

Report on the United Republic of Tanzania’s compliance with its Human Rights obligations with regard to Children in Street Situations

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1. Introduction

This Alternative Report is submitted by a coalition of national and international NGOs who have been part of a 3-year, programme entitled '**Advocating for the Implementation of the UN CRC General Comment No.21 to Change Lives of Tanzanian Street Children**', funded by the UK Foreign, Commonwealth and Development Office. The project has worked across the six of the largest urban areas in Tanzania: Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza. It has aimed to make the provisions contained in the UN CRC General Comment No. 21 a reality for children in street situations in Tanzania.

This report considers Tanzania's progress in the area of the rights of children in street situations since the second cycle UPR review in 2016, using the UN Convention on the Rights of the Child, and the interpretation of the Convention as outlined in the Committee's General Comment no.21 on children in street situations, as its core framework. The report makes reference to Tanzania's other international human rights comments as relevant.

The situation of children in street situations in Tanzania remains a matter of urgent concern: during the 2nd cycle UPR, Tanzania made a number of commitments relevant to street-connected children, including one specifically on their situation,¹ and many with relevance to their rights.² We wish to acknowledge progress made in some areas during the last 5 years: these areas will be highlighted in more detail throughout our report. Despite this progress, a range of serious human rights issues persist. We outline these issues and provide recommendations below, and will welcome follow-up conversation about particular issues.

We wish to note the welcome cooperation we have experienced with the government of Tanzania during our project, and state that we see this UPR cycle as an opportunity to build upon the work we have begun over the past 3 years. It is therefore essential that during this review, increased prominence is given to the situation of street-connected children, in order to build upon this momentum and ensure that, as we move towards 2030, no child is left behind.

2. Methodology

The information in this report is based upon a human rights assessment of the situation of children in street situations in Tanzania, undertaken as part of the above-described project. This study was based upon an indicator framework developed by the Consortium for Street Children based on UN General Comment No. 21 on Children in Street Situations, which was adapted to the Tanzanian context.

Data was gathered from 33 face-to-face focus groups and three individual interviews conducted with current or formerly street-connected children and youth in Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza, as well as 19 face-to-face interviews and four focus groups conducted with government officials and NGO family workers in the same locations.

A legal review was also conducted to assess Tanzania's compliance with the Convention on the Rights of the Child.³ This, along with a Monitoring Report provided by Railway Children Africa, which analysed historical project monitoring data collected from partner organisations in the same six cities between April 2018 and March 2019, was coded using the same process and added to the

¹ Mexico, 'Intensify efforts to prevent and investigate cases of sexual abuse of children, particularly those living on the street, so as to punish the perpetrators, and provide assistance and protection to victims'

² Paragraphs 134.45, 134.50, 134.54, 135.55, 134.57, 134.60, 134.64, 134.65, 134.67, 134.71, 134.114, 136.14, and 136.15 of the Report of the Universal Periodic Review Working Group, document number A/HRC/33/12.

³ This analysis is based on the legal review conducted with pro bono support from Baker McKenzie in partnership with Salesforce.

analysis.⁴

Overarching Recommendation

In line with the provisions of the UN Committee on the Rights of the Child's General Comment no. 21 on children in street situations, and in order to facilitate the implementation of any and all of the above recommendations, we recommend as a matter of priority that the government of Tanzania:

Develop and implement a comprehensive, costed national government strategy concerning children in street situations.

⁴ This monitoring data is based on 6-monthly well-being assessments. Therefore children who have been in programmes for a year or longer will have been measured twice in the data.

The following sections, 3 – 10, provide a human rights analysis of the situation of children in street situations in Tanzania between 2016 and present. They provide an overview and analysis of the most pressing rights issues for this population, outlining key recommendations. We will be pleased to provide more information about any of the issues raised as required: please see contact details on cover page.

3. Non-discrimination

- a. *Police ‘roundups’*: Roundups of children in street situations and/or their families in Tanzania are carried out on a systematic basis. We note in particular the ongoing practice of ‘rounding up’ children from the streets ahead of high-profile events, including visits by high-profile visitors.⁵

Section 3 of the Townships (Removal of Undesirable Persons) Ordinance of 1944 (as amended in 1958) permits the issuance of removal orders to remove undesirable persons as those who loiter; have no settled home; or have no employment or reputable means of living from public spaces.

