



## CRITICAL ISSUES IN HANDLING JUVENILE DELINQUENTS IN TANZANIA: AN APPRAISAL

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### *Abstract*

This paper is about the critical issues in handling juvenile delinquents in Tanzania. The paper sought to explore the critical issues which usually arise during the children's deprivation of liberty and incarceration in various detentions within the country. These issues relate to the separation of juvenile delinquents from adult detainees and their treatment while in detentions. It has been noted that Tanzania has ratified international and regional instruments such as the United Nations Convention on the Rights of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1990. Thus, the country has undertaken a legal obligation to take all necessary steps, legislative, administrative and other measures to implement the rights contained in those instruments, but various studies indicate that Tanzania is not yet fully implementing the international legal instruments relating to the protection of children in conflict with the law.

The paper contains data from library research which lays a theoretical framework of the problem and field data that supports the theoretical work. Through library research, books, legislation, articles, international conventions, government notices, various reports and periodicals were

reviewed while in field research data were collected from juvenile justice stakeholders in Tanzania. The study revealed that in Tanzania there is no total separation of children from adult offenders in detentions, and that children in police stations and prisons are overcrowded, they face beatings and inhuman treatments from adult detainees and the detention staff, they do not get a balanced diet three times per day, they lack clothes and sleeping materials.

### **1.0 Introduction**

As far as the rights of prisoners are concerned, it is commonly agreed that a prisoner does not become a non-human only for the mere reason of imprisonment, and aggravating the suffering of a prisoner beyond that pronounced by the court is unjustifiable. When it comes to persons of young age, this consideration becomes of paramount importance. It is common knowledge that dealing with juvenile delinquents in Tanzania has been one of the obligations that consumes the law enforcement organs' attention, apprehension, arrest, charge, and prosecution. This situation has unfolded in the context of child rights, as embodied in the Law of the Child Act, 2009 numerous critical issues that need intervention by juvenile justice stakeholders. It is the fact that Tanzania has in the past seven years searched constantly for new ways of dealing with juvenile delinquents, but this search has resulted in new measures of punitive handling of children delinquents, which has given rise to critical issues that merit a close review.



It is clear that children indulge in wrongful activities which, if committed by adults in the same circumstances, they amount to the commission of an offence, but on the part of children, these activities or omissions are regarded as mere delinquent acts and the concerned children are considered as juvenile delinquents or children in conflict with the law. Delinquent acts bring children in contact with the police, courts or find themselves in detentions where they may be confined. Both the international and Tanzanian laws do not prohibit the confinement of children, but they require the same to be done in a way that respects children's rights, humanity and dignity.<sup>1</sup>

Tanzania has ratified, among others, the United Nations Convention on the Rights of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1990. By doing so, the country has undertaken a legal obligation to take all necessary steps, legislative, administrative and other measures to implement the rights contained in those instruments.<sup>2</sup> Such measures should necessarily ensure that children in detentions are afforded and have access to their rights. There is no doubt that Tanzania has, and still is showing substantial efforts in strengthening the criminal justice system generally, but the general criminal justice system cannot be perfect while the juvenile justice system is ineffective. Juvenile justice generally and the rights of detained juvenile delinquents in particular, are part of the national criminal justice system.

<sup>1</sup> Article 37 (c), the United Nations Convention on the Rights of the Child, 1989.

<sup>2</sup> Article 4, United Nations Convention on the Rights of the Child, 1989 and Article 1, African Charter on the Rights and Welfare of the Child, 1990.

