

United Republic of Tanzania

**United Nation's Convention on the Rights of the Child
(UNCRC)
NGO REPORT**



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**TANZANIA CSO'S ALTERNATIVE REPORT TO THE 3RD, 4TH AND 5TH
CONSOLIDATED REPORT ON TANZANIA'S IMPLEMENTATION OF
THE CONVENTION ON THE RIGHTS OF THE CHILD**

(2007-2012)

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Tanzania Child Rights Forum, Dar es Salaam.

DEDICATION

This report is dedicated to all children of the United Republic of Tanzania (Mainland and Zanzibar), whose account of daily and life-long experiences we are reporting; dedicated to preserve and protect with a view to ensuring that it remains meaningful and enjoyable throughout the time.

While many of you could not effectively participate for one reason or another, including lack of enough time and resources, your experiences as collated and verified by organisations that work for and with you were useful in enriching the report and will definitely go a long way to contribute to the efforts of guaranteeing your welfare and wellbeing and those of your children.

We owe you a much better work and commitment to ensure that your voice is meaningfully heard and that you enjoy your childhood to the fullest.

We thank you all children in Tanzania for making this process possible. We also thanks 1016 boys and girls children's representatives across the country for being involved directly in the process of preparing this report, those are from: Sumbawanga District in Rukwa region; Kibaha and Kilwa district in Coast region; Ruangwa and Lindi district in Lindi region; Kinondoni and Ilala districts in Dar es Salaam region; Wangingo'mbe district in Njombe region; Bukoba district in Kagera region; Musoma district in Mara region; Morogoro Rural district in Morogoro region; Arusha city in Arusha region; and Karatu district in Manyara region. Facilitation of those children was made possible by following member organisations: Plan International, Save the Children UK, FHI360, Plan International, Mwanza Youth and Children Network (MYCN), ADP- Mbozi, PACT Tanzania, MOSAPORG and LICHIDE. For ethical reasons your names cannot be displayed in this report. From you we were able to extract valuable information and lessons that positively impacted the writing of this report.

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The list can never be exhaustive, but in their organisational and individual capacity they should take note of TCRF's secretariat's sincere gratitude for the contribution made in the accomplishment of this report.



Sabas Benedict Massawe,
Chairperson of the Tanzania Child Rights Forum
March 2014.

TABLE OF CONTENTS

DEDICATION	ii
ACKNOWLEDGMENT	iii
ACRONYMS AND ABBREVIATIONS	vi
EXECUTIVE SUMMARY	1
1.0 INTRODUCTION.....	4
1.1 About the Tanzania Child Rights Forum	4
1.2 Methodology	5
1.3 Child Participation.....	7
2.0 GENERAL MEASURES OF IMPLEMENTATION.....	8
2.1 Key Issues of Concern.....	8
2.2 Recommendations	8
3.0 DEFINITION OF THE CHILD	9
3.1 Key Issue of Concern	9
3.2 Recommendation.....	9
4.0 GENERAL PRINCIPLES.....	10
4.1 Key Issues of Concern.....	10
4.2 Recommendation.....	10
5.0 CIVIL RIGHTS AND FREEDOMS	10
5.1 Key Issues of Concern.....	10
5.2 Recommendations	12
6.0 FAMILY ENVIRONMENT AND ALTERNATIVE CARE	13
6.1 Key Issues of Concern.....	13

7.0 DISABILITY, BASIC HEALTH AND WELFARE	16
7.1 Key Issues of Concern.....	16
7.2 Recommendations	20
8.0 EDUCATION, LEISURE AND CULTURAL ACTIVITIES.....	22
8.1 Key Issues of Concern.....	22
8.2 Recommendations	25
9.0 SPECIAL PROTECTION MEASURES	27
9.1 Key Issues of Concern.....	27
9.2 Recommendations	32
10. CONCLUSION, KEY ISSUES/OBSERVATIONS AND RECOMMENDATIONS	38
10.1 Key Issues of Concern.....	38
10.2 Recommendations	41
Annex 1: LIST OF ORGANIZATIONS PARTICIPATED IN THIS REPORT	44
Civil Societies	44
Government	46
United Nations	46
Media	46

ACRONYMS AND ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
A.G.	Attorney-General
CHRAGG	Commission for Human Rights and Good Governance
C.J.	Chief Justice
CLU	Child Labour Unit
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
CWA	Children with albinism
CWD	Children with disabilities
FGM	Female Genital Mutilation
GBV	Gender Based Violence
G.N.	Government Notice
IECD	Integrated Early Childhood Development
IMTC	Inter-Ministerial Technical Committee
IOM	International Organisation on Migration
LCA	Law of the Child Act
LGA	Local government authority
LHRC	Legal and Human Rights Centre
MACR	Minimum age for criminal responsibility
MCDGC	Ministry of Community Development, Gender and Children
MoCLA	Ministry of Constitutional and Legal Affairs

MoEVT	Ministry of Education and Vocational Training
MVC	Most Vulnerable Children
NAP	National Action Plan
NBS	National Bureau of Statistics
NCPA	National Costed Plan of Action for Most Vulnerable Children
NGO	Non-Governmental Organisation
NOLA	National Organisation for Legal Assistance
PMO-RALG	Prime Minister's Office – Regional Administration and Local Governments
PWA	Persons with Albinism
PWD	Persons with Disabilities
RITA	Registration, Insolvency and Trusteeship Agency
SAM	Severe Acute Malnutrition
SCI	Save the Children International
SEDP	Secondary Education Development Plan
SOPs	Standard Operating Procedures
SRH	Sexual and Reproductive Health
SWO	Social Welfare Officer
TAMWA	Tanzania Media Women's Association
TAWLA	Tanzania Women Lawyers Association
TCRF	Tanzania Child Rights Forum
TDHS	Tanzania Demographic and Health Survey
TFNC	Tanzania Food and Nutrition Centre

TLS	Tanganyika Law Society
TSHs./TZS	Tanzanian Shillings
TTT	Technical Task Team
VAC	Violence against children
WLAC	Women's Legal Aid Centre
ZAFELA	Zanzibar Female Lawyers Association
ZCA	Zanzibar Children's Act

EXECUTIVE SUMMARY

This report has been prepared by Tanzania Child Rights Forum (TCRF), which is an umbrella network for CSOs working with and for children in the country on behalf of civil societies in the United Republic of Tanzania. It contains independent, experience-based and objective information aimed at complementing the information contained in the 3rd, 4th and 5th Consolidated Reports that were submitted to the Committee by the United Republic of Tanzania in January 2012. Although the State Party report contains information relating to its implementation of the Convention for the period between 2006 and 2012, this report includes in some cases where it has been deemed important, information for the period up to February 2014, in order to provide updated information on the actions which were pending during the preparation of the state report, with a view of giving a complete picture. The report contains concise and specific information on the actual implementation of the Convention in the State Party. In particular, the report addresses only critical areas in each of the eight clusters reported by the State Party. In this regard, the report analyses key issues of concern requiring the attention of the Committee for which concrete recommendations are made. In the end, the report sets out general conclusion, observations and recommendations for action that can be taken by the Committee.

In summary, the report covers a wide range of issues but of particular importance are: Firstly, the recognition of efforts made by the State Party in complying with the Committee's previous concluding observations in respect of enacting specific comprehensive child legislation. In 2009, the State Party enacted the Law of the Child Act (LCA), which is applicable in Tanzania Mainland; and in 2011, it enacted the Zanzibar Children's Act (ZCA), which is applicable in Zanzibar. Both laws strive, arguably, to domesticate principles, basic rights and fundamental

1 *CSO's Report on Tanzania's Implementation of the Convention on the Rights of the Child (2007-2012)*

freedoms of the child as enshrined in the Convention and other relevant international human rights law.

Secondly, the State Party has embarked on the process of enacting a new constitution to replace its 1977 Constitution. This proposed new constitution whose 2nd draft was presented to the State Party's Constituent Assembly for deliberation on 18th March, 2014 proposes to have a specific provision in its Bill of Rights, by way of the proposed Article 43, that seeks for the first time, to incorporate children's rights in the State Party's constitution.¹ This is also the case in a number of other rights², which were perceived by the policymakers in the State Party's leadership as falling outside the realm of the Bill of Rights.³ This process of enacting the new constitution is unique for the State Party in that for the first time, the citizenry is directly involved in deciding the type of constitution they want through public consultations and engagement. Between May and August 2013,

¹ The Bill of Rights is contained in Articles 23-48 in Part I of Chapter Four of the 2nd Draft Constitution.

² Some of these rights include freedom of information and the media (Article 31); the right to citizenship (Article 38); the rights of accused or convicted persons (Articles 39 and 40); the right to education (Article 42); the right to a clean and safe environment (Article 41); the rights and duties of the youth (Article 44); the rights of persons with disabilities (Article 45); the rights of minorities (Article 46); the rights of women (Article 47); the right not to be subjected to slavery and servitude (Article 26); the right of employees and employers (Article 36); and the rights of the aged or the elderly (Article 48).