Although there are laws enabling the lawful removal of street children from public spaces, our research and experience indicates that in most cases the police do not follow any applicable law or formal procedure when carrying out round-ups.⁶ As well as being recognised as constituting direct discrimination against street children, police roundups, or other interventions that restrict or interfere with street children’s rights to association and peaceful assembly contravene article 15 (2) of the Convention on the Rights of the Child, as confirmed in paragraph 39 of the General Comment No. 21. The continuing practice of police roundups and the absence of consequences for police officers who violate the rights of street children through such practices demonstrate ongoing direct discrimination against street children by the Tanzanian authorities.

- b. *Criminalisation of status offences*: Street children in Tanzania continue to be disproportionately criminalised under legislation pertaining to three kinds of status offences: ‘breach of curfews’, ‘running away from home’, and ‘vagrancy, loitering and similar activities’.

The 2013-2017 Child Justice Five Year Strategy for Progressive Reform recognized that children should not be held criminally accountable for ‘status offences’, as these offences ‘particularly affect already vulnerable groups of children, such as those without parental care or street children, and should be decriminalised’. Objective 3.8 of this strategy was to ‘Review and amend relevant laws to decriminalise disorder and status offences’: due to be completed by 2015, there has been no progress on this issue to date. The Five-Year Strategy expired in 2017, and has not yet been replaced, despite a new strategy being drafted in 2019. It is of the utmost important that this new strategy be implemented quickly and ambitiously.

3.1 Recommendations on non-discrimination

- 3.1.1 Repeal the Townships (Removal of Undesirable Persons) Ordinance and other laws criminalising loitering, vagrancy and similar offences, and issue a directive to the police clearly ordering that street children must not be rounded up and arrested or removed from the streets as this is a violation of their rights.
- 3.1.2 Implement the as-yet unfulfilled objective 3.8 of the 2013-2017 Child Justice Five Year Strategy for Progressive Reform, and review and amend relevant laws to decriminalise status offences.

⁵ Survey response submitted by Amani Kids, located in Moshi, Arusha and Singida, on 9 April 2019; Survey response submitted by the Cheka Sana Foundation, located in Mwanza, on 8 April 2019.

⁶ Survey response submitted by Amani Kids, located in Moshi, Arusha and Singida, on 9 April 2019.

4. Life, survival and development

- a. *Deaths of children in street situations:* Despite legal provisions, the investigation of deaths among individuals on the streets in Tanzania is not guaranteed, as often there is discretion as to whether or not to investigate a matter in Tanzania (both administrative and functional discretion, often resulting from a lack of resources); and no clear separation between the prosecutorial and investigative functions of the Tanzanian Police Force.

Our research indicates a number of cases in which the deaths of street children are not properly investigated by authorities, despite children supported by our organisations encountering violent deaths.⁷ This includes one child beaten to death by the community because he was suspected of theft,⁸ and four street-connected youths who were burned alive in January 2018 after being accused of theft.⁹ Given the Tanzanian Police Force's ability to decide what it wishes to investigate on a discretionary basis, it is entirely possible for suspicious deaths to go uninvestigated, especially among street-connected children and those who are not registered.

- b. *Criminalisation of survival behaviour:* Begging is often essential to survival for children in street situations. With an age of criminal responsibility of 10 years, and the Penal Code of Tanzania criminalising begging under the categorisation of "idle and disorderly person[s]", street-connected children from the age of 10 are liable to be convicted for begging. At the same time, however, a child found begging is deemed a "child in need of care or protection" under s16(g) of the Law of the Child Act 2009. In practice, arrests for begging take place mainly when important visitors come to town, such as the President or another leader, or when there is an international event taking place in the country.¹⁰

The provisions of the Penal Code and the Law of the Child Act are incompatible with regard to begging by street children. As the Law of the Child Act has not been given supremacy over other laws, law enforcement authorities are not prevented from treating street children found begging as criminals under the Penal Code rather than providing them with the support and care they are entitled to under the Law of the Child Act.

