physical and mental well-being of a child,¹⁴⁷ and whoever contravenes this provision is liable for punishment of six months imprisonment or fine not exceeding five million shillings or both.¹⁴⁸ Again, in ensuring children's safety from sexual abuse the Act requires that an owner or occupier of discotheque, bar and night club shall not allow a child to enter into the premises,¹⁴⁹ and whoever contravenes this provision is liable for punishment of not exceeding twelve months or fine not less than one million shillings but not exceeding five million shillings or to both,¹⁵⁰ because those premises may accelerate child sexual abuse activities due to their nature.

b) Parental or Guardian's Duty under the Act to Protect Children against Sexual Violence/abuse

Parents or guardians are part and parcel of the family, and family is the basic unit of the society and the most popular voluntary institution in modern society which love and care for each other and provides emotional, physical and economic mutual aid to its members.¹⁵¹ At the centre of family relations are the concepts of giving birth and child upbringing.¹⁵² In recognition of the paramount significance of the family in the upbringing and development of the children, therefore, both international and national laws have reflected the need for

¹⁴⁶ Mashamba, C.J. (2004). Using the law to protect Children's rights in Tanzania: An unfinished business, National Organisation for Legal Assistance, Dar-es-Salaam at p.110

¹⁴⁷ Section 13 of the law of the Child Act

¹⁴⁸ Section 14 *ibid*

¹⁴⁹ Section 17 *ibid*

¹⁵⁰ Section 17 (3) *ibid*

¹⁵¹ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p. 117

¹⁵² Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.118

children to grow up with, and be cared for, by their parents or guardians in a family environment.¹⁵³ In Tanzania, under the Act, parents or guardians are given legal duty to provide care, protection and maintenance to a child.¹⁵⁴ The Act provides that, every parent shall have duties and responsibilities whether imposed by law or otherwise towards his child to protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression.¹⁵⁵ Also parents or guardians are bound by the Act to provide protection to children against any violence/abuse (including sexual violence/abuse) that degrading child's dignity or respect.¹⁵⁶

c) Community's Duty for the Children's Protection against Sexual Violence/abuse

Child sexual violence/abuse occurs in the community and even perpetrators are from the community. Therefore, the community has a great role in combating child sexual violence/abuse. The Act introduced provisions that oblige members of the community to report to a Social Welfare Officer (SWO) or local government authority any violation of the child's rights.¹⁵⁷ Failure to report the violation of the child's rights as obliged by law amount to an offence and on conviction, a person shall be liable to a fine of not less than fifty thousand shillings or imprisonment for a term of three months or both.¹⁵⁸

d) SWO's Duties for the Children's Protection against Sexual Violence/abuse

Social Welfare Officer (SWO) for the purpose of this study is a person in the service of the Government imposed with legal duties of ensuring the well-being of children.¹⁵⁹ The SWO is imposed with a duty of taking all necessary steps to ensure that the child is not subjected to harm.¹⁶⁰ With that notion, the SWO is obliged under the Act to ensure that children are protected against sexual violence/abuse. Also in relation to that, the SWO is empowered

¹⁵³ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at p.118

¹⁵⁴ Ibid at p. 138

¹⁵⁵ Section 9(3) (a) of the law of the Child Act.

¹⁵⁶ Section 9(1) ibid

¹⁵⁷ Section 95(1) ibid

¹⁵⁸ Section 95(5) ibid

¹⁵⁹ Section 3 of the law of the Child Act.

¹⁶⁰ Section 20(d) ibid

under the Act to take custody of the child and determine the most suitable place for the child's safety.¹⁶¹

e) Local Government Authority's Duty for Children's Protection against Sexual Violence/abuse

Local Government can be defined as a sub-national, semi-autonomous level government discharging its functions in a specified area within a nation.¹⁶² Local Governments are the level of government that are closest to the people and therefore responsible for serving the political and material needs of people and communities at a specific local area.¹⁶³ For the purpose of this study, local government authorities are said to be the closest organs for children's protection against sexual violence/abuse since these children are living within the jurisdictions of these authorities.

Under the Act, Local government authorities are given legal duty to safeguard and promote the welfare of the child (children) within their jurisdictions.¹⁶⁴ With that legal duty it means that these local government authorities are bound by the Act to protect children from sexual violence/abuse. To cement on that, a Social welfare Officer in collaboration with a Police Officer within the jurisdiction of a local government authority are given legal mandate to investigate all cases of breach or violation of the rights of the child (children),¹⁶⁵ and in the company of a Police Officer a Social welfare Officer may enter and search the premises if he/she has reasonable ground to suspect child abuse.¹⁶⁶ Also the Act gives local government authorities a mandate to keep a register of most vulnerable children within their jurisdictions and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance.¹⁶⁷

¹⁶¹ Section 18(3) of the law of the Child Act

¹⁶² United Republic of Tanzania, (2009). "History of Local Government in Tanzania" President's Office-Regional Administration and Local Government, Dar es Salaam at p. 2

¹⁶³ *ibid*

¹⁶⁴ Section 94(1) of the law of the Child Act

¹⁶⁵ Section 94(7) *ibid*

¹⁶⁶ Section 96 of the law of the Child Act.

