

**COMMISSION FOR HUMAN RIGHTS AND GOOD
GOVERNANCE**



**Inspection Report for Children in Detention
Facilities in Tanzania**

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights (1981)
ACRWC	African Charter on the Rights and Welfare of the Child (1990)
CAT	Convention Against Torture (1985)
CHRAGG	Commission for Human Rights and Good Governance
CPA	Criminal Procedure Act (1984)
CRC	UN Convention on the Rights of the Child (1989)
ICCPR	International Covenant on Civil and Political Rights (1966)
LCA	Law of the Child Act (2009)
LHRC	Legal and Human Rights Centre
LSI	Legal Sector Institutions
LSRP	Legal Sector Reform Programme
MoCDCG	Ministry of Community Development, Gender and Children
MoHSW	Ministry of Health and Social Welfare
NGO	Non-Governmental Organisation
NOLA	National Organisation for Legal Assistance
OPCAT	Optional Protocol to the Convention against Torture
SOSPA	Sexual Offences Special Procedures Act (1998)
TLS	Tanganyika Law Society

EXECUTIVE SUMMARY

1. Background and impetus for the assessment

The Commission for Human Rights and Good Governance (CHRAGG)¹ in Tanzania has the mandate to visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of persons held in such places and making recommendations in relation to protecting their human rights². CHRAGG undertook monitoring visits to detention facilities during 2008/09 and 2009/10. These visits and subsequent reports revealed that the numbers of children being held in detention facilities was increasing, that they were often held in adult prisons and that the conditions in detention and the treatment they received fell far short of international human rights standards. Furthermore, children were not receiving adequate access to reintegration and rehabilitation activities and services.

As a result of these findings, CHRAGG undertook a detailed and comprehensive assessment of the situation of children in detention facilities in Tanzania during early 2011. This assessment involved an extensive desk review and inspection visits to 65 detention centres around the country where children are held. During the inspection visits, 144 detention facility officers were interviewed (73 officers) or took part in group discussions (71 officers), and overall 491 children were involved in the assessment either through one to one interviews (179) or through focus group discussions (312). This Executive Summary gives an overview of the methodology used for this assessment, summarises the key findings regarding the conditions for and treatment of children in police stations, in Retention Homes (facility for under-18s on remand), in the Approved School (facility for convicted under-18s) and in adult prisons, and concludes with a set of recommendations based on the findings.

2. Objectives of the assessment of children in detention

The main objectives of this assessment of the situation of children in detention facilities are to:

- Promote the implementation of the UN Convention on the Rights of the Child (CRC) and other related instruments relating to the placement of children in detention, and their treatment and care while detained;
- Provide recommendations on ways of improving the situation in the Retention Homes, the Approved School and other detention facilities where children are held;
- Provide recommendations for reforming the juvenile justice system in order to reduce the overall number of children placed in detention;
- Develop baseline data for the situation of children in detention for monitoring and advocacy purposes; and
- Identify lessons to be learnt for future research and advocacy work both in Tanzania mainland and in Zanzibar.

¹ CHRAGG is accredited as Tanzania's National Human Rights Institution and the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights has given it an 'A' rating meaning that it is in full compliance with the UN Principles relating to the status of national institutions (Paris Principles).

² Section 6 (1) (h) of the Commission for Human Rights and Good Governance Act No, 7 of 2001.

3. *Methodology used for the assessment*

A team of inspectors was formed to plan and conduct the visits comprising social workers, lawyers, teachers and members of the Department of Social Welfare. This team was given training in the objectives and methodology of monitoring visits by the NGO Penal Reform International (a UK based NGO). In addition the team was given technical assistance during the assessment by UNICEF.

CHRAGG drew upon a variety of sources of information for this assessment and used both quantitative and qualitative methods of gathering data. It prepared a **desk review** of relevant documents, including international and national standards, laws, policies, regulations and standing by-laws relating to juvenile justice, detention facilities, and child welfare and development. The desk review was essential to lay the foundations for the assessment. It developed CHRAGG's understanding of the legal framework for juvenile justice and the penitentiary system and how to evaluate the drivers for children being placed in detention. It also provided a basis for assessing the conditions for and treatment of children while in detention facilities in line with international standards and national laws relating to juvenile justice in Tanzania. It also ensured that the primary data gathered in the course of the assessment was tested against secondary sources to verify its accuracy.

CHRAGG **selected detention facilities to be visited** based on the following considerations:

- The 2006/7, 2008/9, 2009/10 CHRAGG reports which highlighted that there was a very high number of children being held in adult prisons in Tanzania;
- Facilities which were near to Retention Homes in order to understand why children were being sent to adult prisons even though Retention Homes were available within the region;
- Facilities in regions which do not have Retention Homes nor an Approved School;
- Facilities from a wide range of different geographical regions in the country - two regions each were selected from East, South, Northern, Northern Highland, Western Lakes and Central zones; and
- Facilities which included a balance between urban and rural areas.

Following the above criteria, **65 detention facilities were visited** in total from 14 different regions so that a clear picture could be given for the whole of Tanzania. This included all five Retention Homes in operation in Tanzania at the time of the assessment³ and one Approved School. Within each of the 14 regions, approximately two police stations and two prisons were visited. The exceptions to this were in Dar es Salaam where four police stations and three prisons were visited and in the Coast Region where only one prison was visited. For a detailed breakdown of detention facilities visited please see Annexe Two.

In total the sample of facilities visited during the monitoring process included:

- five Retention Homes (100% of total number in country);

³ There were five Retention Homes in operation in Tanzania at the time of the assessment – Mbeyam, Arusha, Moshi, Tanga, and Dar-es-Salaam. Two more Retention Homes are planned in Mtwara and Mwanza

- one Approved School (100% - there is only one in country);
- 29 Prisons (22% of total number in country); and
- 30 police stations (approximately 17% given that there are approximately 177 police stations in the country).

One of the prisons visited was Wami Prison for Young Offenders. This was legally established to accommodate 16-21 year olds, all post trial. However, the Law of the Child Act strictly prohibits imprisonment for children defined as all those under 18. Therefore children aged between 16 and 18 should no longer be placed in Wami Prison for Young Offenders.

CHRAGG **administered structured questionnaires** to detention facilities' officers, detainees and other responsible people. It **conducted formal and informal discussions**, including focus group discussions, with detention facilities' officers, children and adults in detention, and parents and guardians during site visits. It **carried out observations** during site visits of treatment and conditions and how rights and duties are adhered to in connection with laws and regulations and international standards. Finally it **collated a range of case studies** focussing on the experiences of individual children.

In total the team interviewed

- 144⁴ detention facility officers from Prisons, Police stations, Retention Homes and the Approved School; and
- 179⁵ children in detention.

A further 312 children were engaged in focus group discussions.

The children selected for participation had a range of different ages, locations, cultural backgrounds, gender, histories of offending behaviour and legal status (ie children in both pre and post trial detention).

Approximately ten parents and guardians were also interviewed along with a small numbers of mothers of children living with them in detention.

For a detailed breakdown of people involved in the assessment please see Annexe One.

Furthermore, **quantitative data was gathered** and used as a counterweight to the qualitative data gathered through interviews and observation. This included gathering figures to establish the following (please see Annexe Two for a breakdown of this information):

- Number of children in detention in selected detention facilities disaggregated by age and gender;
- Number of children in pre or post trial detention in selected detention facilities; and

⁴ The total included 73 Prison Officers, 56 Police Officers and 15 Retention Home and Approved School Officers

⁵ The total includes 120 children in adult prisons and 59 from Retention Homes and the Approved School

- Overall capacity of detention facilities where children are held.

Limitations to the assessment included the fact that there were few or no children in police stations by the time of visits. Often it was difficult to locate parents and hence few parents or family members were interviewed. In some cases children respondents were accompanied by prison officers during interviews; this affected their responses and prevented them from frankly disclosing information. There was also a degree of inconsistency in terms of the data gathered; for example, the ages and numbers of children in each detention facility were not systematically gathered in all of the facilities visited. In addition, given the low rate of birth registration in Tanzania, age determination is a challenge.

4. *Key findings*

4.1 Numbers of children in detention

During the inspection visits, a total of 591 children were found in the 65 detention centres visited. Out of this number:

- Of the 441 children detained in adult prisons, 407 were boys and 34 were girls. From the data collected on the status of children⁶, 374 (355 boys and 19 girls) were pre-trial and 64 (52 boys and 12 girls) had been convicted;
- 80 children were in the Retention Homes: 70 boys and 10 girls, all in pre-trial detention;
- 56 boys were in the Approved School all in post-trial detention;
- 13 children were found with their mothers in detention (12 in adult prisons and 1 in the police station); and
- 1 child was found in police detention.

These figures can be extrapolated to estimate that **there are approximately 1400 children held in adult detention in Tanzania.**⁷

4.2 Offences children are detained for

⁶ Note that the status of the three children was not recorded.

⁷ This was estimated by extrapolation from the figures gathered during the assessment. On average, 15 children were found in each of the 29 adult prisons visited. In Tanzania there are a total of 130 prisons. Of these nine are central prisons, 85 are district prisons, 35 are open prisons and one is Wami Prison for Young Offenders. In most cases it is very rare to find children in open prisons. Therefore it is estimated that an average of 15 children will be found in the 95 prisons making an overall total estimation of 1,425.

Interviews, focus group discussions and review of admissions registers revealed that the most common offences for children in conflict with the law to be detained for include theft, assaults and grievous harm, unnatural offences, rape, possession of illicit drugs (bhang) and burglary. Children are often detained for minor offences such as theft of cell phones (**See Annexe four**).

Many children in conflict with the law are also child-workers. Most frequently boys are involved in selling scrap metals and plastic bottles, or they wash cars or act as porters for passers-by. Girls in detention are often domestic workers who have been accused of theft by their employers. It was asserted that these convictions are frequently based upon false witness evidence from their employees.

4.3 Treatment of and conditions for children held in police station detention

- **Children are being held in police stations for longer than 24 hours before being brought before the court**

The findings from the inspection visits were that 37% of the 179 children who were interviewed were held in detention in police stations for more than four days. A further 33% revealed that they had been held for between two to three days and only 30% said that they had been held within the statutory 24 hours time period. This indicates that about 70% of children sent to police stations are detained for more than 24 hours before being sent to the courts. The lack of transport to take children from police stations to courthouses was cited by many of the prison and police officers as an explanation for this excessive delay.

- **Age determination is inaccurate during arrest and detention in police stations**

A child under 10 is not criminally liable in Tanzania. A child between 10 and 12 years old may be held criminally liable if the prosecution can demonstrate that the child was able to understand that what he was doing was wrong.⁸ All under 18s have additional safeguards under the law given their age and increased vulnerability. In practice, police officers determine the age of suspects by relying on information supplied by victims and on their own observations. This may not be an accurate process. A total of 27 out of 179 children were interviewed during the inspection visits said that they were under 10 years of age. In interviews with the inspectors, children complained that officers ‘added’ years to their age so that they appeared to have reached the age threshold for criminal responsibility or so that they could be treated as an adult. Boys interviewed in Arusha Central Prison complained that police officers sought bribes to record that they are younger so that they can be sent to the Retention Homes rather than to adult prisons.

⁸ Sections 15(1) &(2) Penal Code respectively. A male under the age of 12 is presumed to be incapable of sexual intercourse. S15(3) Penal Code.

- **Police officers do not always identify themselves to arrested and detained children**

Police officers who arrest children do not always identify themselves; for example, none of the children engaged in the focus group discussion in Segerea reported that police officers identified themselves during their arrest. The same issue was raised by children interviewed in Bangwe, Kasulu, Bukoba and Muleba prisons.

- **Police officers do not always inform children of reasons for arrest**

Children who took part in interviews complained that they were uncertain of why they had been arrested, what offence they had been charged with and their rights whilst arrested and held in detention. In Segerea prison none of the children involved in the focus group discussions reported that they were informed of their rights at the time of arrest and detention. The same issues were raised by children in Bukoba, Bangwe and Isanga prison.

- **A third of children interviewed during inspection visits complained of the use of torture, violence, and inhumane and degrading treatment in police stations**

While 105 out of 179 (59%) children interviewed said that they were fairly treated while in police detention, 56 children (31%) said they were either beaten or treated badly whilst in detention in police stations. Additional allegations of violence, ill treatment, and torture were made by children during focus group discussions; for example, in Upanga Retention Home, 7 out of 14 of the children involved in the group discussion reported that they had been beaten during their arrest. Allegations of torture at police stations were also made during the focus group discussions by children from Arusha Retention Home who reported that they were threatened and beaten so that they would agree to sign a confession. Similar allegations were made by children at Dodoma, Bangwe, Muleba and Masasi prisons. Children interviewed in Mbeya Retention Home explained that they were beaten by the police during arrest and were denied access to food and water during detention.

A 15 year old boy held at Luanda Prison on suspicion of theft of a bicycle reported being beaten by a police officer at Mbeya Central Police while hung upside down to force him to accept responsibility for the crime.

Children interviewed in Luanda prison explained that they were handcuffed and shackled in the police stations at night for security reasons or during transportation to court.

- **Children's families are not always notified of their arrest and children do not have an appropriate adult present during interview**

About 42% of 179 children interviewed said they were not given a chance to contact their relatives upon arrest whilst 45% said they were allowed to contact their relatives. There were also a few allegations made by children that police demanded bribes to facilitate communication with parents. In most cases, children told inspectors that no appropriate adult was present during the police interview. In Ilambo Approved School, for example, out of the

56 children who took part in the focus group discussion not one said that their parents participated when they were interviewed.

- **Children do not have access to lawyers during detention at police stations**

57 out of 179 (32%) of the children interviewed during inspection visits said that they had legal representation whilst they were held in police detention while 92 (51%) said they did not. The remainder either did not answer or did not know.

- **Children are not always held separately from adults in police stations and conditions are generally poor**

Section 102 of the Law of the Child Act (2009) stipulates that children should be held separately from adults while in police custody. However, out of the 30 police stations visited during this assessment, only four had a separate cell where children could be detained (please see Annexe Two for more details). In other police stations children are either held in cells with adults or are kept in offices or corridors. In all police stations, except Magomeni police station, children share the same toilets with adults and are exposed to poor sanitation facilities. Children who spent nights in police stations recounted that they slept on chairs and benches without bedding materials. It was further observed that girls are not provided with hygienic materials.

4.4 The situation of children in pre-trial detention

- **Excessive use is made of pre-trial detention**

Courts remand children into pre-trial detention for minor offences. Often children are granted bail but cannot fulfil the required bail conditions such as sureties because they and their families cannot afford to pay, do not want to pay or because their families have not been contacted. Children rarely have legal representation in court, as such representation is not permitted in the primary courts, so strong bail arguments are not presented on their behalf.

- **Children spend excessive amounts of time in pre-trial detention**

Children who are charged with major offences like murder and armed robbery are spending more than two years in detention facilities pending the hearing of their cases. Several factors were found by the inspectors to contribute to delays: failure by police and prison authorities to bring children to court due to lack of transportation; delays in the completion of the investigation; and frequent adjournment of cases due to a lack of primary court magistrates especially in rural areas like Kilosa and Kasulu. At the Kisutu Juvenile Court (the only Juvenile Court in the country), there is only one Magistrate assigned to preside over juvenile cases, therefore when she is absent either because of sickness or on annual leave, all cases are adjourned waiting for her return.

Excessive delays in justice

In Segerea prison, the inspectors interviewed a 17 year old boy charged with murder who has been in pre-trial detention since he was 14. His case is at a preliminary stage at Kinondoni District court because the investigation is still going on. He told the inspectors that he wishes he could go back to school, as the only education he receives is on HIV-AIDS prevention. He had requested a formal education programme so that he could study while he is staying in the facility but he was told by prison authorities that this was not possible.

Interview by CHRAGG inspectors with boy aged 17 in Segerea Prison

- **Children in pre-trial detention are not able to access legal representation**

During the inspection visits, prison officers were asked about whether children have access to legal representation. 55 out of 73 of the prison officers (75.3%) said that legal representation is theoretically available but is rarely accessed because of lack of knowledge or lack of ability to pay by children and their families. The implications of the lack of legal representation are extremely serious for children in conflict with the law: if a child has been forced to confess to a crime they did not commit whilst in the police station then it is very difficult for them to challenge this forced statement in court; they are not able to make full and effective bail submissions and may be remanded into pre-trial detention even though they are strong candidates for bail; they may sign documents they do not fully understand; and it can mean that magistrates rely heavily upon police statements and less on defence submissions thereby undermining the principle of equality of arms.

- **Children are held in adult prisons during pre trial detention and mixed with adult prisoners**

The inspection visits revealed that 441 children were being held in the 29 adult prisons visited; the vast majority of these children were boys in pre-trial detention⁹. Children are remanded in adult prisons even in the five areas where Retention Homes are in operation. The research revealed that there is no consistency in approach by magistrates in making decisions as to whether to remand children to pre-trial detention in adult prisons or children in Retention Homes.

For example, in Dar Es Salaam, even though Segerea Prison has a separate wing for children awaiting trial and there is a Retention Home for children in Upanga, children are still remanded in Keko Remand Prison where they mix with adults.

Children are not separated from adults when they are held in prison and are not separated from convicted prisoners. In the worst cases, children mix during the day and night with

⁹ From the data collected on the status of children, 374 (355 boys and 19 girls) were pre-trial and 64 (52 boys and 12 girls) had been convicted. The status of the 3 other children was not determined.

adults (e.g. Kiloso Prison). However, in some facilities, efforts are made to restrict children's contact with adults; for example, in Manyoni and Singida Prisons, children are held with 'older prisoners', which prison officers argue is a way of protecting them. In other facilities, separation does happen at night but not during the day.