We wish to note clearly that the UN Committee on the Rights of the Child general comment no. 21 on children in street situations indicates that States have the responsibility to decriminalise offences including laws against begging as they amount to direct discrimination. Likewise, the African Convention on Human and People's Rights, to which Tanzania a signatory, recommends the decriminalisation of such behaviours in the Principles on the Decriminalisation of Petty Offences.¹¹

4.1 Recommendations on life, survival and development

- 4.1.1 Repeal any provisions that make it illegal to beg.
- 4.1.2 Halt the practice among police and other local authorities of arresting street children for the act of begging, as this is not in the best interests of the children.
- 4.1.3 Strengthen oversight mechanisms of the Tanzanian Police Force, to ensure that all suspicious deaths are properly investigated, regardless of who the victim is.

⁷ Information gathered in interviews with Kivuko, and Cheka Sana Foundation, on 12 August 2019.

⁸ As reported in the Railway Children Africa monitoring report.

⁹ Information gathered in an interview with Kivuko, a civil society organisation based in Mwanza, on 12 August 2019.

¹⁰ Survey response submitted by Amani Kids, located in Moshi, Arusha and Singida, on 9 April 2019; survey response submitted by the Cheka Sana Foundation, located in Mwanza, on 8 April 2019.

¹¹ACHPR Principles on the Decriminalisation of Petty Offences, available at: <https://www.achpr.org/legalinstruments/detail?id=2>

5. Family Environment and Alternative Care

- a. *Child-centred family reunification:* We welcome progress made by the government of Tanzania in regard to the provision of child-centred family reunification approaches, in particular the acknowledgement that simply sending a child back to their family, without mediation or support, is neither a suitable nor sustainable response to a child being on the streets. We also welcome the domestication of the Guidelines on Children's Reintegration. We have observed progress in ensuring that temporary shelter is provided for children while the process of finding a child's family and completing a best interests assessment takes place.

Nonetheless we remain concerned that this process seems to be almost entirely funded by NGOs, with the possible exception of Arusha, where some government budget has been allocated for this purpose.

Additionally, the extent to which children's views are taken into account is variable. In some cases, they are simply informed or asked to provide their family's details rather than their preferences being considered, and when they are given the opportunity to express their view, our research indicates that it is often not taken seriously. Taking a child's views about decisions that affect their lives into account is a fundamental part of any child rights-based approach, as recognised in UN CRC General Comment No. 21.

- b. *Short-term care facilities:* The National Costed Plan of Action for Most Vulnerable Children, 2013-2017, included 'children deprived of shelter' in its definition of 'most vulnerable children', committing to provide quality temporary shelter for these children. We note with regret that the plan expired in 2017, and no equivalent updated document has been drafted since this time.

The majority of drop-in shelters, community centres, and night shelters in Tanzania are run by NGOs, faith-based organizations, or other private actors. Though these are viewed by government officials in a positive light, the fact that they are not run and overseen by the government means their existence is sporadic, leaving children in some areas with no access to certain facilities.¹² The lack of regulation of these facilities means that owners are at liberty to exclude certain children from care, leaving them with no option but to remain on the streets. The lack of oversight of these facilities also leads to concerns regarding the standards therewithin: there is an urgent need for the Government to regulate registration of short-term care facilities and conduct regular inspections, as stipulated under sections 150 and 151 of the Law of the Child Act.

- c. *Long-term care provisions:* The Law of the Child Act provides that a child under an interim care order in Tanzania is to be placed under the custody of a Social Welfare Officer, who will determine the most suitable place for the child, among those established by law which include: an approved residential home; a fit person (for a maximum of 6 months); an approved foster parent; a parent, guardian or relative.

Our research indicates that long-term residential care options in Tanzania are typically privately run. In recent years, the government has closed a number of the residential care facilities that were not meeting standards, increasingly also promoting formalized foster care and kinship care, which is a positive step that we welcome.¹³ Kinship care is increasingly

¹² We note, for example, that the cities of Iringa, Mwanza, and Dar es Salaam have no community centres for street children.