¹⁶⁷ Section 94(4) *Ibid*

f) Court's Duty for Children's Protection against Sexual Violence/abuse

Basing on the principle of separation of powers, courts are given the role of interpreting laws with a focus of administering justice. For the purpose of this study, courts are given mandates to administer the rights of children and all issues concerning children while the best interest of the child to be a primary consideration.¹⁶⁸ Courts are given legal duty under the Act to ensure that children are safe from any harmful situation (including sexual violence/abuse) since the Act provides punishments for whoever abuses children sexually. Also courts are given duty to maintain children's safety that upon an application by SWO, the court may issue care order to remove a child from any abuse or when a child is likely to suffer significant harm and transfer the parental rights to the SWO.¹⁶⁹ Moreover, the court is bound under the Act to issue supervision or interim supervision order upon the application by SWO with the aim to prevent any abuse or significant harm being caused to a child whilst he remains at his family home under the custody of his parent, guardian or relative.¹⁷⁰ Furthermore, courts under the Act have been given mandates to make inquiries with the help of SWO, and the SWO shall prepare social investigation report to the court before granting care order, supervision order, foster order and adoption order.¹⁷¹ The rationale of this is to ensure that a child is given to a person who cannot abuse him/her in any way.

3.5 Conclusion

The process of protecting children from sexual violence need strong legal frameworks which will assure that the rights of children are recognised, respected and protected. The domestication of international and regional instruments on children's protection into municipal legal system and the legislation of laws which accommodate the recommendations from those instruments is one thing, and the enforcement of those laws is another thing. Therefore the enforcement of municipal legal system on children protection means a lot.

¹⁶⁸ Section 4(2) of the law of the Child Act

¹⁶⁹ Section 18(1) and (2) *ibid*

¹⁷⁰ Section 19(1) and (2) *ibid*

¹⁷¹ Section 31(1) and (2) *ibid*

CHAPTER FOUR

IMPLEMENTATION OF CHILDREN PROTECTION AGAINST SEXUAL VIOLENCE: AN ANALYTICAL FOCUS ON THE DEFICIENCIES OF THE LAW OF THE CHILD ACT.

4.1 Introduction

This chapter covers a critical analysis on institutional deficiencies that have been an obstacle in implementing children protection against sexual violence. The discussion is based on institutional framework and monitoring mechanisms deficiencies. On examining institutional framework deficiencies, the institutional operations will be discussed whereas on monitoring mechanisms, the Child Protection System will be analysed.

4.2 Deficiencies on Institutional Framework

Though Local Government Authorities are imposed with legal duties to ensure children's safety from any form of violence including sexual violence,¹⁷² these LGA within their respective jurisdictions are facing some challenges that hinder the implementation of children protection against sexual violence, for instance the challenge of facilities like vehicles and fuel. Most of the Social Welfare Departments under the LGA are lacking enough operational facilities like vehicles, fuel and competent staffs to the effect that they fail to perform their duties as enshrined under the Law of the Child Act.¹⁷³ Therefore, this institutional deficiency hinders the implementation of child protection against sexual violence in most of LGA.

Police is another institution that imposed with duties to investigation and arrests anybody who violates the rights of children,¹⁷⁴ Police being the institution imposed with those duties were supposed to have officers who are competent on children rights and protection but that has never been a case since many officers are lacking knowledge on children rights and

¹⁷² Section 94(1) of the law of the Child Act

¹⁷³ Information obtained from the Social Welfare Departments at Babati District in Manyara Region on 9/03/2016 13:00HRS

¹⁷⁴ Section 94(7) of the law of the Child Act

protection.¹⁷⁵ Again, even after the establishment of Police Gender Desks at each Police Post the problem of lacking competent staffs still persists.¹⁷⁶ Though there are so many Police Posts, child sexual violence still persists too due to the aforementioned challenges.

Furthermore, Social Welfare Department and Police are primary institutions which are more close to the society, and the society has much confidence on them. But due to the lack of confidentiality to some SWO and Police Officers, the society had lost that trust they had at prior. The leakages of information vitiate the initiatives taken by some honest people in the society who reports incidences of child sexual violence to these institutions, and children protection against sexual violence become more difficult.

Some scholars opine that child protection against sexual violence could be possible only if there are special pieces of legislation for child protection, and the formation of strong institutions that will respond to child sexual violence.¹⁷⁷ A good example was drawn from Scotland under the Children Act, 1995 whereby strong institutions like Police and Local Authorities are instituted and been imposed with legal duties to ensure children protection against sexual violence.¹⁷⁸ In Scotland, the aforementioned institutions have been framed strategically with operational options under the said Act so that those institutions can implement children protection without any obstacles.¹⁷⁹ Unfortunately, in Tanzania, the Law of the Child Act though it has imposed legal duties on child protection against sexual violence to institutions like Police and Local government Authorities, these institutions are facing a lot of challenges towards the implementation of children protection against sexual violence.

4.3 Deficiency on Monitoring Child Protection Mechanism

Child protection from any form of violence or abuse is enshrined under the Law of the Child Act through its provisions.¹⁸⁰ These provisions provide for child protection in the

¹⁷⁵ Information obtained at Babati Police Gender Desk on 10/03/2016 09:00AM. Question based on the competence of Police Officer on children rights and protection.