Fortunately, the Law of the Child Act, 2009 of Tanzania enshrines a number of key international juvenile justice standards, but many of them are not being upheld in practice. In their review of Tanzania's implementation of the above legal instruments, while recognising the efforts made by the Government in the field of justice, both the United Nations Committee on the Rights of the Child<sup>3</sup> and the African Committee of Experts for the Rights and Welfare of the Child<sup>4</sup> concluded that Tanzania is not yet fully implementing the international legal instruments relating to the rights and welfare of the child. Furthermore, when Tanzania appeared before the United Nations Human Rights Council during the Universal Periodic Review process in December 2011, members raised concerns relating to both juvenile justice and the access to justice system.<sup>5</sup>

This paper aims at exploring the critical issues in handling juvenile delinquents in Mainland Tanzania especially those issues which arise during the children's deprivation

<sup>3</sup> United Nations Committee on the Rights of the Child. (2006). *Concluding Observations: United Republic of Tanzania*, UNCRC/C/TZA/CO/2. <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.TZA.CO.1.pdf> (Accessed on 27/8/2015).

<sup>4</sup> African Committee of Experts on the Rights and Welfare of the Child, (2010), *Concluding Recommendations on the Republic of Tanzania: Report on the Status and Implementation of the African Charter on the Rights and Welfare of the Child*, Addis Ababa, p. 9.

<sup>5</sup> United Nations Human Rights Council Reports, (2011), *Universal Periodic Review*, Office of the High Commissioner, Geneva <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/209/44/PDF/G1620944.pdf?OpenElement>. (Last accessed on September, 2017).



of liberty and incarceration in various detentions within the country. The critical issues which will be addressed in this paper are the separation of juvenile delinquents from adult detainees in detentions and treatment of children in conflict with the law while in detentions. To achieve the objective of this work, the theoretical review of literature relevant to the topic will be conducted and presented. Further, the international and Tanzanian laws for the protection of juvenile delinquents will be analysed while the empirical data collected from the field will be used to support the theoretical part of this paper and find a conclusion based on the research findings.

## 2.0 Research Methods

This paper consists of mainly qualitative data, with limited quantitative inquiries. It attempts to evaluate the extent to which rights of detained juvenile delinquents are protected in Tanzania compared with the international standards that the country has domesticated. The researcher has undertaken library research to broaden a theoretical understanding of the problem, to lay a foundation for assessment of the legal framework for the protection of juvenile delinquents in Tanzania and get some light on how the problem has been dealt with by previous researchers. Through library research, the researcher accessed works of other researchers relevant to the problem and identified the knowledge gap that this paper sought to cover. Field research was also conducted to support the theoretical work. In this regard, the researcher collected empirical data from selected institutions charged with the administration of juvenile justice in the country.

One Hundred Seventy Five respondents participated in this study. In the detention facilities the researcher conducted interviews with detention staff, reviewed the admission books and conducted focus group discussions with detained children. Also the researcher used a set of prepared guidelines according to the international standards to observe the infrastructure, material conditions such as the provision of food, accommodation, hygienic facilities and social service provisions that were available for juvenile delinquents in those detentions. Apart from the detention facilities, data were also collected from interviews with key juvenile justice stakeholders such as parents of detained children, Resident magistrates, non-governmental organisation officials, lecturers of law, the Commissioner of Human Rights and Good Governance of Tanzania, officials from the Law Reform Commission of Tanzania, public prosecutors and private advocates.

## 3.0 Results and Analysis

### 3.1 Separation of Detained Children from Adult Offenders in the Visited Detentions

Children in Tanzania are detained in police stations, Retention Homes, Approved School and prisons during both pre-trial and post trials. At twenty two (22) visited detentions, a total of three hundred sixty three (363) children below the age of eighteen years were found incarcerated. Concerning separation of detained children from adult offenders, it was revealed that out of 363 detained children, Seventy One (71) children (19.6%) were detained in detention facilities which are special for children only; hence, juvenile delinquents do not associate with adult offenders. Three (03) children



(0.8%) who were held in Urafiki Police Station were totally separated from adults as they were held in a room which is usually used as an office. However, a boy was held in the same room with his two sisters. Out of Nine (09) visited prisons, in Six (06) prisons there were Two Hundred Forty Seven (247) children (68%) who were held in separate sleeping areas, but they work together with adult offenders during the day and share all other facilities such as dining and washing areas. Forty Two (42) children (11.6%) were held in the same detention cells or wards with adult criminals.

