



Police Round-ups of Street Children in Arusha are Unjust, Unconstitutional and Undermine the United Republic of Tanzania Constitution and the Rule of Law

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CONTENTS:

- **Introduction /p.1**
- **Methodology /p.1**

1. Background /p.2

2. Domestic Legislation /p.3

- Domestic standards of human and child rights /p.3
- Analysis of Tanzanian law /p.5

3. International Instruments /p.11

- International standards of human and child rights /p.12
- Supervision and enforcement of international standards /p.14
- Analysis of international instruments /p.16

4. Implications for Tanzania's Development /p.17

5. Recommendations /p.18

6. Conclusion /p.20

7. Appendixes /p.21

- Specific violations of human and child rights during round-ups /p.21
- Underlying legal principles violated by the exercise of round-up /p.25
- International instruments and their enforcement in Tanzania /p.26
- Interview questionnaire regarding police round-ups in Arusha /p.27

■ References /p.29

■ Abbreviations /p.32

INTRODUCTION

Since September 2001, Tanzania has witnessed the arrest and detention of more than 45 street children during the course of four major round-ups by police in the Arusha Municipality. Police round-ups of street children as “vagrants” has been the simplified response of the District Commissioner (DC) to the increasingly complex and urgent issue of street children, justified on the basis of the dated and repressive 1944 Townships (Removal of Undesirable Persons) Ordinance. In fact, the constitutionality and appropriateness of police round-ups of street children was challenged in both Europe and South America, and resulted in the revocation of unconstitutional laws on vagrancy and begging. As such, despite the fact that 50% of Tanzania’s population is comprised of children,¹ the legal protection provided to them disturbingly incomplete, contradictory and in violation of both human and child rights.

The purpose of this legal research paper is to advance an informed debate amongst Tanzanian Government and Civil Society regarding the constitutionality of police round-ups of street children. Specifically, this paper contrasts domestic and international standards for child protection with the DC’s current round-up methodology, revealing numerous violations of human and child at each stage of round-up process (i.e. arrest, detention, court process, and remand facility); violations that, according to legal and humanitarian standards, constitute an inhumane, unjust and unconstitutional response to the problem.

The United Nations Committee on the Rights of the Child (UNCRC) advocates for the promotion of human and child rights through training and education on child protection, and for the consolidation of these rights through the reform of the juvenile justice system. Accordingly, this paper also recommends that Arusha’s DC adopt a “child-centred tendency” through observance of the domestic and international standards of human and child rights, noting that, in order to do so, it is urgently necessary to repeal the dated and repressive legislation currently used to justify the round-ups of Tanzania’s most vulnerable children.

METHODOLOGY

This paper contributes to a current project of Mkombozi and the Arusha Caucus for Children’s Rights to improve juvenile justice services for children in contact / conflict with the law and to resolve the current contradictions among national laws. It supports this broader strategy by providing a comprehensive legal analysis of the legislation, principles and standards relevant to the practice of street child round-ups. Notably, the following legal research is specifically relevant to round-ups that have taken place in the Arusha Municipality from September 2001 to September 2005.

■ Sources of information

Legal research sources employed by this study include: in-depth analysis of current Tanzanian and international legislation concerning human and child rights; indicators from Mkombozi’s preliminary research; collaboration with Tanzanian law societies advocating for children’s rights, especially the Eastern Africa Law Society (EALS); as well as first-hand information obtained by Mkombozi’s social workers during interviews with rounded-up street children in Arusha.

■ Analysis

This research paper analyses the police round-ups of street children according to: (a) Tanzanian law; and (b) international human / child rights legislation. This approach departs from the understanding that the United Republic of Tanzania (URT) is a common law country, and as such, has a dualistic legal system whereby domestic and international law are considered different yet interconnected systems. The connection between these systems stems from Tanzania’s obligation to translate binding international instruments into domestic legislation. Importantly, despite the fact that such legal translation has not yet taken place in Tanzania’s juvenile justice system, Tanzanian courts are still duty-bound to respect and apply international human and child rights instruments in their decisions. As such, the methodology chosen to analyse police round-ups of street children considers the constitutionality of the exercise according to

¹ Mkombozi (2005), “Mkombozi Census 2003-2005: A Comparative Analysis of Tanzania’s Most Vulnerable Children”, page 20.

Tanzanian legislation as well as the legality of the exercise according to the international legal system, ultimately revealing that it is indeed an inhumane, unjust, unconstitutional and thus illegal approach.

1 BACKGROUND

Street child round-ups can be traced back to September 2001², when DC Bertha Mende ordered one of Arusha's most widely reported police round-ups of the city's street children³ - an undisclosed number of children were taken into police custody on charges of uzururaji (loitering) and locked in a remand facility for over a month before they were released back to the streets. Although home visits by social workers were initially planned, they did not take place, allegedly due to a lack of resources.

Despite the initial will of a new DC (Mr. Fulgence Saria) to find alternative solutions, on March 17th 2004, approximately 18 children were arrested together with three beggars⁴ and taken to Maromboso Primary Court. Notably, the children were informed that there was an important visitor coming to town and therefore they had to be "cleaned" from the streets. In fact, this round-up coincided with the visit to Arusha of Dr. Johannes Rau, President of Germany.

The Maromboso Primary Court Magistrate who heard the matter of the March round-up ordered the children's release. In breach of the release order, the children were actually driven back to the police station and harshly beaten:

"I was seriously beaten and up to now have chest problems. I was terribly shocked and thought that I was going to die."⁵

It was only after this beating at the police station that the children were released under threat of further action if they were seen again on the street.

In May 2005, 20 street children were arrested in Arusha, seven of which were taken to court. After several weeks in remand, they were released under the custody of CHISWEA, a non-governmental organisation (NGO) established to help street children. Unfortunately, CHISWEA released the children back to the streets that same day with no constructive alternative or link to community services.

On August 26th, 2005, approximately 15 children were arrested and taken to the police station, where they were registered⁶ and held overnight in an adult cell (despite the fact that children have the right to be separated from adults when held in custody). Moreover, during their detention at the police station, the children were beaten with a caning stick, forced to clean the police station and forced to carry large stones on their heads as "punishment". According to a 13 year-old street child involved in the round-up:

"I was taken to the police station and they (the police officers) beat us. Me and other children had to carry very big stones on our heads. They punished us and were happy."⁷

The following day the younger children were released back to the street while the four older children were taken to court. The judge determined the children were too young to be tried and did not initiate criminal proceedings against them. Before their release, however, the children were forced to clean the court's compounds (e.g. sweep the court room, cut the grass).⁸

² This research paper focuses on the round-ups that have taken place from September 2001 to September 2005, noting however that there have actually been other, informal round-ups before this date.

³ Hereafter, unless the context otherwise requires, "street children" will comprise children and young persons who are on the streets either full-time or part-time. "Children" will be those under 12, according to Section 2 of the Children and Young Persons Ordinance (Cap. 13 of the Laws of Tanganyika) and Section 15 of the Penal Code; whereas "young persons" will be those under 18, in harmony with international standards, the URT Constitution, Article 5 and Section 169 CPA (amended by Section 21 Sexual Offences Special Provision Act).

⁴ District Authorities have been combining street children and beggars as one group, viewing both as a "safe and clean cities issue" according to *The Citizen*, April 13, 2005.

⁵ See Appendix 4 (a).

⁶ Note that the registration of names and ages in police stations must be preceded by the accurate birth registration of every street child.

⁷ See Appendix 4 (b).

⁸ Interview of rounded up street children conducted by Mkombizi's social workers on September 5, 2005 (see Appendix 4 (a)).

Taken together, the circumstances and details of the street child round-ups that have occurred in Arusha since 2001 reveal disturbing violations of law, and of human and child rights. They also indicate that the round-ups have occurred under the guise of “maintaining public order and control” and that local authorities reduce the complex issue of street children to a matter of keeping the streets “safe and clean” under the Municipal Sustainable Arusha Program.⁹ Overall, it becomes apparent that Tanzania’s juvenile justice system is significantly under-resourced, and that the policy of street child round-ups is neither constructive nor sustainable.¹⁰

2 DOMESTIC LEGISLATION

Although certain rights relevant to street children are recognised and protected in Tanzanian legislation, they are practically ineffective because of: (1) shortcomings within the Tanzanian legal framework; and (2) the deficient enforcement of that framework.

■ Domestic standards of human and child rights

Importantly, Tanzanian legislation provides implicitly (and sometimes explicitly) for the best interest of the child and for the child’s right to diversion and rehabilitation (to reinforce community safety). It is stated that if the child is not diverted before arrest, deprivation of liberty must only be used as a last resort, due to the importance of the principle of proportionality which demands an appropriate response to the offence. In fact, the child-ruling principle¹¹ (i.e. best interest of the child¹²) is latent in Tanzanian legislation, and yet it must be taken into account from the first moment that a child comes into contact with the justice system.

According to domestic standards then, police officers are compelled to assess the “best interest” of any child in contact / conflict with the law as a primary consideration. This means that an administrative or police officer “may bring before a juvenile court any child or young person found on the street...destitute” (Section 25 of the Children and Young Persons Ordinance¹³). A “destitute child” is a child in need of care and protection; therefore, the court, after being satisfied that the child must be removed from the streets, may commit him/her to the “care of a fit person or institution”.

The child-ruling principle is reinforced by Section 32.1 of the Criminal Procedure Act (CPA) which establishes a maximum detention period of 24 hours. After 24 hours the child must be brought before a court or released, unless he is accused of a serious crime. In this respect it must be stressed that Arusha’s street children are charged with loitering, which is actually classified as a misdemeanour (i.e. a minor offence).¹⁴

In fact, after 24 hours of police custody for a minor or misdemeanour offence, a child has the right to bail. The criteria for granting police bail takes into account factors related to the circumstances of the offender and the nature of the offence. When such consideration results in the finding that police bail is not suitable, then the child can still be released under bail according to conditions laid out in Section 66 of the CPA: “(a) ...he undertakes in writing to appear before a specified court (specifying time and place); (b) if he undertakes in writing to observe specified requirements; (c) if someone undertakes in writing that he is acquainted with the person charged; (d) if the person charged, or another person acceptable to the police, enters into an agreement without security, to forfeit a specified sum of money if that person fails to appear in court to answer the charge; (e)... ; (f) or if he deposits with the police officer a specified sum of money to be forfeited if that person fails to appear in court to answer the charge.” Notably, if the police

⁹ *The Citizen*, April 13, 2005.

¹⁰ This raises the question: is the maintenance of this policy simply an evolution of an unsustainable policy of *punishment* to a policy of *threat*?

¹¹ According to Roman Law, certain legal principles, such as the best interest of the child are required by nature, therefore they are applied without enacting any law that stipulates them. This conception has been adopted by courts in both Common and Roman Law jurisdictions.

¹² The principle of the best interest of the child is provided explicitly in Section 14 of the Children and Young Persons Ordinance, and it is in force and effect within Tanzanian legal framework.

¹³ Cap. 103 of the Laws of Tanganyika.

¹⁴ Sections 35, 176 and 177 CPA.

officer refuses to grant bail according to these conditions, he/she is obliged by Section 67 of the CPA to justify this decision in writing, specifying the reasons for refusal.

The important point is that, according to the best interest of the child, detention must be employed only as a last resort – all other alternatives must be examined and assessed in order to avoid detention of the child to the greatest possible extent: “Detention is not just one more sentencing option. It has the capacity to cause harm – contrary to the obligation to protect the child’s well being at all times...”¹⁵

If a child is placed in detention, the participation principle requires that the child be allowed to notify next of kin or guardian about his/her arrest, and to facilitate access to legal counsel and defense. According to a study on the characteristics of Common Law legal systems: “...the role of the adult is to ensure that the young person is aware of their rights, particularly to legal advice. The adult should be told that their function is not just that of observer, but also of adviser to the young person...”¹⁶ Moreover, with a view to maintaining the child’s integrity, domestic standards provide for the separation of children from adults, as well as convicted from untried, when retained in custody. This reflects the social fear of “criminal contamination”, especially in relation to children who are developing socially and are therefore susceptible to influence.

The right to separation of children and juveniles from adults during custody is extended to the child’s right to be brought before an appropriate and separate juvenile court, as opposed to a primary court. Juvenile courts are intended for children who have achieved the age of majority for criminal liability, and must “...sit in a different building or room from that in which the ordinary sittings of the court are held” (Section 3.1 CPA).¹⁷

According to the principle of participation, from the point of first contact with the law, a child must feel free to participate in the entire process. To this end, the Criminal Procedure Act (CPA) requires that the child be fully informed of his/her rights at first contact, and that the child subsequently be fully informed of (and understand) the charges against him/her. The objective of such protection is to engage the child in the justice process from the beginning and at all stages – an objective which reflects the legal maxim “audi alteram partem” (i.e. all persons have the right to be heard and to benefit from a fair and equitable trial), and Article 13.1 of the URT Constitution (“All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law”).