³ Most of the proposed rights in the proposed Bill of Rights in the Draft Constitution (2013) are socio-economic rights, which in the current constitution are relegated to the unenforceable or 'unenforceable' part of the Constitution (Article 7(2)) – i.e., in Part II of Chapter One of the Constitution that contains Fundamental Objectives and Directive Principles of State Policy. This seems to be 'a deliberate omission since history had shown that the government was against the idea of having a justiciable Bill of Rights'. See Ruhangisa, J.E., "Human Rights in Tanzania: the Role of the Judiciary", Ph.D. Thesis, University of London, 1998. This view, indeed, has been supported by the conformist views held by some of the senior government legal experts in the establishment in those days, who have supported this omission. For example, the then Chief Justice, the late Francis Nyalali, once paradoxically argued that if the entire provisions of the UDHR, particularly economic and social rights and rights of vulnerable groups like children, were included in the Bill of Rights and were made part of the justiciable rights, the country would be thrown into frequent conflicts that could undermine national stability. See Nyalali, F.L., "The Bill of Rights in Tanzania" *University of Dar es Salaam Law Journal* Vol. 8, 1991, p. 2; and Chenge, A.J., "The Government and Fundamental Rights and Freedoms in Tanzania," in Peter, C.M., and Juma, I.H. (eds.), *Fundamental Rights and Freedoms in Tanzania* Dar es Salaam: Mkuki na Nyota Publishers, 1998, p. 4 (The former Attorney-General (A.G.), Andrew Chenge, justified his contention by saying that, for states like Tanzania the rights set out in the ICCPR 'create a very different category of obligations' from those set out in the ICESCR. According to him, rights set out in ICCPR are 'intended to limit the extent to which the State can interfere with or restrict the activities of its citizens, and specify and define the circumstances in which such interference or restriction may be justified in the public interest.').

the first Draft Constitution was subjected to public scrutiny where constitutional fora deliberated on it countrywide with a view to inputting onto it. The second and final Draft Constitution⁴ was submitted to the President of Tanzania and the President of Zanzibar on 30 December 2013 and was tabled in the National Constituent Assembly⁵ responsible for finalising the new constitution for Tanzania on 18th March, 2014, ahead of adoption by all Tanzanians in a referendum⁶.

Thirdly, the State Party has, to a larger extent, complied with the previous Concluding Observations made by the Committee. In particular, the State Party has adopted a number of policies and enacted a number of laws as well as implementing a number of administrative measures geared towards realizing the child's rights and welfare.

Despite these marked efforts, the State Party continued to face a number of challenges regarding the enforcement of the laws and implementation of policies and administrative measures largely due to lack of adequate funding, prioritization as well as financial and human capacity constraints. These factors are also coupled with the existence of entrenched social, cultural and traditional beliefs, some of which are contrary to the rights and welfare of the child. The report, therefore, proposes a number of recommendations to ensure that the State Party, progressively implements the Convention and other relevant human rights treaties.

4 The constitutional fora were established under Section 18(1) of the Constitutional Review Act to 'provide public opinions on Draft Constitution through meetings organised by the Commission' (Section 18(1)). See also *Mwongozo Kuhusu Muundo, Taratibu wa Kuwapata Wajumbe wa Mabaraza ya Katiba ya Wilaya (Mamlaka za Serikali za Mitaa) na Uendeshaji wake, Tarehe 01 Machi, 2013* (made under Section 18(3) of the Constitutional Review Act).

5 The establishment, composition, functions and powers of the Constituent Assembly are spelt out in Sections 22-30 of the Constitutional Review Act.

6 The conduct, procedure and results of the referendum which is due to be held this year, are provided for in Sections 31-36 of the Constitutional Review Act, as modified by the Referendum Act (2013), which seeks to regulate and to provide procedure for the conduct and the manner through which to release results of the referendum.

1.0 INTRODUCTION

1.1 About the Tanzania Child Rights Forum

The Tanzania Child Rights Forum (TCRF) is an umbrella organization whose mission strives, through linking, supporting and promoting the child rights non-governmental member organizations, to create a space where member organizations can work together to amplify their voice and their actions in order to create, promote, monitor and sustain the child rights respecting environment in Tanzania. Tanzania Child Rights Forum believes in ownership, mutual complementarities, universality, the commitment to results, accountability and good governance as vehicles for building child rights environment in the country. TCRF's vision is to ensure through the voice and actions of the Forum, that Tanzania is better able to develop and fulfil the policy, legal and institutional frameworks that are promoting and protecting the rights of children, as well as increasing the capacity of the country to fulfil its regional and international treaty obligations relating to children.

Since its inception in 2010 and thereafter, registration in 2012, TCRF's work has been organized around four broad goals, with strategies aligned towards implementing these goals. These are:

- a. To coordinates CSO's efforts to contribute to an effective implementation of the child rights related legislative frameworks, particularly the Law of the Child Act 2009, and other related strategies and plans, e.g. VAC plan, NACP etc.
- b. To facilitate CSOs efforts in having a stronger unified front to carry out advocacy for policy and legislative reform for child rights under the TCRF umbrella.

- c. To ensure that CSOs are better able to monitor, document and report on child rights both nationally and internationally through a TCRF provided mechanism by 2015.
- d. To facilitate CSOs to have a robust national network through an enhanced capacity; and ensure that they are better linked to perform strategic partnerships through the TCRF Secretariat's support.

The present report and the accompanying processes have been carried out under the third goal which focuses on alternative reporting mechanisms and supporting the government to deliver on its child rights international reporting obligations.

1.2 Methodology

The preparation of this report was coordinated by the Tanzania Rights Forum (TCRF). It involved members and non-members of TCRF who were consulted at several stages of the process, of particular importance being at the TTT⁷ level and at the TCRF Annual Forum (hereinafter, "the Forum") held in Dodoma, the political capital of the State Party from 11th to 13th February, 2014. Whereas at the TTT level a more in-depth analysis of the State Party Report and the Committee's Concluding Observations were made by TTT experts, at the Annual Forum consultations with a diverse group of child rights experts and practitioners were made. About 100 member organizations participated during this national consultation, which included, International Non-Governmental Organizations, national NGOs, CBOs, FBOs and other grassroots organizations⁸, and others

⁷ The TTT stands for technical task team, which is a group of about 15 child rights experts that normally provides technical advice to both the Board and Management of TCRF. Its members are drawn from all members of TCRF and some interested experts on child rights. Of late, it has been responsible for ensuring that the forthcoming Constitution of the United Republic of Tanzania contains a child rights-specific provision. Through its engagement with the Constitutional Review Commission in January 2013, both the 1st and 2nd Drafts of the Constitution have a specific provision setting out the rights of the child. It is expected that the ongoing Constitutional Assembly will retain this provision.

⁸ A list of the participating NGOs and individuals is attached hereto for reference as Annex 1

provided their written inputs. A number of other national and international NGOs were consulted in both Tanzania Mainland and Zanzibar separately on matters of particular specializations and expertise.

There were mainly three stages involved in the preparation of this report. During the first stage, TTT members analysed all relevant documents (the State Party Report, the CRC, the Committee's Concluding Observations, relevant policies and legislation/Regulations, as well as plans of action, strategies and programmes relating to the rights and welfare of the child). As a result of this in-depth analysis, a list of key issues arising out of the State Party Report was developed. In addition, a data collection template to enable stakeholders to provide their views, information and comments in an organised and focused manner was developed. In particular, the data collection template enlisted the key issues identified for each Cluster and set out a list of questions through which information was solicited from respondents.

Both the list of key issues and the data collection template were circulated to all members of TCRF and non-members who work on issues relating to child rights and welfare. Feedback from respondents was provided at the Forum in mid-February and was subsequently subjected to further critical review and improvement. From these consultations and feedback, a zero draft report was developed by the TTT under the stewardship of team of consultants from NOLA Consult, a member of TCRF. The zero draft was then circulated to members for further consultations, yielding in the draft report, which was further subjected to consultations amongst members of TCRF and members from Zanzibar at a separate consultative session that was held in Zanzibar on 25th February 2014. A final report was approved by the TCRF's Board of Directors on 27th February 2014, which directed the Management Team of TCRF to submit this report to the Secretariat of the Committee in Geneva, Switzerland.

1.3 Child Participation

One of the critical issues in the preparation of both the State Party Report and the NGO Alternative Report is the active participation of children in the preparation process. In order to ensure that children are actively and effectively involved in the preparation of this report, several national and international NGOs partnered with TCRF to engage children at the regional and district levels. A total of 1016 children were consulted for both Tanzania Mainland and Zanzibar. A simple, customized questionnaire was developed in Kiswahili and circulated to children prior to their actual consultation. A team of about 17 child participation facilitators was selected and trained (under the auspices of Save the Children, Plan International and Family Health International (FHI 360)) who ensured that children were specifically trained on the basic principles and rights in the CRC as well as on the reporting obligations of the State Party and the reporting procedure and process, before they could be consulted. During the consultation process, children were given ample time to digest the questionnaire and were later involved in group discussions before they could provide their respective views. In the end, a final child consultative report was compiled by Plan International and sent to TCRF for transmission to the Consultant, who incorporated all of the children's views into this report.