The percentage of children in detentions who were not completely separated from adults surpasses the percentage of those who were totally separated from adults. Moreover, even in the facilities where boys were separated from the girls, there was no further separation according to the status of the detainees, age of children or the categories of offences committed or alleged to have been committed. Children who were detained for committing murder, rape, armed robbery, simple theft, illegal immigration and the baggers were held together. Irambo Approved School was an exception on this aspect as it was found that there was a separation of detained children according to the age.

The international standards for the protection of detained juvenile delinquents require that juvenile detainees waiting for trial should be separated from convicted ones.<sup>6</sup> The United Nations Convention on the Rights of the Child, 1989 stipulates that every child deprived of liberty has the right

<sup>6</sup> Rule 18 (a), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 1990.

to be separated from adults unless it is considered in the child's best interests not to separate him or her.<sup>7</sup> Likewise, the Beijing Rules, 1985 provide that juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.<sup>8</sup> The African Charter on the Rights and Welfare of the Child, 1990 provides that States must ensure that children are separated from adults in their place of detention or imprisonment, and that every child accused of infringing the penal law is presumed innocent until duly recognized guilty.<sup>9</sup> The principle of separation of juvenile delinquents from adult offenders has two purposes, namely, to protect children from exploitation, abuse and negative influences by adults, and to ensure that the detention of juvenile delinquents is implemented in the facilities that cater for their special needs.<sup>10</sup>

The Law of the Child Act, 2009 complies with the international standards in this aspect by urging the police officers to make arrangements for preventing as far as practicable, a child while in custody, from associating with an adult charged with an offence unless he is a relative.<sup>11</sup> However, in all visited police stations, there were no special cells for children. Children were held in the same cells with adults or in vacancies available within the offices. As illustrated

<sup>7</sup> Article 37 (c), United Nations Convention on the Rights of the Child, 1989.

<sup>8</sup> Rule 26 (2), Beijing Rules, 1985.

<sup>9</sup> Art. 17 (2), the African Charter on the Rights and Welfare of the Child, 1990.

<sup>10</sup> The United Nations Office on Drugs and Crime. (2006). *Manual for the Measurement of Juvenile Justice Indicators*, New York: United Nations, p. 16.

<sup>11</sup> S. 102, Law of the Child Act, 2009, (Cap. 13).



above, this is the contravention of the international, regional and national laws. Worse enough, there has been no judicial intervention to remedy this situation.

In the case of *Lucien Ikili Rashid v. Mussa Ruganda Leki & Others*,<sup>12</sup> the plaintiff, a citizen of the Democratic Republic of Congo, sued the defendants for maliciously having reported him, his wife and two children to the Immigration Department of Tanzania, leading to their arrest and detention in Segerea Prison. In Segerea Prison, the plaintiff was detained for thirteen days in the same cell together with his children. He contended in evidence, *inter alia*, that while in prison, when the prison officers were in search of opium and money, they undressed the plaintiff in the presence of his two children. Unfortunately, the case was about the claim for compensation for unlawful arrest and detention; therefore, the court did not address the question of separation of children from adults in the detentions.

### 3.2 Treatments of Juvenile Delinquents in Studied Detention Facilities

In respect of treatment of detained children, the researcher investigated aspects such as the hygienic condition of detentions, quality and quantity of food offered to children per day, children's clothing and sleeping materials, as well as sexual abuse and other inhuman treatments. Numerous questions were posed to the respondents to ascertain treatment of children in the visited detentions. These questions were answered by all respondents who participated in this study, and their answers were coupled with

the researcher's observation during the visit in detention facilities.

In the first place, in all detention facilities the researcher inquired about the actual number of inmates per detention cell compared with the capacity of each cell. The purpose was to establish the relationship between overcrowding and poor standard of hygiene in detentions. Except in detentions where children were mixed with adult offenders, all visited detentions had fewer detained children compared with the capacity of each detention facility and therefore, the standard of hygiene was satisfactory. For example, Irambo Approved School, which can accommodate 300 boys, had 23 boys only while Tanga Retention Home which can accommodate 40 children had no children at the time of the visit. Wami Prison for Young Offenders has the capacity to accommodate 255 young male offenders, but it had 82 inmates only. Mbeya Retention Home's capacity is to accommodate 50 children, but there were 12 children only.

