National Network of Organizations Working with Children

NON-GOVERNMENT ORGANISATIONS’ REPORT ON
THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD
PROSTITUTION AND CHILD PORNOGRAPHY
IN TANZANIA

May 2008

Presented to the United Nations Committee on the Rights of the Child by:
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## TABLE OF CONTENTS

Abbreviations ...........................................................................3  
Acknowledgment .......................................................................5  
Executive Summary ...................................................................6  
Background ...............................................................................8  
General Measures of Implementation .........................................9  
Sale of Children .......................................................................18  
Child Prostitution and Child Pornography .................................23  
Penal and Criminal Procedure ..................................................29  
Protection of the Rights of Child Victims .................................31  
Prevention Measures and International Cooperation ...............34  
Comments on Government Reports’ Appendices .......................36  
References ...............................................................................37
**ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABA</td>
<td>American Bar Association</td>
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<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>ACERWC</td>
<td>African Committee of Experts on the Rights and Welfare of the Child</td>
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<td>Cap.</td>
<td>Chapter (of the Tanzanian Laws)</td>
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<td>CDO</td>
<td>Community Development Officer</td>
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<td>CHRAGG</td>
<td>Commission for Human Rights and Good Governance</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>HIV</td>
<td>Human immunodeficiency virus</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IOM</td>
<td>International Organization on Migration</td>
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<td>KIWOHEDE</td>
<td>Kihota Women and Health Development Center</td>
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<td>LGA</td>
<td>Local Government Authority</td>
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<td>MCDGC</td>
<td>Ministry of Community Development, Gender and Children</td>
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<tr>
<td>MKUKUTA</td>
<td>Mkakati wa Kukuza Uchumi na Kuondoa Umaskini Tanzania</td>
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NGO : Non-Governmental Organisation
NNOC : National Network of Organizations working with Children in Tanzania
nola : National Organization for Legal Assistance
OVC : Orphans and Vulnerable Children
R.E. : Revised Edition (of the Tanzanian Laws)
STD : Sexually transmitted disease
SWD : Social Welfare Department
UN : United Nations
UNCRC : United Nations Committee on the Rights of the Child
US : United States (of America)
ACKNOWLEDGEMENT

NNOC is also grateful to Kihota Women and Health Development Center (KIWOHEDE); National Organization for Legal Assistance (nola); Plan International-Tanzania Country Office; Kwetu Mbagala Girls Home, Children and Widows Assistance Centre, and Youth Culture and Information Center. These organizations were deeply immersed in the entire process from pulling ideas and minds together, collecting and sharing data through to evolvement of this report.

For the development and production of this report NNOC feels a deep sense of gratitude to:

(i) Its Steering Committee members and the Secretariat Coordinator who together worked tirelessly to make sure this activity suffices.

(ii) Its forty four members countrywide for their interest and insights in sharing their, time, practical experiences, lessons learned editorial suggestions, and feedback in the process of writing this report.
(iii) Plan International-Tanzania Country Office and UNICEF Tanzania Country Office for their financial and technical support.

(iv) NGO Group on CRC for supporting two representatives to attend UNCRC 49th Pre-session meeting

(v) Children, who by the virtue of working with and for them have taught us lessons in which the value and power of writing this report emerged.

It is not that easy to name every effort and individual who played an active role in the development and production of this report but NNOC sincerely extends it’s gratitude to all those in one way or another made the contribution in the accomplishment of this report.

EXECUTIVE SUMMARY

Tanzania is a source country for children trafficked internally or to other countries for purposes of forced labour, pornography and sexual exploitation. Children are primarily trafficked internally for agricultural labour, domestic servitude, commercial sexual exploitation, and to perform forced menial tasks for small businesses, mostly in major cities of the country such Dar es Salaam, Mwanza, Arusha and Mbeya.

Domestic and transnational child trafficking in Tanzania continues to pose a big challenge both to the general public and law enforcers as people involved find alternative ways of carrying out this inhumane business. Despite the challenge,
various stakeholders/actors in the country such as the Government, the Commission for Human Rights and Good Governance (CHRAGG), law enforcement agencies, UN agencies and local NGOs continue to relentlessly and tirelessly put in place multi-sectoral approaches to fighting and curbing child trafficking, child prostitution and child pornography by arresting and prosecuting perpetrators, providing support to victims and conducting public awareness.

The National Network of Organizations working with Children in Tanzania (NNOC) has prepared this report of Tanzanian NGOs on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. It details the progress and the level of implementation of the Protocol in Tanzania and how the whole process has affected, and is affecting, children and young people in the country.