In harmony with the participation principle, the language used during the court process must be child-friendly. The child, having understood the proceedings undertaken against him/her, will only then be able to review and appeal the Removal Order (under which he/she was arrested) and the court’s decision.

With respect to sentencing of children and youth, domestic standards recognise the previously mentioned principle of proportionality. This means that the court’s decision and sentence must be a proportional and appropriate response to the circumstances of the offender and the offence. In particular, Section 337.1 of the CPA compels the Juvenile Court to “...regard the youth, character, antecedents, health or mental condition of the offender” as well as first-time offender status (i.e. the court’s decision must be specific to the facts of each, individual case). Section 337.1 of the CPA further requires that the magistrate’s decision must be proportionate with the circumstances pertaining to the offence, that is: “... the trivial nature of the offence ...or any extenuating circumstance under which the offence was committed.”¹⁸

Obviously, it becomes necessary to maintain a range of sentencing options in a Juvenile Court, so that the action best suited to the child’s interest can be taken. For this reason, Tanzania’s Children and Young Persons Ordinance emphasises the child’s right to be convicted to imprisonment only as a last resort, after

¹⁵Ozdowski, S. (2005), “Human rights brief no. 2 on sentencing juvenile offenders.” Retrieved Oct. 12, 2005, from Human Rights and Equal Opportunity Commission website: http://www.hreoc.gov.au/human_rights/briefs/brief_2.html

¹⁶ Elliot, C. and Quinn, F. (2005), “English Legal System.” Sixth Edition. England: Pearson Education Limited, page 391.

¹⁷ Notably, in the English Legal System (parent of the Tanzanian Legal System), it is recommended that wigs and gowns are not worn and that the court room is adapted so everyone sits at the same level to alleviate the pressure children are submitted to when sitting in the raised dock. This was in fact a recommendation of the European Court of Human Rights (see Elliot, C. and Quinn, F. 2005. English Legal System, Sixth Edition. England: Pearson Education Limited, page 394).

¹⁸ For instance, circumstances such as necessity, duress, intoxication, lack of criminal responsibility or first-time offender status must be taken into account. However, note that the Penal Code (Section 14), points out that intoxication will not apply as an extenuating circumstance unless the state was caused “...without the consent of the child by malicious or negligent act of another person; or the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.”

considering all options relevant to individualised sentencing, and also that all such options are only excluded for sound reasons. Moreover, it is required that children who are imprisoned are held for the shortest period of time appropriate to the individual case.

Notably, even after a child has been sentenced to a remand facility, a final opportunity for diversion is provided by Section 337.1 of the CPA, whereby the court determines whether the custodial sentence or a probation order is most convenient. This means a custodial sentence may be suspended in favour of a probationary period (of no more than three years) if this option is appropriate to: "...the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence ...or to any extenuating circumstance under which the offence was committed". During probation, the young offender is required to "keep peace and good behaviour".

Overall, it is clear that Tanzania's domestic legislation provides significant standards and safeguards aimed at protection of children in contact / conflict with the law, and also that it is: "...the duty and responsibility of the Government, all its organs and all persons or authorities exercising executive, legislative or judicial functions to take cognizance, observe and apply these principles, enshrined in the Provisions of the URT Constitution" (Article 7 URT Constitution).

■ Analysis of Tanzanian Law

(i) Street child round-ups are unconstitutional

The first criticism of street child round-ups by police in the Arusha Municipality concerns the justification of the practice – round-ups are conducted on the basis of dated and repressive legal provisions that are partially or totally unconstitutional¹⁹ (i.e. in conflict with the spirit of the URT Constitution).

The roots of the legal problem are found in the origin of Tanzania's juvenile justice system. The main child governing legislation – the Children and Young Persons Ordinance – dates back to the colonial period (1937), when British colonial authorities enacted laws to sustain the emerging colonial system (and not to foster the welfare of vulnerable children). This means that the Children and Young Persons Ordinance was established and enacted 52 years before principles of juvenile justice were first articulated and enshrined by the primary child protection body, the UNCRC.

Likewise, it is problematic that Tanzania maintains the Removal of Undesirable Persons Ordinance and (certain provisions of) the CPA²⁰ – both of which were found by Nyalali Commission of Inquiry to be "repressive legislation".²¹ Indeed, national legislation that is uninformed by current principles of human and child rights is not socially relevant or appropriate, and actually contradicts currently recognised humanitarian principles by propagating practices such as the arrest of street children for loitering and vagrancy.

Specifically, it is considered unconstitutional to arrest street children because they are considered to be – and should be penalised for being – "undesirable in the public interest."²² This rationale is actually enabled by the Township (Removal of Undesirable Persons) Ordinance²³, a pre-independence law enacted in 1944 to enable colonial District Authorities to exclude "undesirable persons" from their district. "Undesirable persons" are, according to the Section 3 of the Ordinance, those that loiter, those who are "rogues or vagabonds", in particular those who: "...according to law or custom should be rendered to control; ...(or that have) no settled home within the township or area; ...(or that have) no employment or reputable means of livelihood". Obviously, the goal of this Ordinance was not the well-being of vulnerable children

¹⁹ Directly contravenes Article 26.1 URT Constitution ("everyone has the duty to observe and to abide the laws of the United Republic").

²⁰ Sections 14 (d) and 28 CPA.

²¹ The Nyalali Commission of Inquiry into the Political System submitted the third periodic report on the implementation of the International Covenant on Civil and Political Rights (UN Doc. CCPR/C/83/Add.2) on October 7, 1997.

²² Hereafter, unless context otherwise requires, the justification for arresting street children will be referred to as "loitering", comprising both the alleged offence of loitering (as per Sections 176 and 177 of the Penal Code), and the alleged offence of being an "undesirable person" (as per Section 3 of the Removal of Undesirable Persons Ordinance).

²³ Cap. 104 of the Laws of Tanganyika.

and young persons, but the promotion and protection of the colonial system. In fact, its legal background dates back to 1349, to the English Old Poor Laws.²⁴

It is also problematic that, according to the Removal of Undesirable Persons Ordinance, loitering is proscribed in order to preserve public order and community safety²⁵ and it is punished with a fine or imprisonment, and corporal punishment.²⁶ The criminalisation of behaviours such as loitering constitutes several serious violations of the URT Constitution and the Rule of Law. These violations can be examined under the scope of the legal requirements related to the formal shape of an offence and those related to the legal elements of an offence.

With respect to the formal shape of an offence, an act must only be criminalised in a certain, precise and clear way. In this case, the definition of the “offence” (of loitering, vagrancy and “undesirability”) by the Removal of Undesirable Persons Ordinance and the Penal Code²⁷ is vague and obscure and fails to specify who, for example, should be rendered to control. This is unconstitutional in that it contravenes the legal requirement of *lex certa*, that is, certainty in law. Interestingly, this was one of the reasons that moved the Republic of Venezuela to declare null, void and unconstitutional their vagrancy law.²⁸ Uncertainty in the definition of an offence fosters a general sense of insecurity, as the decision of arresting merely depends “...on what happens to be created in the mind of the arresting officer.”²⁹

If an act or behaviour has been correctly criminalised, it should be possible to identify the legal elements of the offence (which are required by law); that is, the *actus reus* (or unlawfulness of the act) and the *mens rea* (or intention plus consciousness of committing such act).

On one hand, the *actus reus* of loitering, defined in Section 3 of the Removal of Undesirable Persons Ordinance and Sections 170, 176 and 177 of the Penal Code, is based on the danger loitering poses to community safety. Explicitly, Section 170 of the Penal Code classifies it as an act that causes “common injury or danger or annoyance, or obstructs or causes ...inconveniences to the public in the exercise of common rights...”³⁰ However, loitering does not directly impede the exercise of common rights in itself, but may involve the danger of this obstruction taking place³¹. Therefore, no harm to the exercise of common rights (from now on referred to with the general label of community safety) has actually been inflicted. This results in two specific legal problems that reveal the unconstitutionality of the criminalisation of loitering:

- (1) Loitering is based on the danger of an act (the risk of loitering to community safety) and not the act itself (the attack to community safety) – this means that a person is tried for something that has not actually occurred. Also, if the alleged danger of loitering is not subsequently proved in trial, then the presumption of innocence (civil liberty *par excellence*) is violated. In effect, street children rounded-up in Arusha are arrested for something that has not actually occurred and are tried for something that has not been proved, and yet, punishment is still provided³².

²⁴ The English Old Poor Laws can be traced back to the Ordinance of Labourers, 1349 (36 Edw. III c.8) and also comprise the Statute of Cambridge, 1388 (12 Rich. II c.7); Vagabonds and Beggars Act, 1494 (11 Henry VII c.2) Statute of Legal Settlement (1 Edw. VI. c.3); An Act for the Relief of the Poor, 1601 (43 Eliz. I c.2); and An Act for the better Relief of the Poor of this Kingdom, 1662 (13&14 Car. II c.12).

²⁵ According to the Removal of Undesirable Persons Ordinance and Sections 170, 176 and 177 of the Penal Code.

²⁶ According to Section 177 of the Penal Code, the first offence of loitering or begging will be punished by imprisonment for three months, and for every subsequent offence by imprisonment for one year. On the other hand, according to Section 6.2 of the Removal of Undesirable Persons Ordinance, being “undesirable in the public interest” will be punished with 3 months of imprisonment or a fine not exceeding 200 Tanzanian shillings or both. Corporal punishment is a “complementary punishment” to imprisonment, consisting of at least 12 strokes of the cane on entering prison and 12 just before release (Section 5.2 Minimum Sentences Act).

²⁷ Section 3 of the Removal of Undesirable Persons Ordinance and Sections 176 and 177 Penal Code.

²⁸ “Sentencia sobre la acción de inconstitucionalidad total contra la Ley de Vagos y Maleantes, Expediente N° 251” (1997) of the Republic of Venezuela Supreme Court.

²⁹ Burke, Judge. *The People of the State of New York, Respondent v. Alan Berck, Appellant*, Court of Appeals of New York. Retrieved on Oct. 6, 2005, from the Court of Appeals of New York website: <http://wings.buffalo.edu/law/bclc/web/nyberck.htm>

³⁰ Disturbingly, the Penal Code catalogues the offence of “loitering” under Chapter XVII, entitled: “Nuisances and other Offences against Health and Conveniences”.

³¹ This is largely due to the common mis-identification of loitering and vagrancy with criminal behaviours.

³² In Sections 176 and 177 of the Penal Code and Section 6.2 of the Removal of Undesirable Persons Ordinance.

- (2) According to one of the maxims of the principle of legality³³, a person cannot be responsible for an offence for which there has been no direct action - and without responsibility, a person cannot be considered guilty (Feuerbach stated this idea as “nulla poena sine culpa”³⁴). In other words, the offence of loitering (as per the Removal of Undesirable Persons Ordinance) is incompatible with the principle of legality and is, as such, unconstitutional.

Remarkably, vagrancy legislation was declared unconstitutional in Spain for contravening the legal maxim of culpability and hence the principle of legality. Although there was an attempt to avoid the legal maxim and requirement by providing for a “safety measure” rather than “punishment”, under the scope of lawfulness, a “safety measure” is as inappropriate as a “punishment” since both are being applied to a “pre-criminal act”. Loitering is a “pre-criminal act” in that it is based on the risk of a criminal act and not on the criminal act itself. It was on this specific basis that the Spanish legislation which criminalised loitering was declared null and void.³⁵

Note also that the second element of the offence of loitering – mens rea, or the intention and consciousness of committing the offence – must also be called into question. In order for there to be intention and consciousness of committing an offence, this offence must allow for “will” to intervene. However, loitering is based on an alleged criminal “state”³⁶ that does not depend on human will. The main difference between a “state” and an “act” is the same as that which exists between “being” and “doing”. As such, a street child is not accused of “loitering” per se, a street child is accused of “being a loiterer” – a state that is chronic (as opposed to momentary), involuntary and lawful. In effect, the arrest of street children for loitering contravenes the URT Constitution in two ways:

- (1) As previously noted, the alleged offence of loitering is not based on the will of the suspected offender but on his/her condition. Street children do not loiter because it is in their will (as opposed to what the current DC believes³⁷) but because they have been driven to the street by a number of interwoven factors that exist independent of their will. According to a recent study by Mkombozi, children migrate to the streets (either full-time or part-time) because of social breakdown, marginalisation and poverty.³⁸ Consequently, arrest for loitering contravenes the legal guarantee in Section 10 of the Penal Code that: “...a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.”
- (2) Violation of the legal guarantee in Section 10 of Tanzania’s Penal Code actually results in a further violation: that of the principle of non-discrimination. The street child who is arrested for loitering is not being granted the same protection provided by the legal requirements that demand intention in an offence, and as such is being treated differently. Thus, it could be said that street children are: “...regarded as weak or inferior and ...subjected to restrictions or conditions, whereas persons of other categories are treated differently or are accorded opportunities or advantages...” This is, in fact, the definition of discrimination which the URT Constitution condemns in its Article 13.