¹³ SOS Børnebyerne, "Building civil society engagement in quality alternative care and protection for vulnerable children in East Africa - in Ethiopia, Kenya, Rwanda, Somaliland and Tanzania", April 2016, available at: https://webbase.cisu.dk/PubliceredeDokumenter/%7BF140F0A3-B37A-F7C8-22EC-69A162F85EBD%7D_2819.pdf (p. 9).

common, but we remain concerned about the lack of financial and other support to kinship carers, which risks undermining this system.

We welcome the positive steps taken in relation to long-term care options for street-connected children in Tanzania. To build upon this work, we recommend that the government take steps to streamline processes to take the child's views into consideration when determining the most appropriate course of action for their care.

- d. *Institutionalisation*: While Tanzanian law provides a series of safeguards to avoid children being arbitrarily institutionalised, there is no policy regarding the use of institutionalization of children as a last resort or which encourages de-institutionalisation.¹⁴ Our research indicates that many children seem to inadvertently become institutionalised, entering residential facilities as a short-term option, but ending up staying there for long periods of time. Data gathered by Railway Children Africa showed that 31% of surveyed children in care institutions had been there 6 - 10 years, and 28% 11 - 20 years. This lengthy institutionalisation further creates significant challenges in terms of the potential for successful family reunification.

While we welcome the Tanzanian government's progress in closing down many unsuitable residential care facilities, we urge that this must be accompanied by the provision of suitable alternatives, to prevent those children simply ending up back on the streets. We also urge that the government only close down facilities which are unsuitable, and provide support for improvement wherever possible.

5.1 Recommendations on Family Environment and Alternative Care

5.1.1 Oblige Local Governments to set aside 2% of their budget to support family reunification processes.

5.1.2 Social Welfare and others involved in the reintegration process must ensure that children's views are systematically heard and taken into account in all decisions pertaining to their short and long-term care.

5.1.3 Strengthen existing governmental oversight mechanisms for privately run alternative care facilities.

5.1.4 Develop Guidelines for Alternative Care in Tanzania.

¹⁴ Section 137 of the Law of the Child Act states: (1) A child may be admitted to an approved residential home or institution – a) pending the determination by a court for care and protection; b) on the recommendation of a social welfare officer who has determined that the approved residential home or institution is the most suitable place for the child; or c) with the approval of a social welfare officer, **if the child is an orphan and family care and fosterage are not available.**

6. Civil Rights and Freedoms

- a. *Birth Registration*: During the 2nd cycle Review, Tanzania accepted two recommendations, made by Turkey and Poland, to improve birth registration in the country.¹⁵ At this time, the government noted, “The State began the under 5 birth registration in 2013 with support from UNICEF. The program is being implemented in the Regions of Mbeya and Mwanza and will soon extend to the Region of Iringa with the objective of covering the whole country. The State shall continue to expand the program based on its resources and financial capacity.”

While noting some progress in this regard, we observe that a significant number of street-connected children in Tanzania do not have birth certificates. Birth registration is free only for children under 5 years of age: though small, there is a fee for registering children over this age, which increases again after the age of 10. Our research indicates that while the procedures are generally clear and transparent, street children typically lack the required documents in order to obtain a birth certificate, including clinic cards, introduction letters, and information about their parents. We also welcome digital programmes designed to increase birth registration, but note that as access to technology is extremely limited among street children, these programmes are unlikely to benefit them.¹⁶

We are concerned by an attitude which appears to prevail among some government staff that providing identity documents, including birth certification, to children on the streets will act as an encouragement for them to stay on the streets. We note, for example, a representative quote from an official who told us “[...] if you provide them with the identity documents it will be tantamount to encouraging them to stay in the streets, which is not right.”

Lack of access to a birth certificate frequently perpetuates the issues faced by street-connected children, who are then unable to access National ID without paying substantial amounts of money, to which they do not have access. Some children have experienced being charged exorbitant sums of money to access a replacement birth certificate. Lack of birth certification severely limits street children’s access to their other rights in Tanzania. Education is a particular area of concern, as enrolment typically requires provision of a birth certificate.