4.5 Sentencing of children

- **Children are being sentenced to periods of detention without full consideration of alternative sentences**

Magistrates are not detaining children as a matter of last resort. Children are detained for minor offences and first time offences, in cases where alternatives would be more appropriate. Magistrates rarely have the benefit of reports or recommendations of Social Welfare Officers trained in children's issues to inform their sentencing decisions.

- **Children are being committed to serve sentences at adult prisons in contravention of the Law of the Child Act (2009)**

Out of 441, 377 were in pre-trial detention and 64 were convicted. Their imprisonment is in direct contravention of the Law of the Child Act (2009). The only post trial detention permitted is in the Approved School and only for a maximum of three years. However, children are still being placed in adult prisons even though the Approved School is under capacity. At the time of the inspectors visit to the Approved School there were 56 children being held there, whilst it has a capacity to hold 300 children.

4.6 Conditions and treatment of children in pre and post-trial detention

- **Children in detention do not have access to meaningful activities and programmes to help their rehabilitation and reintegration into society**

Children have limited access to education, vocational training, psychosocial support and recreation to help their rehabilitation in the Retention Homes, Approved School and in the prisons. They are not given individual plans for rehabilitation and there are very limited mechanisms or programmes to help children to reintegrate into society on their release. Beyond being provided with transport fares, children are rarely supported to return to their homes or to find alternative accommodation and care if they cannot go home. Consequently, many children on release find themselves with no money, nowhere to stay and no job. This significantly increases the risk of re-offending. This situation is compounded in adult prisons by the fact that during their detention, children are mixing with adult prisoners, who have often committed serious offences. All detention personnel interviewed conceded that it is extremely difficult for a child to rehabilitate in such circumstances.

- **A third of children interviewed complained of experiencing violence and abuse from other detainees**

Some serious allegations of violence, abuse and sexual assault in prisons were made by children interviewed during site visits. Abusers were mainly identified as adult prisoners and fellow children by prison officials, with children also identifying prison officers as abusers. Interviews with children showed that they were most vulnerable to sexual abuse at night, especially in prisons in which they are not separated from adults.

- **Physical punishment and solitary confinement are used as disciplinary measures**

70 out of 179 child respondents (39%) said that confinement and restraint mechanisms are common disciplinary actions taken. In Karanga and Maweni Prisons, common punishments include confinement to special cells for disobedient prisoners and remandees. Observations found that the state of these cells is unpleasant. At Segerea prison three punishment facilities were observed in the boys' dormitories where children can be placed in solitary confinement. Children also experience physical punishment. For example, two boys interviewed in Tukuyu Prison reported: "Officials tend to use force, beat using belts, use corporal punishment and use abusive language to children in cells."

- **The living conditions in detention centres are very poor**

Visits to the prisons and Retention Homes found that facilities are generally old and in a severely dilapidated state. The Approved School's dormitories, and some other facilities, have recently been renovated and the girls' dormitory has just been completed, providing better living conditions than most of the institutions but some of the buildings, such as the kitchen, are still in urgent need of repair.

Supervision at night in all facilities is limited, exposing children to danger. Sleeping accommodation and clothing in all of the facilities visited are not adequate for the prevailing weather conditions. The food provided is of poor quality and often prepared using unsafe water, as water often comes from unsafe sources such as local wells.

While the Retention Homes and the Approved School are persistently under capacity, overcrowding is a significant problem in many adult prisons, with some prisons at more than twice their capacity. This severely exacerbates the very poor living conditions in the prisons.

- **Contact with family and the outside world is limited**

Communication with the outside world is "an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society."¹⁰ While children are allowed to receive visits on a weekly basis in general and to receive and write letters, in practice many children rarely if ever see their family while detained, as children are often held in facilities far from their homes and their families and friends cannot afford the time and money to travel. When families do make the journey, visits are often not private

¹⁰ UN Rules for the Protection of Juvenile Deprived of their Liberty 1990, Rule 59

and as there are rarely dedicated visitors' areas. In the prisons, visitors and children have to communicate through bars in the reception area.

While Community Based Organisations and religious institutions are also allowed to visit with the consent of detention centre authorities, the frequency of such visits is highly variable depending on both the presence and willingness of those organisations in each area and the attitudes of prison management in different facilities.

- **Girls in detention do not receive special treatment**

Overall, the situation of girls is usually much worse than for boys. The number of girls in conflict with the law is often relatively small compared with the number of boys. The result is a lack of suitable facilities for girls so that they are more likely to be detained with adult female prisoners, rather than be separated, even at night. Interviews with staff at the Retention Homes and prisons revealed that girls who are pregnant or who are detained with their children pose a serious challenge to the management of the facilities. It was also found that insufficient attention was paid to the needs of girls to provide them with sanitary napkins, brassieres and underpants. In many facilities the outside space is reserved for boys; for example, girls in one Retention Home were locked up for the whole day in their rooms with no access to outside space for exercise.

- **Staff working in detention centres lack training on children's rights, child protection and rehabilitative methods**

Members of staff need to be trained in order for them to carry out their responsibilities effectively; in particular, they should receive training in child psychology, child welfare as well as knowledge in international standards concerning juvenile justice, including the Havana Rules. It is vitally important that members of staff are carefully selected and recruited. The inspection visits revealed that there is a scarcity of professionals trained to deal with children and little coordination between District Social Welfare Officers, District Medical Officers and Prison Officers. In the Retention Homes and the Approved School there were few Social Workers and sometimes none at all; for example there was just one Social Worker at Irambo Approved School and three para social workers.

- **Children living in prison with their mothers are not being adequately cared for**

Recognising that separation of babies from their mothers is rarely in the child's best interests, children are allowed to stay with their mothers up to the age of two. The inspectors found 12 children living in prisons with their mothers in Kasulu, Bukoba, Msalato, Isapilo, Kilosa and Segerea Prisons. However, conditions are poor. In addition, the discussion with mothers indicated that their children are not provided with a special diet but eat the same food as their mothers. In Segerea Prison one woman who was accompanied by her child stated that "The condition with a child in the prison is very hard, food for a child is of a poor quality and milk is available very rarely". Children living in prison should never be treated as prisoners themselves. Where children are imprisoned with their mothers then the State needs to take on responsibility for caring for the child.

- **Inadequate access to grievance mechanisms**

Children should have the right to make requests or complaints to the manager of the detention facility, the central administration, judicial authorities and other independent authorities (including CHRAGG) about any matter that affects them while in detention. The procedure for handling complaints in the detention facilities is inadequate since complaints are channeled through prisoners' leader (*Nyapara*). In some prisons, children said that the *Nyapara* do not forward on their complaints and there is no appeals process.

5. *Recommendations*

This assessment identifies significant challenges for the justice sector. CHRAGG recognises that some of these challenges require a longer term strategic and coordinated approach by MDAs, as well as allocation of adequate funding. However, there are violations of children's rights at every step of the criminal justice process which could be addressed with minimal expenditure. Further, CHRAGG urges MDAs to swiftly and decisively tackle the physical and sexual abuse of children in detention, especially where perpetrated by state actors.

Recommendations to the police

Short term

- Ensure that allegations of torture and inhuman treatment by police are investigated and, where appropriate, officers disciplined and prosecuted. For this purpose, the Police should establish a transparent and accessible complaints mechanism.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help.
- Ensure children are interviewed and sign confessions in the presence of appropriate adults and/or legal representatives.
- Allocate adequate resources to facilitate the transfer of children from police stations to court so that cases are dealt with within the statutory time limits.

Medium term

- Ensure that children are separated from adult detainees in police cells. Prioritise creating juvenile cells in the police stations that deal with the highest numbers of children's cases.
- Improve sanitary conditions in the police cells and ensure children are provided with basic necessities, such as food.
- Provide police officers with in service training on child rights, the Law of the Child Act and child friendly methods of dealing with children.
- Develop a child specific module to be incorporated into pre-service training for police.
- Promote specialism in the police force so that children's cases are dealt with (at first instance and during investigation) by specially trained police officers.

Recommendations to the prison authorities

Children should not be held in adult prisons. However, until measures can be taken to implement alternatives, the prison authorities need to take steps to ensure that children are adequately cared for and protected while in detention.

Short term:

- Allocate adequate resources to facilitate the transfer of children from detention centres to and from court, so that their cases are reviewed and dealt with within the statutory time limits, and from prison to their home, following their release.
- Develop child protection procedures that protect children from all forms of abuse while in detention and build the capacity of personnel to implement these procedures.
- Ensure that children have separate sleeping quarters from adults and are regularly monitored at night.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help.
- Ensure that children living in prison with their mothers are provided with the necessary conditions for their protection, survival and development particularly with regards to the provision of adequate food.

Medium term:

- Provide prison officers with in service training on child rights, the Law of the Child Act and child friendly methods of dealing with children.
- Work towards the separation of all children from adults in all detention facilities.
- Improve the physical infrastructure of detention facilities, focusing on sanitary facilities and dormitories.
- Provide a suitable area in each prison for children to meet their families and their lawyers.
- Improve access to complaints mechanisms for children in detention.
- Review the way in which girls in detention are treated and adopt and implement a policy explicitly focussed on their rehabilitation and reintegration.
- Promote cooperation with NGOs, CBOs and FBOs in order to enhance the services and support provided to children.

Recommendations to the Ministry of Health and Social Welfare and Retention Homes and the Approved School

Short term:

- Allocate adequate resources to facilitate the transfer of children from the Retention Home to Court, so that their cases are reviewed and dealt with within the statutory time limits, and from the Retention Home and Court to the Approved

School, and from the Approved School (and Retention Homes) back home, when released.

- Promote the use of the Retention Homes among the judiciary in the areas in which the institutions are operating.
- Disseminate the new Approved School Rules and Retention Home Rules (in English and Kiswahili) to relevant personnel when adopted (currently in draft form).
- Develop child protection procedures that protect children from all forms of abuse while in detention and build the capacity of personnel to implement these procedures.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help when in pre-trial detention.

Medium term:

- Ensure that the Approved School and Retention Homes are adequately staffed with qualified and trained personnel.
- Develop a comprehensive rehabilitation and reintegration programme for children at the Approved School, build the capacity of personnel and the institution to deliver the programme and strengthen links with Social Welfare Officers at the district level to ensure that children are supported following release.
- Improve access to education programmes for children in Retention Homes.
- Promote cooperation with NGOs, CBOs and FBOs in order to enhance the services and support provided to children.
- Improve the physical infrastructure of detention facilities to ensure they meet international standards and provide an environment that is conducive to the care and rehabilitation of the children.
- Review the way in which girls in detention are treated and adopt and implement a policy explicitly focussed on their care, rehabilitation and reintegration. Ensure babies' needs are met when in detention facilities with their mothers.
- Improve access to complaints mechanisms for children in detention.
- Increase the number of Social Welfare Officers at the district level and increase resources to enable them to provide comprehensive social investigation reports for the courts that fully explore alternatives to custodial sentences.

Recommendations to the judiciary

Short term

- Raise awareness among the judiciary in order to end the pre-trial detention of under-18s in adult prisons in the areas in which Retention Homes are operating.

- Promote the use of non-custodial pre-trial measures, including by ensuring that bail conditions are set at feasible levels given the financial constraints faced by the children who come into conflict with the law and by their families.
- Raise awareness amongst magistrates and judges that the LCA prohibits imprisonment of children through prompt distribution of a circular.

Medium term

- Appoint adequate numbers of Resident magistrates to preside over juvenile cases. They should receive special training on the CRC, on the social and other causes of juvenile offending, psychological and other aspects of the development of children and the available measures for dealing with children in conflict with the law under the Law of the Child Act (2009).
- Ensure that the judiciary has up to date information about capacity in Retention Homes, when deciding on pre-trial measures, and the Approved School at the point of sentencing, so that they are able to make informed decisions about where to commit children who have received custodial sentences or who are remanded into pre-trial detention.
- Transfer all convicted under-18s who are in adult detention following conviction to the Approved School.
- Ensure that judges and magistrates are closely involved in the design and implementation of non-custodial sanctions and measures for children so that they have confidence and understanding of how to sentence children.
- Expedite children's cases and ensure that the periodic review of the cases of children held in pre-trial detention is carried out, and within that review that the court assesses whether the investigation should be allowed to continue.

Conclusion

While MDAs can take significant steps to improve the treatment and care of children in conflict with the law, the challenges facing the justice system cannot be fully addressed by agencies in isolation. Likewise it is impossible to effectively reduce the number of children in detention and the time they are detained, without grappling with the challenges in the criminal justice system as a whole. Cooperation between agencies and a coordinated approach to reform is essential.

CHRAGG proposes that the issues raised in this assessment and the recommendations for addressing these challenges are prioritised by MDAs and Development Partners in the Legal Sector Reform Programme.

Further CHRAGG recommends that the Child Justice Forum – an interagency body of state and non-state justice actors, convened in 2011 by the Ministry of Constitutional and Legal Affairs, should develop a strategy for reform of the juvenile justice system, which includes a time bound set of objectives for addressing the gaps in the system, including reducing the number of children in detention and improving their care and treatment while detained.

Lastly, CHRAGG encourages the Government of Tanzania to ratify the Optional Protocol to the Convention against Torture, in order to assure future monitoring of the situation of children in detention.

PART ONE: BACKGROUND AND IMPETUS FOR THIS ASSESSMENT

1. INTRODUCTION

International standards provide that the primary objective of a juvenile justice system must be the rehabilitation and reintegration of the child into the community, rather than deterrent and punishment. Detention should only be used as a measure of last resort (i.e. when no other measure would provide the child with the support that they need) and for the shortest appropriate period of time.¹¹ However, in Tanzania children are detained in large numbers in different settings and for different reasons. There are rising concerns regarding the placement of such large numbers of children in detention and their treatment and care while they are detained.

Children do not lose their human rights when they are held in detention. Both domestic and international standards enshrine a detailed set of rights for all detainees to ensure that their dignity is respected, their needs are met and they are prepared for release and reintegration into society. In recognition of the inherent vulnerability of children, additional rights for child detainees are enshrined in the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The UN Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules')¹² in particular, provide a detailed set of standards for their protection and treatment.

Tanzania is committed to ensuring these international standards are upheld and this is evidenced by ratification of the CRC and ACRWC. Under the on going Legal Sector Reform Programme (LSRP¹³), the government has made various efforts to improve prisons conditions by increasing the number of judges and magistrates to speed up cases and thereby reducing the congestion in prisons, establishing parole boards, renovating prisons infrastructure, and enhancing basic services.

However, prison inspections conducted by the Commission for Human Rights and Good Governance (CHRAGG) between 2008 and 2010¹⁴ revealed that prisons conditions for both adults and children were inhuman and degrading. Challenges include overcrowding, inadequate nutrition, sub-standard sanitation and health facilities, lack of education and training, insufficient recreation services and a lack of emergency transport despite national efforts to address these problems. Furthermore, children are being held in detention facilities

¹¹ Articles 37 and 40 of United Nations (UN) General Assembly, Convention on the Rights of the Child, 20 November 1989, UN, Treaty Series, vol. 1577, p. 3 and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (CRC)

¹² UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly., 14 December 1990, A/RES/45/113 (Havana Rules)

¹³ The Legal Sector Reform Programme began in 2004. The Programme, coordinated by the Ministry of Constitutional and Legal Affairs, brings together key Ministries and Agencies, as well as NGOs in order to reform the justice sector and ensure 'More Timely Justice for All'. This programme is jointly funded by the Government and Development Partners (UNICEF, CIDA, DANIDA and World Bank).

¹⁴ CHRAGG Reports on the inspection of prisons and police stations in Tanzania – 2008/9 and 2009/10

in increasing numbers as the number of children coming into conflict with the law rises. Children are frequently held in adult prisons contrary to international standards and Tanzanian law and often mix with adults in cells in prisons and police stations, exposing children to increased risk of abuse.

The full extent and nature of the problem had not been fully assessed in the past. The responsibility for assessing the situation of children in detention facilities was accorded to CHRAGG both as one of the institutions participating in the LSRP and as the key human rights monitoring institution in Tanzania¹⁵. CHRAGG therefore committed itself to undertaking a comprehensive assessment of all aspects of the treatment and conditions of detention for children.

CHRAGG's assessment was undertaken in early 2011 and involved extensive desk review and inspection visits to 65 detention centres around the country where children are held including five Retention Homes, one Approved School, 29 prisons and 30 police stations. During the inspection visits, 144 detention facility officers were interviewed (73 officers) or took part in group discussions (71 officers), and overall 491 children were involved in the assessment either through one to one interviews (179) or through focus group discussions (312).

This report examines the methodology used during these inspection visits including the limitations and ethical considerations. It then summarises the key findings looking at the numbers of children in detention and assessing whether the conditions they live in and treatment they receive is in conformity with international standards. This report concludes with a section on lessons learned, analysis of findings and CHRAGG's recommendations for improvement of conditions and system strengthening. While the primary focus of the study is on children in conflict with the law, it also examines the situation of children living in prison with their mothers.

This report will feed into a wider analysis of the system for children in conflict with the law, which is currently being carried out by the Ministry of Constitutional and Legal Affairs, supported by UNICEF, in consultation with Legal Sector Institutions and other key juvenile justice stakeholders. Together these reports will assist stakeholders and policy makers to understand the situation of children in the juvenile justice system and to develop strategies to reduce the number of children placed in detention and improve the treatment and care of children who are detained.

