

**TANZANIA'S COMPLIANCE WITH INTERNATIONAL LAW
ON CHILDREN IN CONFLICT WITH THE LAW:
THE CASE STUDY OF ZANZIBAR**

**By
Chum Kombo Amour**

**A Dissertation Submitted in Partial Fulfilment of the Requirements for the
Award of the Degree of Master of Laws (LL.M. IL) of Mzumbe University**

2014

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation titled **Tanzania's Compliance with International Law on Children in Conflict with the Law: The Case Study of Zanzibar**, in partial fulfillment of the requirements for award of the degree of Master of Laws in International Law (LL.M/IL) of Mzumbe University.

Signature

Major Supervisor

Signature

Internal Examiner

Accepted for the Board of Faculty of Law

DEAN, FACULTY OF LAW

DECLARATION AND COPY RIGHT

I, Chum Kombo Amour, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for similar or any other degree award.

Signature_____

Date_____

©

This dissertation is a copy right material protected under the Berne Convention, the Copyright and Neighbouring Rights Act, Cap. 218, R.E 2002 and other international and national enactments, in that behalf, on intellectual property. It may not be reproduced by any means in full or in part, except for short extracts in fair dealings, for research or private study, critical scholarly review or discourse with an acknowledgement, without the written permission of Mzumbe University, on behalf of the author

ACKNOWLEDGMENT

Thank God, the Almighty, for blessing me with good health of body and mind that I am now presenting this work after successful completion of the first two semesters in the lecture rooms. It is with no doubt that without His blessing I could not endure this LL.M program.

Besides, I wish to express my gratitude to the Faculty of Law of Mzumbe University, especially Department of International Law for diligently organizing all the courses in the program. I am very much appreciating their good job. It is not possible to mention every one of the lecturer in this acknowledgment but I dare not complete this acknowledgment without mentioning the name of Ms Isabela Warioba for her eloquent lectures on International Law of the Child. On top, her guidance and supervision made this dissertation possible.

I send my regards to those officers from Police Force, Director of Public Prosecutions, Education of Offenders Centres, Children's Court and Social Welfare Department for their cooperation in responding to my questionnaires and interview guides. Their cooperation made this study possible.

My sincere appreciation deserves to be passed on to my employer, on that behalf, Commissioner of Immigration Services Zanzibar. This study and the two semesters in class were fully sponsored by the Commissioner of Immigration Services Zanzibar. His permission to allow me to pursue this LL.M program is also worth to be mentioned in this acknowledgment.

Last but not least, I would like to convey my sincere gratitude to my entire extended family for tolerating me during the entire period of this program. My wife and two little sons are to be given special mention in this acknowledgment since they are the one who felt the pain of missing me during period of this program. I wish them the best.

DEDICATION

To all children of Africa.

ABBREVIATIONS

ACRWC	African Charter on the Rights and the Welfare of the Child
Art.	Article
Cap.	Chapter
CRAE	Children's Right Alliance for England
CRC	Convention on the Rights of the Child
DPP	Director of Public Prosecutions
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
LDCs	Least Developed Countries
NOLA	National Organization for Legal Assistance
RM	Regional Magistrate
SWO	Social Welfare Officer
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children Fund
ZLSC	Zanzibar Legal Service Centre

LIST OF STATUTES

Constitutions

The Constitution of the United Republic of Tanzania of 1977

The Zanzibar Constitution of 1984

Domestic Statutes

Spinster, Widows and Female Divorcee Protection Act, no.5 of 1985 (Zanzibar).

The Children's Act, no.6 of 2011 (Zanzibar)

The Law of Child Act, no. 21 of 2009 (Tanzania Mainland)

International Instruments

International Covenant on Civil and Political Rights of 1966

United Nations Convention on the Rights of the Child of 1989

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

United Nations Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985

United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rule"), 1990

Universal Declaration of Human Rights, 1948

Regional Instruments

African Charter on Human and People's Right of 1981

African Charter on the Rights and the Welfare of the Child of 1990

American Convention on Human Rights of 1969

European Convention on Human Rights of 1950

LIST OF CASES

Kulomin v. Hungary (1997) UNCRC, No. 521/1992

Minors in Detention v. Honduras (1997) Case 11.491, Report No. 41/99 (IACHR)

Nortier v The Netherlands (Application no. 13924/88)

R.v.Oakes (1986) 1S.C.R 103, Supreme Court of Canada

S.C.v. United Kingdom (2004) ECHR 263, (2005) 40 EHRR 10

T. and V. v. United Kingdom, No. 24888/94; (1994) ECHR 2

Villalobos v. Costa Rica (1992), Case 9328 (IACHR)

ABSTRACT

Children in conflict with the law is a phrase which deals with any person who is below the age of eighteen years accused of breaching penal law. International law has placed some principles and standards to be complied by State when dealing with offending children.

This study investigated how Zanzibar complies with international law on children in conflict with the law. The study applied case study design. Questionnaires and interview were used to collect primary data direct from the respondents. Several instruments, international, regional and domestic were consulted to get some information on the study. Writings of scholars and government documents were also visited for secondary data.

The research found that Zanzibar has very comprehensive legislation that to the large extent replicate the requirements of international law on juvenile justice. However, it was revealed that to the large extent the law is not realized by the juvenile justice stakeholders. The existence of only one Children Court in Zanzibar, insufficient numbers of trained legal professionals and poor mechanism for rehabilitation of delinquent juveniles are factors, among others, to substantiate the minimum implementation of the law. On top, people are not aware of the juvenile justice in general.

In this regard, this study put some recommendations including operationalization of the existing Zanzibar Children's Act. Awareness creation among the people is to be urgently maintained by the government and international cooperation is also of vital importance.

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION AND COPY RIGHT.....	ii
ACKNOWLEDGMENT	iii
DEDICATION.....	iv
ABBREVIATIONS	v
LIST OF STATUTES	vi
LIST OF CASES.....	viii
ABSTRACT.....	ix
TABLE OF CONTENTS.....	x
LIST OF TABLES	xiv
LIST OF FIGURES	xv
LIST OF APPENDICES.....	xvi
CHAPTER ONE	1
BACK GROUND INFORMATION	1
1.1 Background to the Problem	1
1.2 Statement of the Problem.....	4
1.3 Objective of the Study	5
1.3.1 General Objective.....	5
1.3.2 Specific Objectives.....	5
1.4 Research Questions.....	5
1.5 Significance of the Research.....	5
1.6 Literature Review.....	6
1.7 Research Methodology	12
1.7.1 Research Design.....	12
1.7.2 Scope of the Study	12
1.7.3 Sampling Frame	13
1.7.4 Sampling Size	13
1.7.5 Sampling Techniques	14
1.8 Methods of Data Collection.....	14

1.8.1	Questionnaires.....	14
1.8.2	Interview	14
1.8.3	Documentary Review	15
1.9	Methods of Data Analysis.....	15
1.10	Limitations of the Study.....	15
 CHAPTER TWO		17
CONCEPTUAL FRAMEWORK.....		17
2.1	Introduction.....	17
2.2	The Concept of a Child	17
2.3	The Overview Concept of Children in Conflict with the Law.....	18
2.4	The Concept of Delinquency	19
2.5	Juvenile Sex Crime	20
2.6	Juvenile Justice	21
2.7	The Best Interests of the Child.....	22
2.8	Non-discrimination	23
2.9	Right to Life, Survival and Development	24
2.10	Right to be heard.....	25
2.11	Restorative Justice	26
2.12	Due Process.....	27
2.13	Delay	28
2.14	Deprivation of Liberty	28
2.15	Care and Welfare	29
2.16	Conclusion	30
 CHAPTER THREE.....		31
ANALYSIS OF ZANZIBAR’S COMPLIANCE WITH INTERNATIONAL LAW ON CHILDREN IN CONFLICT WITH THE LAW.....		31
3.1	Introduction.....	31
3.2	Legislation.....	32
3.3	Prevention of Children Delinquency	33

3.4	Arrest and Pre-Trial Procedures.....	35
3.4.1	Presumption of innocence.....	36
3.4.2	Right to be informed of arrest and charges.....	37
3.4.3	Right to have parents or legal guardians informed of arrest.....	38
3.4.4	Right to legal assistance during questioning.....	40
3.5	Diversion.....	41
3.5.1	Diversion by police.....	42
3.5.2	Diversion by prosecutor.....	43
3.5.3	Diversion by court.....	44
3.6	Juvenile Courts.....	44
3.6.1	Establishment of Children’s Court.....	45
3.6.2	Trials.....	46
3.6.2.1	Understanding the procedures.....	47
3.6.2.2	Children sensitive environment.....	49
3.6.2.3	Right to privacy.....	50
3.6.2.4	Decision to be determined without delay.....	52
3.6.2.5	No compulsion to testimony or confess guilt.....	55
3.6.2.6	Right to appeal.....	56
3.7	Remand homes.....	57
3.8	Reintegration and rehabilitation.....	60
3.9	Conclusion.....	62
	CHAPTER FOUR.....	64
	PRESENTATION OF FINDINGS AND ANALYSIS.....	64
4.1	Introduction.....	64
4.2	Awareness on international standards.....	64
4.2.1	Awareness by government officers.....	64
4.2.2	Awareness of ordinary people.....	65
4.3	Zanzibar’s compliance with international law.....	66
4.3.1	Responses from questionnaires.....	66
4.3.2	Situation of legal aid mechanisms.....	67

4.3.3	Remand facilities	68
4.3.4	Treatment for delinquent juveniles	68
4.3.5	Safeguarding the right to privacy.....	69
4.3.6	Promotion of the concept of reintegration	70
4.3.7	Specialised legal officers in juvenile justice system.....	70
4.3.8	Approved Schools.....	71
4.4	Implementation of international law standards.....	71
4.5	Responses from interviews	72
4.5.1	Zanzibar’s juvenile justice system	73
4.6	Other Observations from the field	74
4.6.1	People’s attitudes on offending children.....	74
4.6.2	Ineffectiveness of Police Gender and Children’s Desk	75
4.7	Conclusion	75
CHAPTER FIVE		77
SUMMARY, CONCLUSION AND RECOMMENDATIONS		77
5.1	Summary	77
5.2	Conclusion	78
5.3	Recommendations.....	80
5.3.1	Implementation of the Children Act	81
5.3.2	Translation of Children’s Act into Kiswahili.....	81
5.3.3	Training of Specialized Children Experts.....	81
5.3.4	Establishment of Remand Homes	81
5.3.5	Improve Awareness of the People on Juvenile Justice	82
5.3.6	International Cooperation.....	82
REFERENCES.....		83
APPENDICES		87

LIST OF TABLES

Table 3.1: Cases Filed to Children’s Court at Vuga in 2013	46
Table 4.1: Shows responses of interviewed officers on courses attended	65
Table 4.2: Situation of legal aid mechanism in Zanzibar	67
Table 4.3: Presents evaluation of remand facilities for children offenders	68
Table 4.4: Presents the opinions on practical treatments on offending children	69
Table 4.5: The views of respondents on practicability of international standards on juvenile delinquency	72

LIST OF FIGURES

Figure 3.1: Demonstrates the Children’s Court layout.....	50
---	----

LIST OF APPENDICES

Appendix I: A copy of questionnaire.....	87
Appendix II: A copy of interview guide.....	90

CHAPTER ONE

BACK GROUND INFORMATION

1.1 Background to the Problem

Efforts for the rights of children have a long history and thus have passed through various stages. Traditionally, children all over the world have been given special consideration in many areas of life including when in conflict with the law. Before 18th century, children offenders were tried and convicted in the same manner as adults and criminals.¹

However, at the end of 18th century the standardization of the treatment among adults and children became shocking.² Therefore, through pressure from social reformers, capital punishment for children was abolished and separate courts dealing with children and young persons were established.

The first Juvenile Court in the world was established in Illinois in 1899.³ The reasons for establishing this court was based on theory that the said juvenile lacked moral development and reasoning capabilities of adults hence could not distinguish right from wrong.⁴

The law protecting juvenile rights was imported in Zanzibar on 1st January 1952 and was named as The Children and Young Persons Decree, Chapter (Cap.) 58. The law was the product of English law⁵ Cap.58 which established provision for protection of persons under the age of sixteen years and for procedure at trial of such persons on criminal charges.

Currently, Zanzibar is obligated to comply with every international or regional agreement that Tanzania has ratified. The Zanzibar Children's Act, no.6 of 2011 has been enacted as an effort to comply with international law on the rights of the children. Part V of the Act specifically deals with children in conflict with the law.

¹ The US reform policy pioneered administration of juvenile justice which spread all over the world

² Watson, J. and Patricia, A. (1975). The Modern Juvenile Court, p.1

³ Sheth, H. (1961). Juvenile Delinquency in an Indian Setting, p.30

⁴ Ibid, p.30

⁵ British rule in Zanzibar (1890-1963) introduced the current common law system in the Islands

As the United Republic of Tanzania is a member of international community, it is bound to respect its international obligations in protecting the rights of children. International legal instruments impose standards on how juvenile justice system should be conducted by country's criminal justice system.

Juvenile justice system tries to treat and rehabilitate offending children and norms to deal with them have existed several decades. The 1955 Standard Minimum Rules for Treatment of Prisoners themselves inspired by standard endorsed by the League of Nations in 1934 which had already set out principle of separation of young prisoners from adults in custodial facilities and for adults and juveniles alike, the separation of accused and convicted detainees.⁶

The 1966 International Covenant on Civil and Political Rights (ICCPR) reiterates these principles in the form of hard law as well as prohibiting the death penalty for persons found guilty of a crime committed when they were under the age of eighteen years.⁷ The ICCPR also contains many safeguards applicable to all person brought to trial and detained and especially states that in the case of juvenile persons, the court procedure shall be such as will take into account their age and the desirability of promoting their rehabilitation.⁸

The main specifically child-focused norms currently regulating this field are contained in the Convention on the Rights of the Child. This instrument has made imperative for member states to obey special rules and principles that protect welfare of offending children, separate from adult offenders.⁹ International law intends to see that the best interest of children is fully observed.

Juveniles are vulnerable to abuse, neglect and exploitation and need to be protected against such threats. In keeping with the objective of diverting juveniles away from

⁶ UNICEF, International Child Development Centre: Juvenile Justice. Retrieved June 13th, 2013 from World Wide Web: <http://www.unicef.org> on

⁷ International Covenant on Civil and Political Rights of 1966, Art.6(5)

⁸ Ibid, Art. 14

⁹ Mashamba, J. (2009). "A child in conflict with the law under the Tanzania Law of the Child Act (2009): accused or victim of circumstances?" p.165

the criminal justice system and directing them towards the community, special measures for the prevention of juvenile delinquency must be developed.¹⁰

Children and young persons frequently get arrested by police and brought before courts where they are charged with criminal offences. These children are subjected to brief hearings on their cases whereby they may be deprived of their liberty and committed for years to juvenile correctional institutions known as approved schools.¹¹ International law requires that suspected or offending children to be placed under remand homes or approved schools in case they are deprived of their liberty. These requirements need sound infrastructures that some underdeveloped or developing countries cannot fully satisfy. This situation may sometimes lead offending children to be committed in regular prisons as remanded or prisoners.

Convention on the Rights of the Child provides with the provision on matters relating to the administration of juvenile justice, calls for alternative to institutional care to ensure that children are treated in a manner appropriate to the well-being and proportionate to their circumstances and offence.¹²

Hence, it is imperative for the Member States to the CRC to respect the rights of suspected or offending children at every stage of criminal proceedings. Their criminal justice systems are to create means that can uphold the standards set by Article 40 of the CRC. The well-being of children is of crucial importance as far as international standards and principles are concerned.

The Zanzibar's Children Act of 2011 establishes the Children's Court which requires having Children's Court in every region of Zanzibar.¹³ These Courts at regional level intend, among others, to hear and determine criminal charges against a child for an offence alleged to have been committed before the child reaches the age of 18 years.

¹⁰ De Rover, T. (1998). To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces, p.315

¹¹ Makaramba, J.(2006) "Children in Conflict with the Law in Tanzania and Zanzibar" , in The Judiciary in Zanzibar, p.70

¹² Convention on the Rights of the Child of 1989 Art.40 insists on this treatment.

¹³ The Children's Act, No. 6 of 2011, Sec.18 (1)

State's compliance with this requirement depends on its political will or even economic capability. It is indeed that full realization of the international set standards need strong economy of a Member State. Progressive realization is a notion that international human rights law recognizes for poor countries to gradually comply with international standards and principles.

1.2 Statement of the Problem

International human rights law requires children offenders to have special protection different from the adults. There are several international instruments (hard law and soft law) intending to protect children in conflict with the law. The instruments create international obligations to make sure that the best interest of children is accordingly observed when we come to the issue of children in conflict with the law.

The welfare of children must be given special priority because of their physical and mental immaturity. Children, when in conflict with the law are entitled to be treated with dignity and worth. This right of course cut-across to cover adult offenders and children. However, for children this goes a bit further. The language used and detention facilities must consider the best interest of children. The criminal justice system of the State must be aware that those children will come to the society ultimately.

Criminal justice system of individual States is obligated to comply with international legal instruments on children in conflict with the law. The United Republic of Tanzania provides dual legal system- that of Tanzania Mainland and of Zanzibar. Both the Tanzania Constitution of 1977 and Zanzibar Constitution of 1984 recognize protection of any person accused of criminal offence. No person shall be subject to torture or inhuman or degrading punishment.¹⁴ This constitutional requirement should extend to children when they are in conflict with the law.

The United Republic of Tanzania and Zanzibar in particular have good laws that intend to meet international standards on the right of children when in conflict with

¹⁴ The 1977 Tanzania Constitution, Art.13 (6) (e), see also Article 6 (d) of the 1984 Zanzibar Constitution.

the law. Even though there are so many good laws on paper, these laws are barely put into practice. This study intended to explore this problem.

1.3 Objective of the Study

This study aimed to treat the following objectives.

1.3.1 General Objective

The general objective of this study was to investigate Tanzania's compliance with international law on children in conflict with the law with specific attention to Zanzibar.

