

THE ADMINISTRATION OF RIGHTS AND WELFARE OF THE STREET CONNECTED CHILDREN: ANALYSIS OF THE LAWS AND PRACTICE IN TANZANIA

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ABSTRACT

The problem of the street connected children is one of the challenges which faces the development, implementation and enforcement of the rights and welfare of the child in Tanzania and in the world at large. The world has already noticed this problem and thus making this problem as one which need to be addressed in order to have a sustainable next generation in the world as it is believed that the children are the next generation. The international community has already addressed this problem since the reign of the League of Nations and up to the time of the adoption of the Universal Declaration of Human Rights (UDHR) and after that different piece of international instruments has been adopted which addressed the problem of street connected children. Tanzania has ratified different international instruments, conventions, declaration and protocols which protects, implement, enforce, realize and declare the rights and welfare of the children in the international community. In reflecting the international instruments in the Tanzanian jurisdiction, different laws have been enacted to govern and protect the rights and welfare of the children in Tanzania. Thus this study examines the laws and practice which governs and protects the rights and welfare of the children in Tanzania, the Law of the Child Act is the main Act which protects the rights of the child. But regardless of the laws enacted there are challenges and ineffectiveness of the law and the challenges facing the children in street situations. And then the study will provide the recommendations on what has to be done in order to have the effective administration of the rights and welfare of the children in Tanzania.

Keywords: Street Connected Children, rights, welfare, administration, laws of the child

INTRODUCTION

The problem of street connected children is the global crisis and which the international community and the world are fighting to eradicate and thus call upon the states to do the same in order to protect the rights of the children and create the better environment and prospects of the world at large. The escalation and the rise of the street connected children raised the alarm to the international community on the need to tackle the problem by enacting the laws and policies that aimed at eradicating or slowing down the situation. The development of science, political, economic and cultural has led to the problem of street connected children in the world due to these impacts they have resulted into the growing of this problem.

A child is defined to be any person under the age of 18 years oldⁱ and thus Street connected children is the name given to the street children and sometimes are referred to Children in Street Situations' but all these names refer to the same group of children who are living in streets in urban areas especially in big cities or towns for different reasons including poverty, running away from homes, orphans and discrimination in their homes. According to UNICEF in 1989, the organization estimated that 100 million children were growing up in urban streets around the world but twenty years later the world has seen the expansion of the problem were the number of children living in urban streets is estimated to be more than 100 million.ⁱⁱ According to UNICEF the reports in 2019 shows that the number of street children is still growing which at large threatens the welfare and rights of the children in the world.ⁱⁱⁱ Thus there is a need to have a close eye on this matter and the International community urges the states to take actions which will ensure that the rights and welfare of the children are protected and promoted for the better future of the world as the world believe that children are the next generation.

Seeing the importance of promoting, protecting and enforcing the rights and welfare of the children the world the world community thought it will be better if the legal regime if formulated which will oversee the welfare of the children in the world.

STREET CONNECTED CHILDREN

This word street connected children is associated or have the same meaning with the concepts like Children in street situations and street children, and in Swahili Language they are referred to as “*Watoto wa Mitaani*”, all of these concepts tend to refer to those person under the age of 18 who are living in streets especially in urban areas or cities. The word street connected children is defined by UNICEF to mean “*a street child or street youth or any minor for whom the street (in the widest sense of the word including unoccupied dwellings, waste land) has become his or her habitual abode, and who is without adequate protection.*”^{iv} This definition as developed by UNICEF has provided two widely accepted categories of children in street situations, which are children *on* the streets and children *of* the streets.^v

THE MAIN RIGHTS VESTED TO STREET CONNECTED CHILDREN

Street connected children have the same rights as those vested to other human beings regardless of them being sometimes discriminated by the society due to bad perceptions and other unacceptable thinking, thus the international human right and some other domestic human rights instruments have provided the following rights in connection with the children in street situations which are the rights against discrimination, right to education and the rights to access health services. These are the main rights vested to the children in Tanzania and other places around the world.

CAUSES LEADING CHILDREN TO THE STREETS

There are two categories of the street children those born in the streets and the other who move to the streets. Therefore the following are the causes or reasons made the children to move to the streets; First cause is economic poverty, this is an important pathway to the street for the most street connected children even though not all of them end in streets. It is by these consequences of poverty that can cause children to leave their homes and seek a living elsewhere. Poverty characterized by a lack of food causes children to have no option but to

find for themselves in the streets thus in some poor families, children are sent to the streets by, or accompany their caregivers, to beg.^{vi}

Second factor is the family breakdown or abandonment of the children, the research conducted by the UNICEF has shown that most of the families of the children who are found in the streets are either broken irreparably or the parents have abandon their duties to take care of the family due to misunderstandings in the family.^{vii}