¹⁵ Section 6 (1) (h) of the Commission for the Human Rights and Good Governance Act No, 7 of 2001 gives the Commission the power to visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of persons held in such places and making recommendations in relation to protecting their human rights.

2. OBJECTIVES OF THIS ASSESSMENT

The main objectives of the assessment of the situation of children in detention facilities are as follows:

- Promote the implementation of the CRC and other related instruments relating to the placement of children in detention, and their treatment and care while detained;
- Provide recommendations on ways of improving the situation in the five Retention Homes, the Approved School and other detention facilities where children are held;
- Provide recommendations for reforming the juvenile justice system in order to reduce the overall number of children placed in detention;
- Develop baseline data for the situation of children in detention for monitoring and advocacy purposes; and
- Identify lessons to be learnt for future research and advocacy work both in Tanzania mainland and in Zanzibar.

3. LEGAL FRAMEWORK FOR CHILDREN IN CONFLICT WITH THE LAW IN TANZANIA

3.1 International standards

The rights of children in conflict with the law in Tanzania are set out in various international, regional and national documents. Relevant international instruments include: the UN Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC)¹⁶, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)¹⁷, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the International Covenant on Civil and Political Rights (ICCPR)¹⁸ and the African Charter on Human and People Rights (ACHPR)¹⁹.

These international standards are clear that children should only be detained as a last resort and for the minimum necessary period both pre and post-trial. The vast majority of children in conflict with the law should be diverted from the formal criminal justice system at as early a stage as possible and, where the child's case does come to trial, alternative sanctions which promote rehabilitation and reintegration into society, rather than punishment, should be used. Detention should be an exceptional measure, to be used only for a small minority of children who have committed serious and violent crimes and where no other measure would meet the

¹⁶ Organization of African Unity, African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990) (ACRWC)

¹⁷ UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice: resolution / adopted by the General Assembly., 29 November 1985, A/RES/40/33 (Beijing Rules)

¹⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976 (ICCPR).

¹⁹ Organization of African Unity, African Charter on Human and Peoples' Rights ('Banjul Charter'), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 (ACHPR).

needs of that child. Where children are given a custodial sentence, those institutions must have rehabilitation and reintegration as the main objective of all policies and processes and early release should be used as often as possible. The best interests of the child should be a primary consideration at all stages of the criminal justice system.

The Havana Rules, in particular, provide detailed recommendations concerning the treatment of children placed in detention and are based on the principle of detention only as a last resort and for the shortest possible time and the principle of separation from adults. The Rules encourage the establishment of small, regional facilities to enable individualized ‘treatment’ and reduce the negative effects of incarceration which are prevalent in larger penal institutions. Staff working with children in detention should receive appropriate education and training including in child welfare and human rights to ensure they have the skills and knowledge to effectively care and rehabilitate the young detainees.

Additional standards include:

- The right of children to receive regular visits and remain in contact with parents/guardians;
- The right of children to lodge internal and external complaints and have assistance in making a complaint;
- Ensure conditions of detention are satisfactory, including but not limited to: sleeping and living space; adequate clothing; food; hygiene and sanitary conditions; educational opportunities;
- Ensure that girls, who make up a relatively small proportion of the prison population, still have their specific needs adequately met, for example with educational opportunities, privacy and special hygiene requirements; and
- Prohibit a number of disciplinary punishments for juveniles deprived of their liberty including: corporal punishment; placement in a dark cell; closed or solitary confinement; reduction of diet; and restriction or denial of contact with family members.

3.2 The extent to which international treaties have been incorporated into national legislation.

Tanzania has ratified the CRC, ACRWC, ICCPR and ACHPR and is obliged to harmonise national legislation with these treaties.²⁰ Relevant national legislation includes: the Constitution of the United Republic of Tanzania 1977 as amended, the Law of the Child Act No 21 of 2009, Age of Majority Act, Cap 431, Criminal Procedure Act, Act No. 9 of 1985 and Penal Code, Cap 16 (R.E., 2002).

The Tanzania Law of the Child Act No. 21, 2009 (LCA) is of particular importance when considering the rights of children in conflict with the law. It enshrined child rights for the first time in national law, including a number of key international juvenile justice standards. Under the Law of the Child Act, all persons under the age of 18 years are considered to be

²⁰ Tanzania has not ratified the Convention against Torture.

children and are therefore entitled to additional legal safeguards and to be treated differently from adults when they come into conflict with the law. While the LCA does not establish a separate system for juvenile justice²¹, as required by these standards, it does establish a special court for the purpose of hearing and determining child matters which is known as the Juvenile Court. This Juvenile Court may dispose of all criminal cases involving accused children except homicide.

In line with international instruments, section 119 of the LCA prohibits children from being imprisoned and encourages the use of alternative punishments such as probation orders. The Act provides that where a child is convicted of an offence which if committed by an adult would have been punished by custodial sentence, the court can order that a child be committed to custody at an Approved School.

Pre-trial, the LCA encourages the use of police bail if the child cannot be immediately brought before the Juvenile Court (s101 LCA), and alternatives to detention if the Juvenile Court is deciding on a pre-trial measure (s104 LCA). Police must also ensure, as far as practicable, the separation of children from adults in police custody (s102 LCA)

It is worth noting the gap between the provisions of the Law of the Child Act and reality on the ground. In spite of the LCA, children are still committed to adult prisons by courts. This creates significant problems since there is no law explicitly governing the treatment of children held in adult prisons and prisons are not set up to meet the specific needs of under-18s. Although the LCA provides for non-custodial sentences for children, in practice these are not available owing to a significant shortage of probation officers and social welfare officers.

3.3 Types of detention facilities in Tanzania

Children are held in a variety of different detention facilities in Tanzania:

- Police stations – there are approximately 180 which are under the control of the Ministry of Home Affairs.

- Prisons – there are 130 prisons in Tanzania: 85 are district prisons, 35 are open prisons and 9 central prisons. In addition there is Wami Prison for Young Offenders which was legally established to accommodate 16-21 year olds, all post trial. However, the Law of the Child Act strictly prohibits imprisonment for children defined as all those under 18. Therefore children aged between 16 and 18 should be not be in Wami Prison for Young Offenders. Prisons, including Wami, are under the control of the Ministry of Home Affairs.

²¹ The LCA does not describe the procedure of arrest, search or investigation of crimes alleged to be committed by a child. As a result it is presumed that arrest, search or investigation of crimes would be dealt as provided in the Criminal Procedure Act of 1985.

- Retention Homes – currently there are 5 in Mbeyam, Arusha, Moshi, Tanga, and Dar-es-Salaam. Two more Retention Homes are planned in Mtwara and Mwanza. They are under the control of the Ministry of Health and Social Welfare.
- Approved School – currently there is just one which is established to receive children convicted of an offence. It only accepts boys at present but a girls’ dormitory is being constructed. It has capacity for 300 children and is under the control of the Ministry of Health and Social Welfare.

4. METHODOLOGY USED TO PREPARE AND IMPLEMENT THE ASSESSMENT

4.1 Introduction

CHRAGG formed a team of inspectors to plan and conduct the assessment comprising social workers, lawyers, teachers from the Commission and members of the Department of Social Welfare. This team was given training in the objectives and methodology of inspection visits by the NGO Penal Reform International. In addition the team was given technical assistance with planning by UNICEF. The team drew upon a variety of sources of information to ensure that the findings of the assessment were as robust as possible and used both quantitative and qualitative methods of gathering data. The draft report was discussed at a stakeholders’ workshop attended by key Ministries. Their comments and recommendations were incorporated into the final report. The following is an overview of the methodology used in preparing and implementing the assessment.

4.2 Desk Review

The team prepared a desk review of relevant documents including international and national standards, laws, policies, regulations and standing by-laws relating to juvenile justice, detention facilities and child welfare and development. The desk review was essential to lay the foundations for the assessment. It developed CHRAGG’s understanding of the legal framework for juvenile justice and how to evaluate the reasons for children being placed in detention. It also provided a basis for assessing the conditions for and treatment of children while in detention facilities in line with international standards and national laws relating to juvenile justice in Tanzania.

The team also considered various documents from the Retention Homes, Approved School, Prisons and Police Stations, such as registers, case files of children and movement orders. Statistics and data provided from the Ministry of Health and Social Welfare and the Ministry of Home Affairs relevant to the detention facilities, such as staffing information, were also used as part of the assessment.

4.3 Selection of detention facilities to visit

CHRAGG selected detention facilities to be visited based on the following considerations:

- The 2006/7, 2008/9, 2009/10 CHRAGG reports which highlighted that there was a high number of children being held in adult prisons in Tanzania;
- Facilities which were near to Retention Homes in order to understand why children were being sent to adult prisons even though Retention Homes were available within the region;
- Facilities in regions which do not have Retention Homes nor an Approved School;
- Facilities from a wide range of different geographical regions in the country: two regions each were selected from East, South, Northern, Northern Highland, Western Lakes and Central zones; and
- Facilities which included a balance between urban and rural areas.

Following the above criteria, **65 detention facilities were visited** in total from 14 different regions. This included all five Retention Homes in operation in Tanzania at the time of the assessment²² and one Approved School. Within each of the 14 regions, approximately two police stations and two prisons were visited. The exceptions to this were in Dar es Salaam where four police stations and three prisons were visited and in the Coast Region where only one prison was visited. For a detailed breakdown of detention facilities visited please see Annexe Two.

In total the sample of facilities visited during the monitoring process included five Retention Homes (100% of total number in country), one Approved School (only one in country), 29 Prisons (22% of total number in country) including Wami Prison for Young Offenders and 30 police stations (approximately 16% given that there are around 180 police stations in the country).

4.4 Methods used to gather data

Structured questionnaires

CHRAGG administered structured questionnaires in one on one interviews to detention facilities' officers, detainees and other responsible people. Three types of questionnaires were used in collating the information. One set was prepared to obtain information from the children in different detention facilities: children in adult prisons, Retention Homes, Approved School and in police cells. This type was tailored to suit the facility and type of information that was required. The second set of questionnaires was designed to collect information from officers of the institutions involved in the study. These included the head of the facilities, officers in charge of sections and wardens in prisons, Retention Homes and the Approved School. The third type was designed to collect information from the parents, guardians or relatives of the children involved in the research.

The questionnaires consisted of a series of questions and other prompts for the purpose of gathering qualitative information on the material conditions of detention, discipline and

²² There were five Retention Homes in operation in Tanzania at the time of the assessment – Mbeyam, Arusha, Moshi, Tanga, and Dar-es-Salaam. Two more Retention Homes are planned in Mtwara and Mwanza

security measures and ability and frequency with which children are able to challenge their detention. Further, the questionnaire sought information on the ability of children to access legal representation, access to contacts from the outside world, access to monitoring and complaints mechanisms as well as the availability and nature of rehabilitation education and leisure activities and reintegration.

Qualitative data was also gathered regarding the situation for children detained with their mothers in prison, focusing on conditions of detention, length of detention, preparation for separation from their mother, health and other social services provided.

Observations

Observations were carried out during site visits and the inspectors observed children's treatment and conditions as well as the extent to which children's rights were being adhered to. By using a set of prepared guidelines, the inspectors observed infrastructure, material conditions such as the provision of food, accommodation, transport, hygienic facilities, social service provisions and programmes facilities, exercise and sports facilities and equipment available for children.

Informal and formal discussion

The inspectors conducted formal and informal discussions with detention facilities' officers, children and adults in detention, and parents and guardians during site visits. Formal and informal discussions were conducted with high level Prison authorities, Police and Social Welfare Officers, detention facilities' officers, and children and adults in detention during site visits. Prior to the beginning of the field mission, the inspectors met and had discussions with the Commissioners for both prisons and social welfare to gain an understanding of the penitentiary systems and the challenges facing the departments in caring for children in detention.

In each facility, two types of focus group were formed: one made up solely of children in order to allow them to speak freely and the second comprised of prison/detention centre officials. Discussions were also held with key personnel like Regional Administrative Secretaries, High Court Judge, Principal State Attorney (Kagera Zones) and the Court Magistrates. The inspectors also collated a range of case studies focussing on the experiences of individual children.

During the inspection visits, 144 detention facility officers were interviewed (73 officers) or took part in group discussions (71 officers), and overall 491 children were involved in the assessment either through one to one interviews (179) or through focus group discussions (312).

Interviewees

In total, 144²³ detention facility officers from Prisons, Police stations, Retention Homes and the Approved School were interviewed and/or completed questionnaires. Overall 491 children were involved in the assessment either through one to one interview, completing questionnaires or involvement in focus group discussions. Of these 491 children, 179²⁴ were interviewed. Most of these 179 children were between 13 and 17 years old (just 12 were under 13) and 128 were boys and 51 were girls. 120 children were in the adult prisons, while 59 were in the Approved School or Retention Homes.

A further 312 children were engaged in focus group discussions in Retention Homes, the Approved School and adult prisons. The children selected for participation had a range of different ages, locations, cultural backgrounds, gender, histories of offending behaviour and legal status (ie children in both pre and post trial detention). Approximately ten parents and guardians were also interviewed. For a detailed breakdown of people who participated in the assessment please see Annexe One.

Quantitative data

Furthermore, quantitative data was gathered and used as a counterweight to the qualitative data gathered through interview, questionnaire, case study and observation. This included gathering figures to establish the following (please see Annexe Two for a breakdown of this information):

- Number of children in detention in selected detention facilities disaggregated by age and gender;
- Number of children in pre or post trial detention in selected detention facilities; and
- Overall capacity of detention facilities where children are held.

4.4 Limitations to the methodology

Limitations to the assessment included the fact that there were few or no children in police stations at the time of visits. Often it was difficult to locate parents and hence few parents or family members were interviewed. In some cases children respondents were accompanied by prison officers during interviews; this affected their responses and prevented them from frankly discussing the issues raised. There was also a degree of inconsistency in terms of the data gathered; for example, the ages and numbers of children in each detention facility were not systematically gathered in all of the facilities visited. In addition, given the low rate of birth registration in Tanzania, accurate age determination was a challenge.

²³ The total included 73 Prison Officers, 56 Police Officers and 15 Retention Home and Approved School Officers.

²⁴ The total included 120 children in adult prisons and 59 from Retention Homes and the Approved School.

PART TWO: FINDINGS OF THE INSPECTION VISITS

1. NUMBERS OF CHILDREN IN DETENTION

During the inspection visits, a total of 591 children were found in the 65 detention centres visited. Out of this number:

- Of the 441 children detained in adult prisons, 407 were boys and 34 girls. From the data collected on the status of children²⁵, 374 (355 boys and 19 girls) were pre-trial and 64 (52 boys and 12 girls) had been convicted;
- 80 children were in the Retention Homes: 70 boys and 10 girls, all in pre-trial detention;
- 56 boys were in the Approved School all in post-trial detention;
- 13 children were found detained with their mothers (12 in adult prisons and 1 in the police station); and
- 1 child was found in police detention

These figures can be extrapolated to estimate that **there are approximately 1400 children held in adult detention in Tanzania.**²⁶

2. CHILDREN DETAINED IN POLICE STATIONS

2.1 Arrest and detention of children by police

Article 37(b) of the CRC shows that arrest, detention or imprisonment of a child by the police may be used only as a measure of last resort and for the shortest appropriate period of time. At the national level, the procedure for the arrest of offenders in Tanzania is regulated by the Criminal Procedure Act, 1985 (CPA). Section 12 of the CPA prohibits forceful and arbitrary arrest. While the LCA does not set out specific procedures for interviewing and investigating children's cases, S102 does provide for the separation of children and adults who have been arrested while in police custody, as far as is practicable.

²⁵ Note the status of three children was not recorded.

²⁶ This was estimated by extrapolation from the figures gathered during the assessment. On average, 15 children were found in each of the 29 adult prisons visited. In Tanzania there are a total of 130 prisons. Of these nine are central prisons, 85 are district prisons, 35 are open prisons and one is Wami Prison for Young Offenders. In most cases it is very rare to find children in open prisons. Therefore it is estimated that an average of 15 children will be found in the 95 prisons making an overall total of 1,425

47 out of 179 children interviewed (26%) in the detention facilities reported that there were arrested by the police and taken to the police station. However, 80 children (45%) were taken to police stations by their parents or guardians on suspicion of having committed minor offences. In rural areas such as Kisarawe, arrests are made by paramilitary forces; 19 children (11%) were arrested by paramilitary or community leaders and 33 (18%) by other authorities.

Table 1: Who brings children to the police stations?

Authority	Respondents in the prisons		Respondents in the retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total Respondents	Cumulative Percent
Parents	37	31	8	13.6	45	25.14
Guardian	25	21	10	16.9	35	19.55
Paramilitary or Community leader	17	14	2	3.4	19	10.61
Police	25	21	22	37.3	47	26.26
Others	16	13	17	28.8	33	18.44
Total	120	100	59	100	179	100.00

Reasons for the arrest were variant major ones includes; theft, drug abuse murder/unintentional killings. Out of 179 children interviewed 50(28%) was due to theft, 36(20%) drug abuse, 26(15%) murder/unintentional killing, 19(11%) school abscond and 18(10%) rape cases. Others included vagabond around the street, illegal migration, truancy and armed robbery (see annexure four).

2.2 Length of time children are detained in police stations

Article 9(3) of the ICCPR requires that anyone arrested or deprived of their liberty on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. The CRC Committee has recommended that the maximum time that a child should be held in pre-charge police detention before being taken before a court should be set at 24 hours.