The report draws its legitimacy from the forty-four (44) NNOC Member Organizations that participated in the preparation of the same. Also, NNOC hired two Consultants with range of experience in childcare and protection, knowledgeable on Government processes, the legislative and policy framework and community based involvement and interventions. The Consultants worked closely with the NNOC Secretariat in the compilation and preparation of this report.
BACKGROUND


3. Apart from the International Labour Organisation (ILO), International Organization on Migration (IOM) and International Committee of the Red Cross (ICRC), very few local civil society organizations (CSOs) were involved in consultations for the preparation of the Government of Tanzania’s Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Even for those CSOs that participated in the process, their inputs to the Country Report were not fully incorporated into the Report.

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\(^1\) The United Republic consists of the mainland of Tanzania (formerly Tanganyika) and the semi-autonomous islands of Zanzibar.

\(^2\) These are (i) Protocol to Prevent and Suppress and Punish Trafficking in Persons especially Women and Children, and (ii) Protocol against the Smuggling of Migrants by Land, Sea and Air.
4. The report was not widely disseminated to non-state stakeholders, particularly local CSOs and children themselves, before it was submitted to the UN Committee on the Rights of the Child.

5. GENERAL MEASURES OF IMPLEMENTATION

Status of the Protocol in Domestic Law
5. Even though Tanzania acceded to the Protocol without any reservations, to date, the State Party has not domesticated the Protocol. As the State Party has reported currently there are several, scattered provisions of law in the country’s legal system. At the same time, the said provisions lack precise definitions, scope, dimensions and do not cover all the elements and forms of sale and traffic in children, child prostitution and child pornography. No measures have been adopted by the State Party to address these shortcomings.

6. Besides, there are no measures put in place by the State Party in disseminating and implementing the legal measures it has adopted as of to date.

7. As the State Party has reported, legal redress is lacking in terms of arrests and prosecutions of cases involving sale of children, traffic in children, child prostitution, and child pornography, notwithstanding the fact that some of these offences have been criminalized since 1998 when the Penal Code\(^3\) was amended vide the Sexual Offenses Special Provisions Act

\(^3\) Cap. 16 R.E. 2002.
(popularly, known as SOSPA). According to the report of the State Party, to date no case of traffic in children has been brought to the courts of law.

8. The statement that no cases involving traffic in children has ever brought in courts of law is exacerbated by the fact that although cases involving sale of children, traffic in children, child prostitution, and child pornography are regularly reported in local newspapers, the law enforcement agencies, particularly the police and Immigration Department, do not have sufficient expertise to identify these cases. These agencies also face the problems of lack of good record keeping/management and sophisticated equipment to combat these crimes.

9. In fact, there have been reported incidences of arrest of groups of Somalis and Eritreans who are being trafficked to South Africa and brought to courts. Many of these people are being transported in trucks from Kenya through to Malawi and Zambia en route to South Africa. In many cases, they travel in groups involving members of same families, including children.

10. In addition, there has emerged a new trend of traffic in children from Malawi to serve as house girls/boys and gardeners to Diplomatic Corps and other international staff working in the State Party’s big cities, especially Dar es Salaam. Reliable sources reveal that that these particular children master English language more than their Tanzanian counterparts. Information available evidences that boys are more prone to be trafficked from Malawi to State Party’s big cities than girls.
11. The State Party has also failed to put in place effective legislative mechanisms that would facilitate proper identification and records of the number of judicial measures on protecting victims; incidences of compensation; and number of official records in respect of sexual exploitation against children, sale of children, and child pornography. There also no legislative measures against prohibition of exposure of children to pornographical websites.

12. Besides, the State Party has not put in place mechanisms that would facilitate proper keeping/management, and availability, of disaggregated data on gender, age, and nationality of children victims and the perpetrators or offenders.

13. As the State Party has reported, Tanzania Mainland has prepared a draft Bill aimed at combating traffic in persons generally, whereby even children will be covered. However, the Bill was not made public and was unduly not tabled in Parliament by end of 2006, as reported by the State Party.

14. The said Bill, entitled: The Anti-Trafficking in Persons Act, 2008, was gazetted in the State Party’s Government Gazette merely on 22nd January 2008.4 The Bill is inspired by the Constitution of Tanzania of 1977, the UN Convention against Transnational Organized Crime together with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, including children.

15. However, the Bill does not make any general reference to the CRC Optional Protocol on the Sale of Children, Child Prostitution and Pornography; nor does it make any specific reference to the Protocol’s key principles; namely prohibition of the sale of children, child pornography and child prostitution; penal/criminal procedures; protection of the rights of child victims; and prevention of the sale of children child prostitution and child pornography.