6.1 Recommendations on Civil Rights and Freedoms

- 6.1.1 Provide rights-based training to all relevant government officials, ensuring that children are not forced to return home in order to access identification documentation.
- 6.1.2 Remove fees for birth registration and replacement documentation or put in place a means assessment to waive these fees for persons from low-income backgrounds.
- 6.1.3 Simplify the birth registration application procedure and reducing any distance that the applicant(s) must travel to register a birth.
- 6.1.4 Establish simplified process to support street children to obtain official identity documents as a matter of priority.

¹⁵ Paragraphs 136.14 and 136.15 of the Report of the Universal Periodic Review Working Group, document number A/HRC/33/12.

¹⁶ Omar Mohammed, ‘In Tanzania, you can now get your birth certificate by mobile phone’ (15 October 2015) *Quartz Africa*, available at: <https://qz.com/africa/524909/in-tanzania-you-can-now-get-your-birth-certificate-by-mobile-phone/>; Joshua Masinde, ‘Tanzania is accelerating a mobile phone program to provide more newborns with birth certificates’ (27 March 2017) *Quartz Africa*, available at: <https://qz.com/africa/942676/tanzania-is-ramping-up-its-mobile-phone-birth-certificates-to-end-invisible-babies/>

7. Protection from Violence

- a. *Sexual violence*: Several recommendations on sexual violence and sexual abuse of children were accepted by Tanzania during the 2nd UPR cycle. We are extremely concerned by persistently high levels of sexual violence experienced by children in street situations. In terms of safeguarding reports filed by partner organisations working directly with children in street situations, sexual abuse was the most common basis for a report (49.4% of safeguarding incidents between 2018 and 2020). Of those, we note that children aged 11-14 most commonly reported experiencing sexual abuse, but street children as young as the 0-5 age group report experiencing sexual abuse. In 73% of cases, this abuse was perpetrated by an adult. The Tanzanian government must continue to take steps to prevent the sexual abuse of all children, including children in street situations.
- b. *Corporal Punishment*: Tanzania is a pathfinder country under the Global Partnership to End Violence Against Children and as such has taken a number of positive steps to end violence against children, including the National Plan of Action to End Violence Against Women and Children, 2017/18 – 2021/22. Despite some progress, the National Plan fails to explicitly call for a legal prohibition of corporal punishment, and Tanzania has rejected successive Universal Periodic Review recommendations to prohibit it. Corporal punishment is a major cause of children moving to the streets in Tanzania, with research demonstrating that 69% of boys and girls living on the streets cited ‘being beaten’ by adults as an immediate reason for leaving home.¹⁷ NGOs contributing to this submission also note the use of corporal punishment in schools as a key reason for children in street situations dropping out of, and being reluctant to return to, education.¹⁸
- c. *Violence against children with disabilities*: Though Tanzanian legislation contains some provisions which can be used to protect children with disabilities, there is no specific disposition on the protection of children with disabilities against violence, exploitation and abuse. Sexual, emotional and physical abuse of disabled children in street situations is a common problem in Tanzania.¹⁹ Violence against children with albinism remains a matter of particular concern, despite the government of Tanzania committing to implement 28 recommendations on discrimination against people with albinism during the 2nd UPR cycle.²⁰

7.1 Recommendations on Protection from Violence

- 7.1.1. Review legislation in order to expressly prohibit the use of corporal punishment against children in all settings.
- 7.1.2. Strengthen efforts to eradicate sexual violence against all children, including children in street situations, and adequately prosecute perpetrators.

¹⁷ Evans, R. (2004) ‘Tanzanian childhoods: street children’s narratives of home’, *Journal of Contemporary African Studies*, 22 (1): 69-92. Available [here](#).

¹⁸ Information gathered in interviews with Iringa Development of Youth Disabled and Children Care (IDYDC), civil society organisation based in Iringa, on 13 August 2019, and Cheka Sana Foundation on 12 August 2019.

