



JUVENILE JUSTICE AND CHILDREN PROTECTION IN MAINLAND TANZANIA: UNBALANCED WEIGHBRIDGE BETWEEN VICTIM CHILDREN AND CHILDREN IN CONFLICT WITH THE LAW

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Abstract

Juvenile justice has been championed in different disciplines by human rights defenders, activists, politicians, religious people, lawyers and social welfare personnel. Remarkable outcry for children rights was witnessed from the industrial revolution era resulting into international and regional instruments such as the Convention on Rights of the Children and the African Charter on Rights and Welfare of the Children, followed

by national legislation. In Mainland Tanzania, children rights paved way to the now repealed Children and Young Persons Act, 1937, the Children Home (Regulation) Act, Cap. 61, the Affiliation Act, Cap. 278, the Adoption of Children Act, Cap. 335 and their respective amendments and subsidiary legislation. In meeting the contemporary needs, the above were replaced with the Law of the Child Act, 2009 and its subsidiary legislation, which largely protect rights of children in conflict with the law with a peanut coverage to rights of victim children in commission of offenses. Such imbalances have caused unfairness in protecting and safeguarding children rights in Mainland Tanzania. This study is a whistle blow in ensuring smooth and equal protection of rights to all children. A critical analysis to the unaddressed rights of victim children has been made towards significant safeguard.

Key words: Juvenile justice, law of the child, protecting children victims

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1.0. Introduction

Children rights and their protection in Mainland Tanzania is hinged on ratification of the Convention on the Rights of the Child¹ which signify her commitment to such international instrument. Such commitment was followed by enactment of various legislation for the sake of implementation. According to Rios-Kohn², children rights trace existence through the common law during the 17th century, meaning that, before that, no formal recognition attached to children rights ever existed in the global community. The International Convention on the Rights of the Child was followed by an African regional instrument³ on rights of the child capturing some provisions with regard to harmful traditional practices in the African context. Children rights further extended coverage through the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)⁴ for the sake of preventing children rights on delinquency.

Despite the above general global legal framework, there have been noticeable infringements against children rights. According to Maganga⁵, despite of the existent standards and guidelines, the practice

shows an imaginable deviation in abrogation of the set objectives through the encountered legislative hurdles in the legal framework in Mainland Tanzania in particular and the international community in general experienced during operationalization of laws. Both the law and practice in Tanzania have set double standards between victim children whose rights have been infringed and children in conflict with the law, that is, alleged children offenders. It is that menace this study addresses.

1.1 Non-discrimination in laws regulating children rights

At municipal level, the term “child”⁶ in Mainland Tanzania has been defined to cover persons below the age of eighteen years. The law in Mainland Tanzania does not segregate between children in conflict with the law and children who are victims of offenses that have been directly committed against them. Children protection in the international context does at least segregate between children in conflict with the law and victim children although in the strict sense, it does not go into the nit grits of the said protection. Asto non-discrimination and protection of the rights of children, the Convention on the Rights of the Child⁷ reads:

“1. 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, color, sex, language, religion,

1 The Convention on the Rights of the Child by the General Assembly in Resolution 44/25 of dated 20th November, 1989 was ratified by Tanzania on 10th June, 1991. The instrument came into force on 2nd September, 1990.

2 Rios-Kohn, R., “Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in Selected Common Law Countries.” In United Nations Children Fund, Protecting the World’s Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems. NY: Cambridge University Press, 2007, p. 39.

3 The African Charter on the Rights and Welfare of the Child which came into force in 1999 with ratification on part of Tanzania effected on 16th March, 2003.

4 The Riyadh Guidelines were passed at the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana Cuba in 1990 vide resolution 45/112.

5 Christina S. Maganga, “Administration of Juvenile Justice in Tanzania: A Study of its Compatibility with International Norms and Standards.” LL.M Thesis, Raoul Wallenberg Institute of Human Rights, Lund University, 2005.