16. The Bill also does not provide a comprehensive scheme for protection and assistance to victims of these offences, including lack of a provision obliging the State Party to provide appropriate legal aid or support services to child victims throughout the legal process. In addition, the scheme for the provision of protection and assistance to the victims of the offence of traffic in persons (including children) is optional, only to be offered subject to availability of resources.\(^5\)

17. Although the Bill was published in the Government Gazette and it has been served on certain legal/human rights sector NGOs, its publicity has been limited and the consultation of children themselves or CSOs directly working with or for children in State Party has not been actively and effectively undertaken.

18. Besides, it not clearly known when the Bill will be tabled in Parliament for enactment into a law.

\(^5\) Section 19(3) of the Bill.
19. To the contrary, Zanzibar does not have such initiatives and there is no any official information as to why Zanzibar has not undertaken any such legislative measures.

Coordination of the Protocol

20. While the Ministry of Community Development, Gender and Children (MCDGC) has acknowledged that existing coordination mechanisms for child rights in Tanzania have been inadequate, it does just proposes for the establishment of a national co-ordination body to coordinate all efforts with regards to child rights at all levels.

21. The same statement was made to the UN CRC Committee when the State Party submitted its second periodic report in 2006, where the UN CRC was critical to this approach. Since then the State Party has not been able to establish a national co-ordination body to coordinate all efforts with regards to child rights at all levels.

NGOs Observation on the Situation

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22. The State Party has failed to enact a comprehensive Children’s Statute to give legal effect all policy and programmatic strategies that have been effected both in Mainland Tanzania and Zanzibar.\(^7\)

23. Children issues are multi-sectoral, needing a multi-sectoral approach to addressing them by various Ministries and non-governmental agencies. In Mainland Tanzania, the MCDGC is responsible for the implementation of the CRC and its optional protocols. But there are no clear coordination modalities between MCDGC and other policy formulation bodies and line Ministries. In practice, this situation complicates coordination and accountability in matters relating to children rights.

24. There is negligible sectoral dialogue and lack of clarity about the roles and responsibilities and boundaries of key actors. For example, currently the Social Welfare Department (SWD) is responsible for children social needs and for the rights of Orphans and Vulnerable Children (OVC); and, in some cases, SWD is also involved in policy formulation, when in fact this should be the responsibility of the MCDGC.

25. In addition, the Commissioner for Social Welfare has indicated that SWD will be increasingly delegating responsibility for children’s services and social safety nets to Local Government Authorities (LGA’s); with SWD taking on more of a monitoring function, as opposed to service delivery.

\(^7\)Ibid.
This will complicate issues of coordination and accountability even more than it is now.

26. There is no information in the State Party about the kind of capacity building offered to the relevant personnel for the implementation of the Protocol; nor are there minimum standards for child protection or multi-sectoral dialogues for enhancing realisation of the Protocol.

27. NGOs are deeply concerned with the ad hoc decision by SWD to alleviate resource problems rather than a strategic move to improve social services for children in the State Party. Moreover, SWD offices are not available in all Tanzania districts, which create desolation to children who needs services such as maintenance and welfare for children.

28. In terms of resources there are no specific or consolidated budget lines in the State Party’s national budget for children; since these continue to be developed along sectoral lines. It is almost impossible to quantify the amount of State Party’s expenditure on children, but there remains a disappointment that resources for both the MCDGC and SWD are apparently scarce.

**Recommendations**

29. The State Party is urged to enact a Children’s Statute that incorporate the principles of the CRC and which will be applicable in both Zanzibar and the
Tanzania Mainland.\textsuperscript{8}

30. The State Party is urged to elevate children’s issues to the level of Union matters.\textsuperscript{9} Under both the CRC and the Protocol under report, the State Party is obliged to develop policies and laws concerning children, which apply uniformly in both the Tanzania Mainland and Zanzibar.

31. For the effective implementation of the CRC and its Optional Protocols, the establishment of one coordinating body or organ in the State Party is of paramount significance. This body could be the ‘Children’s Agency;’ and would be primarily responsible for ensuring that statutory, private and civil society agencies working with children have child protection procedures and policies in place and in developing minimum standards for such actors and ensuring that transgressions is acted upon.

32. The body referred to in 31 above would also coordinate resources and policies related to children across the sectors. It would be a centralised source of information about programmes/initiatives/research about children’s issues and would also develop a framework for complaining and acting against violations in Children’s Rights/shortfalls in services for children.


\textsuperscript{9} According to the first schedule to the Constitution of the United Republic of Tanzania, 1977, children rights and welfare are not enlisted as part of the Union Matters. So, a legislation enacted in Tanzania Mainland cannot automatically apply in Zanzibar, unless and until the Zanzibar House of Representatives (Parliament) ratifies for the application of such legislation.
33. This body would have additional authority if it was placed under the Prime Minister’s office. This strategy would clear up the current challenge where the SWD is concurrently responsible for children, disabled, and old people.