Third factor is domestic violence, child abuse and neglect, natural disasters and harmful cultural practices are some of other causal factors driving children to leave their homes and live on the streets.^{viii} Children with disabilities are stigmatized and often chased away from their homes by the caregivers/parents who are not willing to care for the street, thus the street connected children situations has been as the result of poor policies and efforts by governments to tackle root causes and economic inequalities.^{ix}

THE INTERNATIONAL LEGAL REGIME GOVERNING THE RIGHTS AND WELFARE OF THE CHILDREN

The history of the child's rights can be traced back during the beginning of the 20th Century when the League of Nations was established.^x In the year 1924 the issue of the child's rights became an agenda after the League of Nations brought the Declaration on the Right of the Child.^{xi} The world continues to recognize the rights of the child and protection thus the international community continues to come up with new changes concerning the rights of the child.

After the establishment of the United Nations (UN) the world evidenced the development in the protection and promotion of human rights and the rights of the children were also been developed, promoted and protected under the United Declaration of Human Rights (UDHR)^{xii} which is the mother law on human rights in the world. The notable development of Child rights came with the adoption of the United Nations Convention on the Rights of the Child,^{xiii} which came to harmonize all the international laws relating to the welfare and protection of the rights

children. Other laws adopted in relation to street children, juvenile child and the child's rights are Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,^{xiv} the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)^{xv} and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.^{xvi}

Another important movement in the protection of the children's rights was initiated by the African Union Commission in 1999, where they came up with the convention which protects the rights and welfare of the children in Africa, which is the African Charter on the Rights and Welfare of Children (ACRWC).^{xvii} The Charter obligates the state with the duty to protect, recognize, enforce and implement the rights and welfare of the children in their domestic jurisdictions and this including enacting the laws and policies which will oversee the welfare of the children. The Charter touches clearly on the welfare of the children and their rights including the right to education,^{xviii} right to health,^{xix} parental care and protection^{xx} and protection against harmful social and cultural practices.^{xxi} It provides obligation to the right to special treatment to children, which must protect children dignity and freedom. In order to monitor the implementation of the Charter the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established in 2001. States party to the Charter must submit their reports to the committee, which documents information and assesses the situation of children. Member states must submit their first report on their implementation of the charter two years after ratification and periodic reports are submitted every three years.^{xxii}

THE LEGAL REGIME GOVERNING STREET CONNECTED CHILDREN'S RIGHTS IN TANZANIA

The protection and enforcement of the rights of the street connected children in Tanzania is governed by the following laws, starting with the specific law which is the Law of the Child Act of 2009, the constitution of the United Republic of Tanzania of 1977, the law of Marriage Act and the Probate and Administration of Estates Act;

The Law of the Child Act is the main law which recognizes, declares and protects the rights of the child in Tanzania is the Law of the Child Act of 2009.^{xxiii} The law of the Child Act was enacted to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child; to provide for affiliation, foster care, adoption and custody of the child; to further regulate employment and apprenticeship; to make provisions with respect to a child in conflict with law and to provide for related matters.^{xxiv}

First, the law of the Child act of Tanzania recognize that any person under the age of 18 years old to be the child.^{xxv} Thus according to the requirement of the international human rights instruments Tanzania as the member state must put down measures to implement the rules and requirements in order to protect, implement, recognize and promote the rights of the child. The Law of the Child Act is the law which was enacted to fit the requirement put forth by the international human rights law. With regards to the juvenile justice system the Law of the Child Act is the substantive law which provides for the rules and regulations in the protection of the rights of the child.

Second, the constitution of the United Republic of Tanzania^{xxvi} is the mother law of the land that is why it provides and protects the rights of every person in the state from violations. The constitution is silent with regards to the protection of the rights of the child. But the provision of Article 12 (2) which provides that “Every person is entitled to recognition and respect for his dignity” is an expression of the fact that even the rights of the children are protected and recognized by the constitution.^{xxvii} Another expression that obligates the state to protect every person without discrimination in the state including children is Article 13 (1).^{xxviii} Children are among the vulnerable groups in any society thus they need special attention and care that is why Tanzania have signed and ratify most of the international conventions with regards to human rights.

Third, the Law of the Child (Juvenile Court Procedure),^{xxix} this is the subsidiary piece of legislation which is enacted and put in place to oversee the procedure in the attainment of justice when a child is in conflict with the law. The 2014 Juvenile Court Rules provide for the

treatment of minors in the exercise of their rights under the Act through the courts, and prior to their incarceration. Since many children in street situations are taken by police officers and incarcerated, these rules are particularly applicable to them.