Likewise, Upanga Retention Home can accommodate 60 children, but there were 28 children only while Arusha Retention Home can accommodate 50 children but there were only 8 children. This is a commendable condition, but there could be more improvement if there was an effective coordination between the Ministry of Home Affairs and the Ministry of Health, Community Development, Gender, Elderly, and Children, to transfer children detained in police stations and prisons to the Retention Homes and the Approved School, at any time whenever there are vacancies. It is difficult to justify for instance, the reasons

<sup>12</sup>[2016] TLS LR 13.



for holding 38 children in Butimba prison while there are vacancies at Irambo Approved School. Likewise, 18 children were held in Maweni prison in Tanga while there was no child in Tanga Retention Home, 52 children were detained in Segerea prison while there were vacancies in Upanga Retention Home, and 8 children were incarcerated in Arusha Central police station while Arusha Retention Home which is just close to the police station had vacancies.

The respondents in Retention Homes said this situation is caused by reluctance on the part of the police officers to send children to the Retention Homes. The police and prison officers on their part contended that always there is a lack of information about the vacancies available in Retention Homes. In addition, they said the transfer of children from police stations or prisons to the Retention Homes pose numerous administrative challenges such as financial and security issues. In this regard, the international standards require that the inter-ministerial and interdepartmental cooperation should be fostered in handling juvenile delinquents in order to consider the needs and best interests of the child.<sup>13</sup>

Children detained in prisons face the problem of overcrowding just as adult prisoners. The problem is more acute with male prisoners than females. Most of visited prisons were found accommodating inmates, nearly twice than their actual capacity. For example, Isanga prison can accommodate 784 prisoners, but there were 1080 inmates at the time of the visit. In Kasulu District Prison, there were 323 prisoners during the visit, but the prison's capacity is to

accommodate only 180 inmates. Butimba prison can accommodate 934 prisoners, but the researcher found 2,212 inmates during the visit. During the interview, one prison officer revealed that one prison cell can accommodate 20 prisoners, but there are instances in which 53 inmates are held in one cell and share one toilet.

The United Nations Convention on the Rights of the Child, 1989 directs that every child deprived of liberty should be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.<sup>14</sup> Furthermore, the Beijing Rules stipulate that juveniles in institutions should be kept separate from adults and must be detained in a separate institution or in a separate part of an institution also holding adults.<sup>15</sup> This serves the avoidance of negative influences through adult offenders and the safeguarding of the wellbeing of juveniles in an institutional setting. Juveniles often suffer more human rights abuses when they are incarcerated with adults. It has been said that juveniles incarcerated in adult facilities are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and twice more likely to be attacked with a weapon or beaten by prison staff than adults in the same facilities.<sup>16</sup>

<sup>13</sup> Rule 26.6, Beijing Rules, 1985.

<sup>14</sup> Art. 37 (c), United Nations Convention on the Rights of the Child, 1989.

<sup>15</sup> Beijing Rules, *Loc. Cit.*, Rule 26.3.

<sup>16</sup> Caldwell, B. (2011). Punishment Versus Restoration: A Comparative Analysis of Juvenile Delinquency Law in the United States and Mexico. *Cardozo Journal of International and Company Law*, Vol. 20, pp. 105-139.



### 3.3 Quality and Quantity of Food Offered to Detained Juveniles

Regarding the quality and quantity of food offered to detained children, the researcher found that children in Retention Homes and Approved School are served with meals three times a day. The meals constitute a balanced diet and there was consensus among the respondents that the food is adequate. In prisons, children are offered meals twice per day, that is, porridge in the morning and meals at 2:00 pm in the afternoon. The dominant type of food is stiff porridge served with beans or meat stew in few occasions. Most of the respondents indicated that food is usually sufficient. There were a few disagreements in Segerea prison where children contended that they are offered enough main dishes but served with very little sauce.