Further to the argument of unconstitutionality, attention must be drawn to the legal problems inherent in the discretionary administrative powers surrounding the round-up of Tanzania’s street children. For instance, the maintenance of the Removal of Undesirable Persons Ordinance and the CPA actually enables arrest without warrant (a fact which recalls the discretionary powers entitled to colonial district authorities for returning persons with no reputable means of livelihood to their original areas of

³³ The legal principles identified by Roman Law are regularly applied by both Roman and Common Law jurisdictions, since all are “crowned” by the principle of legality.

³⁴ That is, “no punishment without guilt” which is further developed in the aphorism “no crime without guilt”.

³⁵ Spanish legislation establishing the unconstitutionality of the criminalisation of loitering is comprised in the Spanish Organic Law 10/1995 of the Penal Code and further explained in the Spanish Supreme Court verdicts 23/1986 of February 14, 1986 and 21/1987 of February 19, 1987.

³⁶ Doctrine is unanimous in that the danger a person poses to community safety is a “state” and not an “act”. See García Ibáñez (1995) “La pericolosità nel diritto spagnolo e nel diritto italiano” (page 64) and Marino Barbero Santos (1980) “Marginación Social y Derecho Represivo” (pages 14-19).

³⁷ DC Mr. Fulgence Saria said on an occasion: “ni watoto wakorofi; wazazi wao wana uwezo lakini hawataki kwenda shule.” (i.e. “stubborn kids; their parents are able to pay, but they don’t want to go to school”) (Mashamba, J. C. “Concept Paper on Undertaking a Test Case Against the District Commissioner Rounding up and Detaining Street Children in the Arusha Municipality, Tanzania.” National Organisation for Legal Assistance, page 2.)

³⁸ For further information on the causes that drive street children to the streets see: Mkombozi (2005), “Mkombozi Census 2003-2005: A comparative Analysis of Tanzania’s Most Vulnerable Children” and Committee on the Rights of the Child (2001), “Concluding Observations of the Committee on the Rights of the Child, Tanzania” UN.Doc.CRC/C/15/Add.156.

residence³⁹). Problematically, the arrest of street children without warrants gives police a high degree of discretionary power when deciding who and when to arrest – increasing the risks of abuse of police power and arbitrary arrest. Conversely, if street children are arrested by warrant, then at least it can be assured that a specific order has been issued to a police officer to arrest and bring a specific child before the court or magistrate.

Importantly, it can be argued that all arrests of street children are “arbitrary” arrests, since no distinction is made between children in conflict with the law (i.e. suspected offenders) and children in the need of care and protection (i.e. street children). According to international standards and guidelines:

“...children involved in vagrancy, begging and being the victims of sexual exploitation, are in the need of care and protection. They are not in conflict with the law.”⁴⁰

In turn, if no distinction is made between children in need of care and protection and children in conflict with law, then no distinction is made between indigents and offenders. This raises the question if street child round-ups actually amount to the “punishment of poverty”. In fact, District Authorities reinforce this idea by combining street children and beggars in the same group, and regarding this group as a “safe and clean cities issue” that must be remedied (by round-up) when dignitaries visit Arusha.⁴¹

Given that arrest without warrant and arrest for loitering are discriminatory, and given that both types of arrests are made possible by Tanzanian laws,⁴² it is interesting to point out that Article 13(2) of the URT Constitution stipulates that no law enacted by any authority in the URT shall make any provision that is discriminatory itself in its effect.

(ii) Street child round-ups are inhumane

To this point, it has been shown that both the justification and the administrative powers inherent in street child round-ups constitute an unconstitutional practice. Mention must also be made of the punishment associated with the alleged offence of loitering, since it also constitutes a breach of the URT Constitution.

In the first place, punishment is intended for those persons considered criminally liable; that is, those who have achieved the minimum age for being tried and convicted. However, age limits for criminal responsibility and child protection provided by domestic legislation are regarded as inconsistent and illogical by the UNCRC, in its Concluding Observations on the Implementation of the Convention in Tanzania. That is:

- (1) Age limits for criminal responsibility are illogical in Tanzania because criminal responsibility entails the understanding of lawful and unlawful situations, but the Penal Code establishes the age limit at 12 years of age – too young for the idea of responsibility to have meaning.⁴³ Alarming, it even states that those under the age of 12 and above 10 are criminally responsible if it is proven that they were conscious of the act or omission.⁴⁴ In fact, the maximum age for child protection is set at 16 years old.⁴⁵ This means that those younger than 18 and older than 16 are still considered children by international standards⁴⁶, but are treated as adults in Tanzania.
- (2) Age limits for criminal responsibility are inconsistent in Tanzania because they vary from one law to another⁴⁷, thereby contravening the legal requirement of *lex certa* (i.e. certainty in law). In fact, age

³⁹ District Authorities are entitled to these discretionary powers by the Law Regional Administration Act no.19 of 1997. This law arises from the reform of Act no.7 of 1982 and Act no.8 of 1982 to consolidate some of the functions of local authorities.

⁴⁰ Weham, M., Geerlinck, S. & Jackson, E. (2005), “Police Training on Rights and Child’s Protection. Lessons learned and Manual” page 72.

⁴¹ The police round-up of street children in Arusha on March 17, 2004 coincided with the visit to Arusha of Dr. Johannes Rau, President of Germany.

⁴² Arrest without warrant is provided by the Removal of Undesirable Persons Ordinance and Sections 14 (d) and 28 CPA, while arrest for loitering is provided by the Township Ordinance and Sections 176 and 177 Penal Code.

⁴³ Alarming, the age limit of 12 years for criminal liability has sometimes been violated. For instance, the case of Mohamed Abdullah, aged 9, charged for rape and sentenced to life imprisonment.

⁴⁴ Section 15 of the Penal Code, amended by Section 4 of the Sexual Offences Special Provision Act.

⁴⁵ Section 3 of the Children and Young Persons Ordinance.

⁴⁶ Article 1 UNCRC, Rule 4 of the Beijing Rules and Rule 5 JDLs.

⁴⁷ For instance, there is a bridge between the age children enjoy family protection (14 years, according to Section 166 of the Penal Code) and the minimum age for working (17 years and never below 15). According to the Penal Code, those committed to the

limits acquire special relevance when one considers that there are currently 368 street children in Moshi and 540 in Arusha in the 15 to 19 year age group.⁴⁸ This means that approximately 900 children who should benefit from child protection are actually treated as adults.

The problem of punishment is further aggravated by the fact that imprisonment and corporal punishment are deemed to be viable options for children. For instance, the Tanzanian Minimum Sentences Act provides for corporal punishment, in direct contravention of the right to humane treatment stipulated in Article 13 (6) of the URT Constitution. In fact, juveniles were condemned to corporal punishment in 33% of the total cases determined by the Mbeya Resident Magistrate's Court in 2000.⁴⁹

Regarding imprisonment, Section 22 of the Children and Young Persons Ordinance stipulates that: "(1) No child shall be sentenced to imprisonment; (2) No young person shall be sentenced to imprisonment, unless the court considers that none of the other methods (...) is suitable". This provision is not alarming in and of itself; however, taken together with the established age limits, the result is as follows: "No one under 10 shall be sentenced to imprisonment; Those under 12 and above 10 may be sentenced to imprisonment if it is proved the child was conscious of the offence; Those under 16 and above 12 may be imprisoned if the court considers none of the other methods suitable." It goes without saying that imprisonment of a 10 year old child blatantly contravenes the best interest of the child, the principle of proportionality and the principle of restorative justice, as well their materialisations in the right to diversion and the right to social care and upbringing. The possibility of imprisoning a child must be clearly forbidden, and not left to the discretion of the court.

Given the blatant unconstitutionality of the use of imprisonment and corporal punishment on children, a review of both practices is required, particularly in light of the alternative methods for handling children (such as the conditional or unconditional discharge, compensation or release under the custody of a fit person) outlined in Section 23 of the Children and Young Persons Ordinance.

In addition to the problem of child punishment, it must also be stressed that police round-ups of street children directly violate every person's right to humane treatment during arrest, detention, trial and post-sentencing phases. In particular, it has been noted that the right to humane treatment has been repeatedly violated in the following three situations:

- (1) During the police arrests of street children, the excessive use of force and arbitrary use of power violates Article 13.6 (e) of the URT Constitution – the right to not be subjected to torture, inhumane or degrading treatment or punishment. This refers to both the means and the degree of force used in the apprehension, having "regarded to the gravity of the offence⁵⁰...and the circumstances under which such offence had been, or was being committed" (Section 19 CPA). Specifically, the degree of force allowed under Sections 12 and 21.1 of the CPA is only that which is needed to prevent the escape of the child.
- (2) When children are detained in police stations, their right to humane treatment is expressly protected by Section 55 of the CPA. Despite these provisions, it has been frequently reported that caning sticks and other degrading treatments and punishments are used by police on street children at police stations, in direct violation of the URT Constitution, the Penal Code and the CPA.⁵¹
- (3) In certain instances, street children are subjected to corporal punishment as a "complementary punishment" to imprisonment⁵². According to international standards and the general belief of the

care of the child can wilfully desert him, even if they have enough means to maintain him, if he is over 14. Nevertheless, the Minimum Age Convention for Admission to Employment (1973) stipulates that the minimum age shall be the age of completion of compulsory schooling (in Tanzania, 17 years old) and in any case not below 15. Therefore, the child is expected either to work illegally, being vulnerable to exploitation, or not to work, being vulnerable to the challenge of surviving alone.

⁴⁸ Mkombozi (2005), "Mkombozi Census 2003-2005: A Comparative Analysis of Tanzania's Most Vulnerable Children."

⁴⁹ Legal and Human Rights Centre (2003), "The State of Juvenile Justice in Tanzania."

⁵⁰ The offence of loitering is classified as a minor offence.

⁵¹ The beatings herein reported are not under the umbrella of the Minimum Sentences Act that stipulates certain offenders (for example, not those under the age of 16) shall receive, as a complementary punishment to imprisonment, 12 strokes of the cane on entering prison and 12 just before release. Therefore, beatings at police stations are the infliction of damage to a person, proscribed in Sections 227 and 228 of the Probation of Offenders Ordinance, amended by Section 398 CPA.

⁵² Section 5 of the Minimum Sentences Act.

international community, corporal punishment is an undeniably inhumane and degrading punishment, proscribed not only internationally but also in Article 13.6 (e) of the URT Constitution.

(iii) Street child round-ups are unjust

Finally, attention must be drawn to the fact that the Arusha street child round-ups are effectively unjust – that is, Tanzania’s legal framework (which has been shown to be alarmingly deficient) is actually incorrectly and inconsistently enforced. This fact contravenes the principle of effectiveness reflected in Article 26 of the URT Constitution, whereby: “Every person has the duty to observe and to abide by the URT Constitution and the laws of Tanzania.”

For instance, even the questionable (legal) practice of arrest without warrant is not carried out during street child round-ups according to the conditions of a “lawful arrest”. Sections 12, 14, 15, 21 and 32 of the CPA describe a “lawful arrest” as one wherein all the specific rights entitled to the child during the arrest are complied with and all the provisions under Part II CPA are fulfilled. Specifically, the CPA stipulates that:

- arrest without warrant can only be exercised in presence of the police officer in charge of the police station, a subordinate (after an order specifying the person, the offence or cause of the arrest), a magistrate (who believes that the person has committed an offence under his jurisdiction) or by a private person (only in the case of flagrant act);
- the suspected offender⁵³ must then be taken to the police station;
- the suspected offender must be taken before a court within 24 hours;
- if this is not possible within the time prescribed, the suspected offender should be released, unless he/she is charged for a serious offence (since street children are charged with loitering which is classified as a minor offence, they should benefit from this legal provision).