¹⁷⁶ *ibid*

¹⁷⁷ Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at pp. 55-58

¹⁷⁸ *Ibid*

¹⁷⁹ *Ibid*

¹⁸⁰ Sections 13,16,17 and 83 of the law of the Child Act

sense that children are guaranteed to be safe and secured from sexual violence. However, the Act is silent on how child protection should be conducted, evaluated and monitored, for example the Act does not mention the establishment of child protection system either at ward level or district level to the effect that child protection is nowhere to be monitored and this amount to deficiency in the whole process of protecting children against sexual violence. The requirement of having a child protection system from ward level to district and if possible to national level was opined by some scholar prior to the enactment of the Law of the Child Act. It was recommended that child protection would have no meaning if there is a strong monitoring mechanism like a child protection system.¹⁸¹ Unfortunately that recommendation was not considered because the said Act is silent on the establishment of child protection system and that is deficiency on monitoring children protection in Tanzania.¹⁸²

In other jurisdictions like Scotland under the Children Act, 1995, there is an establishment of children protection system whereby at each Local Authority there is a Child Protection Committee with a legal duty of monitoring the implementation of children protection against any form of violence and abuse in Scotland.¹⁸³ Again in East African Countries (Kenya and Uganda) under their Children's Act there are the establishment of child protection system which comprise child protection committees, and their task is to monitor the implementations of children protection against sexual violence in their countries. This is unlike the Tanzanian law of the Child Act which is silent on the establishment of child protection system which can monitor children protection.¹⁸⁴ Therefore, the deficiency on monitoring children protection under the Law of the Child Act is an obstacle in the whole process of implementing children protection against sexual violence in Tanzania.

¹⁸¹Anderson, M. and Mashamba C.J (2003). "Basic Elements and Principles to be incorporated in a New Children Statute in Tanzania". A requirement paper presented by National Network of Organisations Working with Children to the Government Draftsman in Dar es Salaam (Unpublished) at pp. 10-15

¹⁸²Mashamba, C.J (2010). "Introduction to the Tanzania Law of the Child Act". A Paper presented at a training of Legal and Human Rights Centre (LHRC) Staff on the Child Law Organized by the Directorate of Advocacy and Reforms of the LHRC in Dar es Salaam (Unpublished) at p. 12

¹⁸³Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at pp. 72-74

¹⁸⁴Mohammed, H and Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at pp. 285-325

4.4 Deficiency on the Statutory Substantive Provisions

The Law of the Child Act lacks the full package on the protection of children against sexual violence. To start with the interpretation part, the Act is silent on the meaning of child sexual violence/abuse and its categories, rather, it defines child abuse in general to mean contravention of the rights of the child,¹⁸⁵ therefore, this interpretation gap itself amount to deficiency since there is no clear statutory meaning of the word child sexual violence/abuse. Again, the Act provides for children protection from any degrading treatment, and the word degrading treatment means any act that lowers the dignity of a child,¹⁸⁶ but there is no explicitly statutory protection of children against sexual violence something that obstructs children protection against sexual violence. The Act was supposed to avoid that ambiguity rather than generalizing sexual violence into humiliation and degrading treatment. The Act failed to address comprehensively child sexual violence, it is only one provision under the whole Act which prohibits sexual exploitation though very lightly, and the punishment provided thereunder is too lenient.¹⁸⁷ The rest of punishments are left under Penal Code. This means that the Law of the Child Act depends on the courtesy of the criminal law for it to function and that is a deficiency of the said Act.

One Tanzanian legal scholar opined that the State had good intention of enacting the Law of the Child Act but that good intention has been vitiated because the said Act has failed to protect children since it has accumulated many irrelevant issues concerning children welfare and that is a deficiency which hinders its enforcement.¹⁸⁸

4.5 Conclusion

With such deficiencies the initiatives of protecting children against sexual violence cannot be enforced, and children will remain being exposed to sexual violence same likely as it was prior to the enactment of the Law of the Child. This Act was enacted to provide adequate children protection against any violence by providing strong institutions and mechanisms that could eliminate this catastrophe of child sexual violence in the community but that has been a nightmare.

¹⁸⁵Section 3 of the law of the Child Act.

¹⁸⁶ Section 13 *ibid*

¹⁸⁷ Section 83 of the law of the Child Act

¹⁸⁸ Mohammed, H and Mashamba, C.J.(Supra) at pp. 319-325

CHAPTER FIVE

DATA ANALYSIS AND DISCUSSION OF FINDINGS

5.1 Introduction

This chapter comprise of field findings and analysis. In the course of the practical study, the researcher used both interview and questionnaire during data collection. 28 copies of questionnaire were distributed to respondents. Also oral interview was conducted for 20 respondents to make a total of 48 respondents as planned in this study, and questions were framed basing on the knowledge of each group of respondents. Unfortunately, only 6 Advocates out of 8 returned the questionnaires, only 7 Police Officers out of 8 returned the questionnaires, only 3 Magistrates out of 4 returned the questionnaires and only 2 State Attorneys out of 3 returned the questionnaires while the rest 2 Medical doctors and 3 Social welfare officers returned the questionnaires without missing any of them. Also in oral interview only 7 out of 10 children and 9 out of 10 parents/guardians showed up for oral interview, therefore 40 respondents out of 48 cooperated with the researcher during data collection. The collected data enabled a researcher to analyse the data and determine whether the research questions that were raised earlier concur with the data collected and also the objectives intended by the researcher. The collected data from the field analyses the following sections: - the adequacy of the Law of the Child Act with regard to children's protection against sexual violence/abuse, the guaranty of institutional framework under the Law of the Child Act with regard to children's protection against sexual violence/abuse and other factors hinder the enforcement of the Law of the Child Act with regard to children's protection against sexual violence/abuse.