6 The Law of the Child Act, [Cap. 13] section 4 (1).

7 Convention on Rights of the Child, article 6.

political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

Non-discrimination in the general context is Tanzania captured under section 5(2) of the Law of the Child Act, 2009. The provision comprise the same wording captured under the Convention of the Rights of the Child. What matters both in law and practice is to safeguard best interests of all children guaranteed specifically under the Convention of the Rights of the Child⁸ that:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

1.2 Synopsis on protection of children rights in Mainland Tanzania

The Law of the Child Act deals with rights, duties and protection of children who are in conflict with the law unlike rights of children who have been victims of offenses, that is, children in which offenses have been directly committed against them, such as,

sexual related offenses.

Starting with children in conflict with the law, for instance, in case of a child who has been accused to have committed an offence, the practice has been that the law favors him much when he is arraigned in Court. Such care and protection is never accorded to victim children, hence double standard as far as children rights are concerned. Although Social Welfare Officers are said to have been vested with duty to take care of the victim children, and children in conflict with the law in cases involving children in conflict with the law as accused persons on one hand and victim children on the other hand in that particular single case, yet, the practice has been that children in conflict with the law are the ones who enjoy the very attention unlike the victim children. Notwithstanding the differential treatment, victim children are the ones whose rights have been infringed most. In other words, rights of victim children are not only infringed by the offender, but also, by both the offender and law machinery.

Notably, insignificant attention has been accorded to victim children when the offender is an adult during the time when the victim children are testifying in courts of law. On the contrary, significant attention and coverage is extended to children in conflict with the law whereby Social Welfare Officers are mandatorily required to appear and be present throughout the trial. The child laws impose an obligation to Social Welfare Officers to prepare an Inquiry Report and submit the same to court while there is no such legal requirement imposed to Social Welfare Officers in safeguarding rights of victim children.

The forgoing clearly portrays existence

⁸ The Convention of the Rights of the Child, article 3(1).

of double standards regarding children rights in Tanzania. From an equality point of view, the said double standards portray a negative image, for victim children need also to be protected, having in the first place been affected by the alleged conducts of the perpetrator. Furthermore, regarding obtaining consent of the child with regard to persons who are allowed to attend proceedings involving children under the Law of the Child (Juvenile Court Procedure) Rules⁹, again, such right and issues of obtaining prior consent from the child are available in matters before Juvenile Courts in favor of children in conflict with the law which is not the case with regard to victim children. The said law is thus injurious to rights of victim children. Holding cases in camera when victim children are testifying in court amounts is just a drop in an ocean. Henceforth, the current status regarding protection of rights of victim children needs to be fairly expanded and improved.

The issue of non-disclosure of the identity of a child victim under Circular of the Chief Justice¹⁰ cannot be said to be adequate with regard to protection of rights of victim children especially in offenses against morality such as sexual offenses where the future and prospects of such children may be prejudiced if at all attendance of persons appearing before Courts, though in camera, stands unregulated. Victim children will enjoy such right only if and in cases involving children in conflict with the law, hence, double standard regarding their protection and safeguard.

9 The Law of the Child (Juvenile Court Procedure) Rules, rule 11(3) (g) and (h).

10 Chief Justice's Circular No. 2 of 2018 dated 20th March, 2018 Ref. No. CAB. 50/101/01

2.0 Eminent challenges in constituting and operationalizing Juvenile Courts in Mainland Tanzania

In Mainland Tanzania, there are only two properly constructed Juvenile Courts that is, Kisutu and Mbeya Juvenile Courts. As such, constitution of Juvenile Courts has been through the use of ordinary court buildings. Notably, such court buildings in the ordinary use have been incapable of harmoniously undertaking the intended role set to be performed by Juvenile Courts. The practice is a result of scarcity of buildings in urban areas, whereby magistrates share chambers when hearing ordinary cases, let alone chambers designated for cases involving children.

Lack of specific buildings constructed as Juvenile Courts necessitated reconstruction of the law to enable ordinary court buildings to be used as Juvenile Courts. Accordingly, rule 6 of the Law of the Child (Juvenile Court Procedure) Rules¹¹ reads:

“6(1) Where there is no specific Court building apart from the building ordinarily used for hearing cases by or against adults, the Court shall-

(a) Sit in a separate courtroom or chambers; or

(b) As far as practicable, sit at a different time from the adult Court to be set by the Resident Magistrate in charge.