It should be noted that, for the most part, children's views were based on their practical experience in the day-to-day encounter with a number of challenges in schools, at homes and in the community. They were, thus, able to air out their experiences in the realisation and non-realisation of the Convention rights in various aspects. Where necessary, their views and experiences have been specifically referred to; otherwise, they have been incorporated as part of the entire report.

2.0 GENERAL MEASURES OF IMPLEMENTATION

Articles 4, 42 and 44(6) of the Convention)

2.1 Key Issues of Concern

There are a number of critical issues apparent under this Cluster; but CSOs have earmarked the following as key issues of concern needing the Committee's attention:

- a. The enactment of the Law of the Child Act (LCA) in 2009 (applicable in Tanzania Mainland) and the Children's Act No. 6 (ZCA) 2011 (applicable in Zanzibar, both of which strive to domesticate the CRC and other international child rights treaties, has not brought about adequate protection of the rights of the child in the State Party. There are still a number of challenges facing the implementation of these laws, including the existence of other laws that are in conflict with the LCA and the ZCA; lack of a coordination framework for stakeholders; lack of adequate funding to implement the two laws; and delays in the promulgation of some of the Rules under the two laws -by the relevant bodies; and
- b. Both the LCA and the ZCA are yet to be widely disseminated and applied by key stakeholders as the State Party has not undertaken effective measures to make them widely known and applied by stakeholders, including children.

2.2 Recommendations

The State Party is urged to address the foregoing key concerns by particularly undertaking the following measures:

- a. Addressing the foregoing challenges especially through undertaking law reform to harmonise all laws with the ZCA and the LCA; establish a single body to coordinate stakeholders at all levels from the Union Government

to the grassroots; and allocate sufficient funding to enable effective implementation/enforcement of the two laws; and

- b. Undertaking effective dissemination and sustainable public awareness-raising activities to make the Convention, the ZCA and the LCA known and applied widely by all stakeholders, including children and concerned duty bearers (law enforcers, judicial officials and other non-state actors).

3.0 DEFINITION OF THE CHILD

(Article 1 of the Convention)

3.1 Key Issue of Concern

Both the ZCA and the LCA have defined a child as any person below 18 years. However, various *minimum ages* of the child have been retained in other legislations of the State Party - thus causing inconsistencies and outright interpretational conflict in the application (i.e. minimum age for marriage⁹, minimum age for criminal responsibility, and minimum age for admission to employment).

3.2 Recommendation

The State Party is urged to ensure that minimum ages of the child are reviewed, harmonized and aligned with international child rights standards: the minimum age for marriage should be eighteen years for both males and females¹⁰; the minimum age for criminal responsibility (MACR) should be increased to fourteen years; and the minimum age for admission to employment should be fifteen years in Tanzania Mainland like it is in Zanzibar.

⁹ Children who were consulted in Lindi Region were of the view that the requirement that girls aged 15 years may be married off upon consent of their parents subjected them to their parental whim; and, in most cases, such children's freedom of choice of a partner is curtailed.

¹⁰ Notably, children who were consulted in Mara Region recommended that the minimum age for marriage for women should be 18 years and men 20 years.

4.0 GENERAL PRINCIPLES

(Articles 2, 3, 6 and 12 of the Convention)

4.1 Key Issues of Concern

Both the ZCA and the LCA have domesticated the four general principles enshrined in the Convention (i.e. non-discrimination; best interests of the child; the right to life, survival and development; and the right to participation). However, this legislative measure has not been effectively supported by other administrative and programmatic measures. As a result, children are still discriminated in many settings (particularly in schools); many state and non-state actors do not consider the best interests of the child in issues concerning children; child mortality rate is still high; and many actors (state and non-state) do not consider the views of the child in most of the decisions and actions concerning children.

4.2 Recommendation

The State Party is urged to undertake other supplementary policy, judicial, administrative and programmatic measures to ensure that the legislative measures that have been undertaken to domesticate the general principles enshrined in the Convention are effective, achievable and meaningful to the child's realisation of his or her Convention rights.

5.0 CIVIL RIGHTS AND FREEDOMS

(Articles 7; 8; 13-17; and 37(a) of the Convention)

5.1 Key Issues of Concern

There is a myriad of challenges facing the State Party in implementing the rights of the child under this cluster. However, the following are the key issues of concern that the State Party needs to critically address:

- a. Birth registration and certification is still low in the State Party (particularly in rural areas as compared to urban areas¹¹) as result of a number of intertwining factors: lack of effective legislation and policy on birth registration and certification; lack of awareness on the part of parents to have their children registered and given certificates thereof; weak registration and certification institutional framework, systems and procedures; and inadequate funding;
- b. The State Party does not have a law regarding the public's access to information, a situation that brings about a number of challenges regarding children's access to information that are relevant to their age and interests; there are many unlicensed/unregulated private media outlets, some of which do allow children to access harmful information, e.g. pornographic materials; there is no effective public awareness-raising on the need to protect the privacy of the children in the media; and there is weak licensing and monitoring mechanism to ensure that children are protected from accessing harmful information;
- c. Despite the fact that the State Party has established Junior or Children's Councils, it has failed to provide both material/financial and technical support to make these children and youth associations effective. This includes lack of effective supervisory mechanism beginning from the local through to the national levels. Both in Zanzibar and Tanzanian Mainland,

¹¹ For example, the *Tanzania Demographic and Health Survey 2010* (TDHS 2010) notes that only 17% of children under 5 years had been registered with civil authorities, of whom about half (i.e. 8%) received birth certificates. The THDS 2010 notes that in the period of five years (2005-2010) birth registration remained at the same level whereby its coverage differed by urban-rural residence, region and wealth quintile. In this regard, only 10% of children in rural areas were registered as compared to 40% of children in urban areas. In particular, the proportion of birth registration ranges from 59% in Dar es Salaam (urban area) to 5% or lower in Lindi, Tabora, Shinyanga and Manyara Regions (rural areas). See United Republic of Tanzania, *Tanzania Demographic and Health Survey 2010* (TDHS 2010) Dar es Salaam: National Bureau of Statistics, April 2011, p. 27.

children who were consulted noted that these associations are not in every *Shehia* (in Zanzibar) and district/ward (in Tanzania Mainland); and

- d. Both the Constitution of Zanzibar (1984) and the Constitution of Tanzania (1977) protect the right of every person (including a child) to dignity¹² and there is legislation to protect the child's right not to be subjected 'to torture, or other cruel, inhuman punishments or degrading treatments'¹³ including any cultural practices which dehumanize or are injurious to the physical and mental well-being of a child.'¹⁴ However, it is notable that corporal punishment is still legal and applied in *all* settings (i.e. at home, at school, in the criminal justice system and in the community) in the State Party.¹⁵

5.2 Recommendations

In order to effectively address the foregoing challenges, the State Party must be encouraged to undertake measures that will ensure that:

- a. Every child in the State Party is effectively registered and given a certificate immediately after birth by particularly adopting an effective legislation and policy on birth registration and certification that would expand the space of effecting birth registration through decentralization and delegation; raising public awareness on the part of parents to have their children registered and given certificates thereof; strengthening the capacity of the registration and certification coordinating body through vesting it with

¹² See particularly Articles 13(6)(e) of the Constitution of Tanzania (1977); and 13(3) of the Constitution of Zanzibar (1984).

¹³ According to subsection (3) of Section 13 of the Law of the Child Act, the term "degrading treatment" as used in this section 'means an act done to a child with the intention of humiliating or lowering his dignity.'

¹⁴ *Ibid*, Section 13(1).

¹⁵ United Republic of Tanzania, *Violence Against Children in Tanzania: Findings from a National Survey 2009* Dar es Salaam: UNICEF/US Centre for Disease Control and Prevention/Muhimbili University of Health and Allied Sciences, August 2011.

sufficient mandate to implement broad-based transformation agenda as it has already started; strengthening birth registration and certification systems and procedures; and increasing allocation of resources thereto;

- b. There are effective policy and legislation regarding the public's access to information to ensure that media outlets, particularly private ones, are duly licensed and effectively regulated/ monitored so that they cannot allow children to access harmful information. The State party should also ensure that there is an effective public awareness-raising on the need to protect the privacy of the children in the media; and that there is a strong/effective licensing and monitoring mechanism to ensure that children are exposed to age appropriate content and are protected from accessing harmful information;
- c. The established junior or Children's Councils are provided with both material/financial and technical support to make them effectively functioning at all levels (from the grassroots up to the national level). This entails setting up an effective supervisory mechanism at the local through to the national level; and
- d. Corporal punishment is totally outlawed in *all* settings (i.e. at home, at school, in the criminal justice system and in the community) in the State Party.