5.1.1 Types of Responses

The researcher collected data from respondents through both structured and unstructured questions depending on the categories of respondents. Unstructured questions gave the respondents a wider opportunity to answer the respective questions without necessarily limiting the choices of their answers. This enabled them to write down their views on the subject matter. On the other hand, structured questions were set in a manner that the respondents were given somehow a limited choice of answers. Some questions were set in

a manner that, on the unstructured part, the respondents expressed their views and opinions whereas for the structured questions, respondents were required to make their assessment on the issues raised by stating the extent or degree by using qualitative words like strong or weak, these quality attributes were sub-divided into very strong or very weak. Furthermore, questions asked during data collection were divided basing on the knowledge background of each respondent, some questions were framed in legal context for respondents with legal knowledge while the rest were framed in social-legal context for lay respondents. Therefore the responses given during data collection are based on the nature of each question, the following is the presentation of the data collected by the researcher in the field:-

5.2 The Adequacy of the Law of the Child Act in Protecting Children against Sexual Violence/abuse

Majority of the respondents were of the opinion that the law of the Child Act does not provide adequate protection to children against sexual violence/abuse because it has several weaknesses while the less opined that the said Act do guarantee. Out of 40 respondents, 34 respondents (85%) said that the Act does not provide adequate protection to children against sexual violence/abuse whereas 3 respondents (7.5%) negated the views of majority without supportive logic reasons, and the remained percentage that is 7.5% (3 respondents out of 40 respondents) said that the Act is very weak without supportive arguments too. Majority who opined that the Act do not provide adequate protection to children (to mean weak) had the following reasons:-

First, the Act by being dependant to other criminal laws such as Penal Code is a weakness because the essence of enacting the Law of the Child Act was to provide comprehensive children's protection therefore the Act is supposed to operate by its own but unfortunately issues concerning sexual violence/abuse to children are left to the Penal Code as if there was no need of having the law specific for children. Again, they argued that those consequential amendments under Part thirteen of the Act which amended some provisions of Cap 29 (the Marriage Act), Cap 353 (the Education Act) and Cap 16 (the Penal Code) could have significant merit to children protection against sexual violence/abuse if the Law of the Child Act were dependant.

It is opined by one scholar that children protection can be enforced by enacting law that will operate on its own stand, for instance the English children law of 1989 (The Children Act of 1989) where children protection in England is adequately provided by imposing stiff punishments to perpetrators and the establishment of monitoring mechanisms that evaluate the implementations children protection against violence.¹⁸⁹ The researcher cemented that unlike to Tanzania, the Law of the Child Act operates under the courtesy of other criminal laws with regard to children protection against sexual violence since punishments are provided there and that seems to be the weakness of the said Act as children protection against violence is concerned.

Second, that there are no enough provisions specific for children protection against sexual violence/abuse. They argued that out of 160 provisions only one provision that is Section 83(1),¹⁹⁰ prohibits for a child to be engage on activities of sexual nature so they thought that this is a weakness because the Act has concentrated into other issues which perhaps are not more important to children welfare therefore, children's protection against sexual violence/abuse could be some how difficult.

It is argued by some scholars that, the enactment of child law in Tanzania was to cover gaps which emerged on children protection.¹⁹¹ They continued to argue that the Law of the Child Act of 2009 were supposed to provide enough packaged provisions that could ensure children's safety contrary to what the law has covered.¹⁹² With that stand, the researcher is of the view that by failure to accommodate enough provision to secure children protection against sexual violence, the Law of the Child Act of 2009 doesn't provide adequate protection to children against sexual violence.

Third, that it has been practically impossible for the Act to provide a comprehensive children protection against sexual violence because it provides very lenient fines and

¹⁸⁹ Beckett, C. (2003). Child Protection: An introduction, 1st Edition, SAGE Publications, London at p.24

¹⁹⁰ The Law of the Child Act

¹⁹¹ Mohammed, H and. Mashamba, C.J. (2014). Child Rights and the Law in East Africa, Lawafrica Publishing Co. (T) Ltd, Dar es Salaam at pp. 303-325

¹⁹² Ibid

punishments to whoever jeopardise children rights contrary to the gravity of the offence, and it has even diluted other punishments provided under several pieces of legislation.¹⁹³

They argued that fines and punishment imposed by law under provisions 17(3) and 83(3),¹⁹⁴ which is fine not less than one million shillings and not more than five hundred million shillings or imprisonment for not more than 2 years is too lenient compared to child dignity which has been vitiated.¹⁹⁵ The researcher is of the view that perhaps the punishment could be much sever at least ten million Tanzania shillings to compensate the lost dignity of the victim of child sexual violence. This is cemented by the report of one legal scholar who argued that the punishment imposed under the Law of the Child Act to perpetrators who violate children rights doesn't deter to the effect that they continue to abuse children sexually.¹⁹⁶