It is possible to prolong the restraint of a suspected offender, but only in the event that the police officer deems it to be necessary and is able to specify the reasons⁵⁴ (otherwise, the presumption of innocence will be violated). Importantly, even if detention of a street child is lawfully prolonged, he/she must be granted the possibility of release under bail.⁵⁵

Bearing these facts in mind, it is remarkable that street children have been detained for over a month in September 2001, for several weeks in May 2005 and for a night on August 26, 2005.⁵⁶ It is remarkable also that in each of these round-ups, the children were detained together with adults in direct contravention of Section 5 of the Children and Young Persons Ordinance. In the words of Freedom House in its report on the URT “...Arrest and pre-trial detention laws are often ignored. Prison conditions are harsh, and police abuses are ...common.”⁵⁷

As previously noted, the child’s right to humane treatment is violated by corporal punishment – corporal punishment is preserved in Tanzania’s Minimum Sentences Act⁵⁸ as a “complementary punishment” to imprisonment. In fact, the Minimum Sentences Act establishes two conditions in order to inflict the 24 standard strokes:⁵⁹ firstly, it prohibits corporal punishment for those under 16; and secondly, it provides for the possibility of inflicting only 10 strokes or imprisonment (and not both) after having regarded the special circumstances of the offence and the offender (especially first-time offender status). Incredibly,

⁵³ The term “suspected offender” is used deliberately because Mkombozi considers street children and young persons as children in the need of care and protection and not children in conflict with justice, according to the unconstitutional criminalisation of loitering that has been herein alleged.

⁵⁴ This is a general civil liberty held by everyone subjected to an arrest without warrant; however, note that those removed on the basis of the Removal of Undesirable Persons Ordinance may be detained for a month according to Section 7 of the mentioned Ordinance. This entails one more contradiction between Tanzania’s legal framework and the Removal of Undesirable Persons Ordinance.

⁵⁵ See page 5–6 for conditions and criteria for granting police bail.

⁵⁶ Information from NOLA’s “Concept Paper on Undertaking a Test Case against the District Commissioner’s Rounding Up and Detaining Children in the Arusha Municipality, Tanzania” (page 9), and two interviews of street children by Mkombozi’s social workers, which took place in May and September 2005.

⁵⁷ Information obtained from Freedom House website, retrieved on November 2, 2005, from: <http://www.freedomhouse.org/research/freeworld/2005/Spain-Zimbabwe.pdf> (page 626)

⁵⁸ Repealed in 1972 and later reintroduced.

⁵⁹ Section 5.2 of the Minimum Sentences Act specifies that certain offenders must receive at least 12 strokes of the cane on entering prison, and at least 12 on release.

even these inhumane provisions are not fulfilled. It has been reported that on March 17, 2004 and on August 26, 2005, children as young as 12 were beaten with canning sticks at police stations, not as a complementary punishment to imprisonment but as an arbitrary attitude towards the children themselves.⁶⁰

According to the child's right to be tried in a "competent" court (stipulated in Section 140 of the CPA and Sections 3 and 6 of the Children and Young Persons Ordinance), young persons⁶¹ should be tried in a juvenile court and not a primary court. Nevertheless, this legal requirement is not satisfied – to date, juvenile courts have only been established in Dar es Salaam, Mwanza and Mbeya, and there are no current plans to establish a juvenile court in Arusha or Moshi. In fact, trials currently proceed in adult courts, sometimes without the child fully understanding the charges laid, and/or without securing legal representation for the child – violating the legal maxim "audi alteram partem" (i.e. the obligation to "hear the other side"). In turn, this increases the risk that the magistrate will try children without taking into account their special circumstances (e.g. their youth, character, antecedents, health or mental condition and the trivial nature of the offence) and reduces the likelihood that the child will be diverted.

Finally, it is important to note that the release of street children back to the street, as occurred in September 2001, March 2004, May 2005 and August 2005, is prohibited by Section 169 of the CPA⁶²: "...any person who, having the custody, charge or care of any person under 18 years of age, ill treats, neglects or abandons that person or ...procures that person to be assaulted, ill treated, neglected or abandoned in a manner likely to cause him suffering or injury to health ...or any mental derangement, commits an offence of cruelty to children."

In summary, round-ups are an unconstitutional, inhumane and unjust method of dealing with street children. It has been shown that the police round-ups of street children in Arusha violate the standards, principles and rights contained in the URT Constitution. Consequently, the continued practice of round-ups renders the URT Constitution ineffective and undermines the Rule of Law in Tanzania.

3 | INTERNATIONAL INSTRUMENTS

Given the shortcomings and ineffective application of Tanzania's legal framework, and given that Tanzania is bound by several international instruments, it is imperative to analyze the issue of street child round-ups in light of international law.

As previously noted, the URT is a common law country, and thus bears a dualistic legal system whereby international and domestic law are regarded as different but interconnected systems. This means Tanzania is obliged by international law to translate certain international instruments into domestic legislation. Despite such obligation, Tanzania has in fact not undertaken this process of translation with respect to juvenile justice; therefore, international instruments cannot be cited at court. The important point here is that, irrespective of Tanzania's failure to translate international law into domestic legislation, the obligation still stands that the court must safeguard and apply the letter and the spirit of international instruments that have been signed, acceded or ratified by the Government of Tanzania.

According to international instruments, every person holds human rights by virtue of his/her condition of humanity, without any distinction from other human beings and without the possibility of renouncing these rights or being deprived of them. The Vienna Declaration and Programme of Action affirms the inherent and inalienable dignity and equality of every person in its Article 1: "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Government".

⁶⁰ Information obtained by Mkombozi's social workers during interviews in March 2004 and September 2005 (see Appendix 4).

⁶¹ According to Section 15 of the Penal Code (amended by Section 4 of the Sexual Offences Special Provision Act) criminal liability is set at 12 years of age, with the possibility of extending criminal responsibility to those between 10 and 12 years if the child was conscious of the act or omission.

⁶² Amended by Section 21 Sexual Offences Special Provision Act. The violation of this section is proscribed under the penalty of a term of imprisonment not less than 5 years and not exceeding 15 years, or to a fine not exceeding 3000 shillings, or to both imprisonment and fine.

Children have been included, either directly or indirectly, in most of the nearly 80 treaties, rules or guidelines on human rights. Thus, in addition to the essential rights which apply to all persons, children – because of their vulnerability – enjoy additional protection. For instance, the preamble to the African Charter on the Rights and Welfare of the Child (ACRWC) states:

“Noting with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, (...) exploitation and hunger, and on the account of the child physical and mental immaturity he/she needs special safeguards and care...”

Problematically, Tanzania’s domestic legislation fails to define the boundaries of childhood that clarify who is entitled to this additional protection. Such clarity is essential given that certain international instruments provide for rights of those under the age of 18 regardless of domestic standards (e.g. the ACRWC and the UN Rules for the Juveniles Deprived of their Liberty), while others provide for rights of those deemed to be children according to the definitions of domestic legislation.⁶³

It is illustrative at this point to reiterate that criminal liability in Tanzania is set at 12 years of age and exceptionally at 10 years.⁶⁴ This means children younger than 10 will always be protected,⁶⁵ but the protection of those older than 10 will depend on the applicable instrument. Nevertheless, according to Article 13 of the Guidelines for Action on Children in the Criminal Justice System, even this does not diminish the impact of international law:

“Notwithstanding the age of criminal responsibility... State Parties should ensure that children benefit from all their rights, as guaranteed to them by international law, specifically in this context, those set forth in articles 3, 37 and 40 of the Convention on the Rights of the Child.”⁶⁶

■ International standards of human and child rights

The international community, alarmed by the continuing serious offences against children, has developed several instruments that provide for the prevention and protection of vulnerable children such as street children. In fact, the URT is signatory of two sets of instruments; those that protect human rights and those that specifically relate to child protection. The problem is, because most international child protection standards, rules and guidelines provide a broad and general framework of law, these principles can be eluded by reference to domestic legislation. (Given the problems with Tanzanian legislation as previously discussed, any reference to domestic standards from this point forward will be interpreted as the reiteration of the incompatibility of round-ups with law.)

According to international standards of human and child rights, a street child is a child in need of care and protection: “...a child temporarily deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, therefore shall be entitled to special protection and assistance provided by the State” (Article 20 UNCRC). Obviously such “protection and assistance” (further developed in other international instruments) is incompatible with the practice of police round-ups. Indeed, it can be said that, in general, the international legal framework rejects the practice of street child round-ups on four grounds:

- the upholding of the best interest of the child;
- the assurance of non-discrimination;
- the respect for human dignity; and
- the compliance with a restorative justice.

Firstly, consider that the best interest of the child must guide every situation concerning children, not as a subsidiary but as “...a primary consideration” (Articles 3.1 and 40.4 UNCRC). According to Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR), children must be allowed to participate

⁶³ See Van Bueren (1995), “The international Law on the Rights of the Child”, who analyses the different doctrines on age of majority and their suitability.

⁶⁴ The Committee on the Rights of the Child consider legal minimum ages inconsistent and too low (see Article 22 of Concluding Observations on the Implementation of the UNCRC in Tanzania).

⁶⁵ Section 15 of the Penal Code amended by Section 4 of the Sexual Offences Special Provision Act.

⁶⁶ Articles 3, 37 and 40 of the UNCRC deal with the protection and care of the children in contact with criminal law.

in the entire legal process, to understand the offences accused of which they are accused, to be informed of their rights, and above all, to have access to legal representation and counsel, "...without payment in any such case if he does not have sufficient means to pay it for...". Additionally, the best interest of the child must guide the magistrate's decision in the election of the option that most suits the case, according to the requirement of a proportional response and an individualised decision.

The implication here is that the best interest of the child must be a guiding factor at each stage of the round-up process (i.e. arrest, detention, trial and remand). Of course, if the best interest of the child is applied at the outset (i.e. arrest), it can be argued that street children would be diverted from further stages of the round-up and from criminal law, and that round-ups would be entirely rejected according to international standards.

Secondly, consider that the principle of non-discrimination also excludes the possibility of dealing with street children in the manner of police round-ups. Together with the observance of the requirements of the principle of legality⁶⁷, the principle of non-discrimination secures the right to be free from arbitrariness (undertaken by Tanzania after ratifying the UNCRC in 1991). Freedom from arbitrariness is, in fact, a requirement of the Rule of Law (i.e. the principle of legality demands certainty in law and declares that arbitrariness causes the law to be unpredictable, uncertain and insecure). Tanzania's practice of arresting without warrant therefore undermines certainty in law – arrest should only ever take place as a proportional, consistent, non-discriminatory response to the commission of an offence.

Indeed, Article 37 (b) of the UNCRC describes a lawful arrest as that "...in conformity with the law and ...used only as a measure of last resort and for the shortest appropriate period of time."⁶⁸ The arrest of children for loitering is plainly not "in conformity with the law" as such. Thus, the requirement of a lawful arrest, together with the obligation to arrest only as a last resort, reaffirms the incompatibility of round-ups with international law.

In fact, international law actually provides alternatives to the arrest of children which respect the best interest of the child and enable him/her to access social care and upbringing. This is not a mere recommendation, but an obligation as per Article 37 of the Guidelines for Action on Children in the Criminal Justice System which compel state parties to foster: "...comprehensive prevention plans ...focusing on strategies to socialise and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work." More significantly, it specifically and expressly directs these strategies to:

"...children in need of special protection measures, such as children working or living on the streets"

Thirdly, it becomes apparent that the legal response to street children should be aimed at their protection and should be accomplished by humane methods. Humane treatment is, in fact, a matter of priority for the international community – one that is continuously reiterated in international instruments and one for which a declaration was exclusively designed (i.e. the Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁹).

Rule 10.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) specifies that the treatment of juveniles must not be "harmful" (i.e. the term "harmful" is to be interpreted in the best interest of the child; hence, it implies doing the least harm possible to the juvenile from the first moment of contact with the criminal justice system). In turn, it can be argued that street children (by virtue of their vulnerable circumstance) are harmed by contact with the justice system via round-ups, and that punishments such as corporal punishment and imprisonment are harmful to the street child's welfare and development.

Finally, it is clear that all actions concerning children and young persons must be individually undertaken according to the overarching principle of restorative justice. Restorative juvenile justice prioritises the reintegration of the offender into society, balancing the needs of society and the needs of the suspected

⁶⁷ As explained, round-ups contravene the principle of legality in that they fail the legal requirement of *lex certa* and the maxim stated by Feuerbach as "*nulla poena sine culpa*" (no punishment without guilt).

⁶⁸ The protective measure of child arrest for the shortest period of time is directly violated by Section 7 of the Removal of Undesirable Persons Ordinance which allows for detention pending trial up to a month.

⁶⁹ Although Tanzania has not yet signed this Declaration, its principles are binding in that they are part of the *ius cogens*.

offender so that the best interests of the child and community safety are respected. For example, Article 17.3 of the ACRWC compels state parties like Tanzania to ensure that: “the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law, shall be his or her reformation, reintegration into his or her family and social rehabilitation.”