(2) The Court layout and seating arrangements shall, as far as

11 The Law of the Child (Juvenile Court Procedure) Rules, rule 6.

practicable, be in conformity with Rule 7.

(3) Where the Court is sitting in the same building with the Court which tries adults, the registry officer shall ensure that children attending at the Court, do not share the same waiting room or area with the adults accused of a criminal offence”.

In addition, the Chief Justice under the Law of the Child (Designation of Juvenile Courts) Notice¹² designated a total of 236 Primary Courts duly presided over by Resident Magistrates in the respective Districts to be used and as such be considered as Juvenile Courts all over the country. The Law of the Child Act was accordingly amended vide the Written Laws (Miscellaneous Amendment) Act¹³ to the effect that:

“The principal Act is amended in section 97, by –

(a) Deleting subsection (2) and substituting it for the following:

“(2) without prejudice to subsection (1), a District Court premises or a Court of Resident Magistrate premises may be used as a Juvenile Court”.

(b) Adding immediately after subsection (2) the following:

“(3) Notwithstanding subsection (2), a District Court or a Court of Resident Magistrate may hear and determine any matter triable by a Juvenile Court.

(4) For the purposes of subsection (3), a District Court or a Court of Resident Magistrate shall follow

the procedure prescribed under section 99 of this Act.

(5) A Juvenile Court established in terms of subsection (1) shall, as the case may be, be under the management and supervision of –

(a) The District Court within the District in which the Juvenile Court is established; and

(b) The Resident Magistrate Court within the region that necessitates the establishment of the Juvenile Court.” and

(c) Renumbering subsection (3) as subsection (6)”.

Despite the embraced achievements through the amendments, the legal framework created other legal implementation battles specifically in subsection (3) where the law makes clear that, District Courts may hear and determine any matter triable by a Juvenile Courts. Therefore, by implication, a promulgation that District Courts and Courts of Resident Magistrates are mandated to hear and determine matters triable by Juvenile Courts

12 The Child (Designation of Juvenile Courts) Notice, 2019 published on 22nd February, 2019 vide Government Notice No. 158 of 2019.

13 The Written Laws (Miscellaneous Amendment) Act, 2020 which came into operation on 21st February, 2020 where the amending Act vide section 28 amended section 97 of the Law of the Child Act.

as strictly meant for Juvenile Courts create both interpretation and practical hurdles in the field in the strict sense.

For instance, there have been challenges during registration of cases. Confusions emerges on the category of cases involving children that worth to be registered in the ordinary register and those to be registered in the register of the Juvenile Court. Another reigning issue is as at what point a Resident Magistrates in the District Court or Court of Resident Magistrates sit in the Court designated as Juvenile Court and at what time they will be considered to properly preside over as ordinary Resident Magistrates in District Courts and or Courts of Resident Magistrates in adjudicating matters in Court which ought to have been adjudicated by Juvenile Courts.

From the above state of affairs characterized by inadequate facilities and in consideration of the fact that subjecting children to the ordinary courts environment either being children in conflict with the law or victim children will be injurious to their best interests in their upbringing, it is high time for cases involving children as victims or accused to be held in the offices of the respective District Local Government Authorities which is a much safe environment. Such resort will not be new, rather, an amplification of the existent extended protection under the Child Protection Regulations¹⁴ whereby under parts XI and XII of the regulations, the Local Government Authorities are involved in child care and statutory reviews.

3.0 Protection of children in conflict with the law vis-a-vis victim children

Noticeably, various parts under the Law of the Child Act deal with children rights regardless of whether they are victims or accused persons. Such general statutory coverage includes though not limited to the following areas of concern: part II (rights and welfare of the child), part III (care and protection of a child), part IV (foster care and placements), part V (parentage, custody, access and maintenance), part VI (fosterage and adoption), part VII (employment of a child) and part VIII (support services for child by local Government Authorities). Under part IX of the said Law of the Child Act, the list of objectives aim at ensuring substantial justice to accused children in criminal proceedings by according them fair trial, consideration to rights and welfare of such children facing trial, assurance of child participation, safeguarding interests of witnesses and victims, ensure efficient and expeditious trial and appropriate bail information and sentences.