The LCA provides that if a child cannot immediately be brought before a Juvenile Court, the officer in charge of the police station to which the child is brought shall release the child on a recognisance unless the child is charged with a serious offence, unless it is necessary to remove him from association with an undesirable person or unless it would undermine

justice. In that case, according to the Criminal Procedure Act, the child must be brought to court, not later than the first sitting of a court in the locality.²⁷

The findings from the inspection visits were that certain police stations, such as Msimbazi in Dar es Salaam, hold children who are charged with serious offences after charge. Others such as Oysterbay, Lindi Central and Masasi police stations report that they release children when they are charged with minor offences and/or their identity and addresses are verified. Furthermore, 37% of the 179 children who were interviewed were held in detention in police stations for more than four days. A further 33% revealed that they had been held for between two to three days and only 30% said that they had been held within a 24 hour time period. This indicates that about 70% of children sent to police stations are detained for more than 24 hours before being sent to the courts.

Table 2: Length of stay at the police station

Length of Detention	Number	Percent
Under 24 hours	54	30.17
Two days	37	20.67
Three days	22	12.29
Four days and above	66	36.87
Total	179	100

One important issue noted by a wide range of respondents was the difficulty of ensuring that time limits are met owing to the lack of transport available to take children from police stations to court. For example, in Kilosa District, if a child is detained in the police station in Gairo he has to wait for transport to take him to Kilosa District court which normally takes time since the two places are far apart. The inspectors at Dodoma and Singida were told that police had to pay for taxis out of their own pockets to transport detainees to court. Also in Tukuyu Prison, the two children interviewed explained that they spent some time in the police station because of lack of transport, personnel, and poor bailing processes available.

2.3 Age determination during arrest and detention in police stations

²⁷ Section 67 of CPA states:-

“(2) Where a police officer refuses, under section 64, to grant bail to a person charged with an offence or grants bail to such a person but the person is unable or unwilling to comply or arrange for another person to comply, with any of the conditions subject to which bail was granted, the person shall be brought before a magistrate to be dealt with according to law **as soon as it is practicable to do so** and not later than the first sitting of a court at a place to which it is practicable to take the person for that purpose. (3) A person who is waiting in custody to be brought before a magistrate in accordance with subsection (1) may, at any time, request a police officer for facilities to make an application to magistrate for bail and, if he does so, the police officer shall, **within twenty four hours**, or within such reasonable time as it is practicable after he makes the requests, bring him before a magistrate.”

The CRC Committee in General Comment 10 states that: “If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt²⁸.” Under the Law of the Child Act, all persons under the age of 18 years are considered to be children and are therefore entitled to additional legal safeguards and to be treated differently from adults when they come into conflict with the law. No child under the age of 10 can be held criminally liable and a child between 10 and 12 years old may only be held criminally liable if the prosecution can demonstrate that the child was able to understand that what he was doing was wrong.²⁹ Given the legal and practical implications, age determination is extremely important. However, in Tanzania only 20% of births are registered and only 6% of children under the age of five years have a birth certificate³⁰, making age determination a big challenge for the justice system.

The Law of the Child Act addresses age determination for children brought before a Juvenile Court. Section 113 states: “ Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person. The court shall take such evidence at the hearing of the case which may include medical evidence and, or DNA test as is necessary to provide proof of birth, whether it is of a documentary nature or otherwise as it appears to the court to be worthy of belief.”

However, the LCA does not deal with the issue of age determination at the arrest stage and was highlighted as a significant problem. In practice at the police station stage, police officers reported that they determine the age of suspects by relying on information supplied by victims and on their own observations based on the child’s appearance. This is because the children often do not have birth certificates and neither do they or their parents/guardians know when they were born.

In the focus group discussions, children complained that officers ‘added’ years to their age so that they appeared to have reached the age threshold to be treated as an adult. For example, children in Segerea and Kilosa Prison, especially those who are accused with major offences like murder and armed robbery, stated that their ages were added to by police at the time of registration in the police station or during interrogation. Boys interviewed in Arusha Central Prison complained that police officers sought bribes to record that they were younger so that they could be sent to Retention Homes rather than to adult prisons. A total of 27 out of 179 children who were interviewed during the inspection visits said that they were under 10 years of age.

²⁸ UN Committee on the Rights of the Child, Children’s Rights in Juvenile Justice, General Comment 10, para 39

²⁹ Sections 15(1) &(2) Penal Code respectively. A male under the age of 12 is presumed to be incapable of sexual intercourse. S15(3) Penal Code.

³⁰ Children and Women in Tanzania (SITAN) (UNICEF, 2010)

2.4 Responsibility of police officers to identify themselves to arrested and detained children

Section 53 of the Criminal Procedure Act, 1985 requires the arresting police officer to identify his/her name and rank to the arrested person. The inspection visits revealed that police officers who arrest children do not always identify themselves. For example the children who took part in the focus group discussion in Segerea prison complained that police officers did not identify themselves during their arrest. The same issue was noted by children interviewed in Bangwe, Kasulu, Bukoba and Muleba prisons.

2.5 Children should be informed of rights at time of arrest and detention

Article 9(2) of the ICCPR, which applies equally to children as it does to adults, provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest. Article 40 (2) (b) (ii) CRC and Article 9(2) ICCPR require that every child alleged as or accused of having infringed the criminal law should be informed promptly and directly of the charges against him or her.

Section 53 CPA also obliges the police officer to inform the person arrested of his or her rights. Further, Section 31(5) of the Police Force and Auxiliary Service Act, Cap 322 puts a duty on the arresting police officer to inform the suspect about his rights to bail and Section 21(1) of the Criminal Procedure Act requires the arrested to be informed the offence he/she is arrested for.

Children complained to the inspectors that they were uncertain of why they had been arrested, what offence they had been charged with and their rights whilst arrested and held in detention. In Segerea prison, none of the children in the focus group discussion had been informed of their rights at time of arrest and detention. The same issues were noted in Bukoba, Bangwe, Wami, and Isanga prison.

2.6 Use of torture, cruel, inhumane and degrading treatment in police stations

Article 37(a) of the CRC provides that “[n]o child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment”. This mirrors the provision in Article 7 ICCPR, Article 5 of the ACHPR and Article 16 of the ACRWC. In General Comment No 10, the CRC Committee states that “there must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable³¹”

Torture is clearly prohibited under national law. Article 13(6)(e) of the Constitution of the United Republic of Tanzania prohibits any kind of torture. Section 55(1) and (2) of the CPA prohibits torture of any person under restraint, while the Tanzania Evidence Act 1971 regards a confession obtained by torture, coercion or undue influence as inadmissible as evidence.³²

³¹ UN Committee on the Rights of the Child, Children’s Rights in Juvenile Justice, General Comment 10, para 58

³² Section 29 of the Evidence Act, 1971.

Table 3: Treatment of children in detention in police stations

Response	Respondents in Prison		Respondents in the Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
No punishment/no ill treatment	28	25.9	8	13.6	36	20.11
Treated well	36	28.1	0	0	36	20.11
Treated fairly	13	10.4	28	47.5	41	22.91
Treated badly	24	19.3	16	27.1	40	22.35
Slapped/hit by police and forced to talk/confess	12	10.4	4	6.8	16	8.94
No response	7	5.9	3	5.1	10	5.59
Total	120	100	59	100.1	179	100

Table 3 above shows that 113 out of 179 (63 %) children interviewed said that they were fairly treated when in police custody. However, 56 children (31%) reported being badly treated or subjected to violence by the police, with some children alleging that violence and torture was used to extract confessions. This information was corroborated by the focus group discussions; for example, in Upanga Retention Home, seven out of 14 of the children reported that they had been beaten during their arrest. Children in Mbeya Retention Home also reported beatings by the police. Allegations of torture or use of violence to extract confessions at police stations were made by children from Arusha Retention Centre who reported that they were threatened and beaten in order to agree with what was written by the police, especially by the police in Sakina Police Station. Similar allegations were also made at Dodoma, Bangwe, Muleba and Masasi prisons. A 15 year old boy held at Luanda Prison on suspicion of theft of a bicycle reported being beaten by a police officer at Mbeya Central Police while hung upside down in order to force him to confess the crime. Children arrested by paramilitary forces also reported being beaten or brutalised during arrest.

Account of child tortured in a police station

“At the Central Police station I was brutally treated. During the day time they used to take me to Majengo Police station where they viciously tortured me. They tied my legs with metal strings and stretched them between two tables. Then they started beating me while saying that they had no money to spend on Christmas. When beatings continued and being afraid that they would kill me, I decided to admit that I committed an offence that I stole a radio so that they could leave me alone.”

Interview by inspectors with boy aged 16 in Moshi Retention Home

Children interviewed in Luanda Prison explained that they were handcuffed and shackled in the police stations at night for security reasons or during transportation to court.

2.7 Notification of child’s family

Rule 10.1 of the Beijing Rules provides that a child’s parents or guardian shall be notified immediately if their child is arrested. The CRC Committee in General Comment 10 recommends that: “States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child’s infringement of the criminal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible³³.” Section 56(1) of the Criminal Procedure Act requires the police who are investigating the offence committed by a child to inform the parent or guardian of the child about the arrest and the offence he or she is charged for.

Police officers reported that officers were assigned to the Gender and Children’s Desks and in that role are supposed to deal with the preliminary investigation for cases of children in conflict with the law and to contact their families. However, children who were interviewed in Bangwe, Kilosa, Muleba, Kasulu and Segerea Prisons told inspectors that while upon arrest they were asked to provide the police with their parents’ contact details, very few were subsequently contacted. In a few cases, parents were communicated with if they were prominent people. There were also a few allegations made that police demanded bribes to facilitate communication with parents. Table 4 below indicates that 42% of children said they were not given a chance to contact their relatives upon arrest whilst 44% said they were allowed to contact their relatives. However, it must also be noted that in the focus group discussion, a number of children raised other obstacles to their parents being contacted: some children said they had hidden their identities from the police or that they lacked proper addresses of parents so could not pass on their contact details to the officers.

Table 4: Right to contact relatives or any other persons about arrest

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Yes	48	40	27	45.8	75	41.90
No	48	40	32	54.2	80	44.69
I don't know	24	20	0	0	24	13.41
Total	120	100	59	100	179	100

³³ UN Committee on the Rights of the Child, Children’s Rights in Juvenile Justice, General Comment 10, para 54

2.8 Appropriate adults present during interview

In most of the facilities visited, children told the inspectors that no appropriate adult was present during their police interview. For example, in Ilambo Approved School, out of the 56 children who took part in the focus group discussion, not one said that their parents participated when they were interviewed by the police. It seems that this is a result, in large part, of the parents or other family members not being informed of their child's arrest for the reasons set out above.

2.9 Legal representation at the police station

Article 37(d) of the CRC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. Article 40 (2)(b)(ii) further holds that States shall ensure that every child shall have legal or other appropriate assistance in the preparation and presentation of his or her defence.

While section 99(1)(f) of the Law of Child Act provides that a child has the right to be represented in the Juvenile Court by an Advocate, it is silent on the question of whether children have the right to legal representation at the police station. However, Section 54(1) provides an arrested person with the right to contact his or her lawyer.

In practice only 22.35% of the children interviewed during inspection visits said that they had legal representation whilst they were held in police detention. Nearly 59% said they did not have contact with a lawyer, whilst the remainder did not know.

Table 5: Availability of legal assistance while in police custody

	Respondents in Prison		Respondents in the Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Yes	31	25.83	9	15.3	40	22.35
No	61	50.83	44	74.6	105	58.66
I don't know	28	23.33	6	10.2	34	18.99
Total	120	100	59	100	179	100

2.10 Material conditions of police detention

Provision made for separation of children from adults in police stations appears to be very variable. Section 102 of the Law of the Child Act (2009) stipulates that children should be held separately from adults while in police custody. However, out of the 30 police stations visited during this assessment, only four had a separate cell where children could be detained. Observation and interviews with children revealed that at some police stations children are

kept in offices or corridors rather than dedicated cells. In others they are held in the same cells with adults. In some police stations, such as Osterbay police station, officers make an attempt to protect children by placing boys in the same cell as women rather than placing them with men.

In Magomeni police station there is a cell for children as well as provision for special food and access to medical facilities. However, in all police stations, except Magomeni, children share the same toilets with adults and there is poor sanitation. Children who spent nights in police stations recounted that they slept on chairs and benches without bedding materials. Children who took part in the focus group discussion in Mbeya Retention Home explained that they were denied access to food and water.

Conditions in police detention

”I spent one week in the police cell. The cell was very dirty; a bucket full of urine and faeces was placed in one of the corners. We were six children; we were sleeping on the floor, with nothing to cover our bodies. If one came in with a coat, he was asked to remove it. For the entire week I neither washed myself nor changed my clothes. We were being given three slices of bread once a day, at 8 p.m., if one was thirsty, he could ask for water, but he might not be given it. My colleagues were seriously beaten by the police officers and they were given various sorts of drills such as frog jumping.”

Interview by inspectors with boy aged 14 in Moshi Retention Home

It was further observed that girls are not provided with hygienic materials. However, some women police officers reported that they assisted girls with their sanitary needs at their own expense.

3. ISSUES AFFECTING CHILDREN IN PRE -TRIAL DETENTION

3.1 Pre-trial detention as a measure of last resort

The CRC emphasizes that depriving a child of liberty should be a measure of last resort and only used for the shortest appropriate period of time³⁴. Further, the Beijing Rules requires courts to give “careful consideration” before restricting a child’s liberty especially pre-trial.³⁵ The CRC Committee in General Comment No 10 recommend that judges should consider alternatives to pre-trial deprivation of liberty, such as: close supervision; intensive care or placement with a family; or placement in an educational setting or home. It does recognize that there will be instances where pre-trial deprivation of liberty may be necessary. To ensure

³⁴ Article 37(b) CRC

³⁵ Rules 13.1, 13.2 of Beijing Rules.

that deprivation of liberty is only used as a matter of last resort, legislation should set out the circumstances in which, as an exception, it may be used such as ensuring the child's appearance at the court proceedings, or where the child presents an immediate danger to others. Rule 10.2 of the Beijing Rules provides that a judge or other competent official or body shall, without delay following arrest, consider the issue of release.

In addition to the opportunity for the police to bail a child (see section 2.2 of this report), Section 104 of the Law of the Child Act allows for Juvenile Courts to use alternatives to detention while the child is awaiting trial: "Where a Juvenile Court remands a child or commits a child for trial before the High Court and the child is not released on bail or is not permitted to go at large, the Juvenile Court may, instead of committing the child to prison, order him to be handed over to the care of the Commissioner, fit person or institution named in the order".³⁶

The findings from the inspection found that while the courts often set bail for the child, sureties are attached. The consequence of this was highlighted by a prison officer in charge of the Babati Prison who said: "the facility is crowded with remandees because most of them do not meet bail conditions." Most children and their families (in the cases that children have contact with their relatives), simply do not have the money to post bail, which results in children being detained due to the economic and family circumstances rather than because the court has determined that they need to be held in pre-trial detention.

3.2 Length of time children are held in pre-trial detention

The Committee on the Rights of the Child³⁷ has stated that the maximum duration in pre-trial detention should be limited by law. The decision to impose pre-trial detention and the length of detention (within the time limit set by law) should be made by a competent, independent and impartial authority or judicial body. The legality of the detention should be reviewed regularly (preferably every two weeks). According to international standards, when a minor is in pre-trial detention, the courts and investigative bodies must prioritise the "most expeditious processing of such cases to ensure the shortest possible duration of detention."³⁸ A final decision on the charge (by the court or other competent body) must be made within six months of the court receiving the case.

Section 104 of the LCA and Section 225 of CPA allows a court to adjourn the case and remand a person into detention. This detention must be reviewed every 15 days by the court. Generally the maximum period that the case can be adjourned is for 60 days³⁹, but in exceptional circumstances this can be extended for up to two years.⁴⁰

In theory, the court system in Tanzania has mechanisms which should ensure that cases are heard in a timely fashion. There is an established Case Flow Management Committee in each

³⁶ Bail by the Primary Court and High Court is also dealt with in Sections 148-163 CPA.

³⁷ General Comment No. 10

³⁸ Havana Rules, Rule 17. Also see ICCPR, Article 10(2)(b).

³⁹ Section 255(4)(a) 45-46 of Judicial Service Act require a Magistrate or Judge to pronounce judgment within sixty days.

⁴⁰ Section 255(4(c)) CPA

region to ensure that cases are tracked and followed promptly. Also an accelerated trial procedure has been introduced in the CPA. However, in practice children can languish in pre trial detention for long periods of time.

Excessive delays in justice

“On October 12, 2010 I appeared in court for trial. Since I had no one to bail me out I was sent to Moshi Retention Home. On October 21st, 2010 I was supposed to appear again in court for trial but this didn’t happen because the police could not come to pick me up. On February 3rd, 2011 I appeared for the second time in court for trial. I was supposed to return there again on February 10th, 2011, but the police failed to come and pick me up.”

Interview by inspectors with a 16 year old boy in Moshi Retention Home

Children who are charged with major offences like murder and armed robbery are often spending more than 2 years in detention facilities pending the hearing of their cases. Children charged with minor offences spend shorter times in pre-trial detention, but often longer than 60 days permitted. Several factors were found to contribute to the delays: delays in investigation of the case; failure by police and prison authorities to bring children to the court due to lack of transportation; and frequent adjournment of cases due to a lack of primary court magistrates especially in rural areas like Kilosa and Kasulu. A prison officer in charge of the Babati Prison told the team that children on remand spend longer periods in pre-trial detention than necessary simply because the facility does not have the transport facilities to take the child to court.

At the Kisutu Juvenile Court, it was found that there is only one Resident Magistrate to preside over the court, therefore when she is absent either because of sickness or on annual leave, all cases are adjourned waiting for her returning. There are no sanctions put in place against courts or prison authorities who fail to bring a child before the court at the required date and time.