In Isanga Prison, detained children complained that meal is offered too early, that is, on 2:00 pm, causing them hungry during the night. The prison authority explained that according to the prison Rules, inmates must be locked in on 5:00 pm, so meal is offered early in order to have enough time for checking security and records of the inmates before locking them in. In all visited police stations, there was no food offered to detained children. They solely rely on food brought to them by relatives, if any. For detained children who have no relatives to offer them food, they are assisted by police officers to get shares from their colleagues. The police officers explained this situation as being caused by the Government's delay in paying the suppliers of food to police stations, hence; they stop supplying food until they are paid.

### 3.4 Detained Children's Clothing and Sleeping Materials

Children detained in police stations, Retention Homes and the Approved School, do not wear uniforms. They wear home dresses brought to them by parents or donated by the well-wishers such as religious groups, members of the Non Governmental Organisations and university students. Apart from home dresses, children in the Approved School wear school uniforms supplied to them by the Government. The researcher was informed that sometimes the Government does not supply uniforms in time, hence; children wear torn uniforms or go to school with home dresses. In all studied Retention Homes and the Approved School, sleeping materials were enough and clean. However, in all visited police stations, there were no sleeping materials. Detained children sleep on the bare floor with no covering materials. This situation is considered normal, being part and parcel of the effects of conflicting with the law. One juvenile delinquent explained during focus group discussions that he requested for a blanket in the police station, but he was replied that "... *there is no luxury in the police station, so he better shut up and stop disturbing.*"

On this aspect, the Beijing Rules stipulate that juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners, 2015 adopted by the United Nations.<sup>17</sup> While in custody, juveniles shall receive care, protection and all necessary individual assistance-social,

<sup>17</sup>Rule 13.3, Beijing Rules, 1985.



educational, vocational, psychological, medical and physical, that they may require in view of their age, sex and personality.<sup>18</sup> Commentary to Rule 13.5 of the Beijing Rules explains that juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners, 2015 as well as the International Covenant on Civil and Political Rights, 1966. Concerning clothes for children detained in the prisons, these are categorised into two groups, namely, pretrial and post trial juvenile delinquents. Those who are under trial wear home dresses while the post trial children wear prison uniforms. There were no beds in studied prisons. Children sleep on mattresses placed on the floor.

In one prison, the researcher was informed that overcrowding and lack of prison uniforms forces some detained juveniles to wear home dresses and share sleeping materials while in the prison. The Prisons Act, 1967 stipulates that while in the prison, every prisoner is entitled to food in a prescribed dietary scale and must be supplied with and should wear such prison clothing as may be determined by the Commissioner General of Prisons.<sup>19</sup> In addition, every prisoner has the right to be provided with separate bedding adequate for warmth and health as may be determined by the medical officer and be prescribed by Regulations.<sup>20</sup> However, in studied detentions, there were no facilities to cater for the needs of detained children as per the

requirements of national and international laws.

These findings resemble what was presented in the 2016 Tanzania National Report of Human Rights Institution<sup>21</sup> in which it was revealed that eighty percent (80%) of children held in prisons and police cells are not separated from adults, have limited access to legal representation, and there are few children's facilities including transportation to and from the courts. There are inadequate social workers to handle children in conflict with the law.<sup>22</sup> It has been argued that where conditions within a prison are such that inmates incarcerated therein will inevitably and necessarily become more socio-pathetic than they were prior to the sentence, the court's punitive purpose, charged with healing hope is stultified by the prison authorities.<sup>23</sup> This means the treatment of detained children which does not conform to their rights amounts to punishing them more than their sentences as pronounced by the courts.

### 3.5 Sexual Abuse and Inhuman Treatments of Detained Children

Children detained in Retention Homes and the Approved School face corporal punishment if one commits a serious misconduct such as use of abusive language, bullying, attempt to escape and sexual

<sup>18</sup>*Ibid*, Rule 13.5.