The Law of the Child Act being a specific legislation dealing with children rights has been argued to be biased as it extends legal protection to children in conflict with the law only unlike what it does to victim children. Regarding protection of children in conflict with the law, the Law of the Child Act lines up with what is provided for under the African Charter on the Rights and Welfare of the Child¹⁵ as well as the Convention of the Rights of the Child¹⁶ that focuses at guaranteeing fair trial and access to justice in cases involving children in conflict with the law.

14 Child Protection Regulations vide Government Notice No. 11 of 2015 published on 9th January, 2015.

15 The African Charter on the Rights and Welfare of the Child, article 17(2) (c) (iii).

16 The Convention of the Rights of the Child, articles 20, 37(d) and 40(2) (b) (iii).

The rights guaranteed in favor of children in conflict with the law are not in similar manner guaranteed to victim children available under the Legal Aid (Criminal Proceedings) Act¹⁷. In the said Act, the Chief Justice or Judge of the High Court may certify some accused persons to be accorded Legal Aid as the Court finds it desirable in the course of making preparations for the normal conduct of his defense or at an appellate stage for the sake of preparing or arguing an appeal. The said law accounts for nothing regarding protection and or safeguarding rights of victim children. Noticeably, the Judicature and Application of Laws (Practice and Procedure in Cases Involving Vulnerable Groups) Rules¹⁸ extend Legal Aid provisions in criminal and civil cases to persons with vulnerability though without mentioning victim children who are the most vulnerable.

With regard to the projected sentence to be imposed against children in conflict with the law upon conviction, no sentence is passed to an accused child until a Social Inquiry is conducted by a Social Welfare Officer with a Social Inquiry Report¹⁹ submitted in court. From a practical point of view, such report favors convict children that they may be given lenient sentences by courts. No such consideration is given regarding rights of victim children in protection of their rights including the need for securing a Social Inquiry Report for the sake of, including, compensation before imposition of sentence and other orders as enshrined under the Law of the Child Act.

One would equitably expect a parallel Social Inquiry Report on part of a victim children to be a legal requirement before pronouncement of a sentence and or other orders. Such report will certainly assist both magistrates and or judges in assessing the appropriate sentence and orders in favor of victim children including compensation and other social psychological assistance. The Social Welfare Officer having had time to visit the victim child, will propose in his report the appropriate compensation and sentence that will suit the best interest of the victim child.

Among the governing principles in child protection is the principle that a child should not face degrading sentences and that sentences should objectively focus at rehabilitating and reintegrating offender children with their families and the community should be mainstreamed in all laws. The above are spirited from the fact that the relationship between offender children, their families and community are strengthened.²⁰ For instance, in sexual related offenses under the Penal Code²¹, the law has been lenient during imposition of sentence to children offenders:

“(2) Notwithstanding the provisions of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall (a) if a first offender, be sentenced to corporal punishment only; (b) if a second time offender, be sentence to imprisonment for a term of twelve months with corporal punishment; (c) if a third time and recidivist offender, he shall be sentenced to life imprisonment pursuant to subsection (1).

20 Law of the Child (Juvenile Court Procedure) Rules made vide Government Notice No. 182 of 2016, rule 49.

21 Penal Code, [Cap. 16], section 131(2) (a).

17 Legal Aid (Criminal Proceedings) Act, Act No. 21 of 1969 [Cap. 21].

18 The Judicature and Application of Laws (Practice and Procedure in Cases Involving Vulnerable Groups) Rules, 2019 made under the Judicature and Application of Laws Act, [Cap. 358] vide Government Notice No. 110 published on 01/02/2019, Rule 10.

19 The Law of the Child (Juvenile Court Procedure) Rules, rule 47.

Notwithstanding the achievements attained regarding protection of rights of children who are in conflict with the law, yet, there are some other areas in the governing municipal laws in Tanzania Mainland that have remained unattended. For instance, there are some provisions that disfavor interests of children in conflict with the law. Such anomalies cover children who commit sexual related offenses against children below the age of ten years where the law does not categorize sentences between offenders above eighteen years and those below eighteen years as drawn from the Penal Code²² that reads:

(3) Subject to the provisions of subsection (2), a person who commits an offence of rape of a girl under the age of ten years shall on conviction be sentenced to life imprisonment”.