5.3 The Guaranty of Institutions under the Law of the Child Act on Children Protection against Sexual Violence/abuse

Majority of the respondents opined that the guaranty of institutions under the Law of the Child Act on children protection against sexual violence is weak. Out of 40 respondents, 33 respondents (82.5%) said that the institutions do not guarantee children protection whereas 7 respondents (17.5%) negated the views of the majority without giving supportive arguments. On the other hand, those who were of the opinion that the Act has lacunae with regard to children's protection against sexual violence/abuse had the following arguments:-

First, these institutions (Police and Local Government Authorities) established under the Act for the purpose of children protection against violence including sexual violence do not guarantee children protection because they lack monitoring mechanisms therefore, their daily activities concerning children protection cannot be evaluated. For instance in Babati District Council at the Social Welfare Department, there is no monitoring mechanism to evaluate the implementation of duties imposed thereto to the effect that children protection

¹⁹³ From oral interview with Advocates and State Attorneys held at Babati from 10th -15th March 2016.

¹⁹⁴The Law of the Child Act

¹⁹⁵From oral interview with Advocates and State Attorneys held at Babati from 10th -15th March 2016.

¹⁹⁶Mbezi, P. (2013) "Girl's child protection against sexual abuse: addressing some missing links in the law". Open University law Journal, Volume 4.No.1:20-34 at pp.10-15

initiatives are taken to business as usual.¹⁹⁷ Again, the task force formed by Police Desk Gender and the LGA(s) on the operation to ensure children protection at mtaa level do operate once in a month due to the lack of trained personnel and budget deficit contrary to high demand of daily child protection operations.¹⁹⁸

The researcher opined that the implementation of children protection has to be monitored by a certain committee to make it more effective, also enough budgets should be allocated to these institutions to make them more efficient. But with these institutional deficiencies observed by the researcher, children protection against sexual violence cannot be archived and Tanzania will remain to be the least child-friendly country in East Africa region as the African Child Policy Forum Report of 2013 shows.

Second, the institutions' personnel lack teamwork with the community to the effect that children protection against sexual violence become difficult. Community may have significant information concerning the perpetrators who abuse children sexually but due to the poor relationship with officers who are responsible to take quickly legal actions, children protection against sexual violence become impossible. Some respondents told the researcher that, in several occasions, they have tried to inform Police Officers over incidents of child sexual abuse and even the names of perpetrators but the responses from Police were too slow.¹⁹⁹

Precisely, the researcher noted it as a fundamental challenge that affects children protection against sexual violence because, one scholar opined that institutions responsible for children protection should be covered with well trained and disciplined staffs who will take immediate response to any indicator of child rights violation.²⁰⁰ Therefore, lacking of good network between the community and enforced personnel definitely could affect all initiatives of children protection against sexual violence since the community has

¹⁹⁷ Information obtained from oral interview with the Social Welfare Officer at Babati District Council on 9/03/2016 13:00HRS.

¹⁹⁸ Information obtained from phone interview with one of the Police Officer from Babati Police Station on 9/03/2016 15:00HRS

¹⁹⁹ Information obtained from oral interview with parents and guardians held at Babati Bus Stand on 12/03/2016 12:00 noon

²⁰⁰Beckett, C. (2003). Child Protection: An introduction, 1st Edition, SAGE Publications, London at p. 20

significant information that could help Police Officers and Social Welfare Officers to enhance children's safety.

5.4 Factors Hinder the Enforcement of the Law of the Child Act with regard to Children Protection against Sexual Violence/abuse

Majority of the respondents were of the opinion that there are several factors which hinder the enforcement of the Act with regard to children protection against sexual violence/abuse. Out of 40 respondents, 33 respondents (82.5%) opined that there are factors hindering the enforcement of the Act with regard to children protection against sexual violence/abuse whereas, 7 respondents (17.5%) negated the views of the majority without giving supportive arguments. However, the majority of the respondent who supported the question had the following reasons:-

First, the community itself is an obstacle. Majority of respondents opined that the community is given legal duty under the Act to report any suspicion to relevant authorities such as police that child sexual violence/abuse is likely to happen. Unfortunately some members of the community do not perform the aforementioned legal duty simply because it is either shameful to report when a perpetrator is a close member within the family or feel ashamed to mention those genitals.²⁰¹ One scholar in her report argued that the Law of the Child Act does not compel the community to report any incidence of child abuse to appropriate authorities, therefore to report child abuse is taken as moral obligation to the effect that children protection against any form of violence becomes difficult.²⁰²

The researcher has dissenting opinion since children belong to community therefore the community has a duty to protect them by reporting any incidence of child abuse regardless the law compels to do so or not. Also the researcher argued that children have right to be protected like any other human being, and one way of protecting them is to report all incidents of child sexual abuse either to Police Officers or Social Welfare Officers for further legal actions.