1.3.2 Specific Objectives

- i. To examine whether the Zanzibar criminal justice system on children in conflict with the law comply with international law.
- ii. To find out whether the Zanzibar population is aware on the rights of children when they are in conflict with the law.

1.4 Research Questions

- i. Does Zanzibar criminal justice system comply with international law on children in conflict with the law?
- ii. Is Zanzibar population aware of the rights of children when they are in conflict with the law?

1.5 Significance of the Research

This study will benefit Tanzania and particularly Zanzibar population on the need to protect children when they are involved in offending the penal law of the country. Hence, the population will be in a better position to put more efforts in complying with international standard.

The study intended to create awareness to the people on the existence of international law principles and standards on how children offenders are to be treated.

1.6 Literature Review

Practically all human knowledge can be found in books and libraries. Not like other animals, man is built upon accumulated and recorded knowledge of the past.¹⁵ For many least developed countries (LDCs) such as Tanzania, compliance with international law on children in conflict with the law is an aspect that has limited literatures. It seems that this human right aspect is a new phenomenon to such group of States. However, some scholars, international and regional organizations have tried to produce some literature to expose international principles and standards on children in conflict with the law generally and its compliance by states.

UNICEF¹⁶ comments that juvenile justice is complex area in which to work. According to her, the many differences and complexities of juvenile justice and variations in practice have not been easy to follow. Therefore, a country is to be shaped by experience and by growing understanding of what works and what does not.

However, in the human right issue especially a child protection such commentary can be abused by states which do not adhere to human right standards. Under international human right law states have obligation to protect. Convention on the Rights of the Child is universally binding to Member States.

O'Donnell¹⁷ argues that diversion as a way of dealing with offences committed by children without adjudication prevents stigmatization resulting from trial, permit a more rapid resolution of the case. It may also be conducive to resocialisation or rehabilitation than formal adjudication.

Nonetheless, if diversion is not accordingly maintained it may mean renunciation of the legal rights of a victim. Diversion according to CRC's article 40. 3 and Beijing Rule 11.3 must be accepted voluntarily. State must be in a position to comply with this standard.

¹⁵ Kumar, S. Y (2006). Fundamental Research Methodology and Statistics, p.45

¹⁶ Retrieved 20th August, 2014 from: World Wide Web: <http://www.unicef.org/tdad/unicefceejjassessment>

¹⁷ Dan O'Donnell is international consultant works with UNICEF RO Child Protection Unit

Abramson¹⁸ analyses the Committee observations on the implementation of juvenile justice in 141 countries. According to him, the analysis noted a widespread lack of sympathetic understanding necessary for compliance with CRC. He argued that a complete overhaul of juvenile justice was required in 21 countries and that in others, torture, in humane treatment, lack of separation from adults, police brutality, poor conditions in detention facilities, overcrowding, lack of rehabilitation, ... and improper use of juvenile justice systems to tackle other social problems, were rife.

In his analysis, Abramson mainly bases in identifying European countries, the developed world with reliable infrastructures to comply with international law on the aspect. This shows that compliance with international law on children in conflict with the law may sometimes depend on the State's attitude. This study tried to investigate the Zanzibar's behaviour on the compliance with international law on the said aspect.

Before Tanzania had enacted the current legislations on children, **The United Nations**¹⁹ commented that Tanzania's compliance with international standards on children in conflict with the law is not satisfactory. Its Committee on the Rights of the Child complains that holding of minors in difficult detention facilities, the poor conditions in detention facilities, and the lack of adequate facilities for children in conflict with the law is violation of his or her rights in this regard.

This comment was made almost fourteen years ago, during the period of the repealed children legislations. It is worth studying whether this comment still holds water under the current legislations enacted as to conform with international law requirements.

Zanzibar Government²⁰ articulates that all children in conflict with the law are treated in a manner that complies with international standards, is consistent with their dignity and worth, and focuses on their rehabilitation and reintegration into society.

¹⁸ Abramson, B. (2000). Juvenile Justice: The Unwanted Child of the State Responsibilities, An analysis of the concluding observation of the UN Committee on the Rights of the Child in regard to juvenile justice from 1993 to 2000. Retrieved August 20th, 2014 from World Wide Web: <http://www.defence-for-children.org>

¹⁹ United Nations Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: CRC/C/15/Add.156, para.66

²⁰ Revolutionary Government of Zanzibar (2013), Juvenile Justice System, p.39

This is the worldwide call that international and regional human rights systems is in a position to monitor.

The statement by Zanzibar government is a mere theoretical approach that needs to be honestly dedicated because making a policy statement is one thing and implementation is another. It denotes her political will to comply with international principles and standards. However, its commitment may be seen in its development budget to children's welfare that in this document it is not clearly demonstrated.

Further, the **Zanzibar Government**²¹ insists that in order to promote a child-friendly, child-rights compliant and effective criminal justice process as contained in the Children's Act, it is important that law enforcement officials who come into contact with children in conflict with the law are properly trained, are aware of relevant domestic criminal justice laws, international child rights standards, child development, causes of juvenile delinquency and appropriate techniques of working effectively with children.

However, training on its own should not be considered to be enough. International law requirement is that specialized units for children, staffed by trained personnel, are established within the police, prosecution, and social services and that separate, child friendly courts are established. A State equipped with this mechanism can be said to be in compliance with international law on children in conflict with the law.

The Children's Act²² provides with broad part on children in conflict with the law. Sections provided in Part V of the Act (sections 35 up to 54) clearly seem to be in compliance with international law. This shows how simple to have good law but implementation may not be guaranteed by these provisions.

A juvenile justice system with least or no specialized services such as legal aid, counseling, supervision, rehabilitation, reintegration or facility for residential care and treatment of children in conflict with the law cannot be said to comply with international law.

²¹ Zanzibar Government Juvenile Justice Report of 2013, p.41

²² This is a piece of legislation that was enacted by the House of Representative Zanzibar as an effort to comply with international principles and standards on children in conflict with the law, among others.

Hamilton²³ argues that drafting a new juvenile justice law can only be regarded as one part of any systemic reform. It is essential that States have a clear understanding of the costs of the changes that the legislative reform will bring, as well as commitment to these changes from all relevant ministries.

According to him, in order for legislation to be effective, the costs of implementation should be calculated and the appropriate legislative, executive and judicial authorities should make commitments to establish, strengthen or expand the coverage of the institutions and programmes necessary for implementation. Legislation that fully conforms to international standards, but is impossible to implement because the necessary infrastructure does not exist, does little and may even be counter-productive in some respects.

This argument seems to mainly focus on economic strength of States in which many underdeveloped countries are unable to satisfy. However, a country can be economically well but lack political will to implement international standards.

Muncie²⁴ reveals that the Committee concluded that the United Kingdom's (UK) record on compliance was worsening. At that time, The Children's Rights Alliance for England (CRAE, 2005) declared that England and Wales had effectively 'torn up' the CRC. As part of the consultation prior to the 2008 report, the four children's commissioners for England, Scotland, Wales and Northern Ireland submitted a joint report to the Committee in which they made clear their concerns that the UK was continuing with some 'serious violations' of the Convention, including excessive criminalization, failure to distinguish adequately between adult and child offenders and the promotion of a general punitive ethos of 'offender first, child second.'

UK is a developed, well-off State in Western Europe but it is being criticized for failure to respect international standards on children in conflict with law. It is obviously that political will is also important in the realization of international law

²³ Hamilton, C. (2011). Guidance for Legislative Reform on Juvenile Justice, pp.4-5. Retrieved March 15th 2014 from World Wide Web: <http://www.childrenslegalcentre.com>

²⁴ Muncie, J (2009). The United Nations, children's rights and juvenile justice, p.6. Retrieved from <http://www.routledge.com/books/details> on 13th March 2014

obligation by States. This might also be the weakness of international law that its compliance depends on either domestic or foreign policy of a State concerned.

Riyadh Guidelines²⁵ provides for the need and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. This guide may directly be related to the status offences in which the same guidelines define to be an action that can be committed only by a person occupying a particular status often applied to offences that can be committed only by a child.²⁶

Complying or not complying with the guidelines on criminalization may depend on the criminal law of a State concerned. It is indeed that a State is free to state which commission or omission is a crime. Criminal law is the part of the law that deals with behaviour which is defined as criminal, and results in punishment by the state when a person is found to be guilty of breaking the law.²⁷ Thus, in many States this guide may not be implemented.

National Organization for Legal Assistance (NOLA)²⁸ mention several factors behind the increasing number of children in conflict with the law such as broken families; child abuse and neglect; truancy; abject poverty on the part of their parents; frivolous charges by the police; school dropping out; and child harassment at home. This situation may prove that Riyadh Guideline is not effectively implemented under Tanzania's criminal law and particularly juvenile justice system.

Goldson and Muncie²⁹ argue that global inequalities and social injustices may always impede the realization of a universal and full rights compliant juvenile justice.

²⁵ United Nation Guidelines for the Prevention of Juvenile Delinquency, see the Fundamental Principles, Guideline.5

²⁶ Ibid, see Guideline 56

²⁷ Cross, N. (2010). Criminal Law & Criminal Justice: An Introduction, p.4

²⁸ NOLA, The Justice Review: Special Commentary on the Tanzanian Law of the Child Act (2009), p.177

²⁹ Goldson, B. and Muncie, J.(2006).Rethinking Youth Justice: Comparative analysis, international human rights and research evidence' Youth Justice, vol.6 no.2 pp.91-106

But this should not preclude the insistence that nations States move to comply with their international obligations. They further point out that there are so many examples of the rights of children in conflict with the law being ignored, that nobody whether policy makers, media, elected politicians, practitioners or citizens can simply stand by with indifference.

“Ignore here denotes to refuse deliberately to acknowledge”³⁰ something that in Tanzanian situation may not be the case. Lack of awareness and knowledge to these groups of people may be the reason of not complying with international standards, but it is also to consider the whole issue of progressive realization for the State’s obligation to fulfill.

European Court of Human Rights³¹ (ECHR) provides its criticism on the existing Dutch legal structure and the effects thereof on its application in practice. A committee for the revision of juvenile criminal law was set up in 1979 and it published a report in 1982. Criticism of existing system in legal writing increased as a result of this report and the judgments of the European Court in the case of *De Cubber v. Belgium* (1984).

The criticism by the ECHR against the Netherlands shows that the States compliance with international law is a controversial issue worldwide. States criminal justice systems always contradict with international law. There is always struggle for supremacy between domestic laws and international law though a good number of States willingly sign and ratify the international and regional instruments.

As from the above reviewed literatures, the States’ compliance with international law seems to be an aspect of competition between international law and municipal law. Monitoring system by international and regional organizations put in place to defend the rights of children in conflict with the law seems to be suffering from neglect by States. This being the case, the researcher was in a view that there is a need to carry out a study on Zanzibar’s compliance with international law on children in conflict

³⁰ Hornby, S. (1995). Oxford Advance Learner’s Dictionary, (5th ed), p.590

³¹ *Nortier v The Netherlands* (Application no.13924/88), paras. 23 and 25.

with the law and finally recommending the way to improve the realization of international principles and standards on the aspect.

1.7 Research Methodology

Research methodology is a way to systematically solve the research problem.³² This part comprises several components in relation to the methods and techniques that have been used in the collection, organization and evaluation of data for the study. It gives scientific explanation on the population that has been studied, sample size and sampling techniques, source of data collection and analysis.

1.7.1 Research Design

Research design is the conceptual structure within which research is conducted. It constitutes the blue print for the collection, measurement and analysis of data³³. This study has employed the case study design. Case study design means intensive investigation of the particular unit represented.³⁴ The case study design was useful due to the need of in-depth details and context of the subject under study. It enabled the researcher to understand fully the behaviour pattern of the concerned units.

The case study deepens our perception and gives us a clear insight into life. It gets at behaviour directly and not an indirect and abstract approach. Therefore, this design is crucial in deepening our perception of “Tanzania’s compliance with international law on children in conflict with the law”

1.7.2 Scope of the Study

Tanzania as a sovereign state has international obligation to observe and to respect principles of international law. The country has subscribed to several international instruments on children’s rights. This study is confined to examine how the Zanzibar juvenile justice system, as part of the United Republic of Tanzania, complies with international law of the child on children in conflict with the law. The study has limited itself to examine international law pertaining to children in conflict with the law.

³² Kothari, C.R. (2004). Research Methodology: Methods and Techniques, p.8

³³ Ibid, p.31

³⁴ Singh, K. (2006). Fundamental of Research Methodology and Statistics, p.148

Therefore, the study was mainly conducted in Unguja Urban West region. For the purpose of achieving this investigation during the period of data collection much concentration was on the institutions that deal with children in conflict with the law namely Police Force, Office of Director of Public Prosecutions (DPP) and Children's Court. Others were Education Offenders Centres and Social Welfare Department.

1.7.3 Sampling Frame

This is a complete list of all objects in the population from which one sample is drawn while population is the totality of object under investigation³⁵. Practically there are several institutions in Zanzibar that deal with children in conflict with the law. These are Police Force, the Office of Director of Public Prosecutions (DPP) and the Judiciary. Others are Offenders Education Centres and the Department of Social Welfare.

However, since this study also aimed to find out the people's awareness on international law principles on children in conflict with the law, together with officers from the above institutions, some people from the streets were consulted for interview to know their awareness on the problem applying both judgmental and random sampling.

1.7.4 Sampling Size

Zanzibar has a population of about 1.3 million people. Administratively, it is divided into five regions (three in Unguja and two in Pemba). The study bases in the Urban West region (Unguja) where only a Children's Court has been established. The sample size of the study was fifty (50) people from the mentioned institutions above and ordinary people from the streets. Twenty five (25) officers from the above mentioned institutions were provided with questionnaires, one (1) officer from each of the five institutions was interviewed using interview guide. Twenty (20) ordinary people were drawn from people of different walks of life in Zanzibar town area.

³⁵ Adam, J. and Kamuzora, F. (2008). Research Methods for Business and Social Studies, p.122

1.7.5 Sampling Techniques

Sampling techniques is a selection of units chosen to represent the target population. It is a group of element selected from the population in order to study that that group instead of studying the whole population.³⁶ This study has applied two types of sampling techniques. These are purposive sampling and random sampling. Purposive sampling has been used to those officers dealing with children in conflict with the law. Random sampling has been used for twenty (20) ordinary people from different walks of life in Urban West region to get to know their awareness and attitudes on children in conflict with law.

1.8 Methods of Data Collection

This study relied on primary sources of data and secondary sources of data. The primary data was collected by using questionnaires and interview methods. Secondary data was collected from various sources of already written literatures.

1.8.1 Questionnaires

Set of questionnaires were prepared, tested and then distributed to police officers, State Attorneys and Court officers. Others are Offenders Education Centres Officers and Social Welfare Officers (SWO). Hence, twenty five (25) officers from the selected strata were served with questionnaires. Both open-ended and close ended questions were used to solicit data from concerned respondents. Close-ended questions were employed to allow the researcher to gather data that allowed quick comparison responses. Open-ended questions were used to allow the respondent to answer in their own words.

1.8.2 Interview

Structured and unstructured interview were organized with Police officer, Public Prosecutor, Children Court Magistrate and Social Welfare Officers.

Unstructured interview allowed an interviewee to be free to discuss and comment on issue to be discussed while structured interview was useful in intensifying and checking the written answers by comparing the responses from questionnaires and

³⁶ Nichols, P. (2000). Social Survey Methods: A Fieldguide for Development Workers, p.128

those from interviews. Hence, interview guides were prepared for the purpose of collecting data through interview.

1.8.3 Documentary Review

This method was also used to collect secondary data. Various text books, journals, law reports, international or national instruments and commentaries were reviewed. Other documents reviewed were domestic legislations and government reports. Websites of several international organizations were utilized as means of collecting data.

Libraries of Zanzibar Central Library, Zanzibar Legal Services Centre, Zanzibar High Court and Director of Public Prosecution were useful sources of those documents. Zanzibar government printer was also the source of the documentary review.

1.9 Methods of Data Analysis

In analyzing the collected data, editing was applied in which raw data was examined and proof read to catch and correct errors and inconsistencies. The completed questionnaires were carefully scrutinized. Furthermore, data was classified on the basis of common characteristics so as to get meaningful relationships.

1.10 Limitations of the Study

This study only examined how Zanzibar legal system complies with international law when faced with the whole issue of children in conflict with the law. The concept of children in conflict with law does not seem to be common throughout Tanzania, especially Zanzibar. Hence, during the conduct of this study the researcher faced some difficulties. Scarcity of literatures specifically dealing with Zanzibar was one of obstacle faced by researcher.

Sensitivity and secrecy of children's case was also a limitation to the study. Children's criminal procedure needs to be conducted regarding the right to privacy and thus cases involving them are not subject to be publicly available. On top of that, some of strata are sensitive security organs in such a way that interviewing their officers was not so easy.

However, in spite of these limitations the researcher was able to collect sufficient data to accomplish this study.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.1 Introduction

This part demonstrates the general concept of children in conflict with the law and how international law explains it. These concepts help in the final analysis to decide whether accordingly Zanzibar operationalise them in its juvenile justice system. A child in conflict with the law is a broad term that encompasses several concepts with which States must comply its international obligation.

2.2 The Concept of a Child

Various instruments have defined who a child is. United Nation's Convention on the Right of the Child³⁷ defines a child as an individual below the age of 18 years under the law applicable to the child, majority is attained earlier. This means that CRC covers all individuals bellow the age of eighteen years but does not mention anything before the birth of the child. Additionally, it provides room for the State to have its age of majority below that of the CRC.

Brett³⁸ criticizes that definition of childhood was controversial in a number of respects during the drafting of the Convention. Although a few alternative ages were proposed for the upper age limit of childhood, from an early stage the idea of flexibility in relation to national laws on majority defused the issue. Member States to the Convention took advantage to set age of majority according to their national law. This may also affect the age of criminal responsibility.

African Union³⁹ departs from the open-endedness of the CRC definition by defining a child as every human being below the age of 18 years. Thus, African interpretation of a child must be beneath the age defined by its Charter. The juvenile justice system must work within the age range of these definitions.