In the same footing, regarding sexual offences committed by children below the age of 18 years, the amendments to the Education Act²³ did not segregate ages when the issue at stake regards impregnating a school girl. The said amendment²⁴ to the Education Act reads:

“Any person who impregnates a primary school or a secondary school girl commits an offence and shall, on conviction, be liable to a fine of not less than five million shillings or to imprisonment for a term of five years or to both”.

The above connotes that, the Education Act does not segregate or extend protection to offender children who impregnate a school girl. Perhaps, the reason behind is to protect children who appear to be more vulnerable as under such circumstances, three sets of children are involved, that is, the incoming child as a result of the rape, the victim child and the child in conflict with the law. But the above state of affairs has formed center of discussion where some are in favor of the law with others disfavoring the law arguing that a victim child should exclusively be excluded from capital or imprisonment sentence irrespective of the nature of the offence.

Thus; scholars, stakeholders on children rights and courts of law find themselves at crossroad on the issue of sentence as it stands in other offenses that do not result in pregnancy. Children rights defenders have argued for children in conflict with the law to be accorded protection even under circumstances of impregnating a school girl. On the other hand, other scholars have been arguing that, considering the amendments made to the Education Act were effected in 2016 whilst existence of the contents in section 131 of the Penal Code that means the legislature did not intend to segregate sentences provided a school girl has been impregnated. This notwithstanding is without prejudice to the general rule that exempts children below the ten years from criminal liability for being incapable of forming a criminal intent under the defense of *doli incapax*²⁵.

Another limb of defenders for children in conflict with the law disfavors the existent laws arguing that children in conflict with the law should not be sentenced to custodial

22 Penal Code, [Cap. 16], section 131(3).

23 The Education Act, [Cap. 353].

24 The Written Laws (Miscellaneous Amendment), (No. 2) Act, 2016, section 60A (3).

25 See: The Penal Code, section 15(1).

sentence at all in accordance with the provisions of section 60A(3) of the Education Act as amended by Act No. 4 of 2016. The amendment made under section 60A(3) of the Education Act as amended by the Written Laws (Miscellaneous Amendment), (No. 2) Act, of 2016 seems to have been aware of the existent Convention on Rights of the Child²⁶ that strictly prohibits life imprisonment to children offenders and going further allowing sentences bearing release clauses as it reads:

“States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age”.

Such argument also centers under part VI of the Law of the Child (Juvenile Court Procedure) Rules of G.N. No. 182 of 2016 to the effect that no custodial sentence should be imposed without preference being given to conditional discharge, fine, compensation, costs and probation.

There are challenges affecting children in conflict with the law especially when they are tried together with adults. The Law of the Child Act safeguards children rights by requiring the presence of a Social Welfare Officer to safeguard the rights children in conflict with the law though such requirement does not exist when matters are handled by ordinary domestic courts such as the Resident Magistrates’ or District Courts as per *Kiwano Aloyce Kalongole v. the Republic*²⁷. In that case, the Court observed that:

“Next for consideration is the second ground of appeal which challenges the proceedings of the trial Court for being conducted without the presence of a social welfare officer. The position of law on this point, again, as put forward by Mr. Mwandalama, learned Senior State Attorney; it is the practice in Juvenile Courts established under section 97(1) of the Law of the Child. That the presence of a social welfare officer as mandatorily required is provided for under section 99(1) (d) of that Act; the Law of the Child. The composition of the District Court before which the appellant was arraigned, is provided for under section 6(1) (b) of the Magistrates’ Court Act, Cap. 11 of the Revised Edition, 2019. Under this provision, a District Court is properly constituted if presided over by a District Magistrate or Resident Magistrate. In the premises, the absence of a social welfare officer in the proceedings of the trial Court which are the subject of this appeal had no legal consequences. If anything, in terms of section 6(1) (b) of the MCA, the trial Court was properly constituted”.