6.0 FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(Articles 5; 18 (paras. 1-2); 9-11; 19-21; 25; 27(para. 4); and 39 of the Convention)

6.1 Key Issues of Concern

Although there are many challenges facing the State Party in its endeavour to implement the child's right in the family environment, the following are the critical issues of concern that should be effectively addressed by the State Party:

- a. The State has not adopted the long-awaited Parental Guidelines in respect of alternative care as recommended and reiterated by the Committee in its previous Concluding Observations¹⁶, which puts children whose parents are deceased or separated/divorced, and who are at risk of being abused by relatives who have assumed parental responsibilities by way of court order or any other traditional arrangement. The State Party has not committed appropriate human and financial resources to ensure the provision of adequate care and protection to children deprived of a family;
- b. The Law of Marriage Act (1971) contains a number of weaknesses regarding child protection: it does not provide for provisions that may ensure smooth provision of maintenance, access and custody of children after divorce or separation of their parents; it does not set out a coherent institutional coordination mechanism for monitoring children who go through welfare processes and institutions such as maintenance, and children who are subject to access and custody proceedings during separation and divorce of parents; and it does not provide for a Parenting Plan between divorced/separated parents, which makes it difficult to put in place an effective modality of custody, access and maintenance of children after parents' divorce or separation;
- c. Child laws in the State Party require maintenance to be recovered even by way of distress through an application to the competent authority against

¹⁶ In the same vein, the State Party has taken a very long time to prepare and adopt the Integrated Early Childhood Development (IECD) Policy. In addition, the envisaged IECD Operational Guidelines and Minimum Standards, the IECD Facilitator's Guideline, the IECD In-Service Training Modules and Guidelines for Care-Givers and Pre-Primary Education Teachers, the IECD Playing/Teaching Materials Guide and the IECD advocacy materials have taken too long to be printed and disseminated to the stakeholders for use.

any person who is eligible to maintain the child or contribute towards the welfare and maintenance of the child¹⁷; and

- d. Although the State Party has mandated the Commission of Human Rights and Good Governance (CHRAGG) to monitor the implementation of the CRC, it is observed thus far that the CHRAGG is not an effective independent monitoring mechanism. The same is not better positioned and mandated to provide effective monitoring of children's issues. It does not have the capacity (in terms of both financial and human resources) to effectively monitor the implementation of the CRC country-wide. Besides, the Rules of Procedure for CHRAGG to work upon as a child ombudsperson are yet to be promulgated.

6.2 Recommendations

In order to adequately address the foregoing challenges, the State Party should be urged to undertake, *inter alia*, the following measures:

- a. it should immediately adopt the long-awaited Parental Guidelines in respect of alternative care as recommended and reiterated by the Committee in its previous Concluding Observations; and commit appropriate human and financial resources to ensure the provision of adequate care and protection to children deprived of families;
- b. it should review and amend the Law of Marriage Act (1971) in order to address the above-mentioned weaknesses in order to ensure that it adequately provides for provisions that may ensure smooth provision of maintenance, access and custody of children after divorce or separation of their parents. This law should also make it mandatory for parents who

¹⁷ See particularly Section 42(2) of the Law of the Child Act; and Section 64(2) of the Zanzibar Children's Act. The Law of Marriage Act (1971) still insists that recovery of maintenance may be executed even by way of distress.

seek separation or divorce in court to prepare a Parenting Plan that should address the issues of child maintenance, custody and access in the best interests of the concerned children. In the case where the review of the Law of Marriage is encumbered with delays and uncertainty, the state party is advised to follow the alternative and yet an open route by reviewing the Law of the Child Act for the Tanzania Mainland, and the Zanzibar Children's Act in order to address the above mischief;

- c. it should outlaw the requirement that maintenance of a child could be recovered even by way of distress; and, instead thereof, the law should require that recovery of maintenance of the child should not hinder the best interest of the other children/dependants; and
- d. it should ensure that the Commission of Human Rights and Good Governance (CHRAGG) is an effective body capable of independently monitoring the implementation of the CRC and all relevant laws relating to children in the State Party. This should entail the State Party setting adequate funding to CHRAGG, undertaking to build the capacity of its personnel and adopting Rules of Procedure for it to effectively work upon as a child ombudsperson in the State Party.

7.0 DISABILITY, BASIC HEALTH AND WELFARE

(Articles 6, 18 (para 3), 23, 25, 26, 27 (paras 1-3) and 33)

7.1 Key Issues of Concern

- a. Given the nature of the rights highlighted in this Cluster, it is apparent that the State Party faces a myriad of challenges in its endeavour to ensure that children in its jurisdiction do realise them. Additionally, the following challenges are critical and need to be effectively and immediately addressed, as elaborated below: the LCA obliges every local government authority (LGA) to maintain a register of most vulnerable children (MVC)

within its area of jurisdiction and give assistance to them whenever possible¹⁸. However, the register for MVC is not existent in most LGAs. In addition, there is still low level of knowledge on the part of Social Welfare Officers (SWOs) (particularly those employed in the LGAs) on the principles enshrined in the CRC, other relevant international child rights/human rights norms and the LCA itself. SWOs also do face perennial budgetary constraints and there is also poor coordination mechanism amongst stakeholders at the LGA level; the health system in the State Party faces a number of challenges, including lack of adequate funding; lack of child/youth-friendly health services and children under 5 years still do not obtain free medical care in practice as is provided by the policy; lack of adequate personnel who can specifically provide health care services to children (especially in rural areas); and lack of medical facilities in most rural areas to reduce the distance to and from medical centres. In addition, although the National Costed Plan of Action for Most Vulnerable Children (NCPA) II stipulates that children living in difficult situation have to get free medical services, this has not been effectively implemented;

- b. the legislative measures undertaken by the State Party to criminalize Female Genital Mutilation (FGM) vide the incorporation of special provisions in the Penal Code¹⁹ have not been effectively complemented with other measures. In particular, there is still low public awareness on this matter; consequent to which FGM practices are still rampant and have there is observable pattern of spread from rural areas to urban areas. In most cases, the practitioners of FGM have now moved towards carrying it

¹⁸ Section 94(4) of the LCA provides categorically that: 'The local government authority shall have the duty to keep a register of most vulnerable children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self reliance.'

¹⁹ See particularly Penal Code vide the Sexual Offences (Special Provisions) Act (1998).

on new born girls. In addition, the State Party Report has not explained measures undertaken by the State Party in preventing and eliminating other harmful practices like early and forced marriage, child trafficking, emotional abuse, physical abuse and economic exploitation (child sexual exploitation/abuse and child labour);

- c. the State Party Report does not explicitly elaborate measures undertaken to prevent and eliminate the involvement of children in substance abuse. It does not also explain measures undertaken to prevent children from accessing places where illicit drugs, alcohol or substances are sold, apart from having an unimplemented provision prohibiting children from entering into bars, night clubs and discotheques.²⁰ In contravention of this statutory provision, children are often allowed to enter into bars, night clubs and discotheques and stay there until midnight. In many instances, adults do sell cigarettes, alcohol, any spirit, drugs or any intoxicating substance to children contrary to this provision;
- d. although the LCA has provisions prohibiting the incarceration of children with their mothers²¹, there are still many children in carceral facilities and there are also no effective mechanisms and measures to ensure that those children who are so incarcerated are treated humanely according to international child rights standards. Regardless of the enactment of the LCA, there is still no initiative to take good care of these children like enrolling them in day care centers; children are forced to live in confinement as if they too are prisoners; and there are also no specialized personnel working with prison authorities responsible for taking care of such

²⁰ See Section 17 of the LCA.

²¹ Section 144 of LCA does not provide adequate safeguards to protect children incarcerated with their mothers in prison.

children while their parents are serving their prison terms and conditions²²; and

- e. the State Party has undertaken commendable measures to ensure that children with disabilities are treated in equal dignity with those without disabilities, including the adoption of the Policy on Disability and the enactment of the Persons with Disabilities Act (2010)²³ and its Regulations (2012).²⁴ However, there are still many challenges facing the State Party in its endeavour to effectively promote the rights of children with disabilities:
 - i. the rights of children with disabilities are still violated by private actors in most parts of the country;
 - ii. infrastructure in different public places, utilities and facilities is not suitable for children with disabilities;
 - iii. availability and cost of protective gears for disabled children is still an issue that has not been sufficiently addressed by the State Party; and
 - iv. there is also low public awareness on persons (including children) with disabilities (PWD's), a situation leading to an increase in stigmatization and discrimination of children with disabilities in most communities, particularly in rural areas. In the period between 2007 and 2012, this has also resulted in rampant killings and attacks on persons (including children) with albinism.

²² At Kingolwira Prison in Morogoro Region, the only prison with a separate wing for mothers incarcerated with children, there are no special facilities for children like kindergarten/primary school, playgrounds and medical facilities for children. Children are compelled to live like prisoners and the environment is neither family oriented nor child-friendly.

²³ Cap. 183 R.E. 2010.

²⁴ See the Persons with Disabilities (General) Regulations, GN. No. 152 published on 4 May 2012.