<sup>19</sup> S. 65 (1), the Prisons Act, 1967, [Cap. 58 R.E. 2002].

<sup>20</sup>*Ibid*, S. 65 (2).

<sup>21</sup>United Republic of Tanzania. (2016).*Individual Report of Tanzania National Human Rights Institution, Submitted to the United Nations Human Rights Council under the Universal Periodic Review Mechanism, Review of the United Republic of Tanzania, Universal Periodic Review, Second Cycle*. Geneva: United Nations, p. 4.

<sup>22</sup>*Ibid*.

<sup>23</sup>Krishna Iyer, J., in Charles Sobhraj v. Supt, Central Jail, Tihar, AIR (1978) SC 1515.



violence. Corporal punishment is usually administered in accordance with the Retention Homes or Approved School Rules. In case of less serious misconduct, children are given alternative punishments, which may include cleaning the dormitory, gardening or washing cooking utensils. Children detained in Retention Homes and prisons complained to have been tortured when in police stations in order to confess to the offences or sign the statements given to them by the police officers. Sixty Eight (68) respondents answered the question relating to the acts of torture, sexual abuse and inhuman treatments to detained children. Corporal punishment is one of the complained treatments of detained juvenile delinquents.

Out of five respondents who answered a question relating to corporal punishment, four (4) respondents (5.9%) said that children in detentions are caned for breaching detention Rules, while one (1) respondent (1.5%) said there is no caning of children in detentions. Twenty Eight (28) respondents mentioned the acts of torture of children by police officers. Nineteen (19) children (27.9%) explained that children are tortured when they are detained in police stations, on the other hand, Nine (9) respondents (13.2%) stated that nobody tortures children detained in police stations. Further, among Sixteen (16) respondents who answered the question relating to beating of children by prison officers, Seven (7) respondents (10.3%) confirmed that sometimes prison officers beat detained children on disciplinary grounds. Nine (9) respondents (13.2%) replied that children detained in prisons are never beaten by prison officers, they are only warned.

Four (4) respondents mentioned sexual abuse as one of the problems faced by children in prisons. Out of these four respondents, Three (3) respondents (4.4%) said it is true that such acts exist in prisons. One (1) respondent (1.5%) replied that there is no sexual abuse of children in detentions. Fifteen (15) respondents responded to the question about inhuman treatments of detained children. Fourteen (14) of these respondents (20.6%) said it is true that in some situations, detained children are treated in an inhuman manner. One (1) respondent (1.5%) stated that children in detentions are not maltreated because people tend to sympathise with these children.

A large number of respondents who answered questions relating to the treatment of detained juvenile delinquents have confirmed that children in detentions are ill-treated. For example, respondents detained in Babati prison complained of being threatened in police stations to be shot with guns if they refuse to confess, others said they were burnt with an electric iron on the thighs, others narrated to have been put on electric shock when they refused to confess, while others complained that they were badly insulted outside the court in the presence of the relatives. It is a requirement of the law that a person who is under restraint must be treated with humanity and with respect for human dignity.<sup>24</sup> Like international laws, Tanzanian laws prohibit to subject a person who is under restraint to cruel, inhuman or degrading treatment.<sup>25</sup>

<sup>24</sup> S. 55 (1), Criminal Procedure Act, 1985, [Cap. 20 R.E. 2002].

<sup>25</sup> *Ibid*, S. 55 (2).



Another respondent in Butimba prison explained that when he was in the police station, he saw other boys being beaten heavily by police officers; then he decided to confess to the offence so as to save his life. He was charged with theft. He said the complainant never came to court to testify, but the boy was convicted and sentenced to six months imprisonment. It is important to observe here that the standard of proof in criminal cases is beyond any reasonable doubt and the prosecution must discharge this duty, except in a few cases where the burden of proof usually shifts to the accused person.<sup>26</sup> Theft offence is not one of such exceptions.