34. A model for a multi-sectoral dialogue is needed for improving the quality of dialogue on policies, budgets, expenditures and performance in all sectors related to children rights and welfare. A decision needs to be reached on whether genuinely participative decision making on policies and budgets will occur or whether development partners and civil society stakeholders will only be consulted prior to decision-making on key policies and budgets.

**Dissemination of the Protocol**

35. As reported in the State Party’s Report, dissemination of the Protocol is still not adequate. Only a total of 86 Community Development Officers (CDOs) and 15 principals from 12 regions of Tanzania were provided with the knowledge of the Protocols. This is very minimal number, considering the fact the State Party now has 26 regions with a population of more than 34 million, where more than 51% are children.

36. NGOs recommend that the State Party should take appropriate measures to address this shortfall, by particularly translating the Protocol into Kiswahili, a language commonly used by every Tanzanian. Thereafter, the translated version of the Protocol should be widely disseminated in all parts of the country.
37. Likewise, more personnel should be trained on the CRC, its Optional Protocols and African Charter on the Rights and Welfare of the Child (ACRWC). According to Government Report; only 91 personnel from 12 Regions were trained. This number is very minimal and does not have any significant impact on the realisation of the rights and freedoms guaranteed in the CRC, its Protocols and the ACRWC.

38. The State Party’s report has noted that awareness of Protocol has been raised during consultations in the preparation of the State Party’s report; but, a three-day child forum meeting for children from 8 districts is not enough. Since the State Party has more than 130 districts, the impact of that consultation does not have any impact to the majority of the children within its jurisdiction.

39. Even though, the State Party reports that there has been carried out some awareness raising trainings and dissemination of the CRC, its Optional Protocols and the ACRWC; there is no follow up mechanism to ensure that these efforts have effectively reached the intended audience.
SALE OF CHILDREN

Source of Information on the sale of Children

40. The State Party has reported that there has been undertaken very little research on the extent of human trafficking and related abuses (including pornography and prostitution) in its jurisdiction. Since sale of children is on increase, a comprehensive nationwide research is needed to know how big this problem is.

41. However, there are several baseline surveys/research activities that have been undertaken by local NGOs, like the National Organization for Legal
Assistance (nola), which did a study in 2007 under the auspices of the American Bar Association (ABA Africa Initiative), and established that sale of children from upcountry regions of Iringa, Mbeya, Singida, Tanga and Kigoma to major cities like Dar es Salaam and Mwanza is rampant in the State Party.  

42. In addition, the State Party’s report has failed to indicate measures that have undertaken by the State Party to address shortcomings identified in ILO report findings (Rapid assessments) in 2001.

The Law

43. The State Party has reported that legal protection is guaranteed to all children under the age of eighteen years without any discrimination in line with Articles 2 and 3 of the CRC. This statement is very doubtful, as there is an overt discrimination of children in the State Party’s legal system. The underlying indicator of this discrimination is the fact that there are two different laws providing for children in this regard in the State Party – i.e. one for Zanzibar and another for Tanzania Mainland, which is contrary to Article 2 of the CRC.

44. In addition, there are diverse laws providing for children in both sides of the State Party’s jurisdictions. For example, girl child can be married at the tender age of 14 years as it is described under section 13 of the Law of

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10 See, the Anti-Trafficking in Persons Project, undertaken by nola on behalf of ABA-Africa Initiative, 2007.
11 The Zanzibar Penal Act, No. 7 of 2004.
Marriage Act of 1971. This law has been widely and regularly for various reasons; including medical, legal reasons, and social reasons contending that, “early marriage deprive girls of opportunities to learn a trade of their choice or to continue with other post primary School training.”

45. At the same time, the National Customary Law Declaration Order [G.N. No. 279 of 1963] and the Local Customary Law (Declaration) Order of 1963 [No. 4 of 1963], GN 436/63, Third Schedule] contain several discriminatory provisions which impact on children, particularly girls. In particular, these codified customary laws harshly discriminate illegitimate and girl children, leading to most of them becoming susceptible to being trapped into the sale, trafficking, and prostitution businesses.

46. In addition, most of the provisions of the Children and Young Persons Act, Cap. 13 R.E. 2002, which was enacted in 1937, are repugnant to the principles and standards set out in the CRC and ACRWC, adversely impacting on sale of children, child prostitution and child pornography.

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15 According to section 11(1) of the Law of Contract Act, Cap. 433 R.E. 2002, a person under the age of eighteen is not competent to enter into a lawful contract, although he or she may only enter into contract as an infant for necessaries.
17 In Elizabeth Stephen & Another v. A.G [High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 82 of 2005 (unreported)] the High Court of Tanzania held that these customary laws “are discriminatory in more ways than one.”
47. The absence of a comprehensive statute for promoting and protecting children rights in the State Party has caused serious predicaments to children in Tanzania, including rampant child abuses, neglect, school drop outs, early pregnancies, and early marriages. These abuses have rendered many children in the State Party vulnerable to sale, trafficking and prostitution.