³⁷ Convention on the Rights of the Child, Art. 1

³⁸ Brett, R. (2012) "Rights of the Child". in Kraus, C., Scheinin, M. (2012). *International protection of human rights: A text book*, pp.243-264.

³⁹ African Charter on the Right and the Welfare of the Child (1990), Art. 2

The clarification made by UNICEF⁴⁰ assert that Beijing Rule and Riyadh Guidelines make use of more especially of the term “children” and “young persons” often in tandem. Moreover, they employ juvenile only as an adjective as in juvenile justice or juvenile delinquency.

Moreover, determining the age of majority is always faced by controversy of knowing exactly the age of a child because of many African children not being registered during birth. For the case of Tanzania Mainland, until very recently, registration for birth was not compulsory for African people. Although registration of birth in Zanzibar was compulsory for all since 1907 but up until today there is a good number of children whose births are not registered. This situation creates an atmosphere of uncertainty in determining the age of juvenile offenders. The case of Elizabeth Michael *alias* Lulu may be affine example to the controversy.

The concept of who is a child, is relative to the age of criminal responsibility. The juvenile justice system is required to determine at what stage a child can be held criminally responsible.

2.3 The Overview Concept of Children in Conflict with the Law

The term children in conflict with the law refers to anyone under 18 years who comes into contact with the justice system as a result of being suspected or accused of committing a criminal offense.⁴¹ Most children in conflict with the law commit petty crimes or such minor crimes as status offences such as truancy, vagrancy, alcohol use or begging. Such crimes are always not crimes when committed by adults. In addition some children involve in criminal behaviour crimes when used or coerced by adults.

United Nations Children Fund (UNICEF) insists that too often, prejudice related to race, ethnicity; social or economic status may bring children in conflict with the law.⁴² Therefore, discriminated or children lacking effective family supervision are prone to be involved in offending the penal law of a State. This is because they

⁴⁰ UNICEF, innocent digest: Juvenile Justice. Retrieved 1 June 13th, 2013 from World Wide Web <http://www.unicef.org>.

⁴¹ Ibid.

⁴² *ibid*

always disadvantaged to the required social services such as education. Most of the European jurisdictions are criticized for discriminating minorities or asylum seekers and for having overrepresentations of immigrant and minority groups children under arrest or in detention, particularly the Roma and traveller communities.⁴³

International human rights law provides mechanism to protect them when they are charged for any delinquent acts. Convention on the Rights of the Children (CRC) provides that children in conflict with the law have the rights to treatment that promote their dignity and worth, taking into account their age and their aims for reintegration into society.⁴⁴ It is also provided that placing children in conflict in a closed area should be a measure of last resort, to be avoided whenever possible. The Convention prohibits death penalty and sentence to life imprisonment for offences committed by children under the age of eighteen years.

2.4 The Concept of Delinquency

It is argued that the word ‘delinquency’ has no standard or commonly accepted precise meaning; rather, it is a common appellation used by the public and by the courts to designate a wide variety of forms of behaviour regarded as mis-behaviour.⁴⁵ This means that an individual State or society may define the concept as it thinks fit to do so and probably according to the provided situation.

This is not to deny that more specific and clear definitions may not be found in the laws of various countries. Neither the Tanzania Mainland Law of Child Act of 2009 nor the Zanzibar Children’s Act of 2011 defines the concept of ‘delinquency’ in their provisions. However, the legal dictionary defines delinquency as “the act of committing crime, usually minor crime”.⁴⁶ Additionally, academicians define delinquency as criminal or antisocial behavior or acts committed by children. It

⁴³ Supra, note 22, p.5

⁴⁴ Supra,note 35, Art.37

⁴⁵ United Nations, (1980). Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, para.73

⁴⁶ Collins, H.(1993).Law Dictionary, p. 70

insists that the term has a negative connotation and as with juvenile is a term that is now generally avoided as being stigmatizing for a child.⁴⁷

2.5 Juvenile Sex Crime

The term “juveniles who commit sexual crimes” refers to individuals adjudicated in a criminal court for a sexual crime.⁴⁸ Sex crimes are defined as sexually abusive behavior committed by a person under the age of 18 that is perpetrated against the victim’s will, without consent, and in an aggressive, exploitative, manipulative, or threatening manner.⁴⁹ The juvenile sex crime was a controversial issue in Zanzibar juvenile justice system in the 1970s up until mid 2005. Act no. 4 of 1985 which repealed Decree no. 5 of 1970 defines a spinster as an unmarried female person bellow the age of 25 years.⁵⁰ The law stipulated that a spinster who is found to be pregnant at her will shall be guilty of an offence and shall be liable on conviction to be sent to Education Centre for a period of two years.⁵¹ This provision seemed to victimize female children who were found to be pregnant while unmarried. The age of bellow 25 years included children.

It is important to utilize appropriate terminology for juvenile sex offenders. Harsh and inappropriate expressions include terms such as pedophile; child molester, predator, perpetrator, and mini-perp⁵² have often been unfairly associated with this group, regardless of the youth’s age or developmental stage. Using appropriate expressions can facilitate a more accurate depiction of juvenile sex offenders and may decrease the subsequent aversive psychological effects from using such labels.

⁴⁷ Supra, note. 21, p.2

⁴⁸ Barbaree, H. E., Marshall, W. L. (2008). An introduction to the juvenile sex offender: Terms, concepts, and definitions . Retrieved May 29,2013 from the World Wide Web: <http://www.guildfordpress.org>

⁴⁹ Ryan, G. (1997). Juvenile Sexual Offending: Causes, Consequences and Correction. Retrieved June 6th ,2013 from World Wide Web: <http://wikipedia.org>

⁵⁰ Spinsters, Widows and Female Divorcee Protection Act, sec.2

⁵¹ Ibid, sec. 3 (1) and (3)

⁵² Longo, E., and Prescott, S. (2006). Introduction: A brief history of treating youth with sexual behaviour problems. Current perspectives: Working with sexually aggressive youth and youth with sexual behavior problems, pp, 31-43. Retrieved May 29, 2013 from World Wide Web: <http://www.csm.org/pubs.html>

2.6 Juvenile Justice

The term juvenile justice aims to reduce incarceration while protecting children from violence, abuse and exploitation. It promotes rehabilitation that involves families and communities as safer, more appropriate and effective than punitive measures.⁵³ Justice systems designed for adults often lacks the capacity to adequately address these issues and are more likely to harm than improve a child's chances for reintegration into society.

There is no strict and clear-cut dividing line between the philosophies and approaches underlying a general justice system and that to be applied to juveniles. The difference lies more especially in emphasis, in particular between the weights given respectively to punishment and to securing the offender's social reintegration.

The International Covenant on Civil and Political Rights contains no indications or obligations regarding sentencing for adults⁵⁴, whereas CRC sets out a number of restrictions such as prohibiting death penalty and life imprisonment without possibility of release. The detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.⁵⁵ The provision stem from the approach that the treatment of a child in conflict with the law should take account among others things the desirability of promoting the child's reintegration and the child's assuming a constructive role.⁵⁶

The country's juvenile justice system is required under international law to avoid punitive sanction against children. The Beijing Rule states that juvenile justice system shall emphasize the well-being of the juvenile.⁵⁷ Thus, the Rule introduces the principle of proportionality- and shall ensure that any reaction to juvenile offenders to always be in proportion to the circumstances of both the offenders and the offence. Commentary to Rule is similarly designed to curb undue recourse to such punitive

⁵³ Supra, note 27, p.33

⁵⁴ International Covenant on Civil and Political Rights of 1966, Article 6

⁵⁵ United Nations Conventions on the Rights of the Child, Article 37 (b)

⁵⁶ Ibid, Art 40 (1)

⁵⁷ United Nations Standard Minimu Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985, Rule. 5

sanctions. The commentary stipulates that the first objective is to the promotion of the well-being of the juvenile.⁵⁸

2.7 The Best Interests of the Child

The best interest of the child is one of four principles of the CRC's. The best interest shall be the primary consideration in all actions concerning children.⁵⁹ Thus the best interest of the child is the main underlying principle of the Convention. By primary consideration it means that it will not always be the single, overriding factor to be considered as other parties may have equal claims to have their interests considered.⁶⁰

The concept of best interest of the child is the overriding concept in the rights of children. The law of Zanzibar provides for the significance of the concept. It states that this Act shall be interpreted and applied so that in all matters concerned the care, protection and well being of the child, the best interests of the child concerned shall be the paramount consideration.⁶¹ This is also the requirement of international law but of course needs practical implementation.

The African Union dared not to leave the concept of the best interest of the child. Although the African instrument does not define what the concept of best interest means but stipulates that in all actions concerning the child, the best interest shall be the primary consideration.⁶² The Zanzibar law uses the phrase paramount consideration while African Charter primary consideration in determining the best interest of the child. Paramount denotes that the best interest should dominate other interest while primary denotes the most important of all.

The Charter reiterates that in all judicial or administrative proceedings affecting a child who is capable of communication his or her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an

⁵⁸United Nations Standard Minimu Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985, Rule. 5

⁵⁹ United Nations Convention on the Rights of the Child, Art. 3 (1)

⁶⁰ Shivji, Majamba, Makaramba and Peter (2004). Constitutional and Legal System of Tanzania, p.164

⁶¹ The Children's Act, sec. 3

⁶² African Charter on the Rights and Welfare of the Child, Art. 4 (1)

impartial representative as a party to the proceedings.⁶³ The idea that a child is a right holder is pursued by this concept of the best interest of the child.

Domestic and international instrument do not seem to define the concept of the best interests of the child. However, individual scholars try to give interpretation of what the concept is all about. The best interests can be defined as ‘Basic interests, for example to physical, emotional and intellectual care developmental interests, to enter adulthood as far as possible without disadvantage; autonomy interests, especially the freedom to choose a lifestyle of their own.

The definition stresses that the best interests concept is indeterminate. Moreover, there are different conceptions of what is in a child’s best interests. Different societies, different historical periods will not agree. To take one obvious example: views of corporal punishment of children have changed, and there are still differences between different cultures today.⁶⁴ The law of Zanzibar has outlawed the use of corporal punishment to all convicted criminals.

2.8 Non-discrimination

The dictionary definition of discrimination is treating people in different ways because of class, religion, race, language, colour or sex.⁶⁵ Therefore, opposite to this definition is the concept of non-discrimination which is crucial standard in the protection of the right of children.

Neither ACRWC nor CRC provides for the definition of discrimination but provides for the articles that guarantee the right to non-discrimination. The CRC expressly stipulates that:

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction 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.*⁶⁶

⁶³ African Charter on the Rights and Welfare of the Child, Art. 4 (2)

⁶⁴ Freeman, (2007). Commentary on the United Nations Convention on the Rights of the Child: The Best Interests of the Child. p. 25

⁶⁵ Collin, H. (1993). Law Dictionary, p.76

⁶⁶ United Nations Convention on the Rights of the Child, Art.2

Therefore, under international human right law States are required to have legislation which prohibits discrimination. A State's constitution, criminal law, and criminal procedure law or in child-specific statutes can enshrine this principle. However, it needs to be understood that a general provision on discrimination may not be sufficient to protect certain groups of children within the juvenile justice system who frequently face discrimination.⁶⁷

Practically, there can be two categories of discrimination which are direct discrimination and indirect discrimination. Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground, for instance, because the child comes from an ethnic minority or is born to unmarried parents. Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals or children from poor families who do not possess, or have been denied, such certificates.⁶⁸

Children who are repeatedly in conflict with the law (recidivists) are believed to be likely facing discrimination. Children who are homeless, facing social problems, who are poor or whose parents are offenders themselves or drug and alcohol misusers and children with learning disabilities or mental health issues may also be treated more harshly by the juvenile justice system. Such children are more likely to be prosecuted, more likely to be held in pre-trial detention and more likely to receive a custodial sentence.

2.9 Right to Life, Survival and Development

Article 6 of CRC guarantees the child fundamental right to life, upheld as universal human rights principle in other instruments and to survival and development to the maximum extent possible. This is a holistic concept which emphasizes the key role of parents and the family for children development and the State's obligation to support

⁶⁷ Supra, note 60, p.166

⁶⁸ Njungwe, N. (2009). "International protection of children's rights: an analysis of African attributes in the African Charter on the Rights and Welfare of the Child" In Cameroon Journal on Democracy and Human Rights, CJDHR, Vol. 3 No.1-June 2009 (pp. 5-6)

them. It is a challenging concept since its realization needs economic power of a State. Nonetheless, international law recognizes the idea of progressive realization of rights that need a healthy economy.

Children who are detained by the juvenile justice system or the adult criminal justice system are often not provided with the best possible conditions, and may be housed in poor facilities, with little educational or vocational opportunity, and of course, are separated from their families, often with little contact. Such children find it difficult to obtain education, accommodation or employment when released, and also experience difficulty reintegrating into the family and community.

The Havana Rules contain minimum standards on provision and conditions in custodial institutions. It is provided that “juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity”.⁶⁹

2.10 Right to be heard

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

The Committee on the Rights of the Child,⁷⁰ in General Comment No. 12, has placed great emphasis on the right of the child to be heard at every stage of the juvenile justice process and takes the view that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfillment of their rights.

⁶⁹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rule), 1990, Rule 31

⁷⁰ Committee on the Rights of the Child, General Comment No. 12 (2009), para 30-32. The right of the child to be heard, U.N.Doc. CRC/C/GC/12. Retrieved May 3rd, 2014 from World Wide Web: <http://www.ohchr.org/EN/hrb/crc> on

Article 40 of the CRC also reflects the important principle pertaining to the right to be heard and the right to choose when to be heard and what to say. Children have a right to take an active role in legal proceedings but ‘must not be compelled to give testimony or to confess guilt’. They have a right not to exercise their right to be heard.⁷¹ This is also enshrined in Article 13 of the CRC, which protects the right to freedom of expression.

Additionally, the concept of the right to be heard has, according to the Committee on the Right of the Child, five steps. These are preparation, hearing and assessment of the capacity of the child. Other steps are information about the weight given to the views of the child and complaints, remedies and redress.⁷² Thus, this concept is important and it can render active participation of a child in criminal proceedings against him or her.

2.11 Restorative Justice

Restorative justice is a process in which the victim and offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.⁷³ This is a kind of reconciliation in which it helps to build relation and avoid resorting to formal judicial proceedings.

The UN Economic and Social Council⁷⁴ advise that restorative justice should entail the acknowledgement of responsibility for the offence and understand the effects of the offence on the victim; receive support to repair harm caused to the victim or oneself and family and make amendments or restitution or reparation. Others are to apologise to victims; restore their relationship with victim when appropriate and reach closure.

⁷¹Retrieved May 3rd,2014 from World Wide Web: [http://www.ohchr.org/EN/hrb/crc on](http://www.ohchr.org/EN/hrb/crc%20on), para 37

⁷² Ibid, para. 38

⁷³ Retrieved May 2, 2014 from World Wide Web: <http://www.restorativejustice.org.uk>

⁷⁴Economic and Social Council, Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, 2002/12, para. 2.2.

2.12 Due Process

Juvenile justice system is definitely required to observe due process. The legal dictionary definition of the term provides that due process of law means the formal work of a fair legal action.⁷⁵ Due process is the recognized right of any person accused of an offence to benefit from a fair trial. Some of its elements come into play prior to the trial itself.⁷⁶

These include the right to be informed clearly about the exact charges being leveled; the right to be presumed innocent; the right not to be forced to confess or to give incriminating evidence; the right to legal assistance in preparing for trial; and the right to the matter to be dealt without delay. The juvenile justice system of Zanzibar provides on the procedure to be applied by Children's Court.

The trial itself cannot be deemed fair if any of these rights have previously been violated, and they are indeed set out explicitly in Article 40 of the CRC as minimum requirements. The special treatment to be afforded to children during trial require them to be treated in a manner consistent with the promotion of the child's sense of dignity and worth and which takes into account the child's age.⁷⁷ European Court of Human Rights is of the view that juveniles facing criminal charges and trial are fully entitled as adults to benefit from all the Convention requirements for a fair trial. Great care must be taken to ensure that this entitlement is not diluted by consideration and reform.⁷⁸ This justifies the need for due process of law to be complied with when dealing with children in conflict with the law.

However, the lack of due process guarantee is indeed the main concern arising from the establishment of too high a minimum age. For children under that age, it often means the non-intervention of the justice system in which, alone, those guarantees are safeguarded, in theory at least.⁷⁹

⁷⁵ Supra, note 44, p.81

⁷⁶ Section 43 of The Children's Act provides on the provisions that seem to observe due process.

⁷⁷ See Bueren Commentary on UN CRC, Article 40:Criminal Justice,p.12

⁷⁸ Nortier v Netherland, para. 290

⁷⁹ Muncie, J (2009). The United Nations, children's rights and juvenile justice, p.6. Retrieved from <http://www.routledge.com/books/details> on 13th March 2014

Hearings and decisions outside that system, including those by administrative bodies, are not bound by the same rules and may, it is feared; easily take on an arbitrary nature.⁸⁰

2.13 Delay

Carolyn⁸¹ argues that there is no standard definition of what constitutes delay, or what length of wait between charge and final trial is acceptable. However, it is generally accepted that “reasonable” delay when applied to a child is a shorter time than that which is reasonable for an adult.

The ICCPR, the CRC, the European Convention, the Banjul Charter, the African Charter on the Rights and Welfare of the Child and the American Convention all require an individual charged with a criminal offence to be brought to trial within a “reasonable” period of time and that delay should be avoided. The various international instruments all use slightly different terms, but the essence of the provisions is that there should be no delay.

2.14 Deprivation of Liberty

Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.⁸²

International juvenile justice set some standards to be applied to children deprived of their liberty.

The Havana Rules⁸³ clearly depict the concept of deprivation of liberty as it covers administrative issues, including the management of juvenile facilities, admission, registration, movement and transfer and classification and placement. They also cover physical environment and accommodation, the level of education and vocational training and work that should be offered to children, recreation, medical care, contact

⁸⁰Muncie, J (2009). The United Nations, children’s rights and juvenile justice, p.6 ,p.6

⁸¹ Supra, note 41,p. 67

⁸²Retrieved March 29th, 2014 from World Wide Web [http:// www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)

⁸³ United Nations Rules for the Protection of Juveniles Deprives of their Liberty (1990): The Havana Rules, Rules 19-31

with the wider community, physical restraint and disciplinary measures, inspection and complaints, return to the community and personnel.