¹⁹ Information gathered in an interview with Kivuko, a civil society organisation based in Mwanza, on 12 August 2019.

²⁰ Views adopted by the UN Committee on the Rights of the Child in 2018 under article 5 of the Optional Protocol, concerning communication No. 23/2014, available at :

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsj1c7Y0HKuW%2fmvSYeBvVzRmijaDUqQsfSGuoAUD%2bzI5I7s%2bZCkFfNInR5RpPOxOqWDvk0xk%2fLEPS599DJPjn0VyeoQy4J75LjCuAp%2fnvBFn6quEcGvyYa9ofRtGFzjLbiA%3d%3d>

- 7.1.2 Adopt additional measures to prevent and to explicitly criminalise violence, abuse and exploitation of children with disabilities, and amend the Persons with Disabilities Act to include a specific provision on the protection of persons with disabilities from violence, abuse or exploitation.
- 7.1.3 In-line with the Concluding Observations of the UN Committee on the Rights of the Child, provide, as appropriate, all child victims of physical, sexual and substance abuse with reintegration and recovery services.

8. Access to Healthcare and an Adequate Standard of Living

- a. *Quality and coverage of free basic healthcare services for street-connected children:* Access to healthcare is a significant issue across Tanzania, which is only amplified for children in street situations. Children in street situations rarely have official identification and are often discriminated against by healthcare providers based upon their appearance, if they are not accompanied by NGO staff. None of the country's four publicly funded health insurance schemes are accessible to street children as they require contribution to premiums in order to access 'free' healthcare.
- b. *Access to government safety net schemes:* The law does not provide for economic and social safety nets to assist an individual caring for a child in providing for the child and does not address whether children can access economic and social safety nets directly. The Law of the Child Act 2009 only requires a local government authority to safeguard and promote the welfare of the child (section 94 (1)) and 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 (section 94 (4)). It remains very difficult to identify children who are not part of a household, and they typically lack access to support schemes which are in place. Our research indicates that it is extremely difficult for street children to access welfare and/or social security funds without their parents.

8.1 Recommendations on Access to Healthcare and an Adequate Standard of Living

- 8.1.1 Urgently develop a flexible and accessible health coverage system for the most vulnerable groups, including children in street situations.
- 8.1.2 Develop a comprehensive and user-friendly system enabling children in street situations to access existing schemes and government security nets without their parents.

9. Access to Education

- a. Access to education remains a significant concern for street children across Tanzania. During the 2nd cycle Review, Tanzania accepted two recommendations on improving access to education, but we note with concern limited progress made against these commitments. Though enrolment of primary age children in education is relatively high (estimated at 86 % in 2016), the numbers of children in both pre-primary and secondary education remain persistently low (47% in pre-primary, and 33% in secondary dropping to just .2% in the final years of schooling). Street children continue to face a multitude of barriers to attending schools, with 45% of the children surveyed by us reporting that they had not accessed education in the past 12 months
- b. *Financial barriers to accessing education*: Financial constraints are a significant concern: though schooling is free, parents or guardians are required to pay for uniform, books, school security contribution, and even their desk and chair. Without these, street children are frequently denied access to the classroom. In many cases, NGOs such as our own provide money and resources to enable children to attend school, but this is not a sustainable or fair model.
- c. *The Primary School Leaving Exam*: The Primary School Leaving Exam (PSLE) is sat by students finishing primary school, and passing the exam is a precondition for entering secondary school. Every year, hundreds of thousands of students do not pass the PSLE and drop out of formal education. There are very few alternative options for these children, who are not given another opportunity to repeat the PSLE. These children are extremely vulnerable to becoming street connected, as they leave the formal education system with no qualifications and nothing to occupy their time. Though the government of Tanzania has expressed an intention to phase out the PSLE by 2021, no action has yet been taken to this end.

9.1 Recommendations on Access to Education

- 9.1.1 Improve access to secondary education for all children, including those in the most vulnerable situations, by expediting the promised phase-out of the Primary School Leaving Exam without delay.
- 9.1.2 Work to remove financial barriers to education to the most vulnerable children, including by providing materials necessary for them access education.