48. Although the State Party has enacted the Sexual Offences Special Provisions Act (SOSPA), 1998, this Act has failed to provide a 100% legal remedy to children, as it does not specifically focus on the enforcement of the CRC and its Protocols.

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49. Besides, the current penal laws\textsuperscript{20} that are in existence in the State Party regarding the sale of children, child prostitution and child pornography are outdated and do not accommodate the current trends of these crimes. For instance, the laws do not contain broad definitions, purpose, dimensions, and scope of the offences under the Protocol.

50. Due to the shortfalls inherent in the State Party’s legal system, sale of children, child prostitution and child pornography is increasingly becoming rampant in the State Party. This is because the legal framework, as it is to date, does not effectively and widely cast its net to cover every situation of the crimes as set out in the Protocol.

51. This foregoing fact is verified by the fact that, even though anti-trafficking law(s) are in place, no single person has ever been jailed for crimes of offences stipulated in the Protocol, as the State Party has reported.

\textbf{Raising awareness of trafficking}

52. The State Party has not been able to carry out a comprehensive research to cover ”knowledge gaps” on trafficking. Only the International Organization on Migration (IOM) has carried out number of surveys/researches on trafficking.\textsuperscript{21} But research result is not available.

53. The State Party has reported that it has entered into a bilateral agreement

\textsuperscript{20} See, for example, the Sexual Offences Special Provisions Act (SOSPA), 1998; the Zanzibar Penal Act, No. 7 of 2004; and the Penal Code (Tanzania Mainland), Cap. 16 R.E. 2002.
\textsuperscript{21} The National Organization for Legal Assistance (nola), on behalf of the ABA-Africa Initiative, in 2007 carried out a strategic baseline survey to identify the magnitude, extent and impact of trafficking in persons in Tanzania.
with the US to establish and support a project to combat trafficking, but no details of the agreement is known. For example, it is not made clear which ministry is coordinating this project, its duration and location.

54. The State Party has also been unable to initiate a country-wide programme for raising awareness of its citizens on trafficking, despite the fact that most of the State Party’s citizens do “consent” to the sale or trafficking of their children for financial gains.

Adoption Safeguards

55. The State Party is not a party to the Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (The Hague Convention). NGOs recommend that the State Party should accede and ratify this Convention as it was recommended by UNCRC on the last Concluding Observations in June 2006.22

Child Prostitution and Child Pornography

56. While the situation on the ground relating to child prostitution and child pornography in the State Party is increasingly becoming unbearable, there is a serious lack of data on this area. All the State Party’s data are based on ILO surveys (2001 & 2003). As such, there is no current data on these serious crimes in the State Party.

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57. Therefore, the State Party needs to carry out periodic surveys of its own to establish the magnitude, extent, factors and impact of child prostitution and child pornography in its jurisdiction.

**Child Prostitution**

58. There are areas in Dar es Salaam which are notorious for child prostitution. Suburbs like *Uwanja wa Fisi, Chaka Bovu*, Manzese and Kinondoni are very well known by authority as paradise for child prostitutes. Numerous “operations” have been carried by the Dar es Salaam City authority to “clear” child prostitutes out of the area. These operations in themselves are violative of certain basic rights and fundamental freedoms of the children involved, including the right against torture.

59. Besides, the operations target only the children involved in prostitution; but not the adults who own the unlawful brothels. The omission to apprehend owners of the brothels is said to be a result of the tendency whereby local leaders have been receiving bribery from the proprietors of brothels.

60. Through these crack down operations, though, the State Party has neglected to address the long-term causes for them to engage in prostitution, like poverty, orphanage; family breakdowns; and children delinquency.
Case Study from Igawilo, Mbeya

Interviews and observations in the densely populated community of Igawilo ward in Mbeya region revealed that children in prostitution come from all over the country. The area is rich in agricultural resources. In 10 local brew shops, young people between 10 to 25 years of age were the main customers who where busy drinking, dancing and kissing. At least 175 young girls were seen, most of them drunk. One third of the girls carried children on their back. They were also selling food and/or local brew to customers. When asked about why they engaged in prostitution, they said that they considered themselves to be adult women who can offer sexual services without any problem. Twenty five girls agreed to sit with the researchers in a bar, to share the varied circumstances that make young girls vulnerable to prostitution.

Shirwa Mbegu who had a child on her back said:

“I have been a victim of prostitution because I have no one to help and support. My mother died 7 years ago after a long illness, my father’s mother bewitched her, and they used to quarrel during her lifetime. I left home when I was nine years old, looking for a job as a house girl. During my stay with my employer, at the age of 13, I was made pregnant by my lady lord’s brother who refused to take any responsibility.