²⁰¹Information obtained through oral interview at Babati Police Gender Desk basing on the obstacle course facing Police on arresting perpetrators of child sexual violence

²⁰²Mbezi, P. (2013) "Girl's child protection against sexual abuse: addressing some missing links in the law". Open University law Journal, Volume 4.No.1:20-34 at pp.10-15

Second, corrupt practices and amicable settlement. It was argued by majority of respondents (Police Officers, State Attorneys and Magistrates) that some of perpetrators use their financial strength to spoil the evidence by corrupting unfaithful detectives hence perpetrators are acquitted. Also there is a tendency for members of victims to settle amicably with perpetrators either by fining or other material things like goats, sheep and cattle to the effect these perpetrators do not feel any penal pinch. For instance one of the victims told the researcher that she was raped by one perpetrator who was a shop-seller, and when she reported to her parents, they went to negotiate with the perpetrator that he should compensate them with 1,000,000 or else they shall report him to Police.²⁰³

The researcher viewed that corruption and amicable settlement do affect the initiatives of apprehending perpetrators of child sexual violence because there is no proper monitoring mechanism like committee that will monitor daily children protection tasks and the apprehension of perpetrators for justice to take effect. In other jurisdictions like Scotland, the Scottish government through the Protection of Children and Prevention of Sexual Offences Act of 2005 has established committees countrywide to monitor children protection tasks and to apprehend perpetrators.²⁰⁴ Therefore, the enforcement of children's protection against sexual violence/abuse is likely to be very difficult not only of corruption and amicably settlement of child abuse cases but also due to the absence of monitoring committee.

Third, lack of enough funds and facilities to run children protection system. These institutions (LGA and Police) are empowered with duties under the Act to protect children against sexual violence/abuse therefore enough funds and other facilities like vehicles, buildings are needed to run the system but budget allocation is contrary to demand. For instance, there is budget deficit since 2010-2015 to run daily children protection tasks at Babati Social Welfare Department while Police is running out of fuel for daily patrols.²⁰⁵ The researcher opined that apart from budget deficit and shortage of running facilities also

²⁰³Information obtained through oral interview with victims of child sexual violence held on 26/02/2016 at Kwaraa Primary and Secondary Schools in Babati District.

²⁰⁴Cleland, A. (2008). Child abuse, child protection and the Law 1st Edition, W.Green&son Ltd, London at pp. 10-20

²⁰⁵Information obtained from the interview conducted with Police Gender Desk and SWO at Babati District on 9/03/2016

the misuse of available little physical resources vitiates the running of children protection system in these institutions as it was experienced during data collection.

Fourth, lack of enough experts on children protection field. Children protection against sexual violence/abuse needs enough staffs that are well trained on children rights and protection but there is shortage of those staffs in most of Social Welfare Departments under LGA and Police Gender Desks. For instance, at Babati District the Social Welfare Department and Police Gender Desk have only 2 staffs respectively that are conversant with children rights and protection while other staffs are laypersons.²⁰⁶ The United States of America succeeded to reduce child abuse rates after recruiting many and competent staffs in children protection system.²⁰⁷ Therefore, the researcher viewed that unlike to Tanzania where children protection task is imposed to people with no enough knowledge concerning children rights and protection hence children protection against sexual violence become difficult.

Fifth, lack of civil education on the context of children rights. Members of the community lack civil education on children rights and protection therefore the community doesn't know the significance of protecting children to the effect that children continue to be violated sexually since they are treated as adults. For instance, the researcher asked some parents/guardians on whether they were familiar with children rights and the significance of protecting children the response was that "the government is responsible to protect children not we parents"²⁰⁸ The researcher viewed lacking of civil knowledge on the significance of protecting children is not an excuse to abuse children sexually but much initiatives should be taken by stakeholders to advocate the necessity of protecting children against sexual violence. And also, the community should abandon such negative mindset of regarding children as adults.

²⁰⁶ Information obtained from telephone interview with Heads of Social Welfare Department and Police Gender Desk respectively at Babati District on 3/03/2016

²⁰⁷ Haskins, R and Wulczyn, F. (2007). Child Protection: Using Research to Improve Policy and Practice, Brookings Institution Press, Washington D.C at pp. 4-9

²⁰⁸ Information obtained from oral interview with parents/guardians at Babati Bus station on 7/03/2016

5.5 Conclusion

In summary, the government has expressed its commitment to implement children protection against sexual violence/abuse by enacting the Law of the Child Act though the Act has a lot of gaps which needed to be reformed. On the other hand, the researcher is of the view that the government has to involve stakeholders who have interests in children protection so that they can contribute on the process re-enacting the Law of the Child Act OF 2009 to provide a comprehensive law which will assure children protection against sexual violence/abuse.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter provides for the conclusion and recommendations. These recommendations provided herebelow if worked by appropriate authority, the problem of children sexual violence will be reduced if not eradicated.

6.2 Conclusion

The purpose of enacting the Law of the Child Act was to ensure protection to children against any form of violence, but this has not been achieved due to several gaps on that law. After thorough discussion, the researcher came up with the following conclusions;-

First, the Law of the Child Act lacks enough provisions relevant to children's protection against sexual violence/abuse, and even the institutions established under the Act are weak, this has accelerated the occurrence of much child sexual violence. From the findings thereabove, the researcher can insinuate that due to such weakness on the said Act, children are highly exposed to sexual violence.