Overall, according to international humanitarian standards and legislation, a street child is a vulnerable child in need of special care and protection – a child for whom arrest is inappropriate and corporal punishment is inhumane. International standards are emphatic in this sense and leave no room for the justification and practice of round-ups.

■ Supervision and enforcement of international standards

International human and child rights standards include an international obligation (established by law) to meet these standards – an obligation that is supervised and ensured by several treaty enforcement bodies. Tanzania complies with this obligation by incorporating the pertinent standards into domestic legislation; however, this translation has not yet taken place within Tanzania’s juvenile justice system. The problem here is that, according to the World Conference on Human Rights⁷⁰, compliance with international human and child rights standards is not optional, it is compulsory and mandatory, and a prerequisite to consideration as a democratic, just and free state.

Notably, not all international instruments are equally binding – it depends on signature, accession and ratification. For instance, signature without ratification results in non-legally binding instruments, but the signatory state still carries the international obligation to respect and to not undermine the provisions contained in the signed instrument.⁷¹ Accession and ratification⁷² oblige the compulsory fulfilment and application of the international instruments. Tanzania undertook the obligation of respecting and ensuring human and child rights by signing the UN Charter in 1962. This responsibility has been reaffirmed by the signature, accession or ratification to seven additional international instruments: the African Charter on Human and People’s Rights (ACHPR); the ACRWC; the ICCPR; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the UNCRC; the UN Guidelines for Action on Children in the Criminal Justice System; and the UN Universal Declaration of Human Rights. Consequently, all the rights contained in these instruments are of compulsory fulfilment and application for the URT.

According to the World Conference on Human Rights, the recognition of international and human rights per se is not enough.⁷³ Ten treaty monitoring organs, assisted by other UN agencies, examine the implementation of the human and child rights obligations at a national level through several procedures, including reporting, consideration of individual complaints and inquiries into systematic violations.

At an international level, the main monitoring treaty body is the UN Commission on Human Rights, established to enhance the effectiveness of several international instruments. It supervises the implementation of the UN Charter, the UN Universal Declaration of Human Rights as well as other declarations and guidelines such as the Vienna Declaration and Programme of Action.⁷⁴

The ECOSOC resolution 1503⁷⁵ authorises the UN Commission on Human Rights to deal with gross and reliably attested violations of human rights. Complaints in relation to these violations can actually be initiated by both individuals and NGOs. Additionally, there are special thematic procedures (sometimes referred to as Special Rapporteurs) of the UN Commission on Human Rights designed to address a particular type of violation. Special Rapporteurs undertake country visits⁷⁶ and prepare comprehensive reports that focus on issues of human rights and extreme poverty.

⁷⁰ Article 1 of the Vienna Declaration and Programme of Action (June 25, 1993).

⁷¹ For instance, the URT is signatory to the African Union Convention on the Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, signed in 1998.

⁷² The difference between accession and ratification is that the latter only occurs when the state has already signed the international treaty or instrument, and therefore participated in its negotiations. Accession takes place when the state is not a signatory but adheres to the international instrument.

⁷³ Article 51 of the Vienna Declaration and Programme of Action.

⁷⁴ See Appendix 3 for a detailed analysis of the existing treaty governing bodies.

⁷⁵ The URT was examined under the ECOSOC resolution 1503 procedure twice: in the 30th-31st session of the Commission of Human Rights (1974), and in its 53rd session (1997).

⁷⁶ The next Special Rapporteur visit to Tanzania is scheduled for January 2006.

Notably, there are currently just three Special Rapporteur reports that include consideration of the street child issue, and only in an indirect manner:

- Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Country situations⁷⁷;
- Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment: Summary of communications transmitted to Governments and replies received⁷⁸;
- Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment.⁷⁹

Since 1976, the URT is also bound by two international covenants: the ICESCR and ICCPR. The ICESCR positioned the URT under the supervision of the Committee on Social and Cultural Rights, which requires that it submit a report on implementation every 5 years (i.e. the fourth periodic report is due in 2005). The ratification in 1976 of the ICCPR by Tanzania means that it is obligated to safeguard and apply the rights and civil liberties therein contained, especially Articles 3, 37 and 40 of the UNCRC (i.e. the best interest of the child, the right to a humane treatment and several rights related to the protection of children from criminal justice). This obligation is controlled in two ways by Human Rights Committee: firstly, by submitting periodic reports on the measures adopted to give effect to the ICCPR⁸⁰; and secondly, (under Article 41 of the ICCPR) state parties recognise the competence of the Human Rights Committee to deal with complaints from other states and individuals in relation to the application of the ICCPR.

In the present analysis, the most important treaty enforcement body is the UNCRC – a body devoted exclusively to the safeguard of children’s rights. To this end, Article 44 of the UNCRC mandates that state parties provide an initial report within 2 years of ratification and thereafter every 5 years. In terms of the initial report submitted by Tanzania on 20 October 1999, the Concluding Observations of the Committee on the Rights of the Child emphasised Tanzania’s obligation to take all appropriate measures for the implementation of the UNCRC. The second periodic report (CRC/C/7707Add.26) will be considered during the session of the Commission on the Rights of the Child in May/June 2006.

At a continental level, two treaty bodies safeguard human and child rights⁸¹:

- (1) The African Commission on Human and People’s Rights monitors the implementation of the ACHPR. Tanzania must either submit reports on request, and/or after a violation of the ACHPR reported by another State Party. Amongst the limitations of this Commission, note that it will intervene only after all local remedies have been exhausted. Otherwise, it can intervene if the provision for local remedies has been unduly prolonged.⁸² Tanzania’s next report is due on February 18, 2006 – problematically however, of the 10 reports Tanzania was expected to submit (one every two years), only one has been submitted.⁸³
- (2) The African Committee on the Rights of the Child supervises and enforces the fulfilment of the ACRWC, of which Tanzania is a part. It compels every state party to submit a first report two years after the accession or ratification of the Convention, and every 3 years thereafter.

Perhaps the most significant means of ensuring child protection is that which is provided at a national level. Specifically, the URT has established mechanisms to provide for the safeguard and application of international treaties concerning human and child rights:

⁷⁷ Commission of Human Rights report E/CN.4/1998/68/Add.1 of December 19, 1997.

⁷⁸ Commission of Human Rights Report E/CN.4/1996/35/Add.1 of January 16, 1996.

⁷⁹ Commission of Human Rights report E/CN.4/1996/35 of January 9, 1996.

⁸⁰ Tanzania’s initial report CCPR/C/1/Add.48 on the implementation of the ICCPR was due in August 29; the second periodic report CCPR/C/42/Add.12 on August 26, 1991; the third periodic report CCPR/C/83/Add.2 on October 7, 1997; and the fourth periodic report on June 1, 2002.

⁸¹ It should also be noted that the African Union is presently working to establish an African Court on Human and People’s Rights and that the URT signed the Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights in 1998.

⁸² Given that the first round-up herein mentioned dates back to September 2001, it is reasonable to consider that the application of local remedies is being unduly prolonged.

⁸³ The First Report was submitted was due in 1988 and finally submitted on July 1991. Retrieved on Oct. 15, 2005 from the African Commission on Human and People’s Rights website: http://www.achpr.org/english/info/status_submission_en.html

- The Commission for the Human Rights and Good Governance was established in 2001 to enhance the fulfilment of the UN Universal Declaration of Human Rights. The URT is committed to make the Commission “accessible by every person, children included.”⁸⁴
- The Department of Child Development of the Ministry of Community Development, Gender and Children has undertaken the obligation on coordinating and monitoring the implementation of the Child Development Policy, Family Development Policy and International Covenants on the Rights and Welfare of Children.⁸⁵

Additionally, the Inter-American Court of Human Rights, the European Court of Human Rights and, most importantly, the Committee against Torture⁸⁶ foster the protection of the rights herein mentioned. Even though Tanzania is not strictly obliged to these instruments, the rights therein protected are comprised within the *ius cogens*; that is, considered to have acceptance within the international community and therefore binding in this sense. (In fact, since the Nuremberg Trials of 1950, any norm of the *ius cogens* is enforceable not only against states but also against individuals.)

It is apparent therefore that human and child rights are not only facilitated by a significant number of international instruments, they are also carefully protected by their respective treaty enforcement bodies. The human and child rights at issue in the present discussion are, in fact, enforceable by 10 different treaty monitoring bodies.

■ Analysis of international instruments

(i) Street child round-ups are inhumane

Alarming, on March 17, 2004 and on August 26, 2005 rounded-up street children were beaten and struck with canning sticks at police stations⁸⁷. Thus, it can be argued that police round-ups are inhumane because they fail to respect or uphold the well-being, best interest and mental and physical integrity of the child. It can also be said that rounded-up street children are subjected to cruel, inhumane and degrading treatment and punishment – a serious violation of not only the child’s inherent dignity (as per Article 37 (c) of the UNCRC), but also of the fundamental protection and development of child welfare.

With regard to punishment for loitering,⁸⁸ the Nyalali Commission of Inquiry into the Political System considered the legislation that provides for corporal punishment (namely, Tanzania’s Minimum Sentences Act) as “repressive legislation”.⁸⁹ In particular, corporal punishment contravenes Articles 2 and 37 of the UNCRC, Article 5 of the Universal Declaration of Human Rights, Article 7 of the ICCPR, Article 17.2 of the ACRWC, Rule 67 of the UNJDL, Rule 17.3 of the Beijing Rules, as well as the Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.⁹⁰ Moreover, the ACRWC, binding to the URT since ratification in 2003, compels state parties in its Article 16 to undertake specific legislative, administrative, social and educational measures for protecting children from inhumane or degrading treatment or punishment, especially by special monitoring units to support vulnerable children and other forms of prevention and identification (such as reporting referral investigation, treatment and follow-up of instance of child abuse and neglect).

⁸⁴ Second periodic report of the URT submitted to the UN Committee on the Rights of the Child CRC/C/70Add.26 on the implementation of the UNCRC from 1998 to 2003, page 31.

⁸⁵ Second periodic report of the URT submitted to the Un Commission on the Rights of the Child CRC/C/70Add.26 on the implementation of the UNCRC from 1998 to 2003, page 29.

⁸⁶ The URT has proposed amendments to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, therefore has already considered its accession. However, the World Conference on Human Rights urges its adherence to the Convention.

⁸⁷ Information obtained by Mkombozi’s social workers during interviews with rounded-up street children on March 17, 2005 and on September 5, 2005 (see Appendix 4).

⁸⁸ According to Section 177 of the Penal Code, the first offence of loitering or begging will be punished by imprisonment for three months, and for every subsequent offence by imprisonment for one year. On the other hand, according to Section 6.2 of the Removal of Undesirable Persons Ordinance, being “undesirable in the public interest” will be punished with 3 months of imprisonment or a fine not exceeding 200 Tanzanian shillings or both. Corporal punishment is a “complementary punishment” to imprisonment, consisting of at least 12 strokes of the cane on entering prison and 12 just before release (Section 5.2 Minimum Sentences Act).

⁸⁹ From the third periodic report (UN Doc. CCPR/C/83/Add.2) submitted by the Nyalali Commission of Political Inquiry on the implementation of the ICCPR in the URT (October 7, 1997).

⁹⁰ Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is binding to the URT Constitution in that its main principles are *ius cogens*.

(ii) Street child round-ups are unjust

Police round-ups are unjust in that they observe neither domestic nor international standards of child protection and in that they fail to respect or enforce the rights determined by international legislation. For instance, the protection provided to children under 18 years is of compulsory compliance with regard to the UNJDL and the ACRWC, regardless of Tanzanian age limits. This is critically important, because state parties such as Tanzania are obliged to participate in the process and, above all, assure the best interest of the child “as a primary consideration” (Article 4 of the ACRWC).

Consequently, the legal commitment to uphold children’s rights is further violated by Tanzania’s deficiencies in appropriate juvenile justice methods and systems. Notably, in its Concluding Observations on Tanzania⁹¹ the UNCRC emphasises concern about holding minors in adult detention facilities, as well as the poor conditions of these facilities, the lack of adequate facilities for children in conflict with justice, the limited number of trained personnel involved in juvenile justice, the insufficient number of juvenile courts⁹² and the lack of rehabilitation and reintegration programmes. Even though such measures should be enforced through the appropriate complaint mechanisms, these mechanisms are also deemed to be deficient.