10. Access to justice

We welcome the significant steps taken by the government of Tanzania to address police corruption in recent years and urge the government to continue to strengthen these efforts, as well as in the areas of Legal Aid and the Child Justice System. We note that following the expiry of the 2013-2017 Child Justice Five Year Strategy, a second Strategy was developed in 2019 but has not been launched or disseminated: in order for progress to continue, this new strategy must be implemented as a matter of urgency. We remain, however, extremely concerned about the situation of the detention of children in Tanzania.

- a. *Detention of children*: Tanzanian law provides that where a child is apprehended by law enforcement officials and cannot be brought immediately before a Juvenile Court, the officer in charge of the case must release the child on bail on the condition that the child or their parent or guardian enters a recognisance “or without sureties”.²¹ Exceptions to this rule includes cases where the child is accused of a gravely serious offence (namely, homicide or anything punishable by over 7 years’ imprisonment); where it is necessary to remove the children from “association with any undesirable person”; or if releasing the child would defeat the purpose of bringing the child to court. Street-connected children are disproportionately likely to fall within one of the exceptions to the presumption in favour of bail including because they are perceived to have “undesirable” associations with other street-connected persons or because they do not have a responsible adult to act as a surety. In such cases, the Juvenile Court may commit the child to the care of the Commissioner or other appropriate person or institution, rather than sending the child to prison (s104).

With regard to post-trial detention, section 119 of the Law of the Child Act provides that children cannot be sentenced to imprisonment. Where a child is convicted of an offence which is punishable with imprisonment, the court may give an alternative sentence under s119(2), namely discharging the child without making any order; repatriating the child to his home or district of origin; ordering the child to be taken into care by a fit person or institution; and/or, under s121, committing that child to custody at an approved school.

From our experience, in practice, children who do not have a fixed address are often committed to custody on the basis that they did not have parents or guardians to be entrusted to, rather than because custody was warranted because of the seriousness of the offence committed.²² In addition, despite provisions in the Law of the Child Act regarding the imprisonment of children, large numbers of children are reportedly being detained in adult prisons and held for longer than 24 hours in police stations before being brought before courts. Information we have gathered indicates that this often occurs because of insufficient training of judges. There are five retention homes in Tanzania: in Arusha, Dar es Salaam, Mbeya, Moshi and Tanga. The absence of retention homes in other regions has been cited as a reason for the detention of children in prisons.²³

Budget constraints make it difficult for police and justice systems to ensure that children’s rights are upheld once they are in custody. This is particularly relevant for street-connected children who may not have family members or organisational contacts able to provide for their daily needs while in custody: for example, many prisons only provide one meal per day, with families providing additional food, but often street children have no one able to support them in this way.

²¹ s101 of the Law of the Child Act 2009

²² Information received from NGO based in Arusha, 15th March 2019.

²³ Caucus for Children’s Rights, Report on the Status of Juvenile Justice in Tanzania (2014), p.22 and 43. Available at: https://static1.squarespace.com/static/578e7e8bd2b857e71b2fce28/t/585bbd74cd0f68bda61483ad/1482407333082/CCR_Juvenile_Justice_Report.pdf

10.1 Recommendations on Access to justice

- 10.1.1 Develop guidance on the application of the Law of the Child Act, requiring a judicial assessment during bail hearings to set bail conditions that do not deprive a child of their liberty in a discriminatory way, for instance through setting a reporting condition rather than requiring a surety or fixed address.
- 10.1.2 Strengthen the Law of the Child Act by amending Section 104 to read "must" rather than "may", to specify that detention in custody is a last resort option after all alternatives have been exhausted, and to remove the provision that a child may be deprived of their liberty on the grounds of "undesirable associations".
- 10.1.3 Urgently increase the resourcing of the justice system in order to meet the requirements of the Law of the Child Act.
- 10.1.4 Provide thorough, rights-based training to the police and judiciary should in relation to the Law of the Child Act and detention, including on the need to keep children separate from adults and to promptly bring a child on remand before a court.