The family supported me during my late pregnancy, maybe because I was working. I was told to leave thirty days after the delivery. It was very difficult to go home. I found myself here through my friend Emmy. I work for an elder lady helping her to sell ‘Kimpumu’ (a tribal-Nyakyusa-local brew). I earn nothing. I am given food and shelter I have two male partners. One takes care of the child, the other provides food”.

Shirwa is now 15 years old and is not using any family planning methods or a condom. When she was asked whether felt at risk of contracting AIDS, she said that having two permanent partners was a safety measure.

The girls complained about being sexually exploited by the bar/guesthouse and local brew shop owners, and that whenever they asked for payment, they were told that they should be thankful for being allowed to conduct their prostitution business in the premises.

Community members, including girls currently or formerly engaged in prostitution...
61. Even though Employment and Labour Relations Act, 2004,\textsuperscript{23} prohibits children under the age of 18 years in hazardous conditions that are harmful to the child’s health and development (like bars, mines, factory or as crew on a ship, or in any other worksite including non-formal settings and agriculture),\textsuperscript{24} employment of children (especially girls) as bar maids (waitresses) is rampant in many places in the State Party.

62. Random surveys by many NGOs reveal that most of child waitresses or barmaid end up being sexually abused by their drunken customers. In most cases, owing to low wages paid to child waitresses/barmaid, they fall prey to promiscuous customers who lure the children with some token money for sex. Although child prostitution is prohibited under the Penal Code,\textsuperscript{25} in practice child barmaid/waitresses found themselves actively involved in this dangerous activity, in order to supplement their meager incomes for a living. This is not only a violation of the Penal Code, but it leads to children being infected with sexually transmitted diseases (STD’s), including HIV/AIDS for most of them are cannot protest to unsafe sexuality.

\textsuperscript{23} Act No. 6 of 2004.
\textsuperscript{24} Section 5, ibid.
\textsuperscript{25} See, particularly, section 139 of the SOSPA, Cap. 101 R.E. 2002.
Case Study from Nzovwe Ward, Mbeya

Nzovwe is a ward with the highest HIV/AIDS infection rate in Mbeya Region according to the Mbeya Municipal Report (1998). Mr. Jengela, a bar owner, noted that Nzovwe has many AIDS orphans. According to him children turn to prostitution because they have to take care of themselves and their younger siblings. Mr. Jengela, who was born 58 years ago in Nzovwe, has noticed rapid social changes in the community.

The population in the area is growing fast (approximately 3,000 children out of a total population of 10,826) into a squatter settlement with just two primary schools, no secondary school and only one vocational training centre to cater to the populations needs. Nzovwe has many bars and guesthouses, but no playground for children. Girls said in a focus group discussion that divorced women were migrating to other areas, leaving their children behind to fend for themselves. They also said that Nzovwe is a recruitment and catchment area for children in prostitution.

Happy Clement, a girl of 15 years said:

“I run my life by having 2 or 3 partners per day. I am living with my friend Atunonisye Isiaka of 18 years from Makambako who has a room and once worked in a bar as a bar attendant.”

Happy said she does not have any alternative means of living as she was kicked out of grandfather’s house by her step grand mother. She said her mother died five years back, and that she does not know her father as she has never seen him.

63. The State Party is urged to actively and effectively enforce the provision of the law prohibiting children under 18 years to work as waitresses or barmaids in bars in its jurisdiction. The State Party is also urged to conduct a public awareness campaign to educate the general public and bar proprietors on the negative side of employing children in such hazardous
worksites.

64. Under the Penal Code, it is an offence for a person (male or female) to live wholly or in part on the earnings of prostitution.\(^{26}\) However, due to the weaknesses of this law in, particularly, criminalizing child prostitution, the police do charge children and adult persons found in the process of doing prostitution with loitering.\(^{27}\) The manner used to arrest and arraign children involved in child prostitution is violative of their basic rights and fundamental freedoms as stipulated for in the CRC and the Protocol under report.

**Sex Tourism**

65. Sex tourism is increasingly emerging in the State Party, particularly along the Indian Ocean’s beach hotels where some tourists are interested in having sex intercourse with children (both male and female). There are hot spots for sex tourism in Zanzibar and South Beach (Kigamboni) in Dar es Salaam which are known to host tourists who are in sexual spree tourism.

66. Owing to lack of seriousness on address sex tourism, the State Party does not have actual figures/statistics on the scale, causes and impact of sex tourism to the basic rights and fundamental freedoms of children in the State Party.

\(^{26}\) See, sections 45 and 46 of the Penal Code, Cap. 16 R.E. 2002.