7.2 Recommendations

The State Party is urged to address the foregoing challenges by particularly undertaking measures to ensure that:

- a. every local government authority (LGA) establishes and maintains a register of most vulnerable children (MVC) within its area of jurisdiction and gives assistance to them whenever possible as required by the law;
- b. every LGA in the State Party allocates sufficient budgetary resources to enable SWOs to follow up on issues regarding MVC and to ensure that there is also effective coordination mechanism amongst stakeholders at the LGA level;
- c. it improves the health system for children, by particularly ensuring that there is adequate funding; there are accessible child/youth-friendly health services and that children under five years do obtain free medical care as provided by the policy; ensure governments undertake reforms on child health care services which must include sufficient numbers of health personnel who can specifically provide health care services to children (especially in rural areas); and there are medical facilities in all rural areas to reduce the distance to and from medical centres. In addition, the State party should ensure that all MVC do receive free medical care services in the context of the NCPA II;
- d. the legislative measures undertaken by the State Party to criminalize Female Genital Mutilation (FGM) vide the incorporation of special provisions in the Penal Code are effectively complemented with other measures; including raising public awareness on FGM and other harmful social, cultural and social practices. In addition, the State Party Report should undertake effective measures to prevent and eliminate other harmful social, cultural and social practices;

- e. there are explicitly elaborate measures undertaken to prevent and eliminate the involvement of children in substance abuse; particularly regarding preventing children from accessing places where illicit drugs, alcohol or substances are sold, apart from having an unimplemented provision prohibiting children from entering in bars, night clubs and discotheques as provided for in the law;
- f. there are no children in carceral facilities accompanying their parents/care-givers; by particularly putting in place mechanisms and undertaking measures to ensure, inter alia, that:
 - i. when judicial bodies or tribunals convict parents or primary caregivers with young children, they should consider non-custodial sentence to be of paramount importance;
 - ii. where it is mandatory to imprison a parent or primary caregiver who lives with a child, the State Party should provide family/child-oriented environment for the child to grow without being contaminated with prison life; and
 - iii. measures are put into place to implement Section 144 of the LCA, including making guidelines, putting in place procedures and minimum standards on how to provide treatment for children incarcerated with their parents/primary caregivers; and
- g. children with disabilities do realise their basic rights on equal footing with those without disabilities, by particularly undertaking:
 - i. effective implementation of the policy and the law on persons (including children) with disabilities;
 - ii. putting in place in all public places/buildings, infrastructure that can accommodate children with different disabilities;

- iii. undertake to raise public awareness on the positive aspects of disability and how to positively accommodate children with disabilities in ordinary life;
- iv. undertake specific protective measures for children with albinism who are killed in furtherance of withcraft beliefs;
- v. undertaking to engage in community consultation by engaging cultural and tribal structures in order to challenge negative social and cultural beliefs and norms; and
- vi. undertaking to provide special gears and equipment for children with disabilities like Braille, sunscreen lotion and low vision devices.

8.0 EDUCATION, LEISURE AND CULTURAL ACTIVITIES

(Articles 28, 29, 30 and 31)

8.1 Key Issues of Concern

There a number of issues critical to the realisation of the child's rights to education, leisure and participation in cultural activities in the State Party. However, for the purpose of the report, the following are of great concern and would require the State Party to immediately and effectively address:

- a. the overall performance of the education system in the State Party has especially been very poor in the period under report. In particular, there are inadequate and poor physical infrastructure (latrines, laboratories, libraries, teachers' houses, and dormitories); few schools are easily accessible to children with disabilities; the nature of punishments in school still revolves around corporal punishment²⁵; the amount of contributions that parents have to pay in public schools where education is pronounced

²⁵ See Section on "Corporal Punishment", *supra*.

as free, is well beyond affordability for most poor parents; and the general lack of a child friendly environment in and around the school, both in terms of teaching-learning methodologies and materials and a safe and protective environment;

- b. whereas in urban areas children spend most of their time struggling to board commuter buses (which are unfriendly to children), in rural areas the distance to and from school (without reliable transportation) is long, which is a major factor in terms of vulnerability to abuse and violence, and time, leading to increased drop outs;
- c. the quality of education in the State Party is compromised by a myriad of factors, including overcrowding in primary and secondary schools.²⁶ Although there has been an increase in the number of teachers as noted in the State Party Report, this has not kept pace with the rapid expansion of secondary schools.²⁷ There is also an acute shortage of text books in both primary and secondary schools, coupled with lack of provision of lunch in many schools, particularly in rural areas, which adversely results into school drop outs; the State Party has not reviewed the Education Act (1978) to, *inter alia*, prohibit the expulsion of pregnant school girls or provide for an alternative. Failure to review the Education Act and the policy has led to a continued expulsion of impregnated primary and secondary girls from schools. As a result, most of the expelled teenagers are expelled from their families as well, a situation which compels them to find jobs of any kind in

²⁶ In Zanzibar, there is a high overcrowding of pupils in both primary and secondary schools, where the gross enrolment rate currently stands at 106%²⁶; particularly so in urban areas. See particularly Serikali ya Mapinduzi Zanzibar, *Taarifa Inayowasilishwa Katika Baraza la Wawakilishi Juu ya Utekelezaji wa Haki za Watoto Katika Kilele cha Siku ya Mtoto wa Africa 16 Juni 2011* (Zanzibar: Wizara ya Ustawi wa Jamii na Maendeleo ya Vijana, Wanawake na Watoto, Juni 2011, p. 27.

²⁷ For instance, in Zanzibar secondary school enrolment rose from 6,436 in 2001 to 31,125 in 2010; while the number of teachers in the same period increased from 6,457 to 10,997 only. In Tanzania Mainland there is a shortage of 26,000 Mathematics and Science Teachers while Tanzanian universities only produce 2,200 teachers a year.

the community or elsewhere. The end result of this situation for the teenagers and their born babies, compound their situation and further exposes them to a lot of risks and abuses from the public in their efforts to find sustainable incomes for their lives and their born babies;

- d. the State Party has not increased teachers' salaries; and, as a consequence, teachers have spent most of their valuable teaching time staging perennial strikes (both sit-in and silent strikes), compelling the State Party to resort to judicial suppressive manouvres (through injunctions issued by the Labour Court) to avoid or delay teachers' demands²⁸. As a result, teachers have failed to afford the living costs and the motivation to teaching pupils has gone down causing a drastic fall in the standard and level of education in both primary and secondary schools. Most teachers are actively and fully engaged in providing tuition services to the same pupils at a fee as a coping means for supplementing their meagre incomes, resulting into their concentration on private work to the detriment of quality of teaching delivered during ordinary working hours²⁹;
- e. the State Party has ensured that human rights is a subject in primary and secondary schools; but there are no adequately trained teachers to be able to effectively teach the human rights subject; consequent to which, the human rights course is taught by unqualified teachers who perceive the subject wrongly; and
- f. far less priority is placed on investing in the pre-primary section of basic education both at the policy level, and in terms of resource allocation.

²⁸ See particularly *A.G. v Chama cha Walimu Tanzania* High Court of Tanzania (Labour Division) at Dar es Salaam, Application No. 19 of 2008 (unreported); and *Chama cha Walimu Tanzania v A.G.* Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 151 of 2008 (unreported).

²⁹ Children who were consulted in Zanzibar on 25 February 2014 during the preparation of this report were particularly disturbed by this practice and even went as far as urging the State Party to ban all tuition classes now a common site in every urban and semi-urban areas.

Sufficient efforts are yet to be witnessed in increasing the number of pre-primary teachers/ instructors and developing an accessible curriculum for pre-primary learners.

- g. there are no concrete measures undertaken by the State Party so far to redeem whatever leisure, recreational and cultural activities spaces that are unlawfully occupied by private persons. Similarly, there is lack of coordination between planners and educationalists in respect of construction, establishment and development of school facilities; and lack of coordinated and sustainable training on cultural and sports subjects in teachers' training colleges.

8.2 Recommendations

In order to effectively address the major challenges impeding the realization of the child's rights to education, leisure and participation in cultural activities, the State Party is urged to undertake policy, legislative, judicial and administrative measures, by particularly ensuring that:

- a. the education system in the State Party is improved through ensuring that:
- b. there are quantitatively and qualitatively adequate physical infrastructure, facilities and utilities in all schools;
- c. schools are easily accessible to children with disabilities;
- d. corporal punishment is substituted with alternative methods of disciplines in schools; the number of contributions that parents have to pay is small; and
- e. the school environment is child friendly in and around the school, both in terms of teaching-learning methodologies and materials and a safe and protective environment;
- f. students do not spend most of their time struggling to board commuter buses (in urban areas) and do not walk long distances to and from school

(in rural areas), by particularly ensuring either there are ample means of transportation or that they dwell in dormitories in boarding schools;

- g. overcrowding in primary and secondary schools is eliminated by constructing adequate number of classrooms and increasing the number teachers, text books and other facilities/utilities to match with the fast increasing number of students in schools in the State party;
- h. the review and amendment of the Education Act and its Policy are completed by mid 2015 so as to establish a mechanism that will smoothly enable impregnated primary and secondary school girl to resume their education after delivery.
- i. it is further recommended that the State Party should facilitate coordinated public debate on the mechanism that will enable impregnated primary and secondary school girl to be reintegrated back to school after delivery as it has pledged. This should go hand in hand with a public debate on how the State Party can set appropriate protection measures to protect girls so that they do not get pregnant;
- j. the State Party should recognize that ensuring teacher satisfaction and motivation is a key part of ensuring that all children access their right to education. It is recommended that the State Party should respond positively to the teachers' demands including raising the teachers' salaries and improving the school teaching facilities. The State Party should further devise a mechanism that facilitates smooth and positive dispute settlement rather than resorting to court injunctions which in one way or another spoil the relationship between the State Party government and teachers' association;
- k. the State Party should design continuous tailor-made courses for in service teachers so as to impart in them human rights skills. The same tailor made

training will impart teaching skills for in-service teachers. Emphasis should be placed on the content aspects of human rights at all levels of teacher training. In the long run, teacher training colleges should teach human rights as compulsory subject to equip every teacher with human rights knowledge;

- l. put more emphasis on investing in the pre-primary education including increasing the number of skilled teachers/instructors; developing appropriate curriculum and strengthening accountability mechanisms for pre-primary education.
- m. the State Party should take deliberate measures to recover leisure, recreational and cultural activities spaces for the benefit of today's children and future generations. The State Party should further establish a coordination mechanism between planners and educationalists in respect of construction, establishment and development of schools and educational facilities; as well as coordination of sustainable training on cultural and sports subjects in teachers' training colleges. It should also adopt and implement a policy on protection of open spaces.