3.3 Access to legal representation

Article 37(d) CRC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. Article 40 (2)(b)(ii) further holds that States shall ensure that every child shall have legal or other appropriate assistance in the preparation and presentation of his or her defence. Article 14 of the ICCPR also enshrines the right to free legal assistance for a child if he or she, or the parents, cannot pay for a lawyer.

While lawyers do not appear in Primary Courts, where the majority of criminal cases are heard, Section 99 (1) (f) of the Law of Child Act provides that a child shall have the right to be represented in the Juvenile Court by an advocate. Section 3 of the Legal Aid (Criminal Proceeding) Act, Cap. 21 of the R.E. 2002 of the Laws of Tanzania, states that: “Where in

any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be.”

In practice, legal assistance and representation is only available for free to defendants accused of murder and capital offences, such as treason. There are various NGOs which provide free legal assistance in certain cases, such as the National Organisation for Legal Assistance, Legal and Human Rights Centre, and the Tanganyika Law Society. However, this level of legal assistance is not sufficient to cover the demands for legal aid across the country. In addition, there is a severe lack of qualified lawyers in the country, and the majority of lawyers are based in Dar Es Salaam and Arusha.

During the monitoring visits, prison officers were asked about whether children have access to a lawyer: 55 out of 73 of the officers (75.3%) said that legal assistance is theoretically available but is rarely accessed because of lack of knowledge of the children or lack of ability to pay by children and their families. This was echoed in the interviews and focus group discussions. For example, in Upanga Retention Home children stated that they are allowed to be visited by their lawyers. However, their parents cannot afford the fees. At the time of the monitoring visit, no child in Upanga Retention Home interviewed was represented by legal counsel.

At Luanda and Tukuyu Prisons, children reported that they had no legal counsel. “The trial is unfair as we are treated equivalent to adults” one child reported at Luanda Prison. In Mtwara Prison all children who participated in the group discussions said that they had no legal assistance regarding their cases. They also felt that they were not given the right to a fair hearing as magistrates relied on police reports only.

Children in the Retention Home in Mbeya did say they had legal representation but that their trials were still unfair since they were treated as equivalents to adults. In the absence of lawyers, children in Retention Homes are sometimes accompanied by social welfare officers.

The implications of the lack of legal representation are extremely serious for children in conflict with the law: if a child has been forced to confess to a crime they did not commit whilst in the police station then it is very difficult for them to challenge this forced statement in court; they are not able to make full and effective bail submissions and may be remanded into pre-trial detention even though they are strong candidates for bail; they may sign documents they do not fully understand; and it can mean that magistrates rely heavily upon police statements and less on defence submissions thereby undermining the principle of equality of arms.

3.4 Separation from adults in pre-trial detention

Children placed in pre-trial detention should always be held separately from adults.⁴¹ As noted by the CRC Committee in General Comment No 10, “There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate”. The CRC Committee recommend that States should establish separate facilities for children deprived of their liberty, which include distinct, child-centered staff, personnel, policies and practices. They should also be held separately from convicted children⁴².

In practice, this separation does not happen. The inspection visits revealed that 441 children were being accommodated in the 29 adult prisons visited and that the vast majority of these children were boys. The research revealed that there is no consistency in approach by magistrates in making decisions as to whether to remand children to pre-trial detention in adult prisons or children in Retention Homes. Children are remanded in adult prisons even in the five areas where Retention Homes are in operation and even though these facilities are under capacity. Prison officials explained that they are not in a position to address this problem, as their role is simply to receive detainees referred from the court. The problem, many said, lies with the magistrates, who are often unaware of the law governing children’s cases.

Children in adult prisons

A prison officer from Luanda Prison said that if children live at the prison they cannot go to school and their behaviour becomes different from children who live in the Retention Home. He believes children should not be in adult prison. When asked how the children’s behaviour differs from other children, He said the children in the prison are living in “darkness” and they only see offenders. Some of the prisoners are “very bad” and as the children get older they might follow this example.

Interview by inspectors with a prison officer in Luanda Prison

Children in both pre and post trial detention are not separated from adults when they are held in prison and un-convicted under-18s are not separated from convicted prisoners. In the worst cases, children mix during the day and night with adults (e.g. Kiloso Prison). However, in some facilities, efforts are made to restrict children’s contact with adults; for example, in Manyoni and Singida Prisons, children are held with ‘older prisoners’ as prison official believe that this is a way of protecting them. In Segerea prison, children are separated from

⁴¹ See Article 40(3) UNCRC and Rule 13.4 Beijing Rules

⁴² Article 10(2) of the ICCPR

adults at night in a separate wing, and as far as possible from them during the day. In other facilities, separation does happen at night but not during the day.

4. SENTENCING

Article 37(b) CRC provides that all forms of detention, including as a sentence following a conviction, shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Rule 17 of the Beijing Rules adds to this provision by stating that detention “shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response”. Article 40(3) (b) CRC and Rules 17 and 18 of the Beijing Rules place a specific obligation on States to develop a range of non-custodial measures. The Beijing Rules require that in all cases, except those involving minor offences, there should be a social inquiry report before a sentence is passed on a child to ensure that the measure imposed is appropriate and will best meet his or her needs.

Section 119 of the LCA prohibits the imprisonment of a child. Sections 116, 118 and 119 set out alternative measures that can be imposed including: probation⁴³, a fine payable by the child or the parents, discharge the child without making any order, repatriation at the expense of Government to his home or district of origin if it is within Tanzania; an order the child to be handed over to the care of a fit person or institution named in the order, if the person or institution is willing to undertake such care. Moreover a child who is convicted with an offence which if committed by an adult would have been punishable by a custodial sentence, the court can order that child be committed to custody at an Approved School.⁴⁴ Children can also be sentenced to corporal punishment, In such cases, the child will be remanded into detention, which can include an adult prison, for 24 hours, while a medical examination is carried out to determine whether they are fit enough to receive the punishment.

The inspection visits found that very few children had access to Social Welfare Officers who could be responsible for preparing a social investigation report to be used to inform sentencing decisions. The exception is children who were convicted by Kisutu Resident Magistrate Court in Dar es Salaam. In other regions such as Morogoro there is only one Social Welfare Officer to serve the whole region. Even where Social Welfare Officers are available they often do not have the required training and knowledge regarding children in conflict with the law. In Kilosa District, none of the children, police officers or prison officials interviewed knew about the role of Social Welfare Officers in the juvenile system. In

⁴³ Section 116 provides for a child to be sentenced to a conditional discharge: “Where a child is convicted of an offence other than homicide, the Juvenile Court may make an order discharging the offender conditionally on his entering into recognisance, with or without sureties, to be of good behavior during such period not exceeding three years, as specified in the order but if a child has demonstrated good behavior then that child shall be presumed to have served the sentence.” The law requires the child entered into recognizance to be under the supervision of the parents, guardians or social welfare officer.

⁴⁴ Section 120 of the Law of the Child Act, 2009

most cases Magistrates are forced by circumstance to order custodial sentences owing to a lack of Probation Officers and Social Welfare Officers to deal with children.

The inspection visits also revealed that courts are sentencing children to custody because many of them have no proper addresses and or have no parents, guardian or family to entrust them to. Consequently, children are given custodial sentences because of their family background, rather than due to the seriousness of their offence or the need for them to be detained.

5. CONDITIONS AND TREATMENT OF CHILDREN IN PRE AND POST TRIAL DETENTION

5.1 Rehabilitation and reintegration

International standards promote a holistic approach to rehabilitation and reintegration which addresses both the practical and emotional needs of the child. Article 37(c) CRC provides “Every child deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person”. Rule 26 (2) of the Beijing Rules states “Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society”.

Education and vocational training are essential to a child’s rehabilitation process, as well as psychosocial support to address the root causes of his or her offending behaviour. The importance of the role of the family for the well being of the child and his or her rehabilitation and reintegration into society is recognized by the CRC Committee in General Comment 10, the Beijing Rules, and the Havana Rules. Therefore sustained contact with the child’s family throughout his or her sentence is highly important for his or her successful reintegration.

In the prisons, children have no access to rehabilitative activities or services. Provision in all facilities of education, vocational training and recreation was found by the inspectors to be wholly inadequate. For example, a 16 year old boy in Luanda Prison stated that, “Our situation is not good; there is no adequate space, education and vocational training in the prison.”

There are no mechanisms or programmes to help children be re-integrated with their families and communities on their release. Children are only supported with transport fares home, and only provide with this support of their addresses are known.

Section 132 (1) (d) of the Law of the Child Act requires the Minister for Health and Social Welfare to make rules as to the education, training and rehabilitation of the children in the Approved School. As of June 2011, the rules, which envisage a holistic programme of

support for rehabilitation and reintegration, had been drafted, but not adopted. In Ilambo Approved School, Social Welfare Officers are already assigned to work with the child to promote his rehabilitation. However, there are not enough staff to carry out rehabilitative activities with the children and the staff that have been assigned lack adequate training to work effectively with the children (only one staff member is a qualified social worker). Education is limited to primary school level and vocational training is non-existent. Instead children are assigned duties such as farming and cleaning staff premises. Recreational activities such as sport, are also extremely limited. Due to its remote location in the far South West of the country, approximately 50% of children do not see their families during their entire sentence. Its location also makes reintegration difficult: many children were found in the Approved School waiting for the financial support they required to be transferred to their places of origins. It was also reported to the inspectors that many juveniles were rejected by their families upon release, especially in cases of sexual offences. No work is currently undertaken with the families by Council Social Welfare Officers to prepare them for the child's release and support them following his or her discharge.

Furthermore, there are no monitoring mechanisms or follow up procedures to find out how children cope on release, particularly those who have served long sentences during which time they lack access to education, family, training and other opportunities.

The Department of Social Welfare, which could be in a position to support these children, takes limited measures due to budget constraints, a severe shortage in the number of Social Welfare Officers in the country and the limited political will to deal with issues of children in conflict with the law.

5.2 Separation from adults post-trial

Of the 441 children in conflict with the law held in prison, 64 had been convicted. These convicted children are not separated from adults whilst in detention - as is the case with pre-trial juvenile detainees (see section 2.4 above). Their imprisonment is in direct contravention of the Law of the Child Act (2009). The only post trial detention permitted is in the Approved School and only for a maximum of three years. However, children are placed in adult prisons even though the Approved School is under capacity. At the time of the inspectors visit to the Approved School there were 56 children being held there whilst it has a capacity to hold 300 children.

5.3 Violence against children in detention

Children in detention are extremely vulnerable to violence, abuse, neglect and exploitation at the hands of fellow detainees, staff or even from self-harm (including suicide). Girls can be especially vulnerable to sexual abuse.⁴⁵ Article 19 CRC places a duty on States to take all appropriate legislative, administrative and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or

⁴⁵ Paulo Sérgio Pinheiro, World Report on Violence against Children, UN Secretary-General's Study on Violence against Children, Geneva, 2006

exploitation, including sexual abuse, while in the care of any person who has care of the child. This includes children who are in detention.

It must be noted that penal laws in Tanzania protect children from violence and sexual abuse both in detention and outside. Prisons rules and regulations also enshrine the right of children to be protected from abuse. Part VIII of the Law of the Child Act contains provisions on the protection of a child generally, whereby Section 94 (7) mandates a Social Welfare Officer to investigate violations of child rights.

Some serious allegations of violence, abuse and sexual assault in prisons were made by children interviewed during the inspection visits. Abusers were mainly identified as adult prisoners and fellow children by prison officials, with children also identifying prison officers as abusers. Children’s reports showed that they were most vulnerable to sexual abuse at night, especially in prisons in which children are not separated from adults.

Table 6 (a): Incidence of abuse in prisons as reported to inspectors by prison officers

Response	Frequency	Percent
Yes there is abuse	17	23.3
No there is no abuse	53	72.6
I don’t know	3	4.1
Total	73	100.0

Table 6 (b): Incidence of abuse as reported to inspectors by children

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Yes there is abuse	51	42.50	11	18.6	62	34.64
No there is no abuse	43	35.83	33	55.9	76	42.46
I don’t know	26	21.67	15	25.4	41	22.91
TOTAL	120	100	59	100	179	100

Table 6 (c): Nature of abuse as reported to inspectors by prison officers

Responses	Frequency	Percent
I don't know	40	54.8
Prolonged torture	2	2.7
Beating and sexual harassment	29	39.7
Having to wash adult clothes and adults taking their food	2	2.7
Total	73	100.0

Table 6 (d): Nature of abuse as reported to inspectors by children in prisons

	Respondents in Prison	
	Frequency	Percent
Beating and sexual abuse	33	27.50
Other physical harm	7	5.83
Other abuses, such as delays in being sent to court and having to eat uncooked food	17	14.17
No response	63	52.50
Total	120	100

Table 6 (e): Abusers as reported by prison officers

Abusers identified	Frequency	Percent
Fellow Children	8	11.0
Adult Prisoners	7	9.6
Both fellow children and adults prisoners	3	4.1

Not applicable (no abuse reported)	55	75.3
Total	73	100.0

Table 6 (f): Abusers as reported by children

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Warden (prison officer)	31	25.83	6	10.2	37	20.67
Fellow juvenile detainee	17	14.17	5	8.5	22	12.29
Adult detainee	15	12.50	0	0	15	8.38
Others	4	3.33	7	11.9	11	6.15
Not applicable	53	44.17	41	69.5	94	52.51
Total	120	100	59	100	179	100

5.4 Use of discipline

The Havana Rules provide that “any disciplinary measures and procedure should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self respect and respect for the basic rights of every person.” As such, “[a]ll disciplinary measures constituting cruel, inhuman or degrading treatment [are] strictly prohibited, including corporal punishment,⁴⁶ placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”⁴⁷

In the Retention Homes and Approved School, discipline is controlled by the facilities authority.⁴⁸ If children are to be searched then this should be conducted by an officer of the same sex as the child and should be conducted in a way that does not humiliate, degrade the humanity and dignity of a child. The available disciplinary measures in the Approved School

⁴⁶ The Commission on Human Rights has held that “corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture”: Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment (2001), U.N. Doc. E/CN.4/RES/2001/62, para. 5. See also Rule 17.3 of the Beijing Rules and Guidelines 21(h) and 54 of the Riyadh Guidelines.

⁴⁷ Rule 67 of Havana Rules.

⁴⁸ Under S.122 of the Child Act, the Minister established a Board of Visitors whose duty is to maintain discipline as stipulated under S.123(1)(e)

and Retention Homes differ with those in adult prisons. In Upanga Retention Home it was stated that where the offender is a fellow child, then common punishments are to clean the dormitory, wash dishes or perform harder exercises.

Two boys interviewed in Tukuyu Prison reported: “Adult prisoners and other officials tend to use force, beat using belts, corporal punishment and using abusive language to children in cells.” Another example of punishments found practiced in Karanga and Maweni Prisons include confinement to special cells for disobedient prisoners and remandees. Observations found that the state of these cells is unpleasant. At Segerea prison three punishment facilities were observed in the boys’ dormitories where children are placed in solitary confinement.

5.5 Material conditions

Good living conditions are an essential aspect of a child’s rehabilitation and reintegration and are outlined in Section D of the Havana Rules. This provides that sleeping accommodation should consist of small dormitories or individual rooms and should be unobtrusively supervised. There should be sufficient, clean bedding and adequate sanitary facilities should be installed. To the greatest extent possible, children should be allowed to wear their own clothes, and should be provided with storage facilities for their own personal items. Adequate food and clean drinking water should be made available. In addition, “[t]he physical environment should be in keeping with the rehabilitative aim of residential treatment with due regard to the need of children in detention for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities”.

The inspection visits revealed that living conditions for children in detention are not acceptable. All of the inspectors found that facilities are old and in a severely dilapidated state. Overcrowding is a significant issue in many adult prison cells. For example, in Lilungu Prison, there were 214 inmates at the time of the visit, five of them children. The actual capacity is 75. Sleeping accommodation is not adequate. Cells are often at more than their capacity and sometimes twice their capacity. In many prisons, there are insufficient mattresses and bedding, forcing inmates to sleep on the floor or to share beds. In Tukuyu prison, five inmates, including the two children in pre-trial detention, slept in a cell only big enough for the three mattresses they had between them and the toilet. Inmates are locked in these conditions in the cells for long periods of time. In Tukuyu, inmates spend from 5pm-6am every day in the cells.

Clothing in all of the facilities visited was not adequate for the prevailing weather conditions. For example, the climate in Mbeya (Irambo Approved School) and Iringa (Isupilo Prison), Bukoba, Moshi and Manyara prisons is very cold but juveniles interviewed in these locations were not given adequate clothes and the majority were shivering during discussions and interviews.

Table 7(a): Adequacy of clothing as reported to inspectors by prison officers

Responses	Frequency	Percent
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Children have adequate clothing	38	52.1
Children don't have adequate clothing	27	37.0
I don't know	8	11.0
Total	73	100.0

Table 7(b): Adequacy of sleeping material as reported to inspectors by children

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Appropriate	44	36.67	33	55.9	77	43.02
Not appropriate	66	55.00	5	8.5	71	39.66
Average	10	8.33	21	35.6	31	17.32
Total	120	100	59	100	179	100

Children are supposed to be provided with food according to a dietary scale set by prisons' laws and regulations. However, in many prisons, children receive less than three meals a day, with some children only receiving one meal. Even in the prisons where there is sufficient food, such as in Lilungu prison, the researchers were told that it was not up to standard as it was prepared using unsafe water and the general quality of food was poor. Water supply is not regular in the Lilungu prison which means that the sanitation facilities and general hygiene among inmates is poor. In many of the detention centres visited, it was observed that the food provided typically lacks ample nutrients for adults, let alone for growing children. Many children reported that water was unclean and came from local wells.