**Child Pornography**

67. Many tabloids newspapers and magazines (popularly known as “udaku” in Kiswahili) are publishing immoral pictures of children even though it is restricted by law and no legal action have been taken against the publishers of such newspapers/magazines. In many occasions, certain tabloids have been publishing stories and immoral pictures of children without anonymity.

68. Although the State Party has enacted laws\(^{28}\) to curb child pornography in its jurisdiction, the said laws are not broad enough to effectively combat child pornography as envisaged by the CRC and the Protocol under report. As a result, children have been accessing pornographical materials from such various sources as the internet and other printed materials without much scrutiny of the State Party.

69. The laxity of these laws in the State Party has provided space to crooked adults to exploit children in child pornography. For instance, in late 2007, one Italian Catholic Priest in Mwanza City, Northwestern Tanzania, was caught taking children porno pictures. Due to outdated laws, he was not taken to court to face music; instead he was extradited back to Italy as a free man.

PENAL AND CRIMINAL PROCEDURE

Article 5- Extradition

70. In its report, the State Party has conceded that the Extradition Act\textsuperscript{29} is outdated and it intends to review it with a view to incorporating new developments on extradition matters, the State Party has not provided a concrete time table for the proposed review process.

71. Experience in respect of “enacting” the Children Statute have shown that, “reviews” can go for years, without any positive action on the State Party.\textsuperscript{30} It is, therefore, recommended that a specific plan of action and timetable for this review should be set out; and also the review should aim at incorporating the principles in the CRC and the Protocol under report, particularly Articles 3 and 4 of the Protocol.

72. Besides, political will and proactive measures are needed on the part of the State Party to address shortcomings in the Extradition Act. The State Party should as well make arrangements for entering into bilateral

\textsuperscript{29} Cap. 368 R.E. 2002.
agreements with as many states where victims and/or perpetrators of traffic in children, child prostitution and child pornography may be living or may choose to stay.

73. As there is no disaggregated data on extradition cases in the State Party, NGOs urge the State Party to conduct regular and comprehensive research undertakings on extradition.

Seizure and confiscation of goods and proceeds

74. The Proceeds of Crime Act, 1991,\textsuperscript{31} was enacted seventeen years ago and addresses issues that were not envisaged in the CRC and the Protocol under report. To date, there are several issues and development that have emerged that this law did not envisage in 1991. As such, NGOs urge the State Party to amend it as it is does not address emerging issues which were not envisaged 17 years ago.

\textsuperscript{31}Cap. 254 R.E. 2002.
PROTECTION OF THE RIGHTS OF CHILD VICTIMS

Article 8

Protection of Child Victims

75. The State party has reported that criminal cases involving persons under the age of eighteen years are conducted in camera. In reality, not all criminal cases involving juveniles are held in camera. Very few Courts in Tanzania have set apart conducive rooms which can be used to prosecute juvenile offenders. Even if criminal cases involving juvenile offenders are heard in camera, the environment does not entail privacy to children.

76. The NGOs recommend the State Party for proposing to have provisions that would provide protection to victims and witnesses in the proposed Anti-Trafficking in Persons Bill, 2008.

77. However, as stated in paragraph 16 above, the Bill, amongst other things, does not provide a comprehensive scheme for protection and assistance to victims of these offences, including lack of a provision obliging the State Party to provide appropriate legal aid or support services to child victims throughout the legal process. In addition, the scheme for the provision of protection and assistance to the victims of the offence of traffic in persons (including children) is optional, only to be offered subject
78. NGOs urge the State to address the shortcomings in the Bill as identified in paragraphs 16 and 77 herein above; and further that the State Party is urged to incorporate provisions for the protection of whistleblowers, Human Rights defenders, including NGOs, who may be threatened or intimidated by the perpetrators. This recommendation derives its basis from reports from various NGOs (e.g. Legal and Human Rights Centre and KIWOHEDE), that after winning cases against culprits who abused children in one way or another, they have received phone calls, sms or verbal threats from relatives of convicted offenders.

79. Besides, the State Party is urged to provide free legal aid to child victims of sale of children, child prostitution and child pornography as stated Article 8 of the Protocol. In the alternative, the State Party is urged to provide subsidies to voluntary NGOs which provide legal aid to children on pro bono basis.

80. As the State Party has reported, in sexual offences, the court receives evidence of a child of ‘tender years’ without the requirement for corroboration of the evidence. However, it has been noted that after the SOSPA introduced harsh sentences to perpetrators of sexual offences in the State Party, many child witnesses have found themselves ‘coerced’ by the relatives of the offenders to give hostile evidence to the prosecution.

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32 Section 19(3) of the Bill.
33 Defined as a person under the age of fourteen.
In the end, a good number of perpetrators have been released for lack of evidence.