The same position was arrived at by the same Court in *Alex Ndendya v. Republic*²⁸. Though in the above referred cases the accused was not a child in conflict with the law, rather, against an adult accused person, yet, presence of a Social Welfare Officer is crucial in protecting children rights, herein referred to as, a victim child which cannot be

26 Convention on the rights of the Child, article 37(a).

27 *Kiwano Aloyce Kalongole v. the Republic*, Criminal Appeal No. 208 of 2018 (Unreported), (Iringa Registry), Court of Appeal of Tanzania, pp. 11 and 12.

28 *Alex Ndendya v. Republic*, Criminal Appeal No. 207 of 2018.

safeguarded by a State Attorney who is not a professional in taking care of certain levels of rights as Social Welfare Officers do.

Scrutiny and analysis of the Law of the Child Act in Tanzania portrays that the Child Act focuses much on the interests of children in conflict with the law compared to the protection it provides to victim children who are equally vulnerable. This is clear vide part IX of the Law of the Child Act regarding establishment of the Juvenile Court to deal with rights of children in conflict with the law. Indeed, the said part of the Act deals only with children in conflict with the law. Clearly, it focuses on protection and consideration to children in conflict with the law. The others parts of the Law of the Child Act dealing with rights of children in conflict with the law include part X (approved schools) and part XI (institutionalized care). Unlike the children in conflict with the law, there is no specific parts in the Child Act or else that addresses rights of victim children in particular. Such state of affairs brought home the present study.

From the above in composite, for the sake of uniformity, amendments are further needed. In the circumstances and for easy of handling of cases involving children, be it, children in conflict with the law or victim children, thus, it is impeccable for all matters involving children generally to be strictly handled by Juvenile Courts or ordinary Courts when dully constituted but without forgetting address to other rights especially those of victim children as herein discussed. Though it has been argued to be costly especially for trial of offenses that have been committed by adults and children, yet, such right should be inalienable for the best interest of all the children.

4.0 Other unaddressed rights relating to victim children

Determination of cases instituted against children in conflict with the law has been clear to be heard in Juvenile Courts as special forum and set to be completed within six months timeline.²⁹ Unlike for children in conflict with the law, victim children have been subjected to the normal criminal trials where cases normally take more than six months. Besides, while there are mechanisms under the Law of the Child Act in favor of children in conflict with the law before and after conviction through Social Welfare Officers who are professionals, on the other hand, there are no special programs or mechanisms accorded to victim children who have been affected health-wise and psychologically. Such state of affairs establishes the position that rights of victim children have either been disregarded or remain unattended in the jurisdiction.

It should be noted that, victim children are also psychologically affected by acts and conducts perpetrated against them by their fellow children or adults, their family members inclusive. Nothing has been provided in the municipal laws regarding rights of victim children at least on the issue of having a Social Welfare Officer to safeguard their rights. Presence of a Social Welfare Officer when a victim child is giving testimony does not suffice if it is compared with what has been statutorily accorded to children in conflict with the law. Such legal attention, protection and safeguard will certainly heal such children psychologically in their upbringing. If at all the law establishes approved schools amongst the means of safeguarding children in conflict with the law, it is at worst leaving

²⁹ Law of the Child (Juvenile Court Procedure) Rules made vide Government Notice No. 182 of 2016, rule 34(1).

unaddressed victim children who have been affected by conducts of offenders beyond their consent. Such failure amounts to double punishment to victim children.

5.0 Proposed safeguards for victim children rights in Tanzania

For the sake of protecting children rights especially victim children, the international community came with a resolution³⁰ as part of the body of United Nations standards, norms and principles in crime prevention and criminal justice administration with some significant recognition made by the international community as a primary noble concern. The guidelines resulted into enactment of The Justice in Matters involving Child Victims and Witnesses of Crime Act for according assistance and protection to child victims of crimes and witnesses in the administration of justice.

The Justice in Matters involving Child Victims and Witnesses of Crime Act lays its foundation from the existent international instruments³¹ and comprises several provisions and articles that call for embracement of some local legislation by respective member States to the Convention, Guidelines and related instruments. Another crucial instrument was the Model Law developed by the United Nations Office on Drugs and Crime (UNODC) in collaboration with the United Nations International Children's Fund (UNICEF) and the International Bureau for Children's Rights as reviewed in several meetings of experts representing different legal traditions.