Second, the Act depend on the operation of criminal laws like the Penal Code to protect children against sexual violence/abuse while the Penal Code is not specific for children therefore the entire meaning of children's protection becomes meaningless. The researcher noted that the law of the Child Act was enacted without making a pilot survey to other pieces of legislation so that the Law of the Child Act could provide a comprehensive children's protection against sexual violence/abuse.

Third, the government of Tanzania has not played a proactive role in making sure that the provisions of the Law of the Child Act relevant to children's protection against sexual violence/abuse are well implemented by empowered institutions. The institutions mentioned under the Law of the Child Act which are responsible for children's protection against sexual violence/abuse, are running out of budgets to perform the aforementioned duties hence perpetrators use that gap to abuse children sexually. The researcher has

realised that those aforementioned institutions are not given funds specific for running operations which intend to protect children against sexual violence/abuse.

Fourth, most of members in the community including children are lacking enough civil education on the rights and protection of children, and some of them even the Law of the Child Act is a new vocabulary to the extent that children's rights are not taken into consideration, and likewise child sexual violence/abuse is not taken as a serious matter. The researcher also found that child sexual violence/abuse takes place in the community because children are left to be a responsibility of each family he/she belongs and not the entire community as recommended under the Act.

6.3 Recommendations

6.3.1 Amendment of the Law of the Child Act

It is pertinent that the Law of the Child Act has numbers of lacunae that need to be addressed so as to provide a comprehensive protection to children against sexual violence/abuse. The amendment has to include the followings;

- i. Precisely definition of child sexual violence and its categories. Recently, the Law of the Child Act is missing the legal definition of the word child sexual violence while the said law was enacted to protect children. By lacking a precisely legal definition of child sexual violence, all initiatives of protecting children against sexual violence are vitiated.
- ii. The establishment of child protection monitoring committees at Mtaa (Street) level. In other jurisdictions (Kenya and Uganda) at Mtaa level there is child protection monitoring committees which evaluate the implementation of child protection at Mtaa level. Tanzania also has to adopt that approach in her strategies of protecting children against sexual violence from Mtaa level to National wise.
- iii. Division of daily child protection task among the established institutions under the said Act. Recently, Police and Social Welfare Department under

Local Government Authority are empowered with child protection tasks without demarcating their jurisdictions to the effect that they collide hence child protection against sexual violence become more difficult.

- iv. Moreover, child protection against sexual violence is scattered in many pieces of legislation to the extent that its implementation becomes difficult. Therefore, all child protection strategies and mechanisms to be documented in a single legislation.

6.3.2 To the Government

The Government of Tanzania should do the following to ensure children's safety against sexual violence/abuse;

- i. To promote efforts to raise awareness of and address violations of children's rights among parents, guardians, government officials, teachers and law enforcers because the researcher found that the awareness on children's rights is very low in Tanzania despite the existence of many institutions which advocating for children's rights
- ii. To strengthen mechanisms to enhance awareness of the Law of the Child Act, especially at the Local Government Authority level because it was found during field study that even the Child Act is a new vocabulary to some citizens.
- iii. To increase the budgetary allocation to children protection system because during field study a researcher found that those institutions empowered with duty to protect children against sexual violence/abuse are running out of funds.
- iv. To improve man labour by employing more competent staffs in a social welfare department at Local Government Authorities because a researcher found that there is a huge shortage of man power in the whole children protection system.
- v. To conduct monthly assessment on child sexual violence/abuse to understand the magnitude of the problem.
- vi. To introduce Child Protection Response Centres at each ward that will take immediate and quick actions to respond on child sexual incidents in a respective jurisdiction.

6.3.3 General Recommendations

The government should take all necessary measures to ensure that children in Tanzania are well respected and protected because child sexual violence/abuse vitiates the dignity and well-being of the children in the society. Also child sexual abuse tarnishes the good image of Tanzania at both regional and international level because Tanzania is regarded to be among the few countries that are full of peace and security in the world. Therefore to retain that good image Tanzania has no way out rather than combating child sexual violence/abuse.

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APPENDICES

APPENDIX I

Questionnaire for State Attorneys, Magistrates and Advocates

PART A: Respondent's particulars.

Name:

Age (not compulsory):

Gender:

Occupation:

PART B: The questions

1. What are your comments on the situation of child sexual violence/ abuse in your area?

2. Have you come across with scenarios/cases of child sexual violence/ abuse? If the answer is yes, outline the types of such violence and the age of victims.

3. Do you think children are well protected against sexual violence in your area? If the answer is yes or no, give the reasons:-

In your opinion, do you think the law of the Child Act guarantees sufficient protection to children against sexual violence? If the answer is yes to what extent or if no, why?

4. Basing on your legal knowledge, do you think there is strong institutional framework under the law of the Child Act that guarantee children protection against sexual violence? If the answer is yes how and at what extent, and if no why?

5. Based on the practice, give your assessment on the enforcement of the law of the Child Act towards children's protection against sexual violence/abuse, and are there any factors hinder that implementation? If yes mention and explain.

6. Suggest ways through which child sexual violence cases can be eliminated from your community.

THANKS FOR YOUR CO-OPERATION

Questionnaire for Police Officer (s)

PART A: Respondent's particulars.