Table 7 (c): Frequency of meals as reported to inspectors by children

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
one	55	45.83	26	44.1	81	45.25
two	49	40.83	7	11.9	56	31.28
three	16	13.33	26	44.1	42	23.46
Total	120	100	59	100	179	100

5.6 Contact with family

Communication with the outside world is “an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.”⁴⁹ With regard to the right to be visited, the Havana Rules provide that “Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations and outside world.”

Section 132(1)(c) of the Law of the Child Act, empowers the Minister for Health and Social Welfare to make rules which regulate visits of parents, guardians and relatives to the Retention Homes and Approved School. In essence children are allowed to communicate with their families and friends provided that this communication does not infringe on the institution’s peace and security.

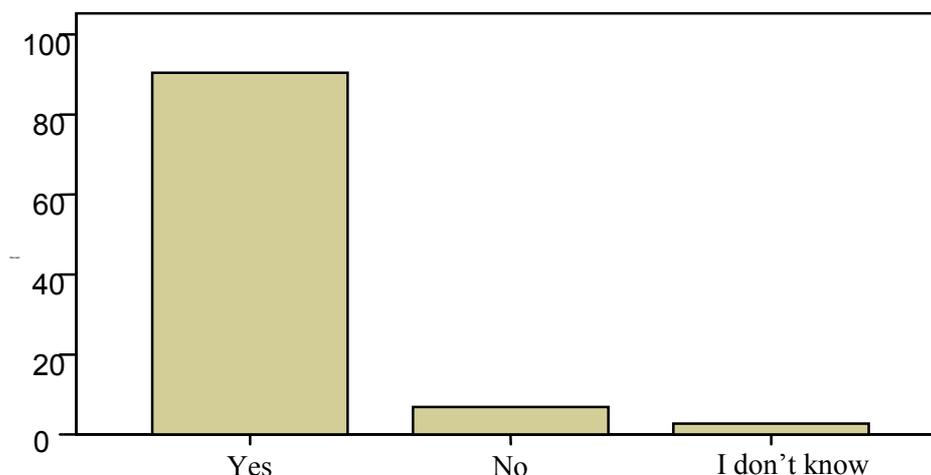
During the inspection visits, inspectors took into account whether children could be visited by families and friends, the frequency and conditions for having visits, duration and regularity of visits by friends/relatives, issues relating to correspondence and parcels and means of receiving information from outside the detention centres.

While the inspectors found that children are allowed to receive visits on a weekly basis in general and to receive and write letters, in practice many children rarely if ever see their family while detained, as children are often held in facilities far from their homes and their families and friends cannot afford the time and money to travel. When families do make the journey, visits are often not private and as there are rarely dedicated visitors’ areas. In the prisons, visitors and children have to communicate through bars in the reception area.

In interviews, 83% of prison staff reported that visitors are allowed, 9% said no visits were allowed while 5% did not know anything related to visiting. For more details see the figure1 below.

⁴⁹ Havana Rules, Rule 59

Figure 1: Are visits allowed?



The scheduled days that prisoners are supposed to receive visitors are Saturday and Sunday with the person of his or her choice unless legally restricted; however, in special cases visitors are allowed on weekdays. In interview, 82% of prison staff said that visits were allowed to take place on a weekly basis, 10% said they were done any time, while 4% said they took place on a monthly basis.

5.7 Contact with the outside world

The Havana Rules do not limit the persons with whom children should be allowed to maintain contact to relatives and legal guardians, but specifically include “friends and other persons or representatives of reputable outside organisations”.⁵⁰ This contact is both an integral part of the right to fair and humane treatment and also essential to the preparation of children for their return to society.⁵¹ In order to facilitate contact with the outside world, the Havana Rules provide that children should be able to receive special permission to leave the detention facility for educational, vocational or other important reasons. Any time spent outside the detention facility should be counted as part of the period of sentence. The Tanzanian Child Development Policy establishes mechanisms for protecting the rights of the child by clearly stating the roles of each stakeholder. The mechanisms include education, awareness and ensuring that a child receives their rights and basic services.

While NGOs and religious institutions are also allowed to visit with the consent of detention centre authorities, the frequency of such visits is highly variable depending on both the presence and willingness of those organisations in each area and the attitudes of prison management in different facilities. Where NGOs do visit they usually provide soaps, books, and other refreshments. At the Upanga Retention Home, it was found that some NGOs visit and supply children with leaflets on child rights. Religious organisations also occasionally

⁵⁰ Havana Rules, Rule 59

⁵¹ Havana Rules, Rule 59

provide them soap and toothpaste. During public holidays, individuals sometimes supply food.

While letters are the most frequent means that children have for communication with the outside world, children in some institutions reported having access to radio and TV. However, children often have to watch adult programmes alongside adult detainees.

5.8 Special treatment of girls in detention

Women and girls who are deprived of their liberty often have different needs from men and boys, including health, hygiene and sanitary needs. They can be at a higher risk of substance abuse, self-harm, mental health issues, HIV and other STDs, and are more likely to have suffered past physical, emotional or sexual abuse. Since girls are usually detained in much smaller numbers than boys, often States provide fewer facilities to ensure their segregation from adults. Girls in detention facilities are at particular risk of physical and sexual abuse, particularly when detained in mixed-sex facilities, or where a general lack of facilities for girls results in placement in adult facilities.

The UN Rules for the Treatment of Women Prisoners ('Bangkok Rules') 2010 include specific measures to protect girl prisoners such as equal access to education and vocation training, education on health care, counseling for sexual abuse or violence and added protections for children living with their mothers in prison. Girl prisoners are supposed to be separated from boys and given attention according to their needs. Provision of hygienic materials and assignment of particular work is required. It is also provided that every prison must employ a number of female prison officials according to how many women are held as detainees.⁵²

The inspectors found many more boys than girls in pre-trial and post-trial detention. The inspection visits found that girls are more likely to be detained with adult female prisoners. Post-trial, the only option for girls currently, if they are detained, is prison, as the Approved School currently only accepts boys (although a girls' dormitory is being constructed). With so few girls, authorities often do not make the effort to separate them. Authorities may also feel that adult female prisoners pose less of a threat to girls, than adult males pose to boys.

Interviews with staff at the Retention Homes and prisons revealed that girls who are pregnant or who are detained with their children pose a serious challenge to the management of the facilities as they struggle to meet the needs of both mother and child. It was also found that insufficient attention was paid to the needs of girls to have sanitary napkins, brassieres and underpants. The situation of girls is usually much worse than for boys. In many facilities the outside space is reserved for boys meaning for example that girls in one Retention Home were locked up for the whole day in their rooms with no access to outside space for exercise.

5.9 Staffing

⁵² Section 62 of the Prison Act, 1967

The Havana Rules lay out requirements for prison staff that work with children in detention. Only highly skilled and experienced staff should be employed to work in child detention facilities. In particular, the Director/Head of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis. The staff should consist of qualified personnel and should include specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. It is vitally important that staffs are carefully selected and recruited. All members of staff should also be checked before they are employed to ensure that they do not have a record of violence or sexual offences and are suitable to work with children.

The inspectors identified a scarcity of professionals trained to deal with children. In the Retention Homes there were few Social Workers and sometimes none at all; for example there was just one Social Worker at Irambo Approved School; the others are para Social Workers. Furthermore, there was no coordination between District Social Workers, District Medical Officers and Prison Officers. The absence of education programmes goes hand in hand with the absence of instructors in both prisons and Retention Homes and in most cases classes are organised by inmates themselves. Also there were no psychiatrists and psychologists specialists to handle children's specific needs.

5.10 Children in prison with their mothers

Pregnant women and women with young children should not be imprisoned unless absolutely necessary. Article 30 of the ACRWC deals with children of imprisoned mothers and states that: "a non-custodial sentence will always be first considered when sentencing such mothers." If children are imprisoned with their mothers then the state should take on responsibility for caring for the child. Children living in prison should never be treated as prisoners themselves. They should not be subjected to disciplinary punishments. In principle they should be free to leave the prison and participate in outside activities, provided their mothers allow them and in compliance with security considerations. Mechanisms should be in place to protect children from all forms of physical and psychological abuse in prisons.

The Bangkok Rules elaborate further that punishment by close confinement or segregation should not be applied to pregnant women, women with infants and breastfeeding mothers in prison. Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children. On admission to prison the number and personal details of children accompanying their mothers should be recorded. During the time which they spend in prison, children should be provided with ongoing good quality primary health care services and their development should be monitored by a prison psychologist and specialists in child development (e.g. on regular visits from community healthcare services). The environment provided for the child's upbringing should be as close as possible to that of a child outside prison, with a nursery staffed by specialists who can take care of the child while separated from his or her mother.

The Prison Act, 1967 under Section 25(2) allows the admission of an infant child with their mother in the prison. Section 144 of the LCA and Section 63(3) of the Prison Act provides that the prison authorities shall ensure that children staying with their mothers while in prison shall receive the necessary child care, which includes an adequate diet, nutrition and health care, including immunisation. Where the child is no longer breast feeding, the LCA provides that the prison authorities shall inform the District Social Welfare Officer, who shall identify the most suitable placement for the child.

In practice the situation for children with their mothers is poor. The researchers found 12 children living in prisons with their mothers in Kasulu, Bukoba, Msalato, Isapilo, Kilosa and Segerea Prisons. While the women interviewed articulated various feelings about their children living in prison, many of their concerns overlapped about: food, nutrition and water, health and access to medical care, financial constraints, access to education, general effects of the prison environment and a lack of response to requests for government assistance that prison administrators or staff made on behalf of mothers, children and pregnant women in prisons.

The discussion with mothers indicated that their children are not given any special diet but are eating the same food as their mother. In Segerea Prison one woman who was accompanied by her child stated that “The condition with a child in the prison is very hard, food for a child is of a poor quality and milk is available very rarely”.

The Heads of facilities and women staff at prison facilities said they themselves provided extra food for children of prisoners, saying that they sometimes used personal funds (from their own pocket) to purchase milk and fruits for a breastfeeding mother. However, this was not corroborated in interviews with the inmates themselves. In fact, mothers at prisons remarked that getting additional food entails making requests to the prison administration. Women in pre-trial detention receive extra food when relatives come to visit and bring money, which they then use to purchase goods from outside the prison via the prison staff.

5.11 Access to grievance mechanisms

Children should have the right to make requests or complaints to the director of the detention facility, the central administration, judicial authorities and other independent authorities about any matter that affects them while in detention. Such complaints should not be censored either in terms of content or substance. In order to exercise their right to make complaints, children have to be aware of their rights and the complaints procedure. Rule 35(1) of the Standard Minimum Rules on the Treatment of Prisoners provides that every prisoner on admission shall be provided written information on the authorised methods of seeking information and making complaints and on his rights and obligations. Children must be given this information in a child friendly manner, which also takes into consideration any learning difficulties, illiteracy, language barriers etc. The Havana Rules emphasise the child’s right to assistance to make complaints. In particular, “[i]lliterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organisations which provide legal counsel or which are competent to receive complaints”.

The procedure for handling complaints in the detention facilities is regulated by the Prison (Prison Offences) Regulations, 1968. The procedure requires the settlement of disputes in an amicable manner unless such disputes involve a criminal offence. In every visited prison and Retention Home, there are prisoners' leaders named "Nyapara" in Swahili who are the prisoner who are appointed as immediate supervisors of their fellow prisoners. Their duty is to ensure peace and security among themselves, to receive individual complaints and forward them to the Officer-in-Charge of the prisoner for adjudication. However, there is no defined appeal procedure for when a prisoner is aggrieved with the decision of the Officer in-Charge of the prison.

It was also found in Kilosa and Morogoro Prisons that sometimes the 'Nyapara' punish their fellow prisoners without forwarding the complaints to the Officer-in-Charge. However, the situation is different in the Retention Homes and Approved schools where matrons and patrons are used, who are qualified social welfare officers and therefore usually able to handle complaints of children in more appropriate way.

Table 9: Availability of complaints mechanism

	Respondents in Prison		Respondents in Retention Homes and Approved School		TOTAL	
	Frequency	Percent	Frequency	Percent	Total	Total %
Yes	40	33.33	17	28.8	57	31.84
No	35	29.17	7	11.9	42	23.46
Yes but not working properly	15	12.50	0	0	15	8.38
I don't know	12	10.00	0	0	12	6.70
Not applicable	18	15.00	35	59.3	53	29.61
Total	120	100	59	100	179	100

PART THREE: LESSONS LEARNED, ANALYSIS AND RECOMMENDATIONS

1. LESSONS LEARNED FROM FIELD RESEARCH

The following issues were identified by the inspectors as areas which could be improved in future inspections:

- **Team composition:** Although the team of inspectors included members from different disciplines - social workers, lawyers, teachers and members of the Department of Social Welfare - the team did not include anyone with medical training or skills to assess fully children's medical situations and conditions.
- **Participation of children in interviews:** Generally children gave their consent to take part in focus group discussion and to be interviewed. Any child who seemed hesitant to take part in group discussions, was given the opportunity to be interviewed on a one to one basis. Prison employees mostly kept their distance during interviews. However, one limitation to the assessment was that it was not possible to interview any children being held in police detention. This may be because the visits were announced in advance. In future assessments it would be good practice to conduct a number of unannounced visits to police stations, as well as to other detention centres.
- **Participation of parents/guardians in interviews:** It was difficult to interview a sufficiently large number of parents and/or guardians to obtain a robust profile of the families of young offenders and the families' experience of the justice system, since they often lived far from the detention centres where their children were being held. In future assessments, additional efforts should be made to arrange interviews with families.
- **Interview tools:** The questionnaire used for interviewing children was lengthy and some children found it difficult to concentrate for a sufficient length of time. This problem was compounded by the low levels of literacy of some of the interviewees. In future, questionnaires should be tested in advance with a small focus group to ensure they are as effective as possible and questions kept to a minimum. However, the questionnaire did not address issues surrounding sentencing and the appeals process and it could have been helpful to ask children who have been sentenced if they had appealed their conviction or length of sentence.
- **Additional areas for research:** An anecdotal finding from the interviews was the view that children who have been held in adult prisons are more likely to re-offend than those who have been held in the Retention Homes or Approved School.

Anecdotally, it was suggested that this was because of mixing children with adult criminals, as well as the absence of rehabilitation activities and support services. Although research into the extent to which children, who have been released from detention have been rehabilitated/ reoffending rates of children who have been detained, this issue should be explored in future research. In addition, it is important to research the drivers for the recent increase in the numbers of children in detention and the percentage of children being detained versus the numbers coming into conflict with the law, especially in light of the fact that the adult prison population has decreased over the last 12 months.

2. ANALYSIS

Standards for juvenile justice and for the treatment and care of children who are in all forms of detention are enshrined in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Tanzania has committed itself to implementing these standards by ratifying these treaties. Significantly, Parliament took steps to enshrine these standards into domestic law by adopting the Law of the Child Act in, 2009. However, the inspection found that these instruments have not been translated into practice, exposing children to sub-standard conditions and violations of their rights. In particular:

- Children who are arrested are held in poor conditions, and often mixed with adults, while detained in the police stations. Some children also suffer mistreatment at the hands of the police on arrest or to extract a confession;
- Legal representation is not readily available at the police station, during the investigation process or at the trial stage. This increases the child's vulnerability to mistreatment when arrested, especially where the child's parents are not contacted, and to custodial measures pre-trial and upon conviction, as the child has no one to advocate for alternatives on their behalf;
- Children are being remanded in adult prisons pre trial, even in areas where Retention Homes, which are under capacity, operate;
- Due to challenges within the criminal justice system, children often languish in pre trial detention for lengthy periods of time, during which time their continued detention is not reviewed by the courts with the frequency that is prescribed by law;
- Even though the Approved School is under capacity, children are being imprisoned in adult prisons, in contravention of the Law of the Child Act;
- Children detained pre and post-trial in adult prisons, frequently mix with adult prisoners. Prison conditions tend to be very poor, exacerbated by overcrowding, with many prisons accommodating more than twice their capacity. Children are vulnerable to violence and abuse from other children, adult prisoners and prison staff;
- Education, vocational training, health care and rehabilitation are extremely limited in all detention centres. There are almost no reintegration services available to help children settle back into communities on their release; and
- Overall there is a lack of general knowledge on the rights of children in Tanzanian society. Even the main stakeholders for juvenile justice, including government

officials, law enforcement agents, judiciary personnel, local government officers, prison officials, Social Welfare Officers and community leaders, do not know about the content of the UN Convention for Rights of the Child and the Law of the Child Act, 2009. Even those who are aware of the existence of these documents have not always read the documents or are aware of the obligations they create for them.

3. RECOMMENDATIONS

This assessment identifies significant challenges for the justice sector. CHRAGG recognises that some of these challenges require a longer term strategic and coordinated approach, as well as allocation of adequate funding. However, there are violations of children's rights at every step of the criminal justice process which could be addressed with minimal expenditure. Further, CHRAGG urges MDAs to swiftly and decisively tackle the physical and sexual abuse of children in detention, especially where perpetrated by state actors.

Recommendations to the police

Short term

- Ensure that allegations of torture and inhuman treatment by police are investigated and, where appropriate, officers disciplined and prosecuted. For this purpose, the Police should establish a transparent complaints mechanism.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help.
- Ensure children are interviewed and sign confessions in the presence of appropriate adults and/or legal representatives.
- Allocate adequate resources to facilitate the transfer of children from police stations to court so that cases are dealt with within the statutory time limits.