9.0 SPECIAL PROTECTION MEASURES

(Articles 22, 30, 32-36, 37(b)-(d), 38, 39 and 40)

9.1 Key Issues of Concern

There are several challenges facing the State Party in its bid to provide special protection to children in its jurisdictions. The following are the critical issues needing State Party's immediate intervention:

- a. Children of parents accused of being illegal immigrants have not been specifically provided with special protection measures. The State Party also has not effectively addressed the question of the rights of children of

asylum seekers. In addition, the Refugees Act (1998) and the Immigration Act (1995) have not been amended as it was proposed by the Committee and no timeframe within which the proposed amendment will be undertaken has been fixed by the State Party;

- b. there are no regular surveys undertaken to establish the number and specific needs of street children since the last of such surveys was undertaken in 2009. In addition, a community-based strategic plan to control and combat the problem of street children has not been adopted by the IMTC;
- c. there are a number of challenges facing the State Party in its endeavour to combat and eliminate economic exploitation of children, particularly child labour; and, in the main, the State Party has not undertaken regular surveys on children's economic exploitation. Instead, the State Party has been using surveys carried out by non-state actors; and the last official survey relating to labour in the State Party (the Integrated Labour Survey) was carried out in 2006. In addition, there is a discrepancy regarding the minimum age for admission of children into employment: while in Zanzibar the minimum age is 15 years, in Tanzania Mainland it is 14 years. In principle, latter age is repugnant to the provisions of Article 2 of the CRC. Of particular concern is the failure by the State Party to operationalise the National Action Plan on Child Labour developed and adopted in 2010.
- d. the VAC study's recommendations concerning the need to effectively protect children from sexual exploitation and abuse are yet to be translated into action.³⁰ Likewise, the child protection units by way of one-

³⁰ See particularly United Republic of Tanzania, *Violence Against Children in Tanzania: Findings from a National Survey 2009* Dar es Salaam: UNICEF/US Centre for Disease Control and Prevention/Muhimbili University of Health and Allied Sciences, August 2011; and United Republic of Tanzania, *Violence Against Children in Tanzania: From Commitments to Action – Key Achievements from the Multi-Sectoral "Priority 28 CSO's Report on Tanzania's Implementation of the Convention on the Rights of the Child (2007-2012)*

stop centres are few and located in major urban centres. The LCA provisions on this subject are also yet to be fully implemented.³¹ It should be noted that in certain institutions, like the police, the State Party has a tendency of transferring its staff without considering whether or not they have undergone thorough specialised training, particularly in gender and children issues.

e. the State Party has not undertaken effective measures to prevent and end drug abuse amongst children, consequent to which children find themselves involved in drug abuse. This situation is a result of a number of factors:

- limited knowledge on the part of members of the community on the effects of drug abuse on children;
- there are few rehabilitation centres for children who have been affected by drug abuse; most of which are run by voluntary, non-state actors.
- in addition, the State Party has not enacted a comprehensive and effective law to ensure that children who are affected by drug abuse are to be placed under rehabilitation programmes and services.
- furthermore, there are few state-run Rehabilitation Centres, such the one being run by the Muhimbili National Hospital, in the State Party;

Responses" to Address Violence against Children (2011-2012) and Priority Activities for 2012-2013 Dar es Salaam: Ministry of Community Development, Gender and Children, 2013.

³¹ Section 16 and 83 of the Law of the Child Act.

although there are a number of private individuals and NGOs who are operating such centres on voluntary basis and mainly located in urban areas; and

- efforts to prevent and combat trafficking in illicit drugs are not effective and very few drug dealers (particularly drug barons) have been arrested and prosecuted. And, where drug dealers/barons are arrested, prosecution and adjudication normally take longer than expected; and, often times, due process is tainted with corrupt practices amongst investigative, prosecutorial and judicial officials.
- f. Despite the enactment of the Anti-Trafficking in Persons Act in 2008³², the State Party has not been capable of preventing and ending traffic in children as children are still trafficked both internally and internationally. The law is not yet well known amongst law enforcement officers and amongst members of the general public. Even though the State Party has established the National Coordination Committee on Trafficking, there is lack of capacity (both human and financial) to effectively combat the issue of trafficking in persons, including children. To exacerbate this anomaly, the State Party has not issued Regulations under the Anti-Trafficking in Persons Act, which results in poor enforcement. This is exacerbated by the fact that the State Party has long and porous borders, which make it difficult for law enforcement agencies to keep watch on all border posts around the country.
- g. Although the Zanzibar Children's Act (ZCA) and the Law of the Child Act (LCA) have incorporated provisions on juvenile justice and adopted a Five-year Strategy for the Progressive Child Justice Reform (2013-2017)

³² Sections 4 and 5 of the Anti-Trafficking in Persons Act (2008) criminalize acts of traffic in persons, including children.

(applicable in Tanzania Mainland)³³; the two laws have a number of problems that make them almost impossible for children in conflict with the law to realise their rights as guaranteed under Articles 37 and 40 of the CRC.³⁴ These problems include:

- lack of enumeration of the fundamental provisions relating to the child's due process rights;
- lack of comprehensive provisions relating to diversion of children from the criminal justice system;
- lack of provisions on legal assistance for children who are in conflict with the law;
- lack of clear provisions on rules of procedure regulating proceedings in the Juvenile Court³⁵;
- lack of provisions relating to the coordination of the administration of juvenile justice system;
- lack of specialized juvenile justice system, procedures and facilities for processing child offenders (e.g. now there is only one Juvenile Court at Kisutu in Dar es Salaam; and only five Retention Homes in Tanzania);

³³ See Ministry of Constitutional and Legal Affairs, *Five-year Strategy for the Progressive Child Justice Reform (2013-2017)* Dar es Salaam: MoCLA/UNICEF, December 2013. See also Ministry of Constitutional and Legal Affairs, *National Human Rights Action Plan* Dar es Salaam: MoCLA, December 2013.

³⁴ See particularly United Republic of Tanzania, "An Analysis of the Situation for Children in Conflict with the Law in Tanzania." Dar es Salaam: MoCLA/UNICEF, 2011; and United Republic of Tanzania, "An Analysis of the Situation for Access to Justice for Under-18 Children in Tanzania." Dar es Salaam: MoCLA/UNICEF, 2011; and Mashamba, C.J., "A Study of Tanzania Non-Compliance with its Obligation to Domesticicate International Juvenile Justice Standards in Comparison with South Africa". Ph.D. Thesis, Open University, 2013.

³⁵ The CJ is mandated under Section 99 of the LCA to make rules which will govern procedure and proceedings at the Juvenile Court.