81. The State Party is urged to amend its evidence laws so as to allow other persons, particularly adults, to give evidence in court to ‘corroborate’ controversial evidence given by a child victim, particularly where both the prosecution and the court are of the view that there might be collusion on the part of the accused persons and the child victims.

Other Protection Measures for Victims

82. The State Party has reported that the SWD has identified and supported 190,291 MVC in 32 Districts, despite the fact that Tanzania Mainland alone has more than 120 Districts. This figure evidences that the support is meager and there is no indication as to what measures the State Party is going to take for the rest of the districts.

83. The State Party is begged to expand this support to all the districts of both Tanzania Mainland and Zanzibar.
PREVENTION MEASURES AND INTERNATIONAL COOPERATION
(Articles 9 and 10)

84. In its report, the State Party has only relied on labour laws (industrial laws) as a sole preventive measure to curb the crimes under the Protocol. This is contrary to the provisions of Article 9 of the Protocol which obliges States Parties thereto to “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol.”

85. Although the Tanzania’s labour laws impliedly address the offences referred to in the Protocol, this is not an adequate legislative preventive measure to deal with this problem. The State Party is urged to formulate a multi-dimensional approach to preventing these offences.

86. The State Party has reported that it has ratified the Convention on the Worst Forms of Child Labour and integrating it in its MKUKUTA (National Strategy for Growth and Reduction of Poverty) awareness and training programme. However, MKUKUTA in general and Cluster II in particular

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34 These laws are the Employment and Labour Relations Act, No. 6 of 2004 (Tanzania Mainland) and the Employment Act, No. 11 of 2005 (Zanzibar).

35 This is a short form for the Kiswahili words, Mmakati wa Kukuza Uchumi na Kuondoa Umaskini Tanzania (National Strategy for Growth and Reduction of Poverty).
(Improvement of Quality of Life and Social Wellbeing) face challenges of under finance and existing systems fail to match complexities introduced by multiple channels of funding programmes at the Districts level. Also, foreign resources predictability is still an issue to be addressed.

87. The State Party has also reported that the International Organisation for Migration (IOM) is implementing a "Counter Trafficking Initiative in Tanzania through Preventive Measures, Protection and Victim Assistance." It is recommended that this project should be incorporating the State Party’s own programmes; and it should be expanded to all parts of the country and including more local and international partners and actors.

**International assistance and cooperation**

88. In year 2001, the State Party adopted the Yokohama Global Commitment for Protecting Children from Sexual Exploitation. But seven years after the adoption of Yokohama Commitment, there is no any implementation report from the Government of Tanzania and the impact so far.

89. Seemingly, all initiatives so far (in this area) are being done by ILO (through its TBP arrangement) and local NGOs. It is recommended that the State Party should broaden its initiatives in this area to cover more areas and to include as many local partners/actors as possible.

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90. This should also consider the fact that experience in the State Party has shown that many donor-funded projects are being implemented in constituents where there are powerful politicians, neglecting areas that do not have powerful or influential politicians. The State Party should thus redress this biasness by putting in place equitable ways of implementing not only donor-funded projects but also its regular activities.

**Comments on Government Reports’ Appendices**

91. There two portfolios dealing *directly* with children affairs on the Mainland of the State Party: MCDGC and SWD.

92. The Commission for Human Rights and Good Governance (CHRAGG) does not have legal power to take any legal actions against culprits in this regard. It has a Children Desk Officer, but it is not easily accessible to children.

93. The State Party has reported that it is currently developing issues for a white paper consultation process on the law relating to children. NGOs are greatly concerned that the process has taken almost 15 years, and there is no sign of white paper forthcoming. It can be recalled, that during 42nd Session of UNCRC in Geneva, May 2006, Minister of Community Development, Gender and Children (MCDGC), after being requested by
Committee Members, promised that the Children Bill would be tabled in Parliament by July 2007 after a consultative process, through a white paper, was done. But, as of to date, neither the white paper nor the Children Bill have been prepared; and the responsible State Party’s authorities have chosen to remain tight-lipped on this matter.

94. The State Party is thus urged to expedite the process of enacting the comprehensive Children Statute that would incorporate principles set out in the CRC, ACRWC, and Protocols to the CRC.

REFERENCES

Legislation

Anti-Trafficking in Persons Act, 2008 (Bill).


Employment and Labour Relations Act, No. 6 of 2004 (Tanzania Mainland).

Employment Act, No. 11 of 2005 (Zanzibar).


Zanzibar Penal Act, No. 7 of 2004.

Reports


Publications/Papers


RESEARCH ON POVERTY ALLEVIATION, “Delivery of Social Services on Mainland


Case

In *Elizabeth Stephen & Another v. A.G.*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 82 of 2005 (unreported).