The extracted articles are crucially calling for the same to be domesticated and reflected in the municipal laws. Such incorporation will largely extend protection to the contentious victim children in safeguarding interests of victim children though the same remains unaddressed under the Law of the Child Act. A diagnosis of the Justice in Matters Involving Child Victims and Witnesses of Crime Act that needs to be emulated covers those on the best interests of the child³² as it is categorically clear that all children especially child victims and witnesses should have their rights and best interest primarily safeguarded. General principles³³ are fairly accorded to victim children or witnesses. They are fairly served or treated without discrimination irrespective of the child's or his or her parents' or guardian's race, color, religion, beliefs, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinions, disabilities (if any) or status of birth, property or any other reason.

Furthermore, protection has been extended to teachers, doctors, social workers and other professional categories as they deem to be appropriate whenever there is reasonable cause to suspect that a child is a victim of or a witness to a crime with duty to report offenses involving children victims or witnesses³⁴. Crucially important, protection has been extended to children from being in contact with offenders.³⁵ The Act also provides for protection of child victims and witnesses with an option to States to

30 Resolution 2005/20 of 22nd July, 2005 through the Economic and Social Council. The said Resolution adopted the Guidelines on "Justice in Matters involving Child Victims and Witnesses of Crime Act".

31 Including the Convention on the Rights of the Child that was adopted by the General Assembly in its resolution 44/25 of 20 November, 1989.

32 Article 1 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

33 Article 2 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

34 Article 3 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

35 Article 4 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

establish a national authority³⁶ in protecting child victims and witnesses. The authority comprises an adjudicator, a representative of the prosecutor's office specialized in cases involving children, a representative of law enforcement agencies, a representative of the child protection services or of any other relevant service within the ministry for social affairs as well as a representative of the ministry for health. Other officers that form the quorum include a representative of the bar association, if possible, who is specialized in cases involving children, a representative of a victim support organization rendering services to children as well as a representative of the ministry responsible for education.

The Act also caters for several functions of the national authority for protection of child victims and witnesses³⁷ in adopting general national policies related to child victims and witnesses, developing some recommendations on relevant prevention and protection programs and submit them to the relevant public authorities as well as in promoting and ensuring national-level coordination of services and institutions that provide assistance or treatment to child victims and witnesses. Training³⁸ to professionals working with child victims and witnesses is also provided and there is accordingly a requirement that such professionals should undergo appropriate training through a special curricula on issues relating to child victims and witnesses.

The Act safeguards right of information to the respective victim children³⁹ and or through

36 Article 5 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

37 Article 6 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

38 Article 8 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

39 Article 9 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

their parents, guardians, lawyers, support persons or other designated persons. It caters for provision of assistance from the initial engagement with the justice process whereas in the process, prompt information at each stage with assessment of their viability are appropriately given. The information also captures the procedures of the adult and juvenile criminal justice process and the role of child victims or witnesses, their importance, timing and the manner of testimony as well as the ways that interviews shall be conducted during investigation and at trial.

Support mechanisms to a victim child and witness when making a complaint and or participating in an investigation or proceedings safeguards intimate and justiciable findings and protection to both the victim child and witness respectively. Another crucial aspect found in the said Act covers the package of health, psychological, social and other relevant services and the means of accessing such services as well as availability of legal or other advice or representation as well as emergency financial support whenever applicable that has been missing in the existing laws.

Aspects of legal assistance⁴⁰ to victim children are articulated where child victims or witnesses are assigned lawyers by the State free of charge throughout the justice process. Some protective measures⁴¹ at any stage in the justice process where the safety of a child victim or witness is deemed to be at risk are arranged in a manner that avoids direct contact between a child victim or witnesses and the accused at any point in the justice process among others. The Act also covers

40 Article 10 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

41 Article 11 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

the aspect of language, interpreter and other special assistance measures⁴² so as to ensure the proceedings relevant to the testimony of a child victim or witness are conducted in simple language commensurable in the justice weighbridge. Special trained investigators⁴³ dealing with children are engaged to guide interviews with the victim child in a child-sensitive approach.