- lack of specialized personnel in the Juvenile Justice System to deal with children who are in conflict with the law or whose fates are to be determined by the Child Justice System;
- children's cases are not prosecuted timely; and in a carceral system that has no separate detention facilities for children, children are mixed up with adults, and spending long periods in detention centres;
- most of the children in conflict with the law, especially in urban areas, are street children. The mapping exercise conducted by WLAC in 2012 showed that 60% of children in detention centres in Dar es Salaam Region were street children;
- lack provisions relating to children's rights/juvenile or child justice in the Constitution of the State Party;
- lack of data collection and management system on the administration of juvenile justice; and
- lack of political will to ensure that juvenile justice is properly and effectively administered.³⁶

9.2 Recommendations

In its attempt to address the foregoing challenges, the State Party is urged to undertake policy, legislative, judicial and other administrative measures to ensure that children are specifically protected from various abuses. In particular, it should undertake to ensure that:

- a. it puts in place effective legislative and administrative measures to ensure that children who are in its jurisdiction seeking asylum or refugee protection

³⁶ See particularly Mashamba, C.J., "A Study of Tanzania Non-Compliance with its Obligation to Domesticated International Juvenile Justice Standards in Comparison with South Africa", *op. cit.*

are adequately protected. The State Party should undertake to amend the Refugees Act, the Refugees Policy and the Immigration Act as recommended by the Committee within a specified timeframe. The State Party should also undertake measures for the protection of urban refugee children and it should provide statistical data on the status of refugee children in the country;

b. In order to effectively address the problem of street children and provide long-term solutions, the State Party should undertake the following measures:

- conduct regular surveys to establish the number of street children in all cities and towns in its jurisdiction. The surveys should not only reveal the number of street children, but also come out with recommendations to address the challenges facing them;
- adopt and effectively implement the Community-based Strategic Plan to control and combat the problem of street children; and
- address the socio-economic causes and effects of street children.

c. as a long-lasting solution to combating children's economic exploitation, particularly child labour, the State Party should undertake the following measures:

- Strive to operationalize the National Child Labour Action Plan developed in 2010, which should go hand in hand with the commitment to allocate resources on the implementation of the plan;
- it should harmonize the minimum age of employment applicable in Tanzania Mainland and Zanzibar to be pegged at 15 years;

- it should undertake regular surveys on the state of children's economic exploitation, including child labour;
- it should strengthen the capacity of the institutions responsible for the control and protection of children against economic exploitation, particularly child labour, as recommended by the Committee;
- it should take the lead in addressing the root causes of child labour, by particularly improving the economic capacity of households, raising public awareness and improving the Labour Inspection Department and the Judiciary to enable them to prevent and combat child labour. These measures imply that the State Party has an obligation of providing an adequate budget to implement and follow up; and
- it should revise and strengthen inter-ministerial child labour coordination, including the implementation of the National Child Labour Plan of Action (2010)

d. In order to address the problem of children's sexual exploitation and abuse, the State party is urged to:

- undertake organised and concerted public awareness-raising campaigns;
- establish child protection units and One-stop Centres in all districts in its jurisdiction;
- cases of children's sexual exploitation and abuse are reported to and processed through courts of law;
- allocate specific fund for Police Gender and Children Desk activities including the renovation and refurbishment of the Desks; and

- ensure that all officers working at the Gender and Children's Desks are specifically trained on the CRC principles and other human rights norms. This should go hand in hand with the State Party's ensuring high level of retention of such police officers to ensure consistency capacity and competency amongst them.
- e. The State Party should undertake effective measures to prevent and eliminate drug abuse amongst children, including:
- the enactment of a comprehensive and effective law to ensure that children who are affected by drug abuse are placed under rehabilitation programmes and services;
 - to provide for effective investigation, prosecution and adjudication of cases involving drug traffickers;
 - to ensure issues of drug prevention and response are effectively and adequately addressed;
 - to ensure that there are adequate state-run Rehabilitation Centres for children who have been affected by drug abuse; and
 - providing statistical information on the number of, and measures/sanctions made against, drug dealers. Further statistical information on the number of children victims of drug abuse assisted by both state and non-state actors.
- f. The State Party is urged to undertake the following measures to ensure that children are not trafficked (both internally and internationally):
- it should complement the anti-trafficking in persons legislation with other, administrative/programmatic measures;
 - it should conduct public awareness-raising campaigns on trafficking in children throughout its jurisdiction;

- it should establish and strengthen an independent monitoring body to ensure that the law on anti-trafficking in persons is effectively applied; with a clear National Plan of Action, improved capacity to discharge its statutory mandate, effective coordination capacity as well as preventive measures;
 - it should make sure that there are effective programmes to rehabilitate children who are victims of trafficking and reintegrate them back to their families/society;
 - it should ensure that the child helpline is operational in all regions and on a twenty-four hour basis; and
 - it should expedite the adoption of Regulations under the Anti-trafficking in Persons Act to ensure effective enforcement of this law.
- g. In order to ensure that the juvenile justice properly and effectively functions and that the rights of children in conflict with the law are properly protected, the State Party should undertake the following measures:
- it should enact a separate, comprehensive Child Justice law that will clearly set out principles, procedures and provisions relating to juvenile justice and child justice (i.e. issues relating to child maintenance, custody, inheritance and access);
 - it should create a child-friendly Juvenile Court System throughout the country
 - it should put in place specialized system, rules of procedure, structures, agencies and personnel on juvenile justice;
 - it should undertake efforts to raise awareness to law enforcers, judicial officers and the public at large on the child justice

(particularly the Law of the Child Act and its related regulations and guidelines); and

- it should put in place an effective data collection and management system on the administration of juvenile justice.

10. CONCLUSION, KEY ISSUES/OBSERVATIONS AND RECOMMENDATIONS

10.1 Key Issues of Concern

By way of conclusion, there are still a number of challenges facing the implementation of the ZCA and the LCA. Those can be categorised into three major areas of:

1. policy and legal framework that are not in consistence with each other and with LCA and the ZCA, apart from being bellow international standards for the protection and wellbeing of a child;
2. the institutional framework and coordination of child rights issues remains a huge challenge; and
3. resource mobilisation and allocation that are affected by the mentioned policy and legislation gaps and therefore lead to increase in inequality and inequity among children and their families and have direct impact in public services which the poor and vulnerable children and their families rely on for access to basic provisional and protection rights.

In details the challenges includes:

- a. lack of knowledge about the two laws, ZCA and LCA on the part of the law enforcement and judicial personnel as well as by members of the general public; and some of the Rules under the two laws have not been promulgated by the relevant bodies;
- b. birth registration and certification is still low in the State Party (particularly in rural areas as compared to urban areas) as result of a number factors: lack of effective legislation and policy on birth registration and certification; lack of awareness on the part of parents to have their children registered and given certificates thereof; weak institutional framework for registration and certification, systems and procedures; and inadequate funding;

- c. the State Party does not have a law regarding the public's access to information. As a result, there are many unlicensed/unregulated private media outlets, some of which do allow children to access harmful information, e.g. pornographic materials; there is no effective public awareness-raising on the need to protect the privacy of the children in the media; and there is weak licensing and monitoring mechanism to ensure that children are protected from accessing harmful information;
- d. the State Party has not undertaken effective measures to protect children who are deprived of a family environment, including failure to the long-awaited Parental Guidelines in respect of alternative care as recommended and reiterated by the Committee in its previous Concluding Observations; and failure to amend the Law of Marriage Act in order for it to set out the requirement for a Parenting Plan for parents who seeks to separate or divorce;
- e. the Commission of Human Rights and Good Governance (CHRAGG) is not an effective independent monitoring mechanism and it is not better positioned and mandated to provide effective monitoring of children's issues as it does not have the capacity (in terms of both financial and human resources) to effectively monitor the implementation of the CRC country-wide. Besides, the Rules of Procedure for CHRAGG to work upon as a child ombudsperson are yet to be promulgated as previously requested by the Committee;
- f. the health system in the State Party faces a number of challenges, including lack of adequate funding; lack of child/youth-friendly health services and children under 5 years still do not obtain free medical care as provided by the policy; lack of adequate personnel who can specifically provide health care services to children (especially in rural areas); and lack

of medical facilities in most rural areas to reduce the distance to and from medical centres;

- g. although the LCA has provisions prohibiting the incarceration of children with their mothers³⁷, there are still many children in carceral facilities and there are also no effective mechanisms and measures to ensure that those children who are so incarcerated are treated humanely according to international child rights standards;
- h. although the State Party has undertaken commendable measures to ensure that children with disabilities are treated in equal dignity with those without disabilities, including the adoption of the Policy on Disability and the enactment of the Persons with Disabilities Act (2010)³⁸ and its Regulations (2012)³⁹; children with disabilities continue to suffer a number of abuses, including discrimination in schools and at homes, and killings and attacks of children with albinism;
- i. the education system in State Party is performing at a dismal pace. In particular, there are inadequate and poor physical infrastructures (latrines, laboratories, libraries, teachers' houses, and dormitories); few schools are easily accessible to children with disabilities; the nature of punishments in school still revolves around corporal punishment; the number of contributions that parents have to pay is enormous; lack of coherent strategy on pre-primary schooling; and the general lack of a child friendly environment in and around the school, both in terms of teaching-learning methodologies and materials and a safe and protective environment; and

³⁷ Section 144 of LCA does not provide adequate safeguards to protect children incarcerated with their mothers in prison.

³⁸ Cap. 183 R.E. 2010.

³⁹ See the Persons with Disabilities (General) Regulations, GN. No. 152 published on 4 May 2012.

- j. despite the fact that the State Party has enacted the ZCA and the LCA, the two laws have a number of problems that make them almost impossible for children in conflict with the law to realise their rights as guaranteed under Articles 37 and 40 of the CRC.