(iii) Street child round-ups are illegal

Police round-ups are illegal in that they conflict with the spirit of the binding human and children rights instruments, namely: the UNCRC, ACHPR, ACRWC, ICCPR, ICESCR, UN Guidelines for Action on Children in the Criminal Justice System and the UN Universal Declaration on Human Rights. These instruments compel state parties to respect and ensure the best interest of the child, the participation of children in contact with juvenile justice, the compliance with the principle of non-discrimination and the establishment of a restorative justice system. In fact, Article 7 of the UNCRC, Article 17 of the ACRWC and Article 18 of the ACHPR specifically oblige state parties to establish a juvenile justice system in harmony with the pertinent human right treaties. In effect then, Tanzania’s failure to establish an appropriate juvenile justice system is actually a violation of the right to not be deprived of the rights enshrined in national and international law.⁹³

In summary, it has been shown that police round-ups of street children constitute an inhumane, unjust and illegal practice which violates international law in three important areas:

- (1) To date, Tanzania has failed to undertake the compulsory translation of internationally protected child rights into its national legislation;
- (2) To date, Tanzania has failed to respect its legally binding obligation to enforce the international standards of human and child rights – even for those instruments to which it is a state party;
- (3) To date, Tanzania has failed to establish an appropriate juvenile justice system – as a result, the current mishandling and punishment of Tanzania’s children and youth constitutes a gross violation of the most fundamental human rights (whose binding force is beyond doubt).

4 IMPLICATIONS FOR TANZANIA’S DEVELOPMENT

It is clear that police round-ups of street children violate human and child rights and contravene international and domestic legislation, including the URT Constitution. This means that certain legal provisions and practices in Tanzania actually contravene its supreme legal body. Without remedial action, continued undermining of a country’s supreme legal body will eventually undermine the country’s entire justice system. In other words, if no action is taken to correct the shortcomings of Tanzania’s legal framework, then Tanzania’s justice system will always have a deficiency, and Tanzania’s Rule of Law will always be questioned (given that there cannot be Rule of Law where there is a deficient justice system).

⁹¹ Committee on the Rights of the Child (2001), “Concluding Observations of the Committee on the Rights of the Child, Tanzania” UN.Doc.CRC/C/15/Add.156.

⁹² Since 1997, only three juvenile courts have been established in Tanzania: in Dar es Salaam, Mwanza and Mbeya.

⁹³ Rule 13 UNJDL.

The consequences of such an outcome are not insignificant. It is often required that a state is a democratic country with a proper justice system before that state can benefit from concessions or advantages associated with international organisations and unions. For example, consider the current difficulties faced by Turkey in joining the European Union because of their deficient justice system – in the words of the European Council, the obstacles are: “...notably with regard to fundamental freedoms and to full respect of human rights.”⁹⁴

5 RECOMMENDATIONS

In accordance with Article 26.2 of the URT Constitution⁹⁵ and Article 23 of the Guidelines for Action on Children in the Criminal Justice System⁹⁶, the Arusha Caucus for Children’s Rights (in partnership with Mkombozi) urges that legal action be taken to stop the round-ups of street children in the Arusha Municipality. Specifically, a three-tier plan of action is proposed, with short-term, medium-term and long-term objectives.

Given the existence of a legally binding framework that protects human and child rights, the proposed short-term objective involves the effective implementation of those rights in force and effect at each stage of the round-up process.⁹⁷ This simply advocates for one of the primary tenets of the URT Constitution: to uphold and safeguard of the laws of the land.⁹⁸ In practice, this means that street children should be diverted from contact with the criminal justice system; for example, by exercise of the DC’s discretionary power to stop round-ups, or by issuing “police warnings” or “behaviour contracts” instead of arrest. Specifically, street children should be diverted to their families, social services, substance abuse programmes and NGOs. When diversion does not occur, the lawfulness of the arrest must always be guaranteed as per Sections 12, 14, 15, and 21 of the CPA, and according to the best interest of the child. Taken together with the right of habeas corpus⁹⁹, diversion underscores the importance of minimising a child’s contact with the justice system by means of options such as conditional or unconditional release. (Conditional release specifically concerns the fulfilment of the release under bail according to Sections 64-66 of the CPA.)

In the short-term it is also strongly recommended that a child is subjected to judicial process only as a last resort, as per Article 40 (b) (iii) of the UNCRC. Further, according to Section 3 of the Children and Young Persons Ordinance and Article 14 of the Guidelines for Action on Children in the Criminal Justice System, in the event that a child must be tried, the child should be tried in a juvenile court (which sits in a different room or building from that in which ordinary sittings of the court are held). This ensures the child’s right to participate in the entire judicial process, through juvenile court measures like the use of child-friendly language.

In the short-term, civil liberties, such as proportionality of the response, must be respected and upheld, especially with a view to provide for the most appropriate response (given the special circumstances of street children). Emphasis must be placed, in particular, on the need for appropriate and individualised judicial decisions wherein imprisonment is only used as a last resort, and corporal punishment is never used on a child under the age of 16. The child’s welfare should be further protected by avoiding unnecessary delay in the public hearing and by achieving a fair and equitable trial as a fundamental right.

⁹⁴ The Copenhagen European Council establishes the Rule of Law as a prerequisite, including mechanisms to guarantee it. See: “Presidency Conclusions of the European Council on Turkey”, December 16-17, 2004. Retrieved on November 10, from the European Commission official website:

http://europa.eu.int/comm/enlargement/turkey/pdf/presidency_conclusions16_17_12_04.pdf

⁹⁵ Article 26.2 URT Constitution: “Every person has the right ...to take legal action to ensure the protection of the URT Constitution and the laws of the land”.

⁹⁶ Article 23 Guidelines for Action on Children in the Criminal Justice System stipulates that: “...due account should be taken of concerns raised by intergovernmental and non-governmental organisations ...in particular systemic issues including... lengthy delays that have impact on children deprived of their liberty...”

⁹⁷ Recommendation of the General Assembly Resolution 48/136 on the Plight of Street Children.

⁹⁸ Article 9 (a) URT Constitution.

⁹⁹ Habeas corpus entails the protection from extended and illegal arrests.

Considering that street children are sent to remand facilities¹⁰⁰, it is also recommended (according to Rule 87 of the UNJD) that remand facilities – as well as police, social welfare and care centres – effectively observe human and child rights within their jurisdiction, under penalty of investigation and prosecution.¹⁰¹ The best interest of the child, when confined in a remand facility, invokes the right to diversion via probation (for purposes of social care and assistance, and re-integration in the community) (as stipulated in the Children and Young Persons Ordinance, the CPA and the Tokyo Rules).

Up to the point of diversion, the child's dignity must be respected and upheld by providing access to social, education and, when necessary, drug abuse prevention programmes, and also by observing the right for children to be held separate from adults and to be detained for the minimum necessary period.

Finally, it is necessary in the short-term that when human and child rights are not upheld, legal action must be swiftly and certainly taken against the person(s) responsible.

Although increasing the immediate protection of children is a necessary first step, it is crucial that a medium-term objective be undertaken to address the limited availability of skilled human resources in the field of juvenile justice. Specifically, it is recommended that child-centred education is included in standard training programmes for all criminal justice professionals, including: police and other law enforcement officers; judges and magistrates; prosecutors, lawyers and administrators; remand facility personnel; and any other professional in contact with juvenile justice. In the words of a police officer from Philippines: "As child-law sensitive enforcers, we are duty-bound and obligated by law to uphold the UN standards on juvenile justice in order to respect and protect the rights of children... Children are naturally good and we have to do our very best to make it easy for them to stay that way."¹⁰²

It is also recommended in the medium-term that judges and magistrates are informed and instructed in the interpretation of Tanzanian law according to international principles. In turn, street children must be educated as to their rights and responsibilities. Accordingly, aware-raising campaigns, requiring the cooperation of other NGOs and CSOs are recommended; for example, Colombia's rights-based and awareness raising "State of Information Agency for Children's Rights and Promotion".

The long-term objective, of course, emphatically advocates for the establishment of a complete and appropriate juvenile justice system in Tanzania, in harmony with the recommendations of the Nyalali Commission¹⁰³ and the Concluding Observations of the Committee on the Rights of the Child.¹⁰⁴ This two-part recommendation includes: (1) overhauling the deficiencies of Tanzania's juvenile justice, and (2) providing for the establishment of a fair, consolidated and effective juvenile justice system.

Recommended strategies to reform the deficiencies of Tanzania's current juvenile justice system include:

- Repeal of the unconstitutional Removal of Undesirable Persons Ordinance, given its incompatibility with Tanzanian and international law.
- Review and amendment of laws and regulations concerning child rights; in particular, the Children and Young Persons Ordinance, the Minimum Sentences Act, the Preventive Detention Act as well as several provisions of the Penal Code and the CPA. The review should aim at the adjustment and improvement of age limits, harmonising them within Tanzanian law, and at establishing criminal liability according to international standards.
- Corporal punishment must be abolished and discriminatory offences such as loitering and begging must be decriminalised.

Given these accomplishments, it becomes possible to establish a child-centred juvenile justice system in Tanzania. Such a system must affect the policies and practices of the criminal justice system as a whole, so

¹⁰⁰ For example, in September 2001, street children were locked in a remand facility for over a month; in May 2005 children spent several weeks in remand before being released into the custody of CHISWEA (an NGO); and in August 26, 2005 they were retained for one night under police custody.

¹⁰¹ Rule 74 UNJD.

¹⁰² Philippine National Police, Office of the High Commissioner for Human Rights, UNICEF. "Juvenile Justice Training Manual for Law Enforcers: Child's Rights Training Programme" (2002) Volume One, Philippines, page 130.

¹⁰³ The Nyalali Commission of Inquiry into the Political System submitted the third periodic report on the application in Tanzania of the ICCPR.

¹⁰⁴ Committee on the Rights of the Child (2001), "Concluding Observations of the Committee on the Rights of the Child, Tanzania" UN.Doc.CRC/C/15/Add.156.

that the protection of children is prioritised. Specific recommended strategies to support the establishment of a fair, consolidated and effective juvenile justice system include:

- Creation and promotion of juvenile courts in the Arusha Municipality.¹⁰⁵
- The assurance of effective birth registration (to avoid injustices that result from considering a child as an adult or juvenile under uncertain grounds).
- The respect of “law hierarchy” to preserve guiding principles enshrined in Tanzania’s supreme legal body, such as the best interest of the child, the principle of non-discrimination, the principle of participation as well as the principle of restorative justice.
- Budgetary reallocation of resources in human, organisational, financial and information areas.¹⁰⁶ With a reallocation of Tanzania’s budget on behalf of vulnerable children, it will be easier to ensure their rights by developing policies and systems of juvenile justice that are responsive to changing circumstances, and by reviewing their impact on the street child issue.
- Compulsory translation of international instruments into domestic law, given that they are binding to the URT.¹⁰⁷

Finally, it is recommended that the District Authorities, together with the cooperation of all relevant actors in Tanzanian justice, ensure juvenile justice is effectively applied. To this end, it is necessary to strengthen and develop human and child rights enforcement bodies at three levels: at a regional level (by promoting the creation of the African Court on Human and People’s Rights); at a national level (by ensuring the accessibility and availability of the Commission for Human Rights and Good Governance); and at an international level (by interacting with treaty governing bodies via examining reports).

6 CONCLUSION

There are currently more than 3,500 street children in Arusha and Moshi.¹⁰⁸ By law, these vulnerable children are protected by ten treaty enforcement bodies, more than twenty international instruments and, more importantly, by the URT Constitution. However, to date, Tanzania has not manifested the concern of the international community with child rights and child protection, as evidenced by maintenance of dated, repressive and unconstitutional legislation. It has been shown that this legislation actually enables the violation of an alarming array of fundamental human rights and freedoms.

Problematically, the justification of the practice of street child round-ups is discriminatory and contravenes the principle of legality (which requires guilt as a condition for being convicted for an offence). Moreover, police round-ups in the Arusha Municipality result in arbitrary arrests, degrading treatment, disrespect of civil liberties and inhumane punishment. Since both the justification and the consequences of police round-ups are unconstitutional, inhumane, unjust and illegal, it is common sense that the entire exercise must urgently be stopped. It is unacceptable to mask the social issue of street children by criminalising them for “loitering” and for being “undesirable to the public interest”. Street children require special protection and access to social care that can only be achieved by the repeal of repressive legislation, the child-oriented education of all juvenile justice system professionals, and the effective enforcement of human and child rights.

In conclusion, it is the finding of this legal analysis that the unconstitutionality of police round-ups of street children is not merely a question of morality, but also a question of legality and thus influential in the stability of Tanzania’s Rule of Law.

¹⁰⁵ Since 1997, only three juvenile courts have been established in Tanzania (in Dar es Salaam, Mwanza and Mbeya).

¹⁰⁶ Notably, this reallocation is a common measure in countries like Jamaica, Indonesia and the Netherlands; for example, “children in especially difficult circumstances” are considered a specific budget item in Dutch development aid.