Concerning inhuman treatment of children by police officers, during the interview one police officer explained the incidents of torture by police officers in the following words: “We do not have the investigation tools. We conduct investigations by using too much energy, brain, psychology and sometimes torture. In our circumstances, torture is unavoidable. We depend so much on the use of force to obtain evidence. If police officers refrain totally from torturing in gathering evidence, no criminal case will ever go to the court. Evidence will always be wanting. However, in the case of children, they confess easily, no need of torture.” Therefore, the police officers use torture as a means to enhance crime investigations. This has been so despite numerous complaints from the general public as well as the international and national laws prohibiting torture of the detained persons. The Constitution, for example, provides that, “...no person should

<sup>26</sup> S. 3 (2) (a) Evidence Act, 1967, [Cap. 6 R.E. 2002].

be subjected to torture, inhuman or degrading punishment or treatment.<sup>27</sup>

Moreover, the Law of the Child Act, 209 prohibits any person to subject a child to torture or other cruel, inhuman punishment or degrading treatment, including any cultural practice which dehumanizes or is injurious to the physical and mental well being of a child.<sup>28</sup> Still, the police officers resort to torture as a short cut to proper investigation, perhaps because they know for sure that there will be no repercussions for their actions. The Criminal Procedure Act, 1985 stipulates that where a police officer contravenes or fails to comply with the provisions relating to the arrest, restraint of the accused person and investigation of the offence, the contravention or failure should not be punishable as an offence against the Criminal Procedure Act, 1985, unless a penalty is expressly provided in respect of the contravention or failure.<sup>29</sup>

Worse still, in certain circumstances torture is permitted in Tanzania if it leads to the confession. The Court of Appeal of Tanzania once held that if despite torture or undue influence, the truth of the confession is not affected; mere allegations of torture will not render the confession automatically inadmissible. But, the admissibility of such confession requires two tests, first the court has to satisfy itself that the confession was voluntary in which case admissibility of the same causes no problem, and secondly, if there are allegations of torture, the same

<sup>27</sup> Art. 13(6) (e), the Constitution of United Republic of Tanzania, 1977, [Cap. 2 R.E. 2002].

<sup>28</sup> S. 13 (1), Law of the Child Act, 2009, [Cap. 13].

<sup>29</sup> S. 6 (2), Criminal Procedure Act, 1985, [Cap. 20 R.E. 2002].

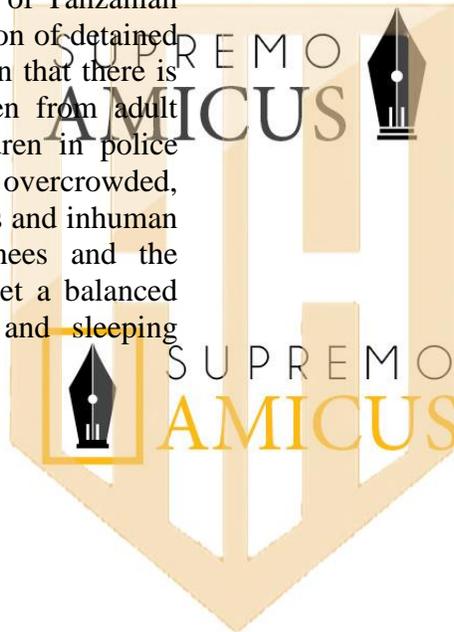


court has to be satisfied that notwithstanding the torture, the truth of the confession was not affected.<sup>30</sup> In this situation, the confession is an outcome of torture, but the Court of Appeal did not provide for remedy that the accused person has if torture does not result into a confession.

#### 4.0 Conclusion

Analysis of the national legal framework for the protection of juvenile delinquents has indicated that there is weak protection of detained juvenile delinquents under the laws of Tanzania. The examination of Tanzanian practice regarding the protection of detained juvenile delinquents has shown that there is no total separation of children from adult offenders in detentions, children in police stations and prisons are overcrowded, detained children face beatings and inhuman treatments from adult detainees and the detention staff, they do not get a balanced diet and they lack clothes and sleeping materials while in detentions.

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<sup>30</sup>*Richard Lubilo and Mohamed Selemani v. R.*, [2003] TLR 149.