According to international standards, the primary purpose of deprivation of liberty must be the reintegration of the child and his or her assuming a constructive role in society. In order to achieve this aim “juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development.”⁸⁴ Thus, deprivation of liberty should focus on correcting the difficult behaviour of delinquent juveniles.

2.15 Care and Welfare

The concepts of care and welfare are sometimes applied as a response to juvenile offending. Where a child is found to have committed a criminal offence, a court or welfare body can order that the child to be removed from his or her parents into the care of another individual or institution. That individual may be a family member or a foster parent, but may also include a residential children’s home.⁸⁵

The concept provides that it is imperative that where welfare body hearing a criminal matter has the power to remove a child from the family. However, this must guarantee the due process such that right to legal representation and deprivation of liberty as last resort and for the shortest appropriate period of time.. A welfare body should only impose a measure against the child in relation to the criminal matter if it is proved that the child has committed the alleged offence. In so finding, the welfare body should apply the same standard of proof that applies in a criminal court.

The law of Zanzibar⁸⁶ upholds this concept by providing some care provisions and foster care. But the law impliedly seems to lean on the prevention of crime on the application of care. The law says that a child is vulnerable and in need of care and

⁸⁴ United Nations Standards Minimum Rules for the Administration of Juvenile Justice (1985):The Beijing Rules, rule 26.1-26-2

⁸⁵ Supra, note 27, p.53-54

⁸⁶ See Part IV of the Children’s Act of 2011

protection if that child lives or works in the streets or begs for a living; is addicted to alcohol or other dependence producing drug or is below the age of 14 years and is involved in an offence other than a minor criminal matter.⁸⁷

The concept as propagated by UNICEF denotes that the children already in the criminal proceedings to be committed for care and welfare of others apart from the parents or legal guardian. The Zanzibar conception is that care is to be provided to rescue a child as he or she is vulnerable. It intends to keep a child from offending the laws. Additionally, foster caring is provided by the Zanzibar juvenile justice. It provides for the qualification for someone to foster a child.⁸⁸

2.16 Conclusion

Conceptual framework is certainly important part in guiding the idea of study. However, concepts can be differently operationlized regarding the circumstances of the provided States. The issue, for instance, of the concept of who a child is may differ from one country to another. CRC sets standard on what age a child should be but give room to States in setting the age of majority to the Member States. Conversely, African Union concept of a child is closed. It set limit that the age of eighteen should be the commencement of age of majority.

Generally, the concepts are taken as a tool to guide implementation of international standards on the treatment of offending children. These concepts are always found in the international instruments and domestic instruments dealing with children.

⁸⁷ The Children's Act, sec.19(1) (c) (f) (g)

⁸⁸ Ibid, sec.72

CHAPTER THREE

ANALYSIS OF ZANZIBAR'S COMPLIANCE WITH INTERNATIONAL LAW ON CHILDREN IN CONFLICT WITH THE LAW

3.1 Introduction

When a child is taken into state custody, the government is obligated to meet certain minimum requirements under international law. The institutionalization in Zanzibar is obligated to address the root problem that leads to the overflow of children engaging in criminal acts. It must also deal with remedial measures to provide children with the rehabilitation, support and education required to enable children in custody to live in the outside world as responsible and capable members of society.⁸⁹

International law incorporates a number of basic principles upon which a child criminal justice system should be based. The most important international instruments for the administration of juvenile justice are the CRC and the ICCPR. The African Charter on the Right and the Welfare of the Child (ACRWC) is significant regional treaty for Africa. The CRC set out the basic principles that should be included in a juvenile justice system as well as specific due process guarantee.⁹⁰

Apart from these international treaties, there are four main supporting juvenile justice instruments. These are the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines)⁹¹.

The four instruments do not have the same status as the CRC and ACRWC. They are not regarded as treaties, which States ratify and by which they consent to be bound. Rather, the four instruments are internationally accepted minimum standard to which

⁸⁹ Supra, note 19, pp.74-75

⁹⁰ CRC, Articles 37 and 40

⁹¹ These instruments set standards aiming at preventing delinquency, treatment of juveniles in justice system, and care of juvenile deprived of their liberty. There are basically not binding to the States but very persuasive and worth compliance.

States should have regard when setting up or amending their existing juvenile justice system. Setting policies and drafting legislation that incorporates the minimum standard that will assist States to comply with the obligations imposed upon them by the CRC and other treaties.⁹²

This chapter discusses how Zanzibar conforms with international obligation on children in conflict with the law.

3.2 Legislation

In order to comply with international law on the protection of children in conflict with the law, enactment of legislation is of immense important. State party which has accordingly ratified and accepted some international and regional instruments that specifically deal with children protection is obligated to have a specific legislation on the field. Convention on the Rights of the Child (CRC) and the African Charter on the Rights and the Welfare of the Child (ACRWC) are among the instruments that the United Republic of Tanzania has accepted.

Convention on the Rights of the Child expressly insists on the establishment of laws, procedures, authorities and institutions applicable to children alleged as, accused of, or recognized as having infringed the penal law.⁹³ Thus, the Revolutionary Government of Zanzibar has legal obligation to undertake all necessary steps, including legislative, administrative and other measures to implement the rights contained in Conventions and Charter.

ACRWC reflects the same requirements as that of the CRC provided above. The provisions on administration of justice denote that enactment of legislation is obligatory to the State Parties.⁹⁴

In compliance with this; Zanzibar House of Representative has in 2011 enacted the Children's Act which was formally gazetted in May 2011. The legislation incorporated key international child rights standards (particularly those contained in

⁹² UNICEF: Juvenile justice reform: Assessment guidelines. Retrieved August 20th, 2014 from World Wide Web: <http://www.unicef.org>

⁹³ Convention on the Rights of the Child of 1989, Article 40 (3).

⁹⁴ African Charter o the Rights and the Welfare of the Child Of 1990, Article 17.

the CRC and ACRWC and the United Nations Minimum Standards and Norms on Juvenile Justice into that enacted domestic law.

The Children's Act introduces a number of far-reaching reforms, particularly with respect to establishing child-sensitive procedures and mechanism in relation to children in conflict with the law and children in need of care and protection. The Act also establishes a new Children's Court with an informal, child friendly procedure and a duality of jurisdiction: it has criminal jurisdiction over all children charged with criminal offences, other than those with originating jurisdiction in the High Court and over civil matters relating to welfare, maintenance, custody, access and child protection.⁹⁵

The Beijing Rules requires that where the case of a juvenile offender has not been diverted it is to be dealt by the competent authority which court, tribunal, board or council.⁹⁶ Therefore, enactment of legislation was important to the conformity of international standards on children in conflict with the law.

The issue remains as to how and to what extent Zanzibar juvenile justice system respects and implements the provision of its own enactment. The realization of this piece of legislation is crucial in meeting international obligation on children in conflict with the law.

3.3 Prevention of Children Delinquency

International law has been in a position to make sure that children are helped to avoid them from breaching criminal law of the state. Juvenile justice system is to set mechanism that is friendly to the prevention of juvenile crime. The central aim of all delinquency prevention efforts is to instill in each child a sense of responsibility, security, belief and confidence.⁹⁷

Zanzibar as it has its independent legal system, must address these efforts of preventing juvenile delinquency as to conform with international law. Families are

⁹⁵ Section 18(1) of the Children's Act (No.6) 2001

⁹⁶ United Nations Standard Minimum Rule on the Administration of Juvenile Justice ("Beijing Rules"), Rule 14

⁹⁷ Encyclopedia Britannica: Juvenile Delinquency. Retrieved August 21st, 2014 from World Wide Web: <http://www.britanica.com/EBchecked/topic/156597>

important units in making this possible but State's helping hand is of crucial importance. Realizing this, African Union in its human rights system requires that:

*State Parties to the present Charter shall in accordance with their means... assist parents and person responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing.*⁹⁸

This article being respected may immensely help to the prevention of juvenile delinquency since offending children are mostly related to socio-economic problems facing the families. This idea should go further to educate the families. The aid offered by the State also aims to prevent children from engaging in the criminal activities.

Prevention of juvenile delinquency has also been an agenda of the United Nations as an aspect of juvenile justice. International law, thus, recognizes prevention of juvenile delinquency as important part of it. It is stated by the United Nations that:

*The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanist orientation towards society and outlook on life, young person can develop non-criminogenic attitudes.*⁹⁹

This provision from Riyadh Guidelines is of course not obligatory to State but very persuasive because it intends to cater for the best interest of the child. Zanzibar is in a position to abide with these guidelines. Its current position in prevention of juvenile delinquency is not clear because it is nowhere to be found in its daily practice. The Zanzibar government's statement on this aspect provides that: "The parameters of the juvenile justice system should be clearly defined, and should include not only those children in conflict with the law, but also those at risk of coming into conflict with the law".¹⁰⁰

This is the vision of Zanzibar in its legal framework in which its realization still lags behind. Thus it cannot yet be said that Zanzibar complies with international law in

⁹⁸ African Charter on the Rights and the Welfare of the Child, 1990, Article 20 (2) (a)

⁹⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines), Guideline, 1.

¹⁰⁰ Ministry of Social Welfare (2013), Vision for the Juvenile Justice System in Zanzibar , para, 3

prevention of juvenile justice as a standard of juvenile justice system. On top of that, stakeholders to juvenile justice system debate as to whether prevention of offending should form part of the juvenile justice system.¹⁰¹ Some argue that prevention strategies are generally not regarded as falling under juvenile justice system. This is dangerous to the Zanzibar compliance to international law on children in conflict with the law.

Conversely, The Children's Act of 2011, seem to uphold this aspect of prevention of juvenile delinquency. The provisions of this Act impliedly well establish the idea of prevention of juvenile delinquency which is the cornerstone of the juvenile justice system.

Provisions of Part IV of the said Act deal with care and protection of a child. The provisions clearly provides that a child is vulnerable and in need of care and protection if that child is abandoned or orphaned and has insufficient care or support; is engaged in behaviour that is, or is likely to be, harmful to him or any other person, the parent or guardian or the person in whose care the child is, is unable or unwilling to control that behaviour.¹⁰²

Though this provision seems to adopt a humanist orientation which is maximum utility in preventing delinquency to children, Zanzibar does not operate care and protection activities as a means to prevent juvenile delinquency. Behaviour management is of crucial importance in preventing juvenile delinquency.

3.4 Arrest and Pre-Trial Procedures

International law provides with minimum guarantee of rights the arrested juvenile delinquent at the stage of pre-trial. These basic guarantees and safeguards can be found in the CRC, the ICCPR, the European Convention, the Banjul Charter, the African Charter on the Rights and Welfare of the Child, the Arab Charter and the

¹⁰¹ But the United Nations General Assembly's 68th plenary meeting of 14th December 1990 passed Guidelines for the Prevention of Juvenile Delinquency to be followed by States' juvenile administration of justice

¹⁰² Children's Act, sec.19 (1) (a) (b)

American Convention. They are applicable from the moment a juvenile is suspected of committing a crime.¹⁰³

Criminal procedures of State must comply with the standards established by these international instruments. At this stage a suspected child has the rights of presumption of innocence, right to be informed of arrest and charges, right to information to his or her parents and right to legal or appropriate assistance during questioning among others.¹⁰⁴

3.4.1 Presumption of innocence

The presumption of innocence is a fundamental principle in human rights law and can be found in the Universal Declaration of Human Rights (UDHR) which is considered as the basis of international human right law today. The UDHR provides that “everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had the entire guarantee for his defence”.¹⁰⁵

UDHR is not specifically targeting to treat children but children fall under the larger group of “everyone”. Therefore, international law provide guarantee for this minimum right at the initial stage of arresting a child even though this Declaration is soft law. On top of that CRC reiterates on this international human right law standard.¹⁰⁶ The Committee on the Rights of the Child pointed out in General Comment No. 10 that “the presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law”.¹⁰⁷

In *R. v. Oakes*,¹⁰⁸ the Supreme Court of Canada held that “the presumption of innocence is crucial. It ensures that until the State proves an accused’s guilt beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in

¹⁰³ Op.cit, p.40

¹⁰⁴ These rights need to be reflected by a State’s domestic legislation

¹⁰⁵ Universal Declaration of Human Rights of 1948, Art.11 (1)

¹⁰⁶ Convention on the Rights of the Child of 1989, Art.40 (2) (b) (i)

¹⁰⁷ Committee on the Rights of the Child, General Comment No. 10 (2007), para. 42. Retrieved from <http://www.tbinternet.ohchr.org/laouts/treatybody>, on 7th May 2014

¹⁰⁸ *R. v. Oakes*, [1986] 1 S.C.R. 103, Supreme Court of Canada, 28 February 1986, p. 22.

humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise.”

This proves that domestic legislation must also uphold this principle. The Children’s Act of Zanzibar is silent on the presumption of innocence at the arresting stage. Arresting of children is provided in section 37 of the legislation concerned. However, this right is a constitutional right and must be respected by police, prosecutor and court. The Zanzibar Constitution of 1984 guarantees this basic right by recognizing that “every person who is charged with a criminal offence - shall be presumed to be innocent until he is proved guilty of that offence”.¹⁰⁹

Thus, Zanzibar criminal justice system enshrines this right in its parent law and so it can be legally claimed that principle is complied at least in its instruments. However, the practice does not show that this principle is fully complied with because of arrested children’s treatments. Arresting officers are always branding names those arrested as criminals. Generally, treatment of the arrested by Police officers is always harsh in such a way that it becomes difficult to differentiate a suspect from the criminal.

3.4.2 Right to be informed of arrest and charges

International standards hold the fundamental right that those who are arrested and/or charged must be informed of the reason for that arrest or charge. The ICCPR¹¹⁰ provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest. This right applies equally to children and adults.

The CRC does not specifically address the right to be informed of the reasons for arrest. However, Article 40 of the CRC does require that every child shall be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians.¹¹¹

¹⁰⁹ Zanzibar Constitution of 1984, Art. 12(6) (b)

¹¹⁰ International Covenant on Civil and Political Rights of 1966, Art. 9 (2); See also Article 5(2) of the European Convention on Human Rights; Article 17(2)(c)(ii) of the African Charter on the Rights and Welfare of the Child; and Article 7(4) of the American Convention.

¹¹¹ Convention on the Rights of the Child of 1990 Article 40(2)(b)(ii)

The Committee on the Rights of the Child,¹¹² in General Comment No. 10, defines “promptly and directly” as meaning as soon as possible. The moment at which the child or his parents should be informed of the charges is when the police, the prosecutor or the judge initially takes procedural steps against the child. However, the need to inform “promptly and directly” also applies where the authorities decide to deal with the case without resorting to judicial proceedings.

Zanzibar government’s rapid assessment of juvenile justice¹¹³ found that existing operating procedures for children in conflict with the law faced challenges that prevented the realization standards for juvenile justice. According to that assessment, children interviewed consistently reported that while in police custody the charge against them are not explained and that they are not given a right to respond. This is contrary to international law as stipulated in some instruments quoted above.

Nevertheless, the legislation is very clear on the right to be informed of the allegation. It is required that “the police official effecting the arrest of a child to inform the child of the allegation against him.”¹¹⁴ Not abiding with this provision means that Zanzibar does not realize the legislation enacted by her. This might be because of lack of awareness on the right by law enforcement agents such as police.

3.4.3 Right to have parents or legal guardians informed of arrest

The Beijing Rules expressly supports this principle in the protection of the right of a child in conflict with the law. Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.¹¹⁵

¹¹² Committee on the Rights of the Child, General Comment No. 10 (2007), para. 47. Retrieved April 13th 2014 from World Wide Web: [http:// www.ohchr.org/EN/HRB](http://www.ohchr.org/EN/HRB) on

¹¹³ Ministry of Social Welfare (2013). Child Justice Reform: A Five Year Strategy 2013-2018, pp.46-47

¹¹⁴ The Children’s Act, sec. 37(3)(a)

¹¹⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rule), 1985, Rule.10. 1

In addition, the Committee on the Rights of the Child, in General Comment No. 10¹¹⁶ recommends that States should explicitly provide in law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. In order to promote parental involvement, parents should be notified of the apprehension of their children as soon as possible.

The Children's Act of Zanzibar under this circumstance states that, if circumstance permit, notify the child's parent or an appropriate adult.¹¹⁷ But the Zanzibar government survey on the implementation of this provision which is also principle in international practice complains of facing challenge in realization of this provision. It is claimed that police do not contact parents, lawyers or social welfare officers as required by international standard when dealing with children offenders. Many police officers are without basic training on the right of children when in conflict with the law.

The guidance paper by Children Protection Unit of the UNICEF¹¹⁸ insists that the presence of a parent will provide emotional support to the child and ensure that he or she does not have to face what is likely to be a very stressful situation on his or her own. In addition, one of the purposes of having a parent present is to ensure that the child understands what is being said; both in terms of content and language, and that the child is enabled to express him or herself clearly.

It is, however, to be understood that a good number of delinquent children in Zanzibar are normally not controlled or cared for by their parents. It is sometimes difficult to have information of where about of their parents. Some of these arrested children are in difficult relationship with their parents. This circumstance makes it difficult for arresting officer to accordingly inform parent. In addition, the wording in Zanzibar legislation on this aspect denotes that information to parents is optional. This may be a loop hole to the breach of this right.

¹¹⁶United Nations Committee on the Rights of the Child, General Comment No.10 para 54

¹¹⁷ The Children's Act, sec.37 (3) (e)

¹¹⁸ Supra, note 21, pp.43-44

3.4.4 Right to legal assistance during questioning

The presence of parents alone may not be sufficient to ensure that children's rights are protected at the police station. It is always in children's best interests to ensure that a lawyer is present when a child is questioned about an alleged offence, and this right should be clearly contained within the legislation.