Fourth, Penal Code the Penal Code^{xxx} is the main law which provides for offences and their punishments and thus it also touches on offences in relation to children which include desertion and neglect of children by their parents are crimes in the Penal Code respectively.^{xxxii} It is provided that the children are neglected and deserted they try to survive on the streets in big cities and towns whereby such acts that cause children to go to streets are acts of cruelty to children.^{xxxiii} The children faced with the following challenges including ill-treatment of children, female genital mutilation and injury even though there are some criminal sanctions, these various forms of ill-treatment and abuse still continue and a growing number of children resort to the streets to find survival.^{xxxiii}

Fifth, the Law of Marriage Act (LMA)^{xxxiv} is a piece of legislation which was enacted to regulate the law relating to marriage, personal and property rights as between husband and wife, separation, divorce and other matrimonial reliefs and other related matters. The Provision of section 129 provides the duty of the man to maintain the children after separation or divorce and it is the duty of the woman once the father dies. Divorce and separation has been an accelerated reason for the increase of street connected children in Tanzania and the world at large.

Sixth, the Probate and administration of Estates Act,^{xxxv} is the law enacted to provide for the grant of probates of wills and letters of administration to the estates of deceased persons, to make certain provisions with regard to the powers and duties of executors and administrators; administration of wakf property; benevolent payments in Islamic estates, and related matters.^{xxxvi} The PAEA does not allow the children to be granted with the letters of administration until they reach the mature age so that they can be granted with the same.^{xxxvii} But most of the time after the death of the parents and the children's left are too young most of the relative tend to discriminate the children and squander the money left and hence the kids due to mistreatments tend to run off from homes and end up in streets. The government do not put much emphasize on the rights and welfare of the kids especially after the death of the

parents as there is a need for the government intervention to ensure the properties of the deceased are protected for the welfare of the children.

Ineffectiveness and challenges facing the implementation and protection of the rights and welfare of the street connected children in Tanzania

The Absence of the specific provision in the Constitution of the United Republic of Tanzania with regards to the implementation and protection of the rights and welfare of the street connected children that the lack of specific provision in the constitution of the United republic of Tanzania,^{xxxviii} made it difficult for realization, protection, enforcement and implementing the rights and welfare of the rights of the children in Tanzania. The enforcement of the rights and welfare of the children's has to start from the mother law of the land in order to give away the better standing of our law and not as now that there is no any provision in the constitution which touches^{xxxix} on matters on children but we only adopt the jurisprudence under the provision of Article 12 on equality.

Lack of government facility to accommodate the street connected children, that the government is the organ which is mandated with the duty to oversee, realization, protection, enforcement and protection of the rights and welfare of be children in their domestic jurisdictions Tanzania included. Thus the government is mandated with the duty to ensure there is enough facilities to tackle the problem of street connected children, facilities includes approved schools, social welfare houses and other centers for children but to date there is low government intervention to address this problem.^{xl} The state must develop the social network for all people and empower the weak and incapable peoples as the dignity of humanity this raise the jurisprudence that the responsibility to take care of the street connected children is the duty and obligation of the state and it must perform its obligations in accordance to the laws and regulations thus building facilities for the protection of the street connected children is one of the duties of the state and not otherwise.

Lack of government Personnel or social welfare officers to govern the issue on street children, the Law of the Child Act^{xli} is one the best piece of legislation in protecting the interest and welfare of the child in Tanzania. The law is very clear by setting out which personnel who

will be responsible for follow ups and maintaining the street connected children in Tanzania. The establishment of the police special desk which deals with only the issues with regards to the juvenile offenders but not to the issues of street connected children also the another important requirement is the relationship which is established by the law between the police and the office of the social welfare.

Absence of the government intervention after the parent (s) died and absence of child protection from the Probate laws, that Tanzania has ratified most of the international human rights treaties which protects the rights and welfare of the children in its domestic jurisdiction, and thus makes it the duty of the government to protect the interest and welfare of the children in Tanzania. According to the law a minor cannot be granted with the letters of administration of estate or execute the will rather the guardian or friend or relative will be placed to administer for her or him. The government does not interfere through their social welfare officers in scenarios like this and the family or clan is left with the power to control the process including the appointment of the administrator. Thus most of the children's rights to inherit are violated and end up loose everything as the relative took everything and left the children stranded in the streets and end up being street connected children.

Absence of the Law or intervention of the government to protect the rights of the children after divorce or separation of the parents, the law of Marriage Act,^{xlii} touches on matters with related to children and the main concern of this study was the time of separation and divorce and how the rights of the children are monitored as divorce and separation has been one of the accelerating reasons for the number of street connected children in Tanzania. According to the report by UNICEF in 2019 more than 100 million children lives in streets and thus made it impossible for the realization and protection of their rights and one of the causes for increasing of the number of street connected children is the separation and divorce.