Name:

Age (not compulsory):

Gender:

Occupation:

PART B: The questions

1. Are cases of child sexual violence/abuse common in your area? If yes or no why?

2. Which are the most common forms of child sexual violence/abuse in your area?

3. Which age groups are more vulnerable to child sexual violence in your area?

Below 10 years old _____, how many? _____ (per month)

Below 15 years old _____, how many? _____ (per month)

Below 17 years old _____, how many? _____ (per month)

4. Which group of people are mostly sexually abuse children in your area?

_____A
re the reported cases of child sexual violence in your area adequately acted upon by
the authorities? If yes how, and if no why?

5. What are the preliminary measures taken to a victim of child sexual violence?

6. In which areas child sexual violence mostly occurred?

At home_____, at school_____, at church/mosques_____, in
bushes_____, on road sides_____

7. Do you think the current legal framework (the law of the Child Act) provides
sufficient protection to children against sexual violence? If yes to what extent, and
if no why?

8. Basing on your practice as Police Officer, what are the factors hinder the
implementation of the law of the Child Act towards children protection against
sexual violence in your area?

9. Does Police as an institution enshrined under the law of the Child Act guarantee
children protection against sexual violence? If yes to what extent, and if no why?

THANKS FOR YOUR CO-OPERATION

Questionnaire for Social Welfare Officer (s)

PART A: Respondent's particulars.

Name:

Age (not compulsory):

Gender:

Occupation:

PART B: The questions

1. Are cases of child sexual violence/abuse common in your area? If yes or no why?

2. Which are the most common forms of child sexual violence/abuse in your area?

3. Which age groups are more vulnerable to child sexual violence in your area?

Below 10 years old _____, how many? _____ (per month)

Below 15 years old _____, how many? _____ (per month)

Below 17 years old _____, how many? _____ (per month)

4. Which group of people are mostly sexually abuse children in your area?

Are the reported cases of child sexual violence in your area adequately acted upon by the authorities? If yes how, and if no why?

5. What are the preliminary measures taken to a victim of child sexual violence?
- _____
- _____
6. In which areas child sexual violence mostly occurred?
- At home_____, at school_____, at church/mosques_____, in bushes_____, on road sides_____
7. What are the causes of child sexual violence/abuse in your area?
- _____
- _____
8. What are the effects of sexual violence/ abuse to children?
- _____
- _____
9. What challenges affect the responding on child sexual violence in your area?
- _____
- _____
10. Are you familiar with the law of the Child Act? If yes how?
- _____
- _____
11. Do you think the law of the Child Act adequately protect children against sexual violence in your area? If yes how and to what extent?
- _____
- _____
12. Do you think your institution as enshrined under the law of the Child Act guarantees children protection against sexual violence? If yes how and to what extent?_____
- _____
13. Suggest ways through which child sexual violence can be eliminated from your community
- _____
- _____

THANKS FOR YOUR CO-OPERATION

Questionnaire for Medical doctor (s)

PART A: Respondent's particulars.

Name:

Age (not compulsory):

Gender:

Occupation:

PART B: The questions

1. Are cases of child sexual violence/abuse common in your area? If yes or no why?

2. Which are the most common forms of child sexual violence/abuse in your area?

3. Which age groups are more vulnerable to child sexual violence in your area?

Below 10 years old_____, how many? _____ (per month)

Below 15 years old_____, how many? _____ (per month)

Below 17 years old_____, how many? _____ (per month)

4. What are the preliminary measures taken to a victim of child sexual violence?

5. What are the effects of sexual violence/ abuse to children?

6. Are you familiar with the law of the Child Act? If yes how?

7. Basing on your medical practice, do you think the law of the Child Act provides adequate protection to children against sexual violence? If yes how, and if no why?

THANKS FOR YOUR CO-OPERATION

Key informant interview guide for parents/guardians

Questions:

1. Have you heard of child sexual abuse?
2. What is commonest form of child sexual abuse in your area?
3. Where does child sexual abuse mostly occurred in your area? (name places e.g. at school etc)
4. Are most of cases of child sexual abuse reported in your area? If yes to whom and where and if no why?
5. Are the reported cases acted upon by authorities? If yes how and if no why?
6. Are familiar with the law of the Child Act? If yes how, and if no why?
7. Do you think children are well protected from sexual abuse in your area? If yes to what extent and if no why?
8. Do you think the law of the Child Act sufficiently protects children against sexual violence? If yes how and to what extent, and if no why?
9. Are any factors hindering the implementation of the law of the Child Act towards children protection against sexual violence? If yes explain how, and if no explain why?
10. Suggest ways through which child sexual violence cases can be eliminated in your community

Key informant interview guide for children

Questions:

1. Have you heard of child sexual abuse?
2. What is commonest form of child sexual abuse in your area?
3. Where does child sexual abuse mostly occurred in your area? (name places e.g at school etc)
4. Are most of cases of child sexual abuse reported in your area? If yes to whom and where and if no why?
5. Are the reported cases acted upon by authorities? If yes to what extent and if no why?
6. Which group of people mostly sexually abuse children in your area?
7. Have you experienced any form of sexual abuse? If yes which one, and who was the perpetrator?
8. Are you familiar with the law of the Child Act? If yes how?
9. Do you think the law of the Child Act provides adequate protection to children against sexual violence in your area? If yes how, and if no why?
10. What else do you think can be included in the law of the Child Act to safeguard children's protection against sexual violence/abuse?