Several international instruments advocate for the right to legal assistance at different stages of proceeding. These set out the rights of a child to assistance when he or she is being questioned as a suspect as well as when the child is charged or stands trial. CRC provides that children shall have prompt access to legal and other appropriate assistance upon arrest. In addition, the Convention provides that: "The State shall ensure that every child shall be provided with legal or other appropriate assistance in the preparation and presentation of his or her defence".¹¹⁹

African human right system does also promote this crucial right to legal assistance to charged children. The administration of justice has to ensure that an accused child is afforded legal and other appropriate assistance in the preparation and presentation of his defence.¹²⁰ Thus, legal assistance during question is very important for the preparation of defence.

Hence, it is advisable for children to be granted time alone with their legal representative before questioning commences to allow them to consult with their lawyers, to ask them questions and generally understand the situation they are in. The Zanzibar Children Act imposes duty to police official arresting a child to inform him or her of rights, including right to legal assistance.¹²¹ This is also the right available under the criminal law of Zanzibar.

The Zanzibar government reiterates its claim that this principle is not complied with at this stage though its law permits this to be applied. It is still a challenge to the compliance with international law that during questioning of juvenile suspect they

¹¹⁹ Convention on the Rights of the Child, Art. 37 and Art.40

¹²⁰ African Charter on the Rights and Welfare of the Child of 1990, Art. 17 (2) (c) (iii)

¹²¹ The Children's Act sec.37 (3) (b)

don't get legal or appropriate assistance.¹²² The purpose of legal assistance when the child is first questioned by the police is to ensure independent scrutiny of the methods of interrogation used and to ensure that the evidence is voluntary and not coerced.

Understanding this requirement, the arresting police officer is obliged to inform the child to be accompanied by a person during the making of any statement or during any interview or examination.¹²³ An arrested child can be informed of this right conferred to him or her but may not know what to do and how to do to exploit this dignified right.

A legal representative can ensure that inappropriate questions are not asked and that the child is treated in a manner suitable and appropriate to the child's age and maturity. This being complied with may help promote the principle of best interest to a child. The lawyer can also argue for diversionary measures to be applied where appropriate.

The study found that in Zanzibar this right is hardly practiced. Zanzibar legal Service Centre (ZLSC), a Non-Governmental Organization (NGO) to offer legal aids confirms that the Centre seldom offer this assistance or until asked so to do. However, ZLSC is on the process of talking with Save the Children, an international NGO with an office in Zanzibar, to jointly protect the rights of the children in general.¹²⁴

3.5 Diversion

International law requires States to develop procedures that allow children who come into conflict with the law to be handled without resorting to judicial proceedings wherever appropriate and desirable, providing that human rights and legal safeguards are fully respected.¹²⁵ A diversionary measure is believed to avoid stigmatization and have good outcomes for children.

¹²² Op. cit , p.47

¹²³ Children's Act, sec. 37 (3) (d)

¹²⁴ Researcher's talk with ZLSC legal officer on the 4th May 2014

¹²⁵ Convention on the Rights of the Child , Art. 40 (3) (b)

The Committee on the Rights of the Child recommends that the law contains specific provisions indicating in which cases diversion is possible, and that the powers of the police, prosecutors and or other agencies to make decisions in this regard be regulated and reviewed, in particular to protect the child from discrimination.¹²⁶ This complied with by the child legislation in Zanzibar by listing down some offences which may be diverted.

The wording of Beijing Rule on diversion signifies that in order for diversion to work effectively, the police, prosecutors, courts and other agencies dealing with juvenile cases need to have legal authority to dispose of cases without resorting to formal hearing before the court.¹²⁷

The juvenile justice system of Zanzibar empowers police authority, prosecution authority and court to make diversion. This upholds the call by international standard of not making prosecution as obligatory. UNICEF advises that legislation should not require mandatory prosecution of children who are alleged to, are accused of or admit to having committed a crime. Any such provisions should be removed from the law.¹²⁸ By allowing the above authority to divert offences to other administrative procedures denotes that Zanzibar legislation is in line with international law.

3.5.1 Diversion by police

The diversion by police is mandated to police officer in charge of a station to a child apprehended with or without warrant when such child has offended for the first time. The officer in charge must keep record of the particular of the offence and of such child and caution him not to reoffend. The law requires that the police officer in charge of the station to advise the child that if he or she reoffend, records of the first incidence shall be used as evidence against him for purpose of trial and sentencing.¹²⁹

¹²⁶ Committee on the Rights of the Child, General Comment No. 10 (2207), para.27

¹²⁷ United Nation Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 11.2

¹²⁸ Supra, note 21, p.56

¹²⁹ Children’s Act, sec.39 (1)

International standard in its practice accepts warning or caution to children offenders which in the above provision by the law of Zanzibar is provided. The power to divert at this stage is highly advantageous as it limits the child's contact with the justice system and is often sufficient to end the child's offending behaviour. But Police Force in Zanzibar has not yet developed guidelines and standard operating procedure in exercising this power. Lack of training on children rights and corruption in the police force frustrate this practice of cautioning.

3.5.2 Diversion by prosecutor

International standard maintains that legislation should contain provisions giving prosecutors discretionary power to suspend, or not to initiate, prosecutions against children, even if there is sufficient evidence to secure a conviction. This principle is known as the principle of discretionary prosecution¹³⁰. Factors such as the child's age, the circumstances of the offence and whether the prosecution is in the public interest, can be taken into account

The Zanzibar Children's Act stipulates that:

42.(1) A matter in respect of which if a child is accused of committing an offence listed in the first Schedule and where such child has acknowledged responsibility for that offence may, be diverted by the Director of Public Prosecutions provided that the child and, if his parent or guardian, have consented in writing to the diversion option to be imposed.¹³¹

First Schedule of the law lists down, among others, offences of theft, malicious injury to property, contempt of court, blasphemy and defamation. Thus, the requirement of diversion as far the as the law of Zanzibar is concerned is that a child must acknowledge that he or she has committed such crime and his or her parent has consented diversion.

The office of DPP Zanzibar has established a Unit with five State Attorneys to deal with prosecution of children. During the discussion with the head of that unit, she confirmed that if the requirement of section 42 above is met, their Office always divert to other procedure which is not judicial. Compromise between the alleged

¹³⁰ Op. cit, p.56

¹³¹ The Children's Act, sec.42

offenders and the victims is always practiced and thus compensation to the victim of crime is done.

It is neither the police nor the prosecution that could give out number of cases diverted under their authority. Record keeping on children right to these authorities is a challenge.

3.5.3 Diversion by court

It is not contrary to international practice that Magistrate or Judges to divert criminal case involving an accused child prior to the beginning of the main trial, usually at the preparatory hearing.

The Children's Court in Zanzibar is conferred with powers to divert a case involving offences acceptable by the Act to other procedures. The court may take into account the written assessment of the child if it is satisfied of such child's guilt, deal with the case by employing any diversion option listed under section 42 (2) of the Act.¹³² According to the law of Zanzibar child assessment is done by probation or social welfare officer.

Therefore, section 42(2) mentioned above focuses on diversion programmes can take a number of different forms. Some are based on restorative justice principles, some take a family-focused, welfare approach, and yet others use activity programmes to address offending behaviour. The Zanzibar's diversion by court mainly focuses on care and welfare procedure which is promoted by international standards on the protection of children's right.

3.6 Juvenile Courts

The juvenile justice system of Zanzibar falls under the larger system of administration of justice. Previously, juvenile courts in Zanzibar existed under Children and Young Person Decree, Cap.58. This is the old Decree enacted in January 1952 which was deleted and replaced by the current Children Act of 2011. Concerns over the protection of children seem to have a long history in Zanzibar. The existence of

¹³² Children's Act, sec.47(1) (e)

current international standards and principles on children in conflict with the law obligates Zanzibar to have new trend of its juvenile courts.

3.6.1 Establishment of Children's Court

Currently, Children's Act of 2011 establishes the Juvenile Courts. The legislation provides for establishment, jurisdiction and power of appeal from Children's Court. It is provided that:

*18.(1) There is hereby established a Court to be known as the Children's Court, in every Region, for the purpose of: ...; (b) hearing and determining criminal charges against a child for an offence alleged to have been committed before the child reaches the age of 18 years, other than a charge of murder, manslaughter, treason or rape.*¹³³

This shows that the jurisdiction of Children's Court extends to various criminal offences except those expressly mentioned in the above provision. It is also to be noted that one of the main purpose the Zanzibar Children's Court is to treat the concept of children in conflict with the law. International law requires that children to have separate court to determine cases involving a child. It is obviously that Zanzibar juvenile justice system has complied with that required standard at least for its legislation establishing such court.

The legislation establishes the Children's Court in every Region of Zanzibar. Meanwhile, Zanzibar has five administrative regions. It is, however, only one Court that is existing presently which is in Urban West Region. The Court is located in the Zanzibar High Court building which is in Vuga Street, Stone Town.

The current practice is that, all children cases for the three Regions of Unguja are filed at the Vuga Children's Court. This Children's Court has registered fifty seven (57) cases for the year 2013. The actions taken by the Court over these cases are that four (4) cases equal to 7.01% have been decided, eleven (11) cases equal to 19.29% have been discharged or withdrawn and forty two (42) equivalents to 73.29% still continue. This data have been obtained from Zanzibar High Court Statistics Unit on 25th March 2014. The table bellow shows the cases registered at Vuga Children Court.

¹³³ Children's Act, sec. 18 (1) (b)

Table 3.1: Cases Filed to Children’s Court at Vuga in 2013

Actions by Court	Number of Cases	Percentage
Decided Cases	4	7.01%
Discharged/Withdrawn	11	19.29%
Continuing Cases	42	73.68%
Total	57	100%

Source: High Court for Zanzibar

The Social Welfare authority in Zanzibar claims that the rate of recorded number of juvenile prosecutions appears to vary widely between different areas of Zanzibar. In the year 2011, only 16 cases were prosecuted in Vuga Court (Zanzibar Town) while approximately 50 cases were prosecuted at Mfenesini- North, Unguja.¹³⁴ This was before the establishment of the current Vuga Children’s Court.

The juvenile criminal cases in the two regions of Pemba are filed in the Regional Courts of Pemba. This is to say that the Zanzibar juvenile justice system does not fully realize its own domestic legislative requirement on the establishment of juvenile courts in every region of Zanzibar. The United Nations’ Committee on the Rights of the Child comments that: “The law must provide the court or judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty...”¹³⁵

The law of Zanzibar has only established Children’s Court at Regional level presided by gazetted Regional Magistrate. No other authority is established by Zanzibar legal system to determine children cases. The Court has started its operation from the year 2013 with least trained court officers.

3.6.2 Trials

International law recognizes the right to fair trial to juvenile offenders. Many of the elements that make the concept of fair trials apply to both children and adults. The ICCPR stipulates on these equality by providing that “all persons shall be equal

¹³⁴ Ministry of Social Welfare, (2013). Vision for the Juvenile Justice System in Zanzibar, p.19

¹³⁵ UN Committee on the Rights of the Child, General comment No. 10 (2007), para. 66

before the courts and tribunals in the determination of any criminal charge against him.”¹³⁶

The elements of fair trial include among others, are the right to have the charges determined without delay by a competent and impartial judicial body, the right not to be compelled to give testimony or to confess guilt and the right to appeal.¹³⁷ However, right to privacy and the right to have child sensitive-environment are specific for a child to enjoy fair trial. It is strongly recommended that alleged child offenders should understand the trial procedures.

3.6.2.1 Understanding the procedures

In order for a child to understand and to take part in proceedings in a meaningful manner, the child must be able to understand the trial procedure and take an active part in defending him or herself. Understanding the language used by the court during the trial is the basis for the understanding of the procedures.

In the United Kingdom, the Lord Chief Justice issued a practice direction to judges requiring that they “should remind those representing a young defendant of their continuing duty to explain each step of the trial to him and should ensure, so far as practicable, that the trial is conducted in language which the young defendant can understand”.¹³⁸ The juvenile justice system of Zanzibar confers with wider power to Chief Justice to make rules¹³⁹ to be applied in juvenile court during trial. But the rules are still under construction.

On the other hand, the Committee on the Rights of the Child¹⁴⁰ stated in General Comment No. 10 that a fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties,

¹³⁶ International Covenant on Civil and Political Rights of 1966, Art.14

¹³⁷ Supra, note 19, p.67

¹³⁸ Practice Direction by the Lord Chief Justice of England and Wales, Trial of Children and Young Persons in the Crown Court, 16 February 2000, para. 11. Retrieved March 3rd 2014 from World Wide Web: <http://www.lawstuff.org.uk>

¹³⁹ Children’s Act, sec. 43

¹⁴⁰ United Nations Committee on the Rights the Child, General Comment No. 10 (2007), para. 46.

in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.

This argument is also reflected in the Beijing Rules¹⁴¹ which provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself or herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

For the case of Zanzibar, impliedly the legislation creates some enabling environment to active participation of the charged children. Providing for provisions which command procedures to be informal and friendly to the child¹⁴² may enable him or her to understand the procedure. This provision by the law of Zanzibar maintains the requirement by Rule 14 of the Beijing Rules. It creates an atmosphere of understanding of the procedure. Indeed this international standard is fully complied by the Children Court at Vuga building. In addition, it is imperative for the court to explain the child in the language that the child can understand.¹⁴³

However, international law does not compel State to provide with environment that can completely enable the child to understand the procedure in trial. The European Court of Human Rights (ECHR)¹⁴⁴ has clarified that “it is not necessary for a fair trial that the child being tried for a criminal offence should understand, or be capable of understanding, every point of law or evidential detail”.

Given the sophistication of modern legal systems, many adults of normal intelligence are unable to fully comprehend all the intricacies and all the exchanges which take place in the courtroom. Therefore, understanding the procedure of the trial by the

¹⁴¹United Nations Standards Minimum Rule for the Administration of Juvenile Justice (Beijing Rules), Rule 14

¹⁴² Children's Act, sec. 43(1)(c)

¹⁴³ Ibid, sec. 43(1)(c)(e)

¹⁴⁴ *S.C. v. United Kingdom* [2004] ECHR 263, (2005) 40 EHRR 10, para. 29, Council of Europe, European Court of Human Rights, 10 December 2004.

alleged child does not seem to be realistic for Zanzibar children. Thus, the need for legal representation is of great importance.

3.6.2.2 Children sensitive environment

Making a courtroom child-sensitive can enable a child to participate by reducing his or her distress and level of intimidation. Making the court environment child-sensitive includes, for example, requiring judges not to wear their formal robes but to dress casually instead, having court staff sit at the same level as the child rather than on a raised bench or podium, allowing the child to sit next to a parent or other adult.¹⁴⁵

The ECHR in *T. and V. v. United Kingdom*¹⁴⁶ is of the view that physical layout of the courtroom was one element that gave rise to a breach of Article 6 of the European Convention (the right to a fair trial). The Court held that the physical environment of the court alone would not itself have been sufficient for a finding of an unfair trial, but that it was a significant contributory element.

State is to provide good practice of juvenile court whether State has established children court or used adult court. Zanzibar legislation on this right tries to promote children sensitive environment. The children legislation provides that:

*Proceeding shall be as informal and as friendly to the child as possible, and made by enquiry without exposing the child to adversarial procedures, in so far as this is compatible with the and other participants having their rights to justice fully safeguarded.*¹⁴⁷

This provision being accordingly implemented may highlight to the compliance of international standard on creating sensitive-child environment as strongly advocated by the UNICEF. This study observation found that the court officers do not wear their formal robes, the benches are of the same level and children are sited between their parents and legal representative. This is said to enable children to participate in a proceeding in a more meaningful manner.

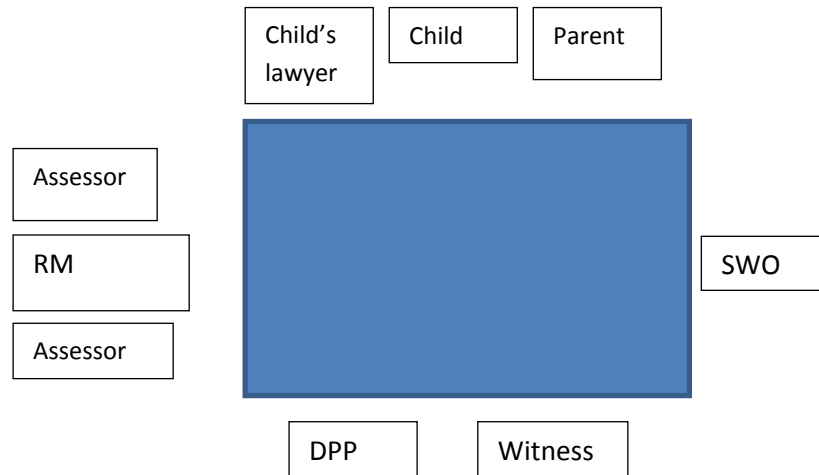
¹⁴⁵ See sec. 43(1) (c) of the Children's Act of 2011

¹⁴⁶ Op. cit

¹⁴⁷ Children's Act, sec. 43 (1) (c)

Bellow is the figure that demonstrates the layout of the required Children’s Court at Vuga building.

Figure 3.1: Demonstrate the layout of Children’s Court as required by the legislation



Source: Ministry of Empowerment, Social Welfare, Youth, Women and Children Development, 2013.

But the study found that there is in the court room medium size flat screen television set behind the Social Welfare Officer (SWO) facing the Regional Magistrate (RM). The screen is used for adducing evidence to abused children avoided to meet the offender. In addition to that, the interview with the Magistrate revealed that the Court did not have assessor as shown in the figure above but probation officers.

3.6.2.3 Right to privacy

Under international standards, children, unlike adults, have a right to have their privacy respected at all stages of the proceedings. ACRWC¹⁴⁸ provides that States to the present Charter shall in particular: prohibit the press and the public from trial”. This intends to preserve the privacy of the child during the trial and after.

The Committee on the Rights of the Child¹⁴⁹ held in General Comment No. 10 that “all stages of the proceedings” starts at the point of initial contact with law

¹⁴⁸ African Charter on the Rights and the Welfare of the Child, Art.17(2)(d)

¹⁴⁹ Committee on the Rights of the Child, General Comment No. 10 (2007), para. 64.

enforcement bodies (e.g. a request for information and identification) right up until release from supervision or custody.