¹⁰⁷ As a member state to the ACHPR, ACRWC, UN Charter, ICESCR, ICCPR, UNCRC, UN Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, Tanzania is obligated to translate these instruments into domestic legislation.

¹⁰⁸ Specifically, 1416 in Moshi and 2103 in Arusha, according to Mkombizi (2005), “Mkombizi Census 2003-2005: A Comparative Analysis of Tanzania’s Most Vulnerable Children.”

7 APPENDIXES

■ APPENDIX #1: Specific violations of domestic and international law at each stage of the round-up process (i.e. arrest, detention, court process and remand facility)

1. ARREST		
Rights violation	Domestic law	International law
Presumption of innocence	-ART 13.6 (b) URT Constitution	-ART 40.2 (b)(i) UNCRC -ART 11.1 Universal Declaration of Human Rights -Rome Statute ART 66 -ART 14.2 ICCPR -RULE 17 UNJDL (UNJDL applies to every child deprived of their liberty, defining child as those less than 18 years old, without any reference to national age standards.) -RULE 7 Beijing Rules -ART 7 ACHPR -ART 17.2 (c) (i) ACRWC
Right to humane treatment (This refers to the excessive use of force in effecting the arrest and arbitrary use of police power.)	-ART 13.6(e) URT Constitution -SEC 19 Penal Code (“...the court shall, in considering whether the means used were necessary or the degree of force used was reasonable for the apprehension of such person, have regard to the gravity of the offence...”) -SEC 21(1) CPA -SEC 12 CPA -SEC 21 Sexual Offences Special Provisions Act (Addition to SEC 169 Penal Code “...Any person who, having the custody, charge or care of any person under 18 years of age, ill treats, neglects or abandons that person or... procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, ... or any mental derangement, commits the offence of cruelty to children.”)	-ART 2 and 37 (c) UNCRC -ART 5 Universal Declaration of Human Rights -ART 7 ICCPR -Rome Statute ART 55.1 (b) -RULE 10.3 Beijing Rules -RULE 18 and 87 UNJDL -ART 5 ACHPR -ART 16 ACRWC -ART 16 and 17.2 (a) ACRWC -Third and Fourth Geneva Convention -Declaration on the Protection of All Persons From Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Although the URT did not sign this Declaration, its main principles are comprised in the ius cogens – since the Nuremberg Trials of 1950, any norm of the ius cogens is enforceable against both states and individuals.)
Right to know the offences of which you are accused (and to understand them)	-CPA	-ART 40.2 (b) (ii) UNCRC -ART 9.2 ICCPR -ART 14.3 (a) ICCPR -ART 17.2 (c) (ii) ACRWC -ART 11 (b) Guidelines for Action on Children in the Criminal Justice System
Right to be informed of your rights (and to understand them)	-SEC 53 CPA	-ART 23 Riyadh Guidelines -ART 11 (b) Guidelines for Action on Children in the Criminal Justice System -ART 9 ACHPR -ART 25 ACHPR (“State Parties to the present Charter have the duty to promote and ensure through teaching, education and publication the respect of the rights and freedoms contained in the present Charter, and to see if they ... are understood...”)
Freedom from arrest without warrant	(Legal according to Tanzanian law, but must comply with Sec. 12, 14, 15, 21 and 32 CPA.)	
Freedom from arbitrary arrest		-ART 37 (b) UNCRC -ART 9 Universal Declaration of Human Rights -ART 9.1 ICCPR -ART 55.1 (d) Rome Statute
Right to appeal against the removal order	-Sec 5(1) Townships Ordinance	
Curtailing of basic freedoms and rights	-ART 13, 29 and 30 URT Constitution	

2. POLICE CUSTODY		
Rights violation	Domestic law	International law
Right to notify next of kin or guardian	-SEC 54 CPA	-RULE 10 Beijing Rules -RULE 92 UN Standard Minimum Rules for the Treatment of Prisoners
Rights during the interrogation (not to be compelled to confess guilt or to testify against yourself)	-ART 13 (d) URT Constitution	-ART 14.3 (g) ICCPR
Right to be submitted to detention pending trial as a last resort	-SEC 54 CPA	-RULE 13.1 Beijing Rules -RULE 19.1 Beijing Rules -RULE 17 UNJDL (“...the institutionalisation of young persons should be used as a measure of last resort and for the minimum necessary period, and the best interest of the young person should be of paramount importance.”) -RULE 6 Tokyo Rules (“...alternatives to pre-trial detention shall be employed at as early stage as possible”.) -ART 43 Guidelines for Action on Children in the Criminal Justice System -Resolution 4 of the Sixth Congress on the Prevention of Crime and the Arrest of Offenders
Right to be held in a different facility than adults	-SEC 5 Children and Young Persons Ordinance	-ART 10.2 (b) ICCPR -RULE 13.4 Beijing Rules -RULE 29 UNJDL -ART 17.2 (b) ACRWC
Right of habeas corpus (protection from illegal and extended arrest)	-SEC 390 CPA (“...that any person illegally or improperly detained in public or private custody within the limits of the URT be set at liberty.”) -SEC 32 (1) CPA -SEC 32 (1) CPA (“... right to appear before a court within 24 hours, if it is not possible... to be released unless he is accused of a serious crime”) -SEC 4 Children and Young Persons Ordinance	-ART 37 (d) UNCRC -ART 40.2 (b) (iii) UNCRC -Rome Statute ART 67.1(c) -ART 9.3 ICCPR (“...the right to be brought promptly before a judge or other officer authorised by law ... It shall not be the general rule that persons awaiting trial shall be detained in custody.”) -ART 17 UNJDL “Detention before trial should be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures ... When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.” -RULE 10.2 Beijing Rules -ART 17.2 (c) (iv) ACRWC -ART 7 (d) ACHPR
Right to be submitted to judicial process as a last resort		-ART 40.2 (b) (vii) (b) UNCRC -ART 11.1 Beijing Rules
Right to humane treatment	-ART 13.6 (e) URT Constitution -SEC 55 CPA (a person shall, while under restraint, be treated with humanity and with respect of human dignity...No person shall, when under restraint, be subject to cruel, inhuman or degrading treatment)	-ART 5 Universal Declaration of Human Rights -ART 17 ACRWC
Right to lawful custody	-SEC 5 CPA	
Right to know the charge		-ART 17.2 (c) (ii) ACRWC

3. COURT PROCESS		
Rights violation	Domestic law	International law
Right to be tried in a competent court (i.e. Juvenile Court and not a Primary Court)	-SEC 140 CPA -Juvenile’s Court Act -SEC 3 Children and Young Person’s Ordinance (Cap. 13) (The juvenile court shall “... sit in a different building or room from that in which the ordinary sittings of the court are held.”)	-ART 14 (d) Guidelines for Action on Children in the Criminal Justice System

	-SEC 6 Children and Young Person's Ordinance ("...for any other offence other than homicide.")	
Right to understand the details of the charge and the witnesses' statements	-CPA -SEC 8 Children and Young Persons Ordinance	-ART 40 (b) (vi) UNCRC -ART 14.3 (f) ICCPR -ART 14.2 Beijing Rules -ART 17.2 (c) (ii) ACRWC
Right to have legal representation and counsel		-ART 12.2 UNCRC -ART 11.1 Universal Declaration of Human Rights -Rome Statute ART 67 (1) (d) -ART 14.3 ICCPR (Right to "...have legal assistance... assigned, in any case where the interest of justice so require, and without payment by him in any such case if he does not have sufficient means to pay it for.) -RULE 7 and 15 Beijing Rules -RULE 18 (a) UNJD -ART 93 of the UN Standard Minimum Rules for the Treatment of Prisoners -ART 7.1 (c) ACHPR -ART 4.2 and 17.2 (c) (iii) ACRWC -ART 16 Guidelines for Action on Children in the Criminal Justice System
Not to be held or be conveyed together with adults	-SEC 187 CPA -SEC 28 Sexual Offences Special Provision Act -SEC 3 (4) Children and Young Persons Ordinance	
Right to be tried taking into account special circumstances	-SEC 337(1) CPA ("...having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence,...or to any extenuating circumstance under which the offence was committed ... the court may direct that he be released on his entering into a bond, with or without sureties, and during such period, not exceeding 3 years, to appear and to receive sentence when called upon, and, in the meantime, to keep peace and good behaviour.")	-RULE 16 (Right to be tried considering a pre-sentence report as indispensable aid.) -17.1 (a) Beijing Rules (The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the juvenile as well as to the needs of society.) -RULE 2.3, 3.2 and 7 Tokyo Rules (Provides for the use of social inquiry reports.) -ART 14.4 ICCPR -ART 17 ACRWC -Principle of Proportionality
Duty to have a minimum age under which children shall be presumed not to have capacity to infringe the penal law		-ART 40.2 (b)(vii)(a) UNCRC -ART 17.4 ACRWC
Right to ask for the presence in court of a parent or guardian	-SEC. 3 (5) Children and Young Persons Ordinance	-RULE 7 Beijing Rules
Right to be heard in open court	-URT Constitution	-ART 10 Universal Declaration of Human Rights -ART 7 ACHPR
Right to due process of law	-ART 13.6 and 30.1	-ART 10 Universal Declaration of Human Rights -ART 14.1 ICCPR -RULE 14.1 Beijing Rules
Right to be sentenced to imprisonment only as a last resort (right to diversion)	-SEC 7 (1) and 22 (2) Children and Young Persons Ordinance ("No young person shall be sentenced to imprisonment unless the court considers that none of the others methods in which the case may be dealt with ...are suitable")	-ARTS 2 and 37 (b) UNCRC -RULE 17.1 (c) Beijing Rules ("...deprivation of liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or persistence.") -RULE 11 Beijing Rules (Right to diversion and redirection to community support service.) -RULE 1 and 2 UNJD -ART 46 and 58 Riyadh Guidelines -RULE 2.4, 8.1 and 14.4 Tokyo Rules -ART 42 Guidelines for Action on Children in the Criminal Justice System -ART 17.3 ACRWC -RESOLUTION 4 on the Sixth Congress of the UN
Right to freedom from corporal punishment	-SEC 2(i) Minimum Sentences Act ("Nothing in this Act shall be applied to a juvenile" i.e. a child under 16	-ART 7 ICCPR -RULE 17.3 Beijing Rules -RULE 67 UNJD

	years old according to SEC 3 Minimum Sentences Act)	-ART 17.2 (a) ACRWC -ART 18 Guidelines for Action on Children in the Criminal Justice System -ART 5 Universal Declaration of Human Rights -Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Although the URT did not sign this Declaration, its main principles are considered to have acceptance among the community, therefore binding to the URT in that it is ius cogens.)
Right of not being imprisoned for non-payment of the fine	-SEC 330 CPA -SEC 336 CPA -SEC 21 CPA (This section compels the parent or guardian to pay the fine instead of the child.)	
Right to review and appeal the court's decision	-ART 13.6 (a) URT Constitution -SEC 359, 360 and 361 CPA -SEC 5 Townships Ordinance (Right to "...appeal against the Removal Order.")	-ART 40.2 (b) (v) UNCRC -ART 14.5 ICCPR -RULE 7 Beijing Rules -ART 7.1 (a) ACHPR -ART 17.2 (c) (iv) ACRWC
Right to compensation for miscarriage of justice		-ART 9.5 ICCPR -ART 14.6 ICCPR