Medium term

- Ensure that children are separated from adult detainees in police cells. Prioritise creating juvenile cells in the police stations that deal with the highest numbers of children's cases.
- Improve sanitary conditions in the police cells and ensure children are provided with basic necessities, such as food.
- Provide police officers with in service training on child rights, the Law of the Child Act and child friendly methods of dealing with children.
- Develop a child specific module to be incorporated into pre-service training for police.
- Promote specialism in the police force so that children's cases are dealt with (at first instance and during investigation) by specially trained police officers.

Recommendations to the prison authorities

Children should not be held in adult prisons. However, until measures can be taken to implement alternatives, the prison authorities need to take steps to ensure that children are adequately cared for and protected while in detention.

Short term:

- Allocate adequate resources to facilitate the transfer of children from detention centres to and from court, so that their cases are reviewed and dealt with within the statutory time limits, and from prison to their home, following their release.
- Develop child protection procedures that protect children from all forms of abuse while in detention and build the capacity of personnel to implement these procedures.
- Ensure that children have separate sleeping quarters from adults and are regularly monitored at night.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help.
- Ensure that children living in prison with their mothers are provided with the necessary conditions for their protection, survival and development particularly with regards to the provision of adequate food.

Medium term:

- Provide prison officers with in service training on child rights, the Law of the Child Act and child friendly methods of dealing with children.
- Work towards the separation of all children from adults in all detention facilities.
- Improve the physical infrastructure of detention facilities, focusing on sanitary facilities and dormitories.
- Provide a suitable area in each prison for children to meet their families and their lawyers.
- Improve access to complaints mechanisms for children in detention.
- Review the way in which girls in detention are treated and adopt and implement a policy explicitly focussed on their rehabilitation and reintegration.
- Promote cooperation with NGOs, CBOs and FBOs in order to enhance the services and support provided to children.

Recommendations to the Ministry of Health and Social Welfare and Retention Homes and the Approved School

Short term:

- Allocate adequate resources to facilitate the transfer of children from the Retention Home to Court, so that their cases are reviewed and dealt with within the statutory time limits, and from the Retention Home and Court to the Approved

School, and from the Approved School (and Retention Homes) back home, when released.

- Promote the use of the Retention Homes among the judiciary in the areas in which the institutions are operating.
- Disseminate the new Approved School Rules and Retention Home Rules (in English and Kiswahili) to relevant personnel when adopted (currently in draft form).
- Develop child protection procedures that protect children from all forms of abuse while in detention and build the capacity of personnel to implement these procedures.
- Cooperate with legal aid providers, who offer legal assistance to children in conflict with the law, in order to facilitate their access to legal help when in pre-trial detention.

Medium term:

- Ensure that the Approved School and Retention Homes are adequately staffed with qualified and trained personnel.
- Develop a comprehensive rehabilitation and reintegration programme for children at the Approved School, build the capacity of personnel and the institution to deliver the programme and strengthen links with Social Welfare Officers at the district level to ensure that children are supported following release.
- Improve access to education programmes for children in Retention Homes.
- Promote cooperation with NGOs, CBOs and FBOs in order to enhance the services and support provided to children.
- Improve the physical infrastructure of detention facilities to ensure they meet international standards and provide an environment that is conducive to the care and rehabilitation of the children.
- Review the way in which girls in detention are treated and adopt and implement a policy explicitly focussed on their care, rehabilitation and reintegration. Ensure babies' needs are met when in detention facilities with their mothers.
- Improve access to complaints mechanisms for children in detention.
- Increase the number of Social Welfare Officers at the district level and increase resources to enable them to provide comprehensive social investigation reports for the courts that fully explore alternatives to custodial sentences.

Recommendations to the judiciary

Short term

- Raise awareness among the judiciary in order to end the pre-trial detention of under-18s in adult prisons in the areas in which Retention Homes are operating.
- Promote the use of non-custodial pre-trial measures, including by ensuring that bail conditions are set at feasible levels given the financial constraints faced by the children who come into conflict with the law and by their families.

- Raise awareness amongst magistrates and judges that the LCA prohibits imprisonment of children through prompt distribution of a circular.

Medium term

- Appoint adequate numbers of Resident magistrates to preside over juvenile cases. They should receive special training on the CRC, on the social and other causes of juvenile offending, psychological and other aspects of the development of children and the available measures for dealing with children in conflict with the law under the Law of the Child Act (2009).
- Ensure that the judiciary has up to date information about capacity in Retention Homes, when deciding on pre-trial measures, and the Approved School at the point of sentencing, so that they are able to make informed decisions about where to commit children who have received custodial sentences or who are remanded into pre-trial detention.
- Transfer all convicted under-18s who are in adult detention following conviction to the Approved School.
- Ensure that judges and magistrates are closely involved in the design and implementation of non-custodial sanctions and measures for children so that they have confidence and understanding of how to sentence children.
- Expedite children's cases and ensure that the periodic review of the cases of children held in pre-trial detention is carried out, and within that review that the court assesses whether the investigation should be allowed to continue.

Conclusion

While MDAs can take significant steps to improve the treatment and care of children in conflict with the law, the challenges facing the justice system cannot be fully addressed by agencies in isolation. Likewise it is impossible to effectively reduce the number of children in detention and the time they are detained, without grappling with the challenges in the criminal justice system as a whole. Cooperation between agencies and a coordinated approach to reform is essential.

CHRAGG proposes that the issues raised in this assessment and the recommendations for addressing these challenges are prioritised by MDAs and Development Partners in the Legal Sector Reform Programme.

Further CHRAGG recommends that the Child Justice Forum – an interagency body of state and non-state justice actors, convened in 2011 by the Ministry of Constitutional and Legal Affairs, should develop a strategy for reform of the juvenile justice system, which includes a time bound set of objectives for addressing the gaps in the system, including reducing the number of children in detention and improving their care and treatment while detained. In particular, the strategy should promote coordination between the justice actors and social welfare in order to effectively prevent and respond to juvenile offending.

Lastly, CHRAGG encourages the Government of Tanzania to ratify the Optional Protocol to the Convention against Torture, in order to assure future monitoring of the situation of children in detention.

ANNEXES

- Annex 1 - Name of detention facilities visited and number and status of respondents in each facility
- Annex 2 - Institutional profiles and numbers of children held in detention facilities disaggregated by age, gender and legal status - narrative
- Annex 3 - Institutional profiles and numbers of children held in detention facilities disaggregated by age, gender and legal status – reference tables
- Annex 4 – Reason for the juvenile arrest- crime committed by juvenile
- Annex 5 – Stakeholders’ meeting comments and recommendations
- Annex 6 – Governments’ meeting comments and recommendations

ANNEX 1: NAME OF DETENTION FACILITIES VISITED AND NUMBER AND STATUS OF RESPONDENTS IN EACH FACILITY

A. Respondents in Retention Homes and Approved School - Children

Facilty					
		Frequency	Percent	Valid Percent	Cumulative Percent
1	Arusha	12	20.34	20.34	20.34
2	Mbeya	11	18.64	18.64	38.98
3	Ilambo Approved School	11	18.64	18.64	57.63
4	Upanga	11	18.64	18.64	76.27
5	Moshi	10	16.95	16.95	93.22
6	Tanga	4	6.78	6.78	100.00
	Total	59	100	100	

Age of the respondent					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	5-9	1	1.69	1.69	1.69
	10-13	11	18.64	18.64	20.34
	13-16	33	55.93	55.93	76.27
	16-18	14	23.73	23.73	100.00
	Total	59	100	100	

Sex of the respondent					
		Frequency	Percent	Valid Percent	Cumulative Percent
	Male	50	84.75	84.75	84.75
	Female	9	15.25	15.25	100.00
	Total	59	100	100	

B. Respondents in Prisons - Children

	Facilities	Frequency	Percent	Valid Percent	Cumulative Percent
1	Kondoa prison	31	25.83	22.96	25.83
2	Manyoni Prison	14	11.67	10.37	37.50
3	Singida Prison	16	13.33	11.85	50.83
4	Isanga Prison	22	18.33	16.30	69.17
5	Wami VIJANA Prison	1	0.83	11.85	70.00
6	Kilosa Prison	9	7.50	6.67	77.50
7	Morogoro Remand	4	3.33	2.96	80.83
8	Keko Remandees	6	5.00	4.44	85.83
9	Morogoro Urban Prison	3	2.50	2.22	88.33
10	Segerea Prison	8	6.67	5.93	95.00
11	Bagamoyo Prison	2	1.67	1.48	96.67
12	Tukuyu Prison	1	0.83	0.74	97.50
13	Kigongoni Prison	2	1.67	1.48	99.17
14	Bukuba Prison	1	0.83	0.74	100.00
	Total	120	100	100	100

Age group of respondents				
	Frequency	Percent	Valid Percent	Cumulative Percent
5-9	26	21.67	21.67	21.67
10-13	18	15.00	15.00	36.67
13-15	16	13.33	13.33	50.00
16-18	56	46.67	46.67	96.67
Cannot tell	4	3.33	3.33	100.00
Total	120	100	100	

Sex of the respondent				
	Frequency	Percent	Valid Percent	Cumulative Percent
Male	78	65	65	65
Female	42	35	35	100
Total	120	100	100	

C. Respondent in Retention Homes and Approved School - Officers

Name of the facility

		Frequency	Percent	Valid Percent	Cumulative Percent
1	Ilambo Approved school	2	13.33	13.33	13.33
2	Upanga Retention Home	3	20.00	20.00	33.33
3	Arusha Retention Home	3	20.00	20.00	53.33
4	Tanga Retention Home	2	13.33	13.33	66.67
5	Moshi Retention Home	2	13.33	13.33	80.00
6	Mbeya Retention Home	3	20.00	20.00	100.00
	Total	15	100	100	

Sex

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	7	46.67	46.67	46.67
	Female	8	53.33	53.33	100.00
	Total	15	100	100	

Region

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Tanga	2	13.33	13.33	13.33
	Kilimanjaro	2	13.33	13.33	26.67
	Arusha	3	20.00	20.00	46.67
	Dar es Salaam	3	20.00	20.00	66.67
	Mbeya	5	33.33	33.33	100.00
	Total	15	100	100	

D. Respondents in Police Stations – Police Officers

Police stations					
		Frequency	Percent	Valid Percent	Cumulative Percent
1	Singida central police	4	7.14	7.14	7.14
2	Police Manyoni	1	1.79	1.79	8.93
3	Police Dodoma	2	3.57	3.57	12.50
4	Msimbazi Police	3	5.36	5.36	17.86
5	Arusha Central Police	5	8.93	8.93	26.79
6	Mbeya central Police	2	3.57	3.57	30.36
7	Rungwe central Police	1	1.79	1.79	32.14
8	buguruni Police	5	8.93	8.93	41.07
9	Ostabay Police	2	3.57	3.57	44.64
10	Changambe Police	2	3.57	3.57	48.21
11	Bagamoyo Police	1	1.79	1.79	50.00
12	Kasulu Police	4	7.14	7.14	57.14
13	Kagera Central Police	6	10.71	10.71	67.86
14	Mtwara Central Police	3	5.36	5.36	73.21
15	Lindi central Police	1	1.79	1.79	75.00
16	Babati police	5	8.93	8.93	83.93
17	Iringa police	1	1.79	1.79	85.71
18	Tanga police	4	7.14	7.14	92.86
19	Mbalizi Police	1	1.79	1.79	94.64
20	Tukuyu	2	3.57	3.57	98.21
21	Moshi police	1	1.79	1.79	100.00
	Total	56	100	100	

Sex of the respondent					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	male	33	58.93	58.93	58.93
	female	23	41.07	41.07	100
	Total	56	100	100	

Region					
		Frequency	Percent	Valid Percent	Cumulative Percent
1	Tanga	3	5.36	5.36	5.36
2	Kilimanjaro	1	1.79	1.79	7.14
3	Manyara	6	10.71	10.71	17.86
4	Arusha	5	8.93	8.93	26.79
5	Mtwara	2	3.57	3.57	30.36
6	Lindi	2	3.57	3.57	33.93
7	Pwani	2	3.57	3.57	37.50
8	Kagera	5	8.93	8.93	46.43
9	Dar es Salaam	12	21.43	21.43	67.86
10	Mbeya	7	12.50	12.50	80.36
11	Iringa	1	1.79	1.79	82.14
12	Singida	3	5.36	5.36	87.50
13	Dodoma	3	5.36	5.36	92.86
14	Kigoma	4	7.14	7.14	100.00
	Total	56	100	100	

E. Respondent in Prisons – Prison Officers

Name of Facility visited

		Frequency	Percent	Valid Percent	Cumulative Percent
1	Singida	2	2.74	2.74	2.74
2	Isanga	5	6.85	6.85	9.59
3	Keko Remandee Prison	3	4.11	4.11	13.70
4	Morogoro Urban	1	1.37	1.37	15.07
5	Segerea	5	6.85	6.85	21.92
6	Baganmoyo	4	5.48	5.48	27.40
7	Tukuyu	5	6.85	6.85	34.25
8	Msalato	6	8.22	8.22	42.47
9	Arusha	2	2.74	2.74	45.21
10	Babati	3	4.11	4.11	49.32
11	Mbulu	2	2.74	2.74	52.05
12	Lindi	3	4.11	4.11	56.16
13	Masaki	5	6.85	6.85	63.01
14	Bukoba	3	4.11	4.11	67.12
15	Iringa	2	2.74	2.74	69.86
16	Isupilo	6	8.22	8.22	78.08
17	Luanda	4	5.48	5.48	83.56
18	Bangwe	3	4.11	4.11	87.67

19	Kasulu	1	1.37	1.37	89.04
20	Mwanga	3	4.11	4.11	93.15
21	Karanga	2	2.74	2.74	95.89
22	Korogwe	3	4.11	4.11	100.00
	Total	73	100.00	100.00	

Sex of respondent

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	58	79.45	79.45	79.45
	Female	15	20.55	20.55	100.00
	Total	73	100	100	

ANNEX 2: INSTITUTIONAL PROFILES AND NUMBERS OF CHILDREN HELD IN DETENTION FACILITIES DISAGGREGATED BY AGE, GENDER AND LEGAL STATUS - NARRATIVE

Region	Detention facilities visited	No. of children being detained at the time of the field visit	No of children detained disaggregated by gender, age and according to pre and post trial status	Short profile and overall capacity of the detention facility visited
Arusha and Manyara	Arusha Retention Home	23	1 boy, aged 10-12, pre-trial 21 boys, aged 13-17, pre-trial 1 girl, aged 13-17, pre-trial	Capacity: 40 children (30 boys and 10 girls). At the time of the inspection there were 23 children.
	Arusha Central Prison	26	25 boys, 13-17, pre-trial 1 boy, 13-17, post-trial	Capacity: 530 adults.
	Arusha Central Police Station	0	0	No figures available. No separate cell for children.
	Babati Police Station	0	0	No figures available. No separate cell for children.
	Babati Prison	34	34 boys, aged 13-17, pre-trial 0 girls	Capacity: 115 adults.
	Mbulu Prison	9	4 boys, aged 13-17, pre-trial 5 boys, aged 13-17, post-trial	Capacity: 84 adults. At the time of the inspection there were 138 adults and 9 children.

			0 girls	
Dodoma and Singida	Msalato Prison	0	0	Capacity: 212 adults. At the time of inspection there were 121 adults.
	Isanga Prison	8	7 boys post-trial 1 girl pre trial	Capacity: 784 adults. At the time of inspection there were 1,284 adults and 8 children.
	Kondoa Remand Prison	6	6 boys pre-trial 0 girls Ages unknown	Capacity: 124 adults
	Singida Prison	17	10 boys pre-trial 5 boys post-trial 2 girls post-trial Age range from 15-17	Capacity: 330 adults. At the time of the inspection there were 398 adults and 17 children.
	Manyoni Prison	3	3 girls 0 boys	Capacity: 117. At the time of the inspection there were 254 adults and 3 children. Each cell has the capacity for 11 detainees but the inspectors observed there were 33 detainees in a cell. For women, each cell has the capacity for 4 but the inspectors observed there were 15 pre and post trial detainees in one cell.

	Dodoma Central Police Station	0	0	Capacity: 40 One temporary cell for women and children to be detained separately.
	Kondoa Police Station	0	0	Capacity: 20 (no separate cell for children)
	Singida Central Police Station	0	0	Capacity: 35 adults and 10 children. One separate cell for children.
	Manyoni Police Station	0	0	Capacity: 12 adults (no separate cell for children).
Kigoma and Kagera	Bangwe Prison	9	5 boys pre-trial 3 boys post-trial 1 child detained with mother	Capacity: 194 adults.
	Kasulu Prison	11	4 girls pre-trial 2 girls post-trial 5 children detained with their mothers	Capacity: 180 adults.
	Bukoba Prison	12	1 boy, aged 14-15 pre-trial 8 boys, aged 16-17, pre-trial 3 children detained with mother	Capacity: 360 adults.
	Bukoba Central Police Station	0	0	Capacity: 10 No separate cell for children.
	Muleba Prison	7	2 boys pre-trial 1 girl pre trial 2 boys post-trial 2 detained with	Capacity: 157 adults. The inspectors observed that cells designed to hold 10 detainees are holding 40.

			mothers	
	Kigoma Central Police Station	1	1	Capacity 50 adults (30 men and 20 women) No separate cell for children.
	Kigoma Town Police Station	0	0	Capacity unknown. No separate cell for children.
	Muleba Police Station	1	1 child detained with mother	Capacity: 10 No separate cell for children.
	Kasulu Police Station	0	0	Capacity: 30 (20 men and 10 women) One separate cell for children.
Tanga and Kilimanjaro	Tanga Retention Home	4	4 boys pre trial	Capacity: 50 children (40 boys and 10 girls). At the time of the inspection there were 4 children.
	Maweni Prison	6	4 boys pre-trial 2 boys post trial	Capacity: 920 adults.
	Korogwe Prison	5	5 boys pre-trial	Capacity: 87 adults.
	Moshi Retention Home	10	9 boys pre-trial 1 girl pre-trial	Capacity: 60 (50 boys and 10 girls). At the time of the inspection there were 10 children.
	Karanga Prison	10	7 boys pre-trial 1 boy post-trial 2 girl post-trial	Capacity: 841 adults.
	Mwanga Prison	0	0	Capacity: 150 adults.
	Korogwe Police Station	0	0	Capacity unknown. No separate cell for children.