Therefore, the purpose of the right to privacy is to avoid the harm that can be caused to the child by undue publicity. Negative publicity can stigmatise the child and is likely to have a negative impact on the child's ability to access education, work and housing and on their reintegration in general.

The international tendency of protecting right to privacy is clearly explained in the case of *T. and V. v. United Kingdom*¹⁵⁰, where two 10-year-old boys were tried for the murder of a two-year-old child, the European Court of Human Rights expressed concern at the extent of the publicity surrounding the children. The Court noted that “the trial generated extremely high levels of press and public interest, both inside and outside the courtroom, to the extent that the judge in his summing-up referred to the problems caused to witnesses by the blaze of publicity.” The Court found that the increased intimidation caused by the press and publicity surrounding the trial made it harder for the two accused boys to participate effectively. The Court held that allowing the media to be present in court contributed to the finding that there had been a violation of Article 6 (right to a fair trial) of the European Convention.

Hence, the Committee on the Rights of the Child¹⁵¹ urges that States should make it clear in their legislation that where a child is being tried for a criminal offence, the hearing should take place behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. Experts and other professionals should be allowed to attend the trial or hearing with the special permission of the court or tribunal.

The law of Zanzibar does not expressly provide for the provision that stipulates the right to privacy. Nevertheless, this right seems to be impliedly maintained through some of its provisions. The section deals with *procedure in Children Court* require

¹⁵⁰ *T. and V. v. United Kingdom*, No. 24888/94; [1999] ECHR 2; No. 24724/94 (2000) 30 EHRR 121, Council of Europe: ECHR, 16 December 1999, para. 86.

¹⁵¹ Committee on the Rights of the Child, General Comment No. 10 (2007), para. 65-66

that “proceeding to be in camera”.¹⁵² The implication of this wording is that right to privacy is to be maintained. The requirement of this provision is fully maintained in the Vuga Court because trials are being held in camera.

Besides, the court is empowered by the law to exclude any person from being present in court if it determines that the presence of such person is not in the best interests of the child.¹⁵³ Right to privacy is there to uphold the best interest of the child which is one of the cardinal principles of the CRC.

Additionally, the law prohibits publication of information of a child who is either an accused or witness.¹⁵⁴ Therefore, these provisions are in line with certain provisions in ACRWC and the CRC. They are also in line with the UN Children Committee.

According to the Beijing Rule the purpose of right to privacy must focus on avoiding harm that can be caused to the child by undue publicity because negative publicity can stigmatise the child and is likely to have a negative impact on the child’s ability to access education, work or their reintegration in general.¹⁵⁵ Therefore, legislation should prohibit public authorities from issuing any information, such as press releases, that might enable children in conflict with the law to be identified.

Surprisingly, recently Zanzibar Broadcasting Corporation (ZBC) radio station was heard to publicise the case of two male children charged of assaulting a female child in Wete Pemba. The *Mawio* (morning) programme of ZBC radio gave full account of the case including Chairman of that Children Court and the name of the charged children who are 17 years old. This is contrary to the principle of fair trial to juveniles offenders.

3.6.2.4 Decision to be determined without delay

European Convention of Human Rights requires that “everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought

¹⁵² Children’s Act, sec.43 (1) (b)

¹⁵³ Ibid, sec. 43(2)

¹⁵⁴ Ibid, sec. 48

¹⁵⁵ United Nations Standard Minimum Rule for the Administration of Juvenile Justice (“The Beijing Rule”), Rule 8

promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.

This principle is also to be found in the ICCPR¹⁵⁶ which asserts that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. The principle is reflected in *Kulomin v. Hungary*¹⁵⁷ in which the UN Human Rights Committee comments that the importance and the meaning of “promptness” under Article 9(3) of the ICCPR is that it brings “the detention of a person charged with a criminal offence under judicial control”.

The Committee on the Rights of the Child¹⁵⁸ points out that internationally there is a consensus that for children in conflict with the law “the time between the commission of the offence and the final response to this act should be as short as possible.” The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatised. One amongst the four basic principles of CRC is survival and development of a child. Delaying the case, in the view of the Committee of the Child, lead to stigmatization which is contrary to this basic principle.

Furthermore, the Committee¹⁵⁹ has recommended that States Parties should set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But, at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected.

¹⁵⁶ International Covenant on Civil and Political Rights of 1966 Art. 9(3)

¹⁵⁷ Communication No. 521/1992, Human Rights Committee, 22 March 1996 in Report of the UN Human Rights Committee, 1997, General Assembly Official Records Fifty-first Session Supplement No. 40,A/51/40, (vol. II), p. 80, para. 11.2. Retrieved 18th September 2013 from <http://www.ohchr.org/EN/HRB>

¹⁵⁸ Committee on the Rights of the Child, General Comment No. 10 (2007), para. 51.

¹⁵⁹ *Ibid.* para. 52.

In a report for the case of T. and V. v. United Kingdom¹⁶⁰ in the ECHR, a professor of child psychiatry described the impact of delay on young defenders as follows “one serious consequence of the long time involved in trial means that there is an inevitable delay in providing the psychological care and therapeutic help that is needed. A child of ten has many years of psychological development still to come and it is most important that there is not a prolonged hiatus when this is impeded by the trial process.

This above international principle and concern by UN body is reflected by the law of the Child Act of Zanzibar. The Zanzibar Children’s Act provides a six month time limit from first hearing for cases to be processed and concluded. The legislation provides that “where a child is brought before the Children’s Court, the case shall be disposed of by that court without delay and, in any case, within a period not exceeding six months from the date upon which the child has first appeared in that court”.¹⁶¹

The current practice of the court shows that delay and frequent adjournments were characteristic of the current system leading to children’s cases taking up to one year or longer, even when the offences are relatively trivial and involves theft of small sums. Such delays and adjournments are neither to the best interests of the child, nor suitable to the survival and development of a child. They are cost-effective as well. The main cause of delays appears to be case management, with confusion as to who has responsibility for ensuring that the criminal justice is run in an efficient and effective.

Therefore, the law of Zanzibar at least sets a time limit of six month from the beginning of the case to its final adjudication as proposed by international law. This is reasonable which this study is convinced that it can avoid stigmatization to the child. But again the realization is still in bleak.

¹⁶⁰ *T. and V. v. United Kingdom*, No. 24888/94; [1999] ECHR 2; No. 24724/94 (2000) 30 EHRR 121, Council of Europe: ECHR, 1999.

¹⁶¹ Children’s Act , sec. 51

3.6.2.5 No compulsion to testimony or confess guilt

For a fair trial there must be a balance between encouraging a child to participate and not forcing the child to testify or to confess guilt. The ICCPR¹⁶² provides that the accused shall not be compelled to testify against him or herself or to confess to a crime. CRC, on the other hand, reiterates this principle in its provisions. It is stipulated that “State Parties shall, in particular, ensure that children are not to be compelled to give testimony or to confess guilt”.¹⁶³

Thus, a child should be given the right in law, not to give evidence at his or her own trial at all, if that is what he or she chooses. The legislation should also make it clear that a child has a right to refuse to answer incriminating questions at the trial. International standards require that the legislation should contain a section or article providing that the court should not be permitted to draw an adverse inference, or to treat the child as guilty, simply because the child chooses to exercise these rights.

The Zanzibar criminal justice system is obligated to comply with this international standard in juvenile trials. To some extent this element of fair trials is maintained by the Children’s Act of 2011. The law states that “the court shall explain to the child, in a language that the child can understand: that he has the right not be compelled to give evidence or confess guilt;”¹⁶⁴

The wording of this section denotes that court is obligated to explain this right to the accused child before it and it must do this in the language she or he understands. Interview with the Children’s Court Magistrate at Vuga building proved that this right is fully complied with. However, the researcher could not manage to attend any session of the proceeding because it was not for the best interest of accused children.

¹⁶² International Covenant on Civil and Political Rights of 1966 Article 14 (3) (g).

¹⁶³ Convention on the Rights of the Child of 1989, Art.40.2. (b) (iv)

¹⁶⁴ The Children Act, sec. 43. (1) (e) (vi)

3.6.2.6 Right to appeal

The ICCPR¹⁶⁵ provides that everyone convicted of a crime has the right to have his conviction and sentence reviewed by a higher tribunal. This is definitely the right of appeal. More to the point, the CRC¹⁶⁶ reflects this provision, but gives children a slightly wider right as it covers all children who are considered to have infringed criminal law. This right, which can also be found in regional human rights instruments,¹⁶⁷ should be contained in all juvenile justice and criminal procedure laws.

The Human Rights Committee¹⁶⁸ in its General Comment No. 32 has interpreted the right as applying to all offences, and not just to serious offences. Legislation should set out the right to appeal and the procedure for that appeal. The right to appeal should include appeals against the sufficiency of evidence and of the law, the conviction and the sentence. A review that is limited to the formal or legal aspects of the conviction, without any consideration whatsoever of the facts, is not sufficient to satisfy the ICCPR. This is reflected in the case of:

Villalobos v. Costa Rica,¹⁶⁹ *The Inter-American Commission on Human Rights has made clear that the right to appeal under Article 8(2)(h) of the American Convention (which reflects Article 14(5) of the ICCPR) is unqualified – it cannot be limited to certain crimes or punishments. The Commission found that the Costa Rican Criminal Code violated the Convention.*

The Children's Act of Zanzibar endows with the provision which states that "a child has the right to appeal a judgment or sentence of the court or to have judgment or sentence reviewed by a higher court."¹⁷⁰

¹⁶⁵ International Covenant on Civil and Political Rights Of 1966, Article 14(5)

¹⁶⁶ Convention on the Rights of the Child of 1989, Article, 40(2)(b)(v)

¹⁶⁷ See Article 6 of the European Convention on Human Rights, Article 8 of the American Convention on Human Rights and Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child

¹⁶⁸ Human Rights Committee, General Comment No. 32, Article 14 (2007), U.N. Doc. CCPR/C/GC, paras 32, 45, 48 and 49

¹⁶⁹ *Villalobos v. Costa Rica* Case 9328, 9329, 9742, 9884, (IACHR), 2 October 1992, para. 9;

¹⁷⁰ Children Act, sec.43(1)(e)(i)

Thus, this provision complies with almost all international instruments. It does not set out limit to right to appeal as it has been seen in Costa Rican Criminal Code. Under the newly established Zanzibar Children's Court there has been no appeal because a reasonable good number of cases are still on trial. In the first year of operation of the Court, that is the year 2013, only four (4) cases were decided yet out of fifty seven (57) cases registered.¹⁷¹ There was no custodial sentence but only fine and family commitment.

3.7 Remand homes

Under international law and practice, children are to be kept in remand homes if, upon being charged with criminal offence, they fail to secure bail. International standards on juvenile justice demand that remanding juveniles must be a last resort. Remand homes directly treat the concept of deprivation of liberty.

Beijing Rules reflects this purpose of remand homes by providing that: "The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society".¹⁷²

In order to achieve this aim, "juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development."¹⁷³ All detention facilities holding children should operate a regime focused on re-integration of the child within his or her community. The child should be interviewed upon admission and a psychological and social report prepared. The report together with the medical report should be used by the institution to determine the most appropriate programme to be pursued.

Further, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees, and that account should always be taken of the

¹⁷¹ This is according to the statistical data available from the Zanzibar High Court, see table 3.1 above

¹⁷² United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') of 1985, Rule 26.1

¹⁷³ Ibid, Rule 26.2

needs particular to their stage of development. The Inter-America Commission states that:

*The State was detaining children in central prison facilities with adults who subjected them to physical and sexual abuse. The Commission held that Article 19 of the American Convention, Article 37(c) of the CRC and Article 122(2) of the Honduran Constitution “taken together, made it clear that the State of Honduras had an obligation to keep juveniles separate from adult inmates”. It also stated “the cohabitation of juvenile and adult inmates is a violation of the human dignity of these minors and has led to abuses of the juveniles’ ‘personal integrity’.*¹⁷⁴

The CRC¹⁷⁵ and the ICCPR¹⁷⁶ both require that where children are deprived of their liberty States shall ensure that they are separated from adults, unless it is considered in the child’s best interest not to do so. The Honduran case above proves that in cohabitating children with adult are contrary to the best interest of the child and thus not friendly to the principle of survival and development.

The Committee on the Rights of the Child¹⁷⁷ recommends in General Comment No. 10 that the phrase “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean “for the convenience of the State”. Further, this exception does not pardon a State of its obligation to establish separate facilities for children, which include distinct, child-centred staff, personnel, policies and practices.

The provisions on bail of children by the Children’s Court of the Zanzibar legislation recognizes the need to place children accused of crimes to remand homes. Hence, the concept of deprivation of liberty is practiced in Zanzibar juvenile justice system. The legislation states that:

(2)The court may, instead of committing a child who is not released in terms of subsection (1) to an Offenders’ Education Centre, make an order sending

¹⁷⁴ *Minors in Detention v. Honduras*, Case 11.491, Report No. 41/99, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95 Doc. 7 rev. at 573 (1997), 16 October 1996, Inter-American Commission on Human Rights, 1998, paras. 1, 3; Article 122(2) of Honduran Constitution, paras.4, 68, 75, 130,172, 173.

¹⁷⁵ Convention on the Rights of the Child of 1989, Article 37(c).

¹⁷⁶ International Covenant on Civil and Political Rights of 1966, Article 10(3).

¹⁷⁷ Committee on the Rights of the Child, General Comment No. 10 (2007), paras. 28 and 85

children's remand home or a place of safety named in the order, to remain there in custody for the period for which he or she is remanded or until finalizing of the proceedings before the court.

*(3) The court may commit such child to custody in an Offenders Education Centre if it is satisfied that the child is at least 16 years of age and poses a threat to safety of any person.*¹⁷⁸

The law provides three options on placement here. These are Offenders' Education Centre and remand homes or place of safety. Offenders Education Centres, according to the law of Zanzibar, are prisons. Therefore, the law of Zanzibar optionally allows children to be committed to prisons if they are 16 years. The law requires that those children must be confined in a separate building or in a separate part of the same building to prevent them from communicating with adult remandees.¹⁷⁹

However, the study found that children are committed in the same building but in a separate wing-children wing of the Offenders' Education Centres. The structure of the building cannot prevent them from communicating with adult remandees or prisoners. In addition to that the study found that there are no remand homes in Zanzibar. These situations coerce every child who is not bailed to be committed to prison (Offenders Education Centres).

Place of safety is interpreted by the law as "any institution, hospital or other suitable place, the occupier of which is willing to accept the temporary care of a child."¹⁸⁰

There is no operating institution on this or hospital that takes such care. The Havana Rules insists on classification and placement for detention of juveniles by asserting that:

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the

¹⁷⁸ Children's Act, sec.45 (2) (3)

¹⁷⁹ Ibid, sec. 45 (3), (6)

¹⁸⁰ Ibid, sec.2

*individuals concerned and the protection of their physical, mental and moral integrity and well-being.*¹⁸¹

This mechanism does not seem to be complied with by Zanzibar juvenile justice system.

It is very unfortunately claimed that some children committed in Offenders Education Centres especially those charged with serious offence are sexually abused by prison inmates. For the case of children offenders, creating juvenile wings in adult prisons is not recommended as a long-term solution for dealing with children in detention.

Furthermore, in spite of the prison institutions to be named Offenders' Education Centres, they practically do not educate the remanded. The Centres do not uphold the purpose of deprivation of liberty as required by international juvenile standards.

Nonetheless, plans are in place and work has started on establishing a central prison in Unguja which will replace the dilapidated current central prison. The government of Zanzibar is about to build an institution with a juvenile wing for 14-17 year olds, a wing for 18-21 years and a wing for 21s+.¹⁸²

3.8 Reintegration and rehabilitation

International law insists on the reintegration and rehabilitation of delinquent children. The UN CRC requires State to provides for variety of widely available, non-custodial sentencing measures in their legislation to ensure that children are dealt with in a manner that is appropriate both to their circumstances and the offence that take into account their age and the need to promote the child's re-integration and assume a constructive role in society.¹⁸³

Riyadh Guidelines claim on the process of reintegration as a matter of socialization process. The resolution provides that:

Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular

¹⁸¹ United nations Rules for the Protection of Juvenile Deprived of their Liberty (Havana Rules) of 1990, Rule.28

¹⁸² Interview with Chief Legal Officer-Offenders Education Centres, Zanzibar

¹⁸³ Op. cit

through the family, the community, peer groups, schools, vocational training...

*Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration process.*¹⁸⁴

Therefore, the concept of reintegration bases on preventive policies established by State and thus socialization policy is to uphold the reintegration process. However, CRC is criticized of not clearly providing for the rehabilitation issue. Bueren argues that Article 40 does not incorporate the concept of a child's 'rehabilitation'.¹⁸⁵ The concept of rehabilitation is explained by the ICCPR by stating that as the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability to promot their rehabilitation.¹⁸⁶

In Zanzibar presently, there is no clear mechanisms to promote the concept of reintegration and rehabilitation although international law persistently advocates. However, the Children Act provides on the methods of dealing with children charged with offences¹⁸⁷ by requiring that children be placed under the supervision of a probation officer or a welfare officer on probation of good conduct, with or without a parent for the good behavior and well-being of the child for any period not exceeding three years.¹⁸⁸

Nevertheless, some of the convicted children are committed to community services but its implementation is still not operational that the concept of rehabilitation and reintegration is not practically realized. Counseling is also applied to offending children before judicial process is initiated. The history shows that Zanzibar government had programs of rehabilitation and reintegration of children with troubled behavior in the 1970's and 1980's. These programs stopped in the end of 1980's.

In spite of not having practically clear programs of reintegration and rehabilitation, its current strategy believe that ideally community-based rehabilitation and reintegration

¹⁸⁴ UN Guidelines for the Prevention of Juvenile Delinquency, A/RES/45/112, para.10

¹⁸⁵ Bueren, Commentary on UN CRC, Art.: Child Criminal Justice, para. 22

¹⁸⁶ International Covenant on Civil and Political Rights of 1966, Art.14 (4)

¹⁸⁷ Children's Act, sec.47

¹⁸⁸ Ibid, sec. 47 (1) (d)

programmes should be established for children in conflict with the law in their own communities and should work with the child and family to address the immediate and root cause of a child's mis-behaviour. Police, Prosecutors and Courts should have the mandate and authority to refer children to these programmes.