Another crucial component concerns protection and safeguard to child victims in offenses during medical examinations and the taking of bodily samples.⁴⁴ Accordingly, child victims or witnesses are subjected to medical examination or the taking of bodily samples when his or her parents, guardians or the support persons are present, unless the child victim decides otherwise or under circumstances where there is a written authorization for a medical examination or the taking of a bodily sample as so ordered by court, senior police officer or the prosecutor.

Important to note also is designation of a support person⁴⁵ to perform functions⁴⁶ including general emotional support to the victim child⁴⁷ and assistance to a child-sensitive in the entire justice processes. The referred assistance covers measures to alleviate negative effects of the criminal offence on the child, rejuvenate the child in carrying out his or her daily life and in dealing with administrative measures under circumstances of each case. Other functionalities covered under the Act include functions of the support person in case of the release of the respective accused,⁴⁸

competency examination,⁴⁹ issues of oath, victim children giving false testimonies⁵⁰ as well as designation of a support person during trial.⁵¹ Other conversed aspects under the Act include availability of courtroom facilities,⁵² the hurdles of cross-examination of a victim child⁵³ to an extent of being under supervision of a competent Magistrate or Judge with duty to prevent the asking of questions that stand to expose the child to intimidation, hardship or undue distress.

Other important addressed areas under the Act are with regard to measures aiming at protecting the privacy and well-being of child victims and witnesses⁵⁴, also, the duty of the court to inform the victim child of the outcome of the trial⁵⁵ and the role of the support person after the conclusion of the proceedings.⁵⁶ It also evolves on further counselling or treatment of the child victim or witness whenever necessary for such practice has never been considered important to the victim. The Act also embraces the duty to inform child victims or their parents or guardians⁵⁷ on the release of the convicted person as early as possible after such a decision has been taken. The above encompasses safeguarding the victim children with any likelihood danger after the said release of the convict(s) with guidance extended to such victim(s) for the sake of safety.

49 Article 21 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

50 Article 22 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

51 Article 23 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

52 Article 26 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

53 Article 27 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

54 Article 28 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

55 Article 31 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

56 Article 32 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

57 Article 33 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

42 Article 12 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

43 Article 13 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

44 Article 14 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

45 Article 16 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

46 Article 17 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

47 Article 25 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

48 Article 19 of the Justice in Matters involving Child Victims and Witnesses of Crime Act.

6.0 Concluding remarks

Although Tanzania has made significant steps on the protection of children rights, there are some aspects that have been partially addressed or absolutely remains unaddressed. The pointed out setbacks are wanting for imminent response in stretching and counterbalancing between rights of victim children and those in conflict with the law. Currently, the lever leans in protecting children in conflict with the law unlike protection of victim children. This study has also pointed out unaddressed areas with regard to children in conflict with the law on the issue of sentences in respect of the amendments made to the Education Act thus calling for attention.

The referred to and reproduced articles as enshrined under the “Justice in Matters involving Child Victims and Witnesses of Crime Act” are worthwhile for incorporation to form part of the local legislation. Thus, the Law of the Child Act needs further amendments to capture the above provisions for the sake of safeguarding interests of victim children that have been left behind under the Law of the Child Act. Reigning from the above, it has been for the sake of broad interest of justice to children specifically criminal justice that there have been categories of protection depending on the age of the victim as it stands under the Penal Code⁵⁸ portraying categories of sentences in rape cases where sentences are imposed to perpetrators based on the age of the child in conflict with the law as well as the age of the victim child.

Categories of protection should as well be with regard to cases where offenses involve children themselves (where the child in conflict with the law and the victim are both children) as well as consideration to the outcome of the offence including but not limited to, issues of pregnancy. Time calls for criminal cases involving victim children to be tried by Juvenile Courts. That will be logical for if an alleged child offender is that much protected, more should be to a victim child who not only is presumed innocent, rather, is absolutely innocent from the onset to down-set.

58 The Penal Code, [Cap. 16] ss. 131, 131A and 132.