	Mwanga Police Station	0	0	Capacity unknown. No separate cell for children.
	Moshi Police Station	0	0	Capacity unknown. No separate cell for children.
	Chumbageni Police Station	0	0	Capacity unknown. No separate cell for children.
	Himo Police Station	0	0	Capacity unknown. No separate cell for children.
Dar es Salaam and Morogoro	Upanga Retention Home	15	12 boys and 3 girls	Capacity: 60 children. At the time of the inspection there were 15 children.
	Segerea Prison	169	139 boys pre-trial 13 girls pre-trial 13 boys post-trial 4 girls post-trial	Capacity: 900 adults. At the time of the inspection there were 1,842 adults and 169 children.
	Keko Remand Prison for Adults	18	18 boys pre-trial 0 girls	Capacity: 340 adults. At the time of the inspection there were 1,082 adults and 18 children.
	Bagamoyo-Kigongoni Prison	7	7 boys 0 girls	Capacity: 198 adults.
	Kilosa Prison	1	1 child detained with mother	Capacity: 95. At the time of the inspection there were 328 adults and 1 child detained with mother.
	Wami Prison for Young Offenders	2	2 boys	Capacity: 255 adults aged 18-21 years post-trial. At the time of the inspection there were 51 adults and 2 children.

	Morogoro Remand and Urban Prison	18	14 pre-trial 4 post-trial	Capacity: 144 adults.
	Msimbazi Police Station	0	0	Capacity: 25 Separate cell for children.
	Kilosa District Police Station	0	0	Capacity unknown. No separate cell for children.
	Oysterbay Police Station	0	0	Capacity unknown. No separate cell for children.
	Chang'ombe Police Station	0	0	Capacity unknown. No separate cell for children.
	Buguruni Police Station	0	0	Capacity unknown. No separate cell for children.
Mbeya and Iringa	Luanda Prison	15	15 boys pre-trial	Capacity: 400 At the time of the inspection the inspectors observed that Cell No. 6 accommodated 49 detainees instead of an authorized capacity of 21 detainees.
	Isupilo Prison	13	13 boys	Capacity: 300
	Irambo Approved School	56	56 children in post-trial	Capacity: 300 children post-trial. At the time of the inspection there were 56

			detention	children.
	Mbeya Retention Home	28	23 boys 5 girls boys and girls range in age from 11 to 17 years.	Capacity: 50 children. At time of inspection there were 28 children.
	Iringa Prison	7	6 boys pre trial 1 girl post trial	Capacity: 643. At the time of inspection the inspectors observed that cells with a capacity of 25 detainees were holding 50 or 60 detainees.
	Iringa Police Station	0	0	Capacity unknown. No separate cell for children.
	Tukuyu Prison	2	1 boy aged 14 years pre-trial detention 1 boy aged 17 years pre-trial detention	Capacity: 110 At the time of the inspection there were 253 adults and 2 children. Inspectors questioned why these two boys were not sent to Mbeya Retention Home.
	Tukuyu Police Station	0	0	Capacity unknown. No separate cell for children.
	Mbeya Central Police Station	0	0	Capacity unknown. No separate cell for children.
	Uyole Police Station	0	0	Capacity unknown. No separate cell for children.
	Mbalizi Police Station	0	0	Capacity unknown. No separate cell for children.
	Mafinga Police Station	0	0	Capacity unknown. No separate cell for children.

Mtwara	Lilungu Prison	5	4 boys pre-trial 1 boy post-trial	Capacity: 75 At the time of the inspection there were 209 adults and 5 children.
	Mtwara Police Station	0	0	Capacity unknown. No separate cell for children.
	Masasi Prison	4	4 boys pre-trial	Capacity: 75 adults. At the time of the inspection there were 204 adults and 4 children.
	Masasi Police Station	0	0	Capacity unknown. No separate cell for children.
Lindi	Lindi Prison	3	3 boys pre-trial	Capacity: 386 At the time of the inspection there were 284 adults and 3 children.
	Lindi Central Police Station	0	0	Capacity unknown. No separate cell for children.

ANNEX 3: INSTITUTIONAL PROFILES AND NUMBERS OF CHILDREN HELD IN DETENTION FACILITIES DISAGGREGATED BY AGE, GENDER AND LEGAL STATUS – REFERENCE TABLES

Prison (total children)	453
Pre Trial	374
Post Trial	64
Babies	12
Retention Home (total children)	80
Approved School (total children)	56
Police stations (total children)	2
Babies	1
DETAINED CHILDREN	578
BABIES WITH MOTHERS	13
TOTAL DETAINED	591

NB status of three children was not recorded

NB 1 baby and 1 child found in police detention

	TOTAL No. of children	TOTAL disaggregated by sex		TOTAL Pre Trial disaggregated by sex		TOTAL Post Trial disaggregated by sex		No. of babies
	No	Boys	Girls	Boys	Girls	Boys	Girls	Babies
Kigoma central police station	1	1	0	1	0	0	0	0
Muleba police station	1	0	0	0	0	0	0	0
Sub total Police Stations	2	1	0	1	0	0	0	0
Arusha Retention Home	23	22	1	22	1			
Tanga Retention Home	4	4		4				
Moshi Retention Home	10	9	1	9	1			
Upanga Retention Home	15	12	3	12	3			
Mbeya Retention Home	28	23	5	23	5			
Sub total Retention Home	80	70	10	70	10	0	0	0
Irambo Approved School	56	56				56		
Sub total Approved School	56	56	0	0	0	56	0	0
Arusha central prisin	26	26		25		1		
Babati Prison	34	34		34				
Mbulu Prison	9	9		4		5		
Msalato Prison	0							
Isanga Prisoin	8	7	1			7	1	
Kondoa Remand Prison	6	6		6				
Singida Prison	17	15	2	10		5	2	
Manyoni Prison	3		3					
Bangwe Prison	9	8		5		3		
Kasulu Prison	11		6		4		2	
Bukoba Prison	12	9		9				
Muleba Prison	7	4	1	2	1	2	0	
Maweni Prison	6	6		4		2		
Korogwe Prison	5	5		5				
Mwanga Prison	0	0	0					
Karanga Prison	10	8	2	7		1	2	
Segerea Prison	169	152	17	139	13	13	4	
Keko Remande Prison	18	18		18				
Bagamoyo-Kigongoni	7	7		7				
Kilosa Prison	27	25	1	20	1	5	0	
Wami Prison for Young Offenders	2	2				2		
Morogoro Remand Prison	18	18		14		4		
Luanda Prison	15	15		14		1		
Iringa Prison	7	6	1	6			1	
Tukuyu Prison	2	2		2				

Lilungu Prison	5	5		4		1		
Isupilo Prison	13	13		13				
Masasi Prison	4	4		4				
Lindi Prison	3	3		3				
Sub total Prisons	453	407	34	355	19	52	12	12

ANNEX 4: TYPE OF CRIME COMMITTED FOR DETENTION.

Reasons for detention	Frequency	Percent
School abscond	19	10.61
Vagabond around the street, illegal migration	9	5.03
Theft	50	27.93
Illegal living with a girl child/raping	18	10.06
Murder, killing unintentionally	26	14.53
Truancy	1	0.56
Witch craft	10	5.59
Because of street children	1	0.56
Drug abuse - marijuana/bang	36	20.11
Armed robbery	1	0.56
He didn't understand the question	8	4.47
Total	179	100.00

ANNEX 5: Working meeting to discuss the findings of the Inspection Report for Children in Detention in Tanzania, prepared by CHRAGG

Conclusions and Recommendations

July 8th 2011

Summary

The Ministry of Constitutional and Legal Affairs convened a high-level working meeting of Legal Sector Institutions, Legal Sector Reform Programme Development Partners, and other interested Development Partners, in order to discuss the findings and recommendations of the Commission for Human Rights and Good Governance's Inspection Report on Children in Detention in Tanzania and agree on the way forward to address the challenges raised in the report and to implement its recommendations.

Deliberations:

1. Inspection Report for Children in Detention in Tanzania as prepared by CHRAGG was **endorsed**;
2. **Agreed** that recommendations contained in the report should be **implemented**;
3. **Development Partners and MDAs** expressed their appreciation for CHRAGG's work in highlighting the situation of children in detention;
4. **Consensus** of participants that there should be sustained follow up to the Inspection Report, to ensure that the recommendations of the report are implemented;
5. **Launching** of the report was considered an essential step and should involve key stakeholders, including CSOs and MPs from relevant parliamentary committees;
6. Proposal by participants for the establishment of a **high level committee** to promote and monitor the implementation of the recommendations of the Inspection Report;

7. **The representative from the Ministry of Constitutional and Legal Affairs** informed participants that it was in the course of overseeing a comprehensive assessment of the juvenile justice system. It had convened a **Child Justice Forum** - an inter agency forum of state and non state bodies mandated to guide the assessment and act as a policy body for juvenile justice reform. The Forum will be convened in September in order to review the findings of the assessment and develop an action plan/strategy to strengthen the juvenile justice system
8. **Agreed** that the Inspection Report should be discussed during the **Child Justice Forum in September 2011**;
9. **The representative from the Ministry of Constitutional and Legal Affairs** committed to **distributing** the report to all members of the **Child Justice Forum** following the launch with a request or instruction for each member to prepare commitments and action points for implementing the recommendations of the report which they would be asked to present at the Child Justice Forum. MDAs present at the meeting **committed** to preparing these commitments and action points;
10. **Agreed** that two parallel bodies should not be established on child justice and proposed that options should be explored for whether the **Child Justice Forum**, in its current form or with modifications, such as with a technical sub committee or with a high level reference group that it would report to, could become a permanent body with the mandate to oversee the strengthening of the juvenile justice system, including monitoring the implementation of the recommendations of the Inspection Report
11. **Ministry of Constitutional and Legal Affairs** committed to the continuation of the work of the **Child Justice Forum** following the completion of the juvenile justice assessment and the development of a strategy for juvenile justice reform, in a form agreed by the Forum;

12. **Agreed** that the situation of children in detention should be regularly monitored by CHRAGG rather than be a one- time exercise and that a comprehensive follow up assessment should be carried out by CHRAGG, within the next two years, of the same sample institutions as were visited for this inspection, in order to assess the extent to which the recommendations in the report have been implemented;
13. **Noted** that Department of Probation and Community services within the Ministry of Home Affairs should be consulted for this Inspection Report and for the Juvenile Justice Assessment;
14. Reiterated that the **commitment of the Government** is essential in observing fundamental principles established in the CRC, including to ensure that detention of children is used as a last resort and for the shortest appropriate period,
15. **Agreed** that the situation of children in detention cannot be addressed in isolation or by one MDA alone and that the strengthening of the juvenile justice system as whole, including the development of prevention and rehabilitation programmes at the community level, needs to be undertaken in a coordinated manner by MDAs;
16. Noted that 75% of the 1400 children are in pre-trial detention and called for actions to **expedite** the hearing of juvenile cases and include recommendations for the DPP Office in the report, which should include seeking effective alternative to bonds as pre trial conditions to reduce the use of pre-trial detention;
17. Emphasized the need to influence NGOs and Communities to engage in **preventing juvenile delinquency** as part of the long term solution;
18. **Recognised** that the forthcoming State Report to the Committee on the Rights of the Child would provide an opportunity for the State to demonstrate its commitment to strengthening the juvenile justice system.

Participants: LSRP Organizations and Development Partners represented during the meeting:

(i) Ministry of Constitution and Legal Affairs (Chair)

(ii) Ministry of Home Affairs

(iii) Office the Inspector General of Police

(iv) Director of Public Prosecution;

(v) Social Welfare Department

(vi) Embassy of Ireland

(vii) Embassy of Norway

(viii) Embassy of Sweden

(ix) Office of the UN Resident Coordinator

(x) UNICEF

(xi) The World Bank

(xii) DANIDA

(xiii) Canadian International Development Agency

(xiv) CHRAGG

ANNEX 6: Commission for Human rights and Good Governance

Inspection Report of Juvenile Detention Facilities presented to government institutions

30th July, 2011

Output from the meeting:

The Commission for Human Rights and Good Governance organized a meeting with key government institutions with children in conflict with the law mandate at policy and implementation levels and presented an on-site inspection and transparent investigation report of facilities where juveniles are detained. The institutions that attended the meeting were:

- (i) the Judiciary (Registrar of the Court of Appeal);
- (ii) Director of Public Prosecution;
- (iii) Chief Magistrate – Juvenile Court;
- (iv) Prisons Service (two Senior Officers);
- (v) Police Force (two senior officers);
- (vi) Social Welfare Department (two senior officers);
- (vii) Attorney General Chambers (one senior officer)
- (viii) Ministry of Community Development, Gender and Children (One senior Officer).

The meeting began with CHRAGG thanking the government senior officials for their attendance and UNICEF for its financial and technical support. CHRAGG commended the staff of the detention facilities for their helpfulness and professional conduct and also the juvenile inmates for participating in the interviews. Presentation ensued of the research report on the inspection of 65 detention facilities in 14 regions of Tanzania mainland where juveniles were held, i.e. prisons, retention homes, the Approved School and police cells. The inspection was conducted during the first quarter of 2011. The situation analysis was

presented together with challenges. Consistent with CHRAGG statutory obligation, recommendations accompanied the inspection and research findings. Plenary discussions followed that included the following comments and recommendations:-

- **The report was accepted** as a positive development and underlined the willingness of the authorities to advance the juvenile justice system and improve the situation in detention facilities in accordance with both international and national standards;
- **Recognized** that child offenders and juvenile justice should be taken seriously and aim at reducing the risk of re-offending as far as possible because many (*although by no means not all*) child offenders are tomorrow's young offenders and adult criminals;
- **Regrettable** that there are **no good statistics** available on the prevalence of child offenders, the kind of crimes they commit, levels of criminality and prevalence of re-offending. It is imperative that researches should establish the real situation including the underlying causes;
- **Gaps were identified** in the institutions dealing with administration of justice system for instance **inadequate training** on the skills needed in handling juvenile offenders from the time the child is apprehended, sentenced, detained and released to be re-integrated into society. Continuous training and awareness creation among law enforcement agencies was recognized as indispensable;
- **Reiterated the primary duty of the government** in improving juvenile detention facilities. The meeting proposed involvement of **Principal Secretaries of key Ministries** as the main actors and decision makers in relation to allocation of resources and implementation of recommendations and policy strategies;

- **Emphasized** that Juvenile justice rests on the principle that treatment of juvenile offenders is a care and protection issue and on the belief that juvenile offenders are a product of the **wider family** within which lasting solutions must be found;
- **Acknowledged the need for further research** on social issues, for instance, on the reasons behind parents seeking law enforcement actions when children offend and looking into the possibility of using **Ward Councils** in the absence of family courts to hear juvenile cases as a way of strengthening restorative justice and seek community solutions and yet still allow reasonable punishment in the public interest;
- **Noted** that current problems are a result of lack of accountable **coordinated national initiative** (*mfumo*) and since approaches to juvenile justice and detention require both welfare and justice models – a national organ or committee on juvenile justice be formed that will address properly the recommendations from CHRAGG and like minded organizations;.
- **Expressed** cause for optimism in relation to **age determination** of juvenile offenders in the context of expanded work of RITA;
- **Recognized** special desks on gender, children and on ethics at Police stations and offices as positive steps in addressing challenges within juvenile justice;
- **Endorsed** that juvenile justice system is under-**resourced** in the form of structures, equipment, personnel, transportation and skills. Support has to be solicited from both government and development partners. However there are steps that could be taken by the related authorities e.g.
 - i. Make full use of facilities available in retention homes, juvenile court and approved School instead of sending juveniles to adult facilities,
 - ii. Increase awareness and training,

- iii. Encourage proper plans on the implementation of the Child Rights Act including finalizing the Regulations and learning from past mistakes,
- iv. Promote an integrated approach while establishment new districts in ensuring all necessary services and infrastructure are available e.g. police stations, prisons, courts that observe juvenile justice standards,
- v. Emphasize that implementing or functional managers have a supervisory role over sub-ordinates,
- vi. Child rights should be mainstreamed in school and other institutions curricula as an initiative of creating a culture of child rights through education and recognizing youth as agents of change that are,
- vii. Step-up initiatives in relation to seeking alternative sentencing i.e. non custodian to juvenile offenders and related bail conditions that could keep children out of prison and pre-trial detention,
- viii. Continue with current initiatives of separating children from adult inmates while in detention and other initiatives like education, welfare of infants in prison with their mothers and advising doctors to appear before courts as principal witnesses when required,
- ix. Emulate DPP^s initiative of issuing a circular on giving priorities to cases when children are the perpetrators or victims,
- x. Rediscover the role of Social welfare officers and probation officers.