3.9 Conclusion

International law through various instruments and specialized monitoring bodies set standards and principles to be complied with by States when dealing with children in conflict with the law. A State's juvenile justice system is obligated to respect those already set standards. International law supposedly sends a message to States that their criminal justice systems are not free to act on their own pleasure but must comply with its standards.

It is therefore important for domestic laws to reflect international law and that should not be considered as diminishing the sovereignty of such States. In this regard, domestic legislations are important tools for a State to comply with international law on children in conflict with the law. This is to ensure that rights of alleged or charged children during arrest, investigation or adjudication are clearly stipulated in such legislation.

However, a serious challenge facing many States' juvenile justice system is the implementation of their own enacted statutes on children right when facing the criminal justice system. Zanzibar has enacted the Children's Act of 2011 as was to show compliance to international law on children in conflict with the law. But its implementation is not promising. The poor infrastructures and the least specialized trained personnel to support juvenile criminal procedures leave Zanzibar to be suffering from effectively implementing her newly enacted Children's Act.

International and regional human rights systems put in place monitoring bodies or tribunals to receive and consider complaints of those children aggrieved by decisions of domestic adjudications. The UN Committee on the Right of the Child, monitoring body for the implementation of the CRC has since its establishment recommended on various complaints communicated to it. The African Committee of Experts has been

doing the same as the regional monitoring body. But their decisions are not binding in nature.

CHAPTER FOUR

PRESENTATION OF FINDINGS AND ANALYSIS

4.1 Introduction

This chapter presents and analyses findings from the field. The concern of this study is the Zanzibar's compliance with international law on children in conflict with the law and whether Zanzibar population is aware on the rights of the children when in conflict with the law. The findings of the study therefore, reflect the two research questions which are to be answered by this study.

4.2 Awareness on international standards

Under this question the researcher presents the responses from various respondents including government officials and common people on international standards applicable to children in conflict with the law. Awareness of people on the rights of children when are in conflict with the law is an important means towards compliance with international standards.

4.2.1 Awareness by government officers

On the question of whether they know on international law standards on children in conflict with the law, the answer was positive to all twenty two (22) officers completed the questionnaires and five (5) interviewed officers. This seems to be so because all the respondents belong to the five institutions that directly deal with children in conflict with the law. Those institutions were Police Force, DPP's Office, Children's Court, Education Offenders Centres and Department of Social Welfare.

Police officers are the ones who arrest, interrogate and investigate the offences. Police has power to divert certain offences to other procedure which is not judicial. DPP's office prosecutes the juvenile delinquents or diverts their offences while Children Court is vested with jurisdiction to adjudicate children in conflict the law. The social welfare office is the overall government office dealing with policy and child protection. The Children's Court layout provides with social welfare officers.

Offenders Education Centres take care of every child who is not bailed. They provide remand facilities.

This situation gives every stratum at least to have basic knowledge on the international standards on juvenile justice. In addition to that, some of them got opportunities of attending some workshop trainings. However, going through other questions in the questionnaires, the response do not seem that the respondents deeply know the international standards as it is a complex issue of international law. The table below demonstrates the training attended the five interviewed officers.

Table 4.1: Shows responses of interviewed officers on courses attended

Type of Course Attended	Officers Attended	Percentage
Long Course	0	0%
Short Course	1	20%
Seminar(s)	3	60%
None	1	20%
Total	5	100%

Source: Filed Research

4.2.2 Awareness of ordinary people

In getting the view of Zanzibar population on their awareness on this study, the researcher managed to get the view of general population of Zanzibar in which twenty (20) people were interviewed through Urban West region without focusing on a specific group.

However, a mixture of male, female and children were contacted to get their view. The researcher was convinced that this random contact of people could produce reliable inference of the population's awareness on the topic. Hence, the respondents shown that they are aware on the general rights of children as it is advocated through various forums in Zanzibar.

On the question of their awareness on international standards on children in conflict with the law, sixteen (16) respondents, equal to (80%) said that they don't know if there are any international law principles and standards on the rights of juvenile

delinquents to be complied with by Zanzibar. They could not say anything about the position of Zanzibar; whether it respects them or otherwise.

Four (4) respondents, equal to (20%) mentioned the existence of the Children's Act and Children's Court in Zanzibar but they don't know what the statute provides and how the Court functions. They don't even know whether this court and legislation is the reaction to international law obligation to the State.

On the question on whether they knew the specific places to remand children in conflict with the law, the responses were that all twenty (20) which are 100% of the respondents said that what they know is that every charged offender not bailed is committed to Offenders Education Centres. This denotes that the population is not aware whether there is a need for remand homes in Zanzibar for juvenile delinquents as required by international law.

Regarding the question on whether they know that children have right to privacy on the criminal proceedings involving them, the answer was diverse. Only six (6) of the respondents which represented 30% answered that the existence of Children Court is to promote the privacy of children in the court. Thus, they have at least some idea that children in conflict with the law have right to privacy. But these respondents are not aware that cases involving children are not to be published in any media. The other fourteen (14) represented 70% didn't know anything about the right to privacy for children in conflict with the law.

4.3 Zanzibar's compliance with international law

In collecting data to answer this research question, questionnaires and interviews were applied. The targeted group was officers working in the juvenile justice system from five units of inquiries provided above.

4.3.1 Responses from questionnaires

As stated above, questionnaires were applied in collecting primary data from various strata. Twenty five questionnaires were distributed to target population; five questionnaires were distributed to each stratum in order to ensure equal

representation. However, not every questionnaire distributed was returned. Among the twenty five (25) questionnaires, twenty two (22) were returned which makes eighty eight percent (88%) while three (3) which makes twelve percent (12%) were never returned.

4.3.2 Situation of legal aid mechanisms

Concerning the question on the situation of legal aid mechanism for poor delinquent juveniles, the answers are diverse. All respondents answered this question. Hence, two (2) equivalent to nine percent (9.09%) of the respondents said that legal aid is only offered in serious cases to poor delinquent children but in other cases they get no assistance in defending their cases. Only one (1) which is four point five percent of the respondents (4.5%) said that there are not specialized trained advocate in Zanzibar to offer legal aid to alleged children offenders. The rest nineteen (19) which makes eighty six point three percent (86.3%) responded that there is no legal aid system to poor delinquent juveniles. The table below shows the situation of legal aids to children offenders.

Table 4.2: Situation of legal aid mechanism in Zanzibar

Answers	Number of Respondents	Percentage
Legal aids to serious cases only	2	9.09%
No child specialized trained lawyers	1	4.5%
No legal aids to poor juvenile delinquents	19	86.3%
Total	22	100%

Source: Own findings

These answers portrays that the respondents are negative on the situation of legal aid to children offenders in spite that section 43 (1) of the Children Act expressly stipulates that a child has the right to legal assistance either from government or other sources. It was observed that, in the absence of legal assistance, welfare officers from the Department of Social Welfare are taking the position of helping them. Social welfare officers and probation officers have locus in children court during trials.

4.3.3 Remand facilities

In respect to the question on the evaluation of remand facilities for offending children the answers were negative. In fact every one of the respondents answered this question. One (1) respondent which makes four point five percent (4.5%) said that the remand facilities for children in conflict with the law are satisfactory. All the rest twenty (21) which is equivalent to ninety five point five percent (95.5%) said that the remand facilities are not conducive. As stated above, there are no remand homes available for juvenile delinquents in Zanzibar. All children offenders are committed to the cells reserved for children in Offenders Education Centres. The table bellow shows how the respondents commented on the juvenile remand facilities in Zanzibar.

Table 4.3: Presents evaluation of remand facilities for children offenders

Answers	Number of Respondents	Percentage
Very Conducive	0	0%
Conducive	0	0%
Satisfactory	1	4.5%
Not conducive	21	95.5%
Total	22	100%

Source: Own findings

On top of that, this study found that there are not approved schools in Zanzibar but there has never been a custodial sentence to any juvenile offenders convicted by the Children's Court.

4.3.4 Treatment for delinquent juveniles

Regarding the question on what treatment is more practicable for delinquent juveniles in Zanzibar; all respondents answered this question. Three (3) respondents equivalent to (13.6%) said diversion is more practicable than prosecution. These three respondents are two (2) from Education Offenders Centres and one (1) from Police Force. Eighteen (18) respondents which is equivalent to (81.8%) said that prosecution is the practical treatment to children offenders. One (1) equal to (4.5%) respondent answered that all two means are equally practicable to the treatment of juvenile offenders. The table bellow presents the opinion of officers on the treatments of offending children.

Table 4.4: Presents the opinions on practical treatments on offending children

Answers	Number of Respondents	Per centage
Diversion	3	13.6%
Prosecutions	18	81.8%
Diversion and Prosecutions	1	4.5%
Total	22	100%

Source: Own findings

The law of Zanzibar allows those two means of dealing with children offenders. Police officers and prosecutors, as shown above have power to divert cases from judicial process to other administrative procedures. This study could not find the statistical data on the number of those alleged offenders who enjoyed diversion. Record keeping is still a challenge in those two authorities. However, it was revealed that almost fifty seven cases (57) were registered at the Vuga Children Court for the year 2013 while up to March 2014; only three cases have been registered¹⁸⁹.

4.3.5 Safeguarding the right to privacy

The answer from the question on how does the right to privacy is maintained in the juvenile criminal trials in Zanzibar are that all twenty two (22) respondents answered this question both positively and negatively.

In their responses, nine (9) respondents equivalent to 40.9% said the right to privacy is safeguarded by trying children in camera while two (2) respondents equal to 9.09% said that the right to privacy is maintained by not publishing information of offending children and deleting the criminal records of the juveniles.

As explained above the Children's Act does not define what privacy means in the aspect of children's criminal trials. In addition, there is no provision on the right to privacy but what is expressly provided by the law is that the trial to be conducted in camera and prohibition of publication of information of alleged offenders. Expungement of criminal records is optional according to section 52 of the Act. Therefore, these answers are in line with law of Zanzibar and that this right is implemented at the Vuga Children's Court at Vuga.

¹⁸⁹ Interview with the Magistrate of Vuga Children's Court on the 18th March 2014

On the other hand, another eleven (11) respondent's equivalent to (50%) claimed that right to privacy is not maintained in Zanzibar juvenile criminal trials. Because this was an open ended question variety of reasons were provided by this group of respondents. Almost every one of this negative answer claimed on poor infrastructure of juvenile courts that cannot support right to privacy. In addition poor knowledge on children's rights also lead to the breach of right to privacy of alleged offenders in criminal trials.

4.3.6 Promotion of the concept of reintegration

On the question of how Zanzibar juvenile justice system promotes the concept of reintegration to children in conflict with the law, this is the only question that some respondents did not answer. Sixteen (16) respondents which is equivalent to (72.72%) replied to this question.

Thirteen (13) respondents equal to (59.09%) respondents answered that by allowing diversion by police, prosecutors and courts it helps to promote the concept of reintegration. Two (2) of the respondents which is equal to (9.09%) answered that by court not imposing custodial sentences, the juvenile justice system promotes the concept of reintegration. Only (1) of the respondent equivalent to (4.54%) answered that warning by police promotes reintegration. In fact all these sixteen respondents agreed that juvenile justice system in Zanzibar is in a position to change behaviour of offending children and thus has reduced the number of children in conflict with the law. Six (6) respondents, equivalent to (27.2%) did not respond to this question.

4.3.7 Specialised legal officers in juvenile justice system

All respondents agreed that currently there are not specialized legal officers who were trained to specifically to deal with children who offended the law or children's right as a whole. Police officer interviewed claimed that the same Magistrate adjudicating adults is the same who adjudicate the juveniles. This has been proved by current Vuga Children's Court is as well the District Magistrate at Mwanakwerekwe District Court in Western District.

However, international institution such as UNICEF has been regularly conducting seminars to the stakeholders of children's right and welfare. Moreover, respondents from Court and DPP's office confirmed that their respective offices are in the process of conducting in service training for their personnel.

4.3.8 Approved Schools

The Children's Act empowers the Minister under section 115 of the same to establish an Approved School which may be used to accommodate children with behavioural problems or restricting liberty of children. All respondents from the interview answered that there is no single approved school in Zanzibar. Non-applicability of custodial sentences in Zanzibar to convicted juvenile delinquents makes the absence of approved schools not to be seen as a serious challenge currently. Convicted children are committed to community services or parental care but it is verily proved that this mechanism is not effectively controlled.

4.4 Implementation of international law standards

From the data collected from the questionnaires, most respondents identified some factors that impair the implementation of international law standards in Zanzibar juvenile justice system. Twelve (12) of the respondents which is equivalent to (54.6%) opined that international standards on juvenile justice are hindered by various factors.

One of the factors to the answer is Zanzibar's juvenile justice system unpreparedness to implement international law requirements on the aspect. Another factor impeding the implementation is the behaviour of Zanzibar to enact good laws but lacking enforcement. Poor supervision of children's rights in Zanzibar is also said to be a factor obstructing implementation of international standards on children in conflict with the law.

It is also reasoned that Zanzibar's cultural practice is an obstacle for the implementation of international standards on children in conflict with the law. One respondent explained that these standards are western and thus do not conform with Zanzibar culture which has deep Islamic influence. Additionally, lack of knowledge

by the majority of the Zanzibar people is also said to be a reason impede the implementation of such international standards.

However, in spite of all these impeding factors some ten (10) respondents, equivalent to (45.4%) said that international standards are implementable in Zanzibar. Zanzibar cannot avoid international law standards since it is part of it. The arguments for these respondents were that the establishment of the Children’s Court in Zanzibar shows that international standards on juvenile delinquency is practicable. The court does not imprison the convicted children but imposes fine or commit them to community works. The table bellows presents the response from officers dealing with offending children.

Table 4.5: The views of respondents on practicability of international standards on juvenile delinquency

Answers	Number of Respondents	Percentage
Yes	10	45.4%
No	12	54.6%
Total	22	100%

Source: Own findings

The summary shows that bigger number of respondents (54.6%) was not convinced that international law standards on children in conflict with the law is not implementable considering several factors outlined above.

4.5 Responses from interviews

This study applied interview to collect data as explained above. Five officers were interviewed from five units of inquiry in order to get a deeper understanding of Zanzibar compliance with international law on children in conflict with the law. From this interview, comments from interviewees varied to some extent. This depended on their position in institution and the way they see the world. The researcher is duty bound to respect their views as it is an ethical issue in scientific studies.

4.5.1 Zanzibar's juvenile justice system

State Attorney (prosecutor) and the Children's Court Magistrate hailed the position of Zanzibar in compliance with international law. The enactment and enforcement of the Children's Act is claimed to be a remarkable step forward to the compliance of principles and standards of international law on children in conflict with the law. The Act provides for the provision that "preserve the best interest of a child in relation to international law".

Apart from the legislation, the Magistrate insisted that the establishment of Children's Court under section 18 of the Act is also Zanzibar's show of respect to its international obligation as part of the United Republic of Tanzania. At least for Unguja Island all children who face judicial process are prosecuted in a separate court chambers and behind closed door. The Court in spite of inadequate infrastructure, it is installed with television screen that is to adduce evidence for victim witness. Diversion by police, prosecutor and court is an aspect these respondents claim to be compliance with international law on juvenile justice system.

Legal officer from Social Welfare authority responded that the Ministry in collaboration with other stake holders has identified child justice as thematic focus and recognizing the importance of the justice sector to implement children's right. The Ministry has been taking steps to create a child friendly justice system that guarantees rights to children in conflict with the law. This move by Zanzibar is an indication that compliance with international law on juvenile justice is progressively realized.

However, police and prison officer respondents were negative on Zanzibar's position on compliance. These officers who arrest and remand the alleged offenders complained that in the absence of trained personnel in the field, compliance with international law is far beyond the reality. No Police Station has separate lockups for accused children. Zanzibar has neither remand homes nor approved schools for such children.

4.6 Other Observations from the field

The researcher managed to observe some other things pertaining to children in conflict with the law especially on the issue of compliance with international law principles and standards. The issue of attitudes of people on offending children and how they are portrayed in the society was closely observed. Other observations were Police Gender and Children's Desk¹⁹⁰ is not active on children in conflict with the law and absence of regulation dealing with children in conflict with the law.

4.6.1 People's attitudes on offending children

Attitudes of the people in Zanzibar on children in conflict with the law vary. Police officer and Education Offenders Centre (prison officer) commented that children in conflict with the law are considered to be ordinary criminals who deserve punishment to correct their criminal behaviour. Those who involve themselves in sexual offences or theft are portrayed to be wicked or threatening and thus they must be dealt with accordingly. These responses are from male officers.

Some ordinary people believe that children in conflict with the law are ill-disciplined thus they deserve punishment. But punishment should be exercised by the community itself and not by the Court. Social solution, according to them, is more preferable than justice solution. This means that still some people in Zanzibar believe in punitive sentiments against offending children. This is possible because of cultural influence of African communities and even Islamic faith which predominates Zanzibar population.

On the other hand, responses from others show some sympathy to juvenile delinquents. They explained that family circumstances force those children to commit crimes. The argument raised is that attitudes of some families which do not properly care for their children contribute to those children to jump into difficult behaviour. Juvenile delinquents are mostly influenced by peer pressure, single family and poor upbringing. Therefore, there are people in Zanzibar who see delinquent juveniles need help and not punishment.

¹⁹⁰ Based on Tanzania Police Force's Guidelines for the Establishment of Police Gender and Children's Desks

4.6.2 Ineffectiveness of Police Gender and Children's Desk

It has been observed that the Police Gender and Children Desk is more active in violence against women and children and not dealing with children in conflict with the law.¹⁹¹ This means that still children in conflict with the law are dealt with by the ordinary Police Officers' Desk at various Police Stations.

This situation does not indicate the respect for international law on the treatment of children in conflict with the law. This may also be contributed by poor knowledge of Police Officers on the aspect and poor monitoring mechanisms by responsible government department for children protection.