4. REMAND FACILITY		
Rights violation	Domestic law	International law
Right to be sent to a remand facility with a valid order from a competent authority		-RULE 20 and 21 UNJDL
Right to be informed of the rules of the remand facility		-RULE 24 UNJDL -RULE 12.3 Tokyo Rules
Right to be held in a different facility than adults	-Prisons Act	-ART 37 (c) UNCRC -ART 10.2 ICCPR -RULE 26.3 Beijing Rules -RULE 29 UNJDL -RESOLUTION 4 on the Sixth Convention of the UN Congress
Right to adequate communication with the outside world		-RULE 26.5 Beijing Rules -RULE 22, 56, 59 and 60 UNJDL -ART 20 Guidelines for Action on Children in the Criminal Justice System
Right to a complete and secure record of himself		-RULE 19, 21 AND 22 UNJDL
Right to have the duration of confinement determined at the time of the order of placement and for the minimum period		-RULE 2 and 21 (c) Beijing Rules -RULE 11.1 Tokyo Rules
Right to access to further legal assistance		-ART 24 UNJDL
Right to unrestricted access for inspection		-RULE 72 UNJDL
Right to access complaint mechanisms		-RULE 75 and 87 UNJDL
Duty of all personnel of the remand facility to respect the rights of the juveniles		-RULE 74 and 87 UNJDL
Least possible use of institutionalisation		-RULE 19.1 Beijing Rules -RESOLUTION 4 and 8 of the Sixth Congress of the UN -ART 46 Riyadh Guidelines -ART 18 Guidelines for Action on Children in the Criminal Justice System -ART 36 Guidelines for Action on Children in the Criminal Justice System: (The placement of "...children in need of special protection, such as children living and working on the streets... in institutions should be proscribed...")
Right to be held in the most		-RULE 27 and 30 UNJDL

appropriate placement		
Right to diversion	-SEC 18 Children and Young Persons Ordinance -SEC 337(1) CPA (Right to probation: "...having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, ... or to any extenuating circumstance under which the offence was committed... the court may direct that he be released on his entering into a bond... and during such period, not exceeding 3 years, to appear and to receive sentence when called upon, and, in the meantime, to keep peace and good behaviour.")	-RULE 9.1 and 9.2 Tokyo Rules ("Post-sentencing dispositions may include: (a) Furlough and half-way houses; (b) work or education release; (c) various forms of parole; (d) remission; and (e) pardon.")
Right to humane treatment	-ART 25 URT Constitution -SEC 55 CPA - Amendment of SEC 169 A Penal Code by SEC 21 Sexual Offences Special Provisions Act ("Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person ... in a manner to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits an offence of cruelty to children.")	-ART 32 UNCRC -RULE 12,18,44 ,63, 64, 67 ("All disciplinary measures constituting cruel, inhuman or degrading treatment or punishment shall be strictly prohibited."), 70 and 87 UNJDL -RULE 54 Riyadh Guidelines -ART 5 ACHPR -ART 16 ACRWC -ART 3 European Convention of Human Rights (Tanzania is not a State Party to this Convention; however, its principles are comprised within the ius cogens, and are thus binding.)
Right to access to social care and upbringing		-ART 20 UNCRC ("...a child temporarily deprived of his and her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.") -ART 39 UNCRC (Rehabilitative care) -ART 40.4 UNCRC (Alternatives to institutional care) -ART 25.2 URT Constitution -RULE 8, 14 and 80 UNJDL -RULE 18, 24 and 26 Beijing Rules -RULE 13.4 Tokyo Rules -ART 24 ACHPR -ART 33 and 34 Riyadh Guidelines -ART 14 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
Right to drug abuse prevention and rehabilitation programmes		-RULE 54 UNJDL -ART 28 ACRWC -ART 25, 36 and 59 Riyadh Guidelines
Right to education	-Education Act	-ART 28 and 29 UNCRC -RULE 38 UNJDL -ART 11 ACRWC

■ APPENDIX #2: Underlying legal principles violated by the exercise of round-up

- The "best interest of the child"
- Principle of Liberty and Security of the Person
- Principle of Restorative Justice
- Principle of Non-discrimination
- Principle of Proportionality
- Dignity of the Person
- Principle of Equality (The right of not being denied rights to which a person is entitled to by Domestic and International legislation)
- Principle of Effectiveness
- Principle of Legality
- Rule of Law

■ APPENDIX #3: International instruments and their enforcement in Tanzania

TREATIES	BINDING FORCE	TREATY ENFORCEMENT BODY
African Charter on Human and People's Rights	Ratified: 18 February 1984	African Commission on Human and People's Rights
African Charter on the Rights and Welfare of the Child	Ratified: 16 March 2003	African Committee of Experts on the Rights and Welfare of the Child
American Convention of Human Rights ¹⁰⁹	-	Inter-American Court of Human Rights
Charter of the UN	Ratified: 14 Dec 1961 ¹¹⁰	UN Commission for Human Rights
International Covenant on Civil and Political Rights	Acceded: 11 June 1976	UN Human Rights Committee
International Covenant on Economic, Social and Cultural Rights	Acceded: 11 June 1976	UN Committee on Social and Cultural Rights
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ¹¹¹	-	UN Committee Against Torture
European Convention for the Protection of Human Rights and Fundamental Freedoms	-	European Court of Human Rights
UN Convention on the Rights of the Child ¹¹²	Ratified: 10 June 1991	UN Committee on the Rights of the Child (through periodic reports, arts. 43, 44, 45 UNCRC)
UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	-	UN Commission of Human Rights
UN Guidelines for Action on Children in the Criminal Justice System ¹¹³	Acceded: 11 June 1976	UN Committee on the Rights of the Child (through periodic reports, arts. 43, 44, 45 UNCRC) that may transmit to specialised agencies).
UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)	-	UN Commission of Human Rights
UN Guidelines for the Protection of Juveniles Deprived of their Liberty	-	UN Secretariat
UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)	(Not legally binding) ¹¹⁴	-
UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) ¹¹⁵	-	UN Commission of Human Rights
UN Standard Minimum Rules for the treatment of Prisoners	-	UN Commission of Human Rights
UN Universal Declaration of Human Rights	10 December 1948	Special Rapporteur of the UN Commission of Human Rights
Vienna Declaration and Programme of Action	25 June 1993	The UN's General Assembly, the Commission on Human Rights ¹¹⁶ , the Centre for Human Rights ¹¹⁷ and other organs and agencies of the UN

¹⁰⁹ Note that Tanzania has not acceded, ratified or signed eight international instruments. However, their importance lays in that namely the main rights and principles in each one contained are accepted by the international community, i.e. becoming part of the *ius cogens*, hence binding to the United Republic of Tanzania. Remarkably, since the Nuremberg Trials of 1950, any norm of the *ius cogens* is enforceable not only against states but also against individuals.

¹¹⁰ Tanganyika ratified the UN Charter on December 14, 1961 and Zanzibar on December 16, 1963. Both merged together in 1964 to form the URT.

¹¹¹ Despite Tanzania is not a state party to it, amendments have been proposed, hence Tanzania has already thought about acceding it. Anyway, its main principles are comprised in the *ius cogens*.

¹¹² The URT signed the two Optional Protocols of the UNCRC on November 11, 2004; and April 24, 2003 respectively.

¹¹³ Art.6 of the Guidelines for Action on Children in the Criminal Justice System states that "... the responsibility to implement the Convention clearly rests with the State Parties thereto", strengthened by art.11 (a) of this document.

¹¹⁴ It is binding in that General Assembly of the United Nations requires States to inform the Secretary General every 5 years on the application of the Rules.

¹¹⁵ The Tokyo Rules have no treaty enforcing body, however, collaboration and cooperation with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretary are required in the light of rule 23.1 Tokyo Rules.

¹¹⁶ Art. 99 of the Vienna Declaration and Programme of Action recommends the Commission on Human Rights to review its implementation every year.

¹¹⁷ Art. 86 of the Vienna Declaration and Programme of Action provides for periodic meetings between the representatives of national institutions and the Centre for Human Rights.

■ APPENDIX #4: Interview questionnaire on police round-ups of street children in Arusha

(a) Police Round up of Street Children on Wednesday, 17th March 2004:

Under instruction from the DC of Arusha, Mr. Fulgence Saria, police officers began rounding-up street children on 17th of March this year. The children were subsequently taken to court where a magistrate ordered their immediate release. Police however ignored these explicit orders and beat some of the children prior to releasing them back onto the streets of Arusha. Social workers in contact with street children in Arusha had the opportunity to interview two of the children on the circumstances leading to their arrest.

Question: Can you tell us briefly what happened on Wednesday 17th March 2004?

Answer: A group of us were just resting at Mnara wa Jamii and then all of a sudden the home guards came and told us that they had been instructed by the District Commissioner to take us to police station.

Question: Can you explain what happened after you were arrested by the home guards?

Answer: After the arrest, we were taken to central Police station but were not held in the cell and were taken straight to Maromboso Primary Court.

Question: What time did all this begin?

Answer: The whole exercise started at around 10 a.m.

Question: How many were you in number?

Answer: About 18 of us in our group and three other beggars.

Question: What happened at Maromboso Primary court?

Answer: At the court the judge said that he was not aware of us being brought to court and asked the police to go back with us.

Question: Did the police comply with the judge's directive?

Answer: Yes, and they bundled us into a vehicle and we were driven back to central Police Station.

Question: What happened at the police station?

Child 1: My friends were badly mishandled and insulted. They were beaten and threatened. But they did not mishandle me in any way given the fact that I have a big wound on my hand.

Child 2: I was seriously beaten and up to now have chest problems. I was terribly shocked and thought that I was going to die.

Question: Do you think this was a routine exercise?

Answer: Well, to a certain extent we are used to this kind of treatment but we understand there was an important visitor in town from abroad and they wanted to clear us off the streets so that we are not seen.

Question: At what time were you released?

Answer: They started releasing us in groups at around 6 p.m. But they threatened that they will shoot us if they found us on the streets again.

Question: What is your general feeling about the police and the home guards?

Answer: They are brutal. They mistreat us a lot in the streets and are never kind to us.

Question: What is your message to the government and society?

Answer: Society should know that we are also human beings with all the rights. It is never our wish to be in the streets. And being in the streets is enough suffering for us and wouldn't like to get exposed to another suffering by the police or the public. The government should help us start small in-come generating projects so that we can start and live our own lives.

(b) Police Round up of Street Children on Friday, 26th August 2005:

On August 26th, street children were arrested and taken to the police station. After one night there, the younger ones were set at liberty and older children were taken to court. The judge said they were too young to be tried, so they were released. Mkombozi's social workers interviewed four of the rounded up children that they found back on the streets.

Question 1: Can you remember what happened on August 26th?

Answer: We were arrested. The municipals arrived but there were no vehicles. Vehicles arrived with police and took us to the police station.

Question 2: At what time did this happen?

Answer: At noon – 1 p.m.

Question 3: Did the police say anything to you?

Child 1: They said: "You guys are begging and stealing so you have to go to police, so you are not good persons, you are thieves." They shouted: "Go! Go!"

Child 2: They said: "We want to return you back to your community. You are making town dirty."

Child 3: I asked them: "Why are you taking us?" They replied: "Just go!"

Question 4: Did people around you do anything?

Answer: People were happy (when we were arrested). People don't like street boys.

Question 5: How old are you?¹¹⁸

Child 1: 15 years old. Child 2: 13 years old. Child 3: 12 years old. Child 4: 11 years old.

Question 6: How many of you were arrested?

Answer: Many. Around 15, only children, no beggars. The youngest was 7 years old.

Question 7: What happened after you were arrested?

Answer: Someone registered us; they asked our names and ages. After that;

Child 1: I was made to clean the police station. They beat me in the leg, it hurts.

Child 2: We were made to carry a big stone on the top of our heads. They also hit us with a stick on the bottom, on top of the clothes.

Child 3: I was taken to the police station and they (the police officers) beat us. Me and other children had to carry very big stones on our heads. They punished us and were happy.

Child 4: We were beaten by police with a canning stick.

Question 8: Were you held in a cell with adults?

Answer: Yes, for one night. There were a lot of adults, 25 or more. (Child 1 added that a group of children did not spend the night there; they were released because they told the police the thieves were the other children.)

Question 9: What happened the next day?

Child 1 and 2: Four of us were taken to Maromboso Primary Court. There was no process, they just said we were charged for loitering, punished us and then let us go.

Child 3 and 4: The young boys like us were released without going to court.

Question 10: What was the punishment?

Answer: We were made to clean the compounds of the court – the outside, the court room and the grass. The judge was good to us, he said: "I can't take them to court, they are too young."

Question 11: If you could send a message to the police, what would you say to them?

Child 1: We might be on the street, but we don't like to be beaten or arrested.

Child 2: I don't want them to arrest us because some people are helping us. We are not bad people.

¹¹⁸ Note that the ages are what children replied. However, these are approximate ages, some were not very sure about their age. According to Mkombozi's social workers they appeared to be between 10 and 15 years old.

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ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
Cap	Chapter of the Laws of Tanganyika
Children and Young Persons Ordinance	Chapter 13 of the Laws of Tanganyika
CPA	Criminal Procedure Act
CSO	Civil Society Organisations
DC	District Commissioner
EALS	Eastern Africa Law Society
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-governmental organisation
NOLA	National Organisation for Legal Assistance
Removal of Undesirable Persons Ordinance	Township (Removal of Undesirable Persons) Ordinance, Chapter 104 of the Laws of Tanganyika
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency
Standard Minimum Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures
UN	United Nations
UNJDL	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
URT Constitution	United Republic of Tanzania Constitution
Tokyo Rules	United Nations Standard Minimum Rules for Non-Custodial Measures
UNCRC	United Nations Convention on the Rights of Child
UNJDL	United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty
URT Constitution	United Republic of Tanzania Constitution