The failure of the government provide mandatory access to education to the street connected children, the Tanzanian the education from the primary level to the stage of ordinary secondary level is provide freely without any payment but the fact that most of the street connected children do not get this opportunity for the fact that they are not sometimes forced to do so by the government of given a free passage to education. According to social welfare at

KIWOHEDE provide that the right to protection and provision of the children education is government's duty and it is its authority to implement, supervision of education, and provide scholarships assistance but also the government is responsible to provide education facilities and infrastructures in order to support teaching and learning processes.^{xliii}

CONCLUSION

The street connected children are among the vulnerable groups in any society as they need protection from the government and the society at large. This study did analyze the legal and practical position of children in street situations in Tanzania. The study made the analysis commenced with an overview of the problems facing children in street situations globally and nationally and then the overview was followed by a critically discussion of the legal framework surrounding the protection of the rights of the child in street situations. The legal framework included international, regional and national conventions and statutes that seek to provide for children in street situations. This study did focused on the situation in Tanzania by examining the policies and strategies that the state has set in place for children in street situation were critically examined and the critique raised was the helpful hand to make comparison with the work carried out by an NGO in order to provide a viable and effective alternative.

RECOMMENDATIONS

This study has provided the following recommendations as follows, the government should put forth mechanisms which will ensure the protection of street connected children's rights and then the government shall build institutionalized care and homes in every district will be the major development in the implementation of the juvenile offenders' rights. The building of juvenile homes and schools will help the in the reformation of the street connected children and the child in conflict with the law so that they can be good people in the society. And also The public should be informed and educated about the rights so that to remove the negative perception on the street connected children that they are bad person with bad attitudes and

when the children are in conflict with the law then the government must create units within the police and dedicated courts for children.

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ENDNOTES

ⁱ Article 2 The African Charter on the Rights and Welfare of the Child. This is a regional human rights treaty adopted in 1990 and which came into force in 1999. It sets out rights and defines principles for the status of children.

ⁱⁱ CAMPOS et al (2019) Social Networks and daily activities of street youth in Belo Horizonte, Brazil, Child Development , 65, at page 319

ⁱⁱⁱ UNICEF (2019) State of the World's Children: Excluded and Invisible, New York, USA, at page 23

^{iv} P M Correa (2013) '*Poverty as a violation of human rights: the case of street children in Guatemala and Brazil*' (2013) 10. No 2. Brazil Journal of International Law. At page 12

^v S Khan et al, (2013) '*A Situational Analysis of the Street Child Phenomenon in Pakistan: A Literature Review*' Institute of Child Health Centre for International Health and Development

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^{vii} Ibid, UNHRC (2013) at page 11

^{viii} Rwezaura B (2000) 'The Value Of A Child: Marginal Children And The Law In Contemporary Tanzania' 14 *Int'l J.L. Pol'y & Fam.* 326, 326.

^{ix} Ibid

^x O'Denell, D., & Seymour, D. (2004) *Child protection A handbook for parliamentarians*. Inter-parliamentary Union & SRO-Kundig. Switzerland: UNICEF, at page 3

^{xi} ibid

^{xii} 1945

^{xiii} Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> visited on 01/10/2021

^{xiv} A/RES/41/85 of 3 December 1986

^{xv} Adopted by General Assembly resolution 40/33 of 29 November 1985

^{xvi} Proclaimed by General Assembly resolution 3318 (XXIX) of 14 December 1974

^{xvii} The African Charter on the Rights and Welfare of the Child is a regional human rights treaty adopted in 1990 and which came into force in 1999. It sets out rights and defines principles for the status of children.

^{xviii} Ibid, Article 11

^{xix} Ibid, Article 14

^{xx} Ibid, Article 19 and 20

^{xxi} Ibid, Article 21

^{xxii} <https://resourcecentre.savethechildren.net/library/african-charter-rights-child> visited on 10/10/2021

^{xxiii} Law of the Child Act, Cap 13 R.E 2019

^{xxiv} Ibid, Introductory note of the Act

^{xxv} Ibid, Section 4

^{xxvi} 1977

^{xxvii} Article 12 (2) of the URT Constitution of 1977

^{xxviii} Article 13 (1) express that "All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law."

^{xxix} GN. No 182 of 2016

^{xxx} The Penal Code, Cap 16 R.E 2019

^{xxxi} Ibid, Section 166 and 167

^{xxxii} Ibid

^{xxxiii} Ibid, Section 169A

^{xxxiv} The Law of Marriage Act, Cap 29 R.E 2019

^{xxxv} Cap 352 R.E 2002

^{xxxvi} ibid

^{xxxvii} Ibid, Section 36

^{xxxviii} 1977

^{xxxix} Ibid

^{xl} Read, KIWOHEDE 2019 Report on the Right and welfare of the Child in Lake Zone, at page 33

^{xli} Act No 21 of 2009

^{xlii} Cap 29 R.E 2019

^{xliii} An interview done in Mwanza on 12/10/2021