10.2 Recommendations

In order to address the foregoing key issues (and others not mentioned herein above), the State Party is urged to *undertake the following priority measures*:

- a. undertaking law reform to harmonise all laws and policies to be in consistence with provisions of the ZCA and the LCA; establish a single body to coordinate stakeholders at all levels from the Union Government to the grassroots to ensure implementation of the laws relating to children; review all economic, social services, and political policies that implicate inequality and equity among children and should provide for equal access to all children to basic provisional and protection rights; capacity build law enforcers and judicial personnel; raise public awareness on child law; and allocate sufficient funding to enable effective implementation/enforcement of the two laws;
- b. birth registration and certification in the State Party should be made compulsory; and, as such, every child should be registered and given a certificate thereof immediately after birth. This entails enacting an effective legislation and policy on birth registration and certification; raising awareness on the part of parents to have their children registered and given certificates thereof; strengthening the birth registration and certification body, systems and procedures; and allocating adequate funding for birth registration and certification;
- c. enacting an effective legislation regarding the public's access to information, in order to ensure that all media outlets are duly licensed and

effectively regulated and monitored so that children would not access harmful information, e.g. pornographic materials. It should also undertake effective public awareness-raising on the need to protect the privacy of the children in the media;

- d. undertake effective measures to protect children who are deprived of a family environment from abuses. This should entail adopting the long-awaited Parental Guidelines in respect of alternative care as recommended and reiterated by the Committee in its previous Concluding Observations; and amending the Law of Marriage Act in order for it to set out the requirement for a Parenting Plan for parents who seeks to separate or divorce;
- e. ensure that the Commission of Human Rights and Good Governance (CHRAGG) is made an effective child rights independent monitoring mechanism, which include enhancing its capacity (in terms of both financial and human resources) to effectively monitor the implementation of the CRC country-wide; and adopting the Rules of Procedure for CHRAGG to work upon as a child ombudsperson as previously advised by the Committee;
- f. undertake to improve its health system to ensure that children do effectively realise their right to health, which includes allocating adequate funding to health; provision of child/youth-friendly health services and ensuring that children under 5 years do obtain free medical care as provided by the policy; employ adequate personnel who can specifically provide health care services to children (especially in rural areas); and put in place adequate medical/health facilities in most rural areas to reduce the distance to and from medical centres;

- g. ensure that provisions in the LCA prohibiting the incarceration of children with their mothers⁴⁰ are amended to ensure that mothers with children are only incarcerated as a matter of last resort; and where they are incarcerated, there should be carceral facilities and effective mechanisms and measures to ensure that those children who are so incarcerated are treated humanely according to international child rights standards;
- h. ensure the Policy on Disability and the Persons with Disabilities Act (2010)⁴¹ and its Regulations (2012)⁴² are complemented by effective judicial and administrative measures to ensure that children with disabilities do not suffer from abuses, including discrimination in schools and at home, and killings and attacks of children with albinism is stopped;
- i. improve its education policy and system by particularly ensuring that public schools have adequate physical and quality infrastructures (latrines, laboratories, libraries, teachers' houses, and dormitories); schools are easily accessible to children with disabilities; corporal punishment and all forms of violent disciplinary measures are abolished in schools and in lieu thereof, alternative methods of disciplines are in line with the Convention are adopted and effectively implemented; contributions for school requirements are removed particularly in respect of poor parents; and there measures to ensure that teachers, school committees and community commit to a violence free and child-friendly environment in and around the school, both in terms of teaching-learning methodologies and materials and there is a safe and protective environment.

⁴⁰ Section 144 of LCA.

⁴¹ Cap. 183 R.E. 2010.

⁴² See the Persons with Disabilities (General) Regulations, GN. No. 152 published on 4 May 2012.

Annex 1: LIST OF ORGANIZATIONS PARTICIPATED IN THIS REPORT

Participants in the drafting of the Tanzania CSO's Alternative Report on Tanzania's Implementation of the Convention on the Rights of the Child

(2007-2012)

Civil Societies

1. Action for Development Program Mbozi – ADP Mbozi
2. African Inland Church of Tanzania Mara & Ukerewe (Most Vulnerable Children Program)
3. Africare Tanzania
4. Child Book Project – CBP
5. Child Dignity Forum CDF – National,
6. Children Education Society - CHESO
7. Community Concern of Orphan's and Development Association - COCODA - NJOMBE
8. Community Development Mission of Tanzania – CDMT - Handeni
9. Compassion Foundation - Njombe
10. C-Sema- Child Helpline
11. Diocese of Central Tanganyika (Anglican Church's Most Vulnerable Children Programme Chamwino) – DCT
12. DOGODOGO Centre for Street Children
13. Ekama Development
14. Family health International - FHI360
15. Faraja Trust Fund
16. Foundation Karibu Tanzania
17. Friends of Children with Cancer - FOCC
18. Global Network of Religions for Children – Africa - GNRC
19. Good Samaritan Mission – GSM - Songea
20. Huduma ya Watoto - HUYAWA -ELCT – Kagera
21. Human Development Trust - HDT,
22. Intermediary Gender Network – IGN - Sumbawanga
23. Iringa development of Youth and Disadvantaged Children - IDYDC
24. Jitegemee Women Group (JIWOG)
25. Kigwe Social Economic Development and Training - KISEDET
26. Kikundi cha Wanawake Kilimanjaro Kupambana na UKIMWI (Women Against AIDS in Kilimanjaro) - KIWAKUKI
27. Kili Centre
28. Kiota Women's Health and Development Organisation- KIWOHEDE
29. Kwetu Counselling Salvation Army
30. Lake Tanganyika Development and Relief Organisation - TADERO – Kigoma

31. Legal and Human Rights Centre – LHRC
32. Lifelihood of Children and Development Society – LICHIDE- Sumbawanga
33. London School of Hygiene and Tropical Medicine - LSHTM)/ National Institute for Medical Research Tanzania - NIMR
34. MAKINI
35. Mapambano Centre for Children Rights
36. Mekon Research Bureau
37. Misenyi AIDS & Poverty Eradication Crusade - MAPEC
38. Miyuji Cheshire Home for Children with Disability - Dodoma
39. MKOMBOZI centre for Street Children
40. Morogoro Saving the Poor Organization - MOSAPORG
41. Msamaria Center for Street Children
42. Muheza Hospice Care - MHC
43. Muheza NGO Network - MUNGONET
44. Mwanza Youth and Children Network – MYCN
45. National Organization for Legal Assistance - nola
46. Orphans Relief Services - ORES
47. Pact Tanzania
48. Panos Eastern Africa
49. Pestalozzi Children's Foundation
50. Pemba environmental & Malaria Control - PEMCO – Pemba
51. Peoples' Development Forum
52. Plan International
53. Protect the Children
54. Rafiki Family
55. Rafiki Social Development Organization
56. REPSSI East Africa Sub-Regional Office
57. Right to Play Tanzania
58. Rukwa Kizwite- Ndua Group
59. Ruvuma Orphans Association - ROA
60. Saidia Wazee Karagwe - SAWAKA
61. Save Children of Tanzania - SACHITA
62. Save the Children (UK)
63. Seka Association
64. Shirikisho la Vyama vya Watu Wenye Ulemavu (The Tanzania Federation of Disabled People's Organizations) - SHIVYAWATA
65. Songea Women and Children Care Organization - SWACCO
66. SOS Children's Villages Tanzania
67. St. Teresa Orphans Foundation - STOF
68. Starve for Helping Other People's - SHOP MBEYA
69. Street Children Care Organisation - STRECCO
70. TAMASHA Vijana

71. Tanzania Association of Journalists for Children - TAJOC
72. Tanzania Development and AIDS Prevention -TADEPA
73. Tanzania Domestic Workers Coalition - TDWC
74. Tanzania Early Childhood Education Network - TECDEN
75. Tanzania Home Economics ASSOCIATION - TAHEA- Iringa.
76. Tanzania Red Cross (Mara & Ukerewe)
77. Tanzania Resource and Assessment Centre for Disabled Children - TRACED
78. Tanzania Women and Children Welfare Centre- TWCWC
79. Tanzania Women Research Foundation - TAWREF
80. Tanzania Youth2Youth Movement for Social and Economic Change
81. The African Network for the Prevention and Protection Against Child Abuse and Neglect Tanzania Chapter - ANPPCAN
82. Tukolene Youth Development Centre
83. Tumaini la Maisha
84. Umoja wa Vijana Kuelimishana na Kusaidiana - UVIKITWE Mbinga
85. Watoto Salama Trust
86. Watoto Wetu Tanzania (Friends of Don Bosco),
87. Women Against AIDS in Kilimanjaro- KIWAKUKI
88. Women Emancipation and Development Agency- WOMEDA
89. World Education Inc./Bantwana
90. Youth Counseling and Rehabilitation Centre- YCRC
91. Youth Cultural and Information Centre - YCIC
92. Youth with Disability Community Program –Tanga - YDCP
93. Zanzibar Aids Association and Support of Orphans - ZASO

Government

94. Child Development Department (CDD): Ministry of Community Development, Gender and Children
95. Department for Social Welfare: Ministry of Health and Social Welfare
96. Institute of Social Work, Dar es Salaam
97. Patandi Teachers' College (Special Needs Education)

United Nations

98. UNICEF

Media

- | | | |
|---------------|-----------------|----------------|
| 99. Radio One | 101. ITV | 103. Mwananchi |
| 100. Nipashe | 102. Habari Leo | |

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