Additionally, The Children's Act vested with power to the responsible Minister to make regulations on manner of arrest, police admonition, interviewing and amount to be set for release on police bail.¹⁹² This power has not been worked out and thus leaves police not to have standard operating procedures in dealing with offending children. This being the case, offending children turn to be victims of circumstances.

4.7 Conclusion

Children in conflict with the law and its compliance with international law seem to be a new shift of paradigm for Zanzibar's juvenile justice system. Her criminal justice system on this field is still on the making. The awareness by the entire community including government officers is still very low.

The findings from primary data collected by researcher demonstrate that the system is still crawling. There is lack of required infrastructures, insufficient well trained legal officers to uphold international standards and some cultural practices make Zanzibar not to comply with international law on children in conflict with the law. Law enforcers are still with attitudes that children offenders are to be treated as other adult criminals. This is also the attitudes of some ordinary people in the streets. Absence of legal aids to the alleged children makes them to be interrogated or prosecuted without appropriate legal assistance.

¹⁹¹ Interview with Police Officer-in Charge of Gender and Children Desk at Mwera Police Station, March 2014

¹⁹² Children's Act, sec.54

Although the Children's Act of 2011 has no provision on custodial sentences, there is still unsatisfactory management of reintegration and rehabilitation for children who are committed to community services. On top of that, from the findings of this study it seems that some very important officers in the administration of juvenile justice lack understanding of the concept of reintegration and rehabilitation. This denotes that they were posted to serve juvenile justice system without being trained on this important agenda.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

Children in conflict with the law are a topic that falls under the international law of the child as an aspect of international human rights law. International law has provided with some principles and standards on how juvenile delinquents are to be treated by individual States. Hard laws and soft laws are there to be complied with by Member States. In 2010, the African Committee of Experts on the Rights and Welfare of the Child made concluding recommendations in relation to the implementation of juvenile justice standards in the Tanzania Mainland and Zanzibar as follow:

The Committee urge the State Party to work on the Concluding Observation made by the UN Committee on the Rights of Child aimed at improving the state of juvenile justice in its jurisdiction, by particularly enacting comprehensive provisions in the juvenile justice standards; allocating sufficient human and physical resources; and conduct regular training to juvenile justice personnel to ensure that juvenile justice is administered in consonance with best practices and international standards¹⁹³

In this regard, this study has investigated the ‘Tanzania’s compliance on international law in children in conflict with the law, focusing Zanzibar as the case study’. Consistently restating, promoting and defending these principles is a vital first step for governments (States Parties) if they are to move towards child-centred and rights compliant systems of youth and juvenile.

Zanzibar, as is engulfed by poverty still has a long way to go in achieving full compliance with the international law in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort. This is so because of insufficient mechanisms and infrastructures to deal with children in conflict with the law. It is widely argued

¹⁹³ African Committee of Experts on the Rights and Welfare of the Child, Concluding Recommendations on the Republic of Tanzania on the Status and Implementation of the African Charter on the Rights and Welfare of the Child, 2010, p.9; quoted in Zanzibar Government Report, (2013) Vision for the Juvenile Justice System in Zanzibar, p.2

that offending children need to be disciplined by rehabilitating them and not through arrest and custodial sentences.

Zanzibar has already a fine piece of legislation, the Children's Act of 2011, in which to the large extent reflects the international law principles and standards on children in conflict with the law. It provides the whole Part V with provisions on children in conflict with the law. This legislation extensively defines the best interest of the child and determinants of the same. Should Zanzibar accordingly implement this legislation, its level of compliance with international law on juvenile delinquency would be commendable. However, Zanzibar government five year strategy (2013-2018) on Child Justice Reform and her "Vision for the Juvenile Justice System in Zanzibar" demonstrates that Zanzibar is eager to walk her commitment to international agreements on children's right.

5.2 Conclusion

Compliance with international law on children in conflict with the law is seriously monitored by relevant international treaty body, in this respect the UN Committee on the Right of the Child (UNCRC). This study found that UNCRC has been adamant in portraying how States avoid themselves in respecting or protecting children's rights. In 2004 the Committee's report on Germany condemned the increasing number of children placed in detention, especially affecting children of foreign origin, and that children in detention or custody are placed with persons up to the age of 25 years. The report on the Netherlands in the same year expressed concern that custody was no longer being used as a last resort.¹⁹⁴

Children in conflict with the law have rights as any other alleged offenders but to them (children) rights should go further. This study exposes how Zanzibar complies with international law on juvenile justice system. Zanzibar, in compliance with international principles and standards faces many challenges in meeting international law standards.

¹⁹⁴Retrieved March 29th, 2014 from World Wide Web: [http:// www.oro.open.ac.uk](http://www.oro.open.ac.uk)

In five administrative regions of Zanzibar, there is still one court in Unguja which prosecute the cases from all three regions of Unguja. This makes the under resourced Children's Court in Zanzibar Town to be overworked and lead to delay of children's cases. International law requires that juvenile adjudications should be finalized in reasonable time from the initial stage to the final decision. In the Zanzibar law, a case must be finalized within six months. There is no Children's Court in Pemba Island. Trying children cases in ordinary courts is undesirable as far as international law standards are concerned.

Poor infrastructures in law enforcement agents such as police and prisons contribute to the poor performance of Zanzibar's compliance with international law on juvenile justice system. Zanzibar has not until today any remand homes or approved schools for children deprived of their liberty. Committing juveniles to ordinary prison cells may amount to contravention of international standards on juvenile justice. There are some claims that some children are badly influenced by inmates while remanded. This infringes their right to survival and development.

It is obviously seen that Zanzibar is seriously suffering from the professionals in children's rights including lawyers. During the investigation of this study, respondents from the questionnaires and interview showed that they lack required knowledge on juvenile justice system. Legal assistance to alleged children offenders is beyond the reality. Those advocates who occasionally represent juveniles in prosecutions are not specialists in law of the child.

However, Zanzibar has done well in diversion as alternative to judicial process. Police officers, prosecutors and court, after carefully examining the children circumstances that force him or her to commit such crime, may divert the case to other procedure. This mainly focus on restorative justice in which the victim of the offence is giving due consideration to the diversion. Prosecution authority and police always meet together before filing the case to the court for discussion and counseling.

Juvenile cases are now prosecuted behind the closed door in order to observe the right to privacy. The legislation prohibits the publication of any children case.

Nevertheless, some media have been seen to publish information concerning juvenile adjudication of children in conflict of the law especially when involved in sexual offences. Some consider those juveniles committing sexual crime as “not children” but just criminals. For example in the UK when the Secretary of State for Justice was asked what he might do to reduce the trend of demonising children and young people, his response was unequivocal: ‘these are not children; they are often large unpleasant thugs.’¹⁹⁵

The issue of awareness of people on the right of children when offending penal law is important in States’ complying with international obligation. It is the awareness of common people on any right which can foster its fulfillment in any community. In Zanzibar the level of awareness juvenile justice is very low. This seems to be because of complexity of the subject. Juvenile justice is complex area in which to comprehend. People do not know how to access the rights of their children in time of need.

Therefore, sometimes people resort to social solution rather than justice solution because of being unaware. Children themselves are not aware of their already existing right when they are in breach of the law. Domestic legal instruments being written in foreign language hinders the population being aware of children’s right.

5.3 Recommendations

Zanzibar is in the initial stage in present day juvenile justice system. It has recently enacted the exhaustive Children’s Act as an instrument to uphold international standards. It clearly seems that the semi-autonomy of Zanzibar is ambitious to comply with international law on children in conflict with the law.

But some factor constraints the full realization of international standards. Juvenile justice system cut-across several stakeholders that they must work together in order that Zanzibar can realize the international standards progressively. The Ministry responsible for children affairs is a driving force toward other stake holders since it is

¹⁹⁵ Ibid, p.3

a policy maker for children's rights. Therefore the recommendations bellow are identified to better uphold international law standards on juvenile delinquency.

5.3.1 Implementation of the Children Act

The implementation of the current Zanzibar Children Act of 2011 which incorporate international law standards on juvenile justice system is not completely operational. This is an obstacle to the Zanzibar compliance with international law on children in conflict with the law. It is recommended that Zanzibar must strive to fully operationalize its legislation on children's rights. This needs a healthy budget thus the government must increase its developmental budget in children affairs.

5.3.2 Translation of Children's Act into Kiswahili

Majority of Zanzibar people speak Kiswahili only as their mother tongue language. Providing only English version of the legislation that carter for the rights and welfare of children impairs the right of children indirectly. It is a kind of discrimination to the majority of children who don't understand the English language. Zanzibar juvenile justice system is to translate that English version into Kiswahili and distribute it to the community.

5.3.3 Training of Specialized Children Experts

This requires that Zanzibar is to have skilled personnel on children rights and welfare in legal and social affairs. Lawyers specialized in children rights are badly needed to offer legal assistance when children are arrested or tried before the court. This training should include law enforcement agents since they are inevitable in juvenile justice system. Professionals in sociological and psychological point of view are of great importance in helping prevention of crime and rehabilitation of delinquent juveniles. Zanzibar should train those personnel to have functioning juvenile justice system which conforms to international standards.

5.3.4 Establishment of Remand Homes

There is up to now no remand homes in Zanzibar while they are children who are not bailed. Hence, these children find themselves in prison cells and cannot avoid themselves to communicate with other adults inmates which are to their detriment. It

is highly recommended that remand homes to be established as it is required by the Children's Act of 2006. This should include progressive renovation and equip police stations to appropriately deal with offending children in those stations.

5.3.5 Improve Awareness of the People on Juvenile Justice

In order that the right of children in conflict with law respected and protected, awareness of the people is crucial. It is these people that can push the government to enforce the rights of children offenders. Thus Zanzibar juvenile justice system must conduct sensitization program throughout Zanzibar. It will help to improve the level of Zanzibar's compliance with international law on children in conflict with the law.

5.3.6 International Cooperation

This is the century of interdependence in which no individual State can uphold international affair by itself. Zanzibar should seek international help in financial resources to improve correctional facilities, training and some technicalities in complying with international standards on children in conflict with the law. International cooperation must as well include complying with UNCRC and African Committee on the Rights and Welfare of the Child (Children's Charter implementing body)

REFERENCES

Books

- Adam, J. and Kamuzora, F. (2008). *Research methods for business and social studies*, Mzumbe, Mzumbe Book Project.
- Brett, R. (2012) "Rights of the Child". in Kraus, C., Scheinin, M. (2012). *International protection of human rights: A text book*, (pp.243-264). Turku: Abo Akademi University.
- Collin, H. (1993). *Law dictionary*, New Delhi, Universal Book Stall.
- Cross, N. (2010). *Criminal Law & Criminal Justice: An Introduction*, London, SAGE Publishers.
- De Rover, T. (1998). *To serve and to protect: Human rights and humanitarian law for police and security forces*, New York,
- Goldson, B and Muncie. (2006). *Rethinking youth justice: comparative analysis, youth international human right and research evidence, youth justice* (vol 6 no 2). London, Willan Publishing.
- Kothari, C. (2004). *Research methodology: Methods and techniques*, New Delhi, New Age International Publishers.
- Kumar, Y. (2006). *Fundamental research methodology and statistics*, New Delhi, New Age International Publishers.
- Makaramba, J. (2006). "Children in Conflict with the Law in Tanzania and Zanzibar". *In The Judiciary in Zanzibar* (pp. 68-89), Zanzibar, Zanzibar Legal Services Centre.
- Nichols, P. (2000). *Social survey methods: A field guide for development workers*, London, Oxfam
- Sheth, H. (1961). *Juvenile delinquency in an Indian setting*, Bombay, Popular Book Deport.

Shivji, I., Majamba, H., Makaramba, R., Peter, C. (2004). *Constitutional and legal system of Tanzania*, Dares salaam: Mkuki na Nyota.

Siegel, J. and Welsh, B. (2011). *Juvenile delinquency*, Belmont, Wadworth Learning.

Journal

Njungwe, E. N. (2009). International protection of children's rights: An analysis of African attributes in the African Charter on the Rights and Welfare of the Child. *Cameroon Journal on Democracy and Human Rights*, Vol. 3, No.1 of June 2009. 5-6.

Commentaries

Freeman. Commentary on the United Nations Convention on the Rights of the Child, Article 3: The best interests of the child. Leiden, NLD: Martinus Nijhoff Publishers, 2007.

Mashamba, J.C. (2009). "A child in conflict with the law under the Tanzania Law of child Act (2009): accused or victim of circumstances?" In *NOLA, The justice review: Special commentary on the Tanzania Law of the Child Act (2009)*, Vol.8 No. 2, 2009, (pp. 156-169). Dar es Salaam

Government Documents

Ministry of Social Welfare- Zanzibar. (2013). *Child justice reform: A five year Strategy, 2013-2018*, Zanzibar: Author

Ministry of Social Welfare- Zanzibar. (2013). *Vision for the juvenile justice system in Zanzibar*, Zanzibar: Author

Electronic Sources

Abramson, B. (2000). *Juvenile Justice: The Unwanted Child of the State Responsibilities*, An analysis of the concluding observation of the UN Committee on the Rights of the Child in regard to juvenile justice from 1993 to 2000. Retrieved August 20th , 2014 from World Wide Web: <http://www.defence-for-children.org>

- Barbaree, E. and Marshall, L. (2008). An introduction to the juvenile sex offenders: terms, concepts, and definitions. Retrieved 29/05/2013 from World Wide Web: <http://www.guilfordpress.org>
- Hamilton, C. (2011). Guidance for legislative reform on juvenile justice. Retrieved March 15th, 2014 from World Wide Web: <http://www.childrenlegalcentre.co>
- Longo, R.E. and Prescott, S. (2006). Introduction: A brief history of treating youth with sexual behaviour problems. Current perspectives: Working with sexually aggressive youth and youth with behaviour problems. Retrieved 29/05/2013 from the World Wide Web: <http://www.csom.org/pubs/juvbrf10.html>
- Muncie, J (2009). The United Nations, children's rights and juvenile justice, p.6. Retrieved from <http://www.routledge.com/books/details> on 13th March 2014.
- Practice direction by the Lord Chief Justice of England and Wales, trial of children and young persons in the Crown Court, 16 February 2000. Retrieved 3rd February 2014 from World Wide Web: <http://www.lawstuff.org.uk>.
- Retrieved 29th March 2014 from World Wide Web: <http://www.oro.open.ac.uk>
- Retrieved 20th August, 2014 from World Wide Web: <http://www.unicef.org/tdad/unicefcejassessment>
- Ryan, G. (1997). Juvenile sexual offending: Causes, consequences and correction. Retrieved 10/06/2013 from World Wide Web: [http://www.wikipedia.org/w/index.juvenile delinquency](http://www.wikipedia.org/w/index.juvenile%20delinquency)
- UN human rights committee, 1997, General Assembly official records fifty-first session supplement No. 40, A/51/40, (vol. II). Retrieved 18th September 2013 from World Wide Web <http://www.ohchr.org/EN/HRB>
- UNICEF: Children in conflict with the law: Child protection information sheet. Retrieved 13/06/2013 from World Wide Web: <http://www.kidsbehindbars.org>

UNICEF: Innocent digest: Juvenile justice. Retrieved 13/06/2013 from World Wide Web: [http:// www. unicef.org](http://www.unicef.org)

United Nations, (1980). Sixth United Nations congress on the protection of crime and the treatment of offenders. Retrieved 20/05/2013 from World Wide Web: <http://www.unojust.org>

United Nations. (2007). Committee on the rights of the child, general comment No. 10 (2007). Retrieved 13th April 2014 from World Wide Web: <http://www.ohchr.org/EN/HRB>

APPENDICES

Appendix I: Questionnaire

Questionnaire for the study of “Tanzania’s compliance with International Law on Children in Conflict with the Law: The Case Study of Zanzibar.”

This questionnaire is for the purpose of dissertation for completion of Master Degree in Law (International Law) at the Mzumbe University-Morogoro. No individual will be identified and all data are strictly confidential. We kindly request you to respond to this questionnaire as accurately as you can.

A. Personal Particulars

- a) Age group: 18-25 years []; 26-35 years []; 36- > years [].
- b) Occupation.....
- c) Designation.....

B. QUESTIONS

1. How long have you been serving in your present occupation?

.....

2. Do you know anything about international law standard on children in conflict with the law?

Yes [] No []

3. Does Zanzibar criminal justice system have legislation that expressly deals with children in conflict with the law?

Yes [] No []

4. How do you evaluate the Zanzibar remand facilities for children in conflict with the law considering the required international law standard.

a) Very conducive []

b) Conducive []

c) Satisfactory []

d) Not conducive []

5. What is the situation of legal aid mechanism for poor delinquent juveniles in Zanzibar?

.....
.....
.....
.....
.....

6. Describe the prevalence of juvenile courts in Zanzibar.

.....
.....
.....
.....

7. What treatment is more practicable for delinquent juveniles in Zanzibar?

- a) Prosecutions []
- b) Administrative Proceedings (diversion) []

8. How does the right to privacy is maintained in the juvenile criminal trials in Zanzibar?

.....
.....
.....
.....
.....

9. Explain how Zanzibar juvenile justice system promotes the concept of reintegration of children in conflict with the law.

.....
.....
.....
.....
.....
.....

10. In your opinion, does international law standard on children in conflict with the law implementable considering the Zanzibar situation?

Yes [] No []

Give reason to your answer.

.....
.....
.....
.....
.....
.....

Appendix II: Interview Guide

1. International law provides principles and standard on the treatment of children in conflict with the law. What is the position of Zanzibar juvenile justice system?

.....
.....
.....
.....
.....

2. Does Zanzibar justice system has specialized trained legal officers in juvenile justice?

.....
.....
.....
.....
.....

3. Explain the situation of juvenile remand homes in Zanzibar.

.....
.....
.....
.....
.....
.....
.....
.....
.....

4. Explain on how the juvenile trials are conducted in Zanzibar.

.....
.....
.....
.....

5. What is the situation of approved schools in Zanzibar?

.....

.....

.....

.....

.....

6. How can you explain the attitudes, customs and practices of ordinary people of Zanzibar on juvenile delinquency?