

**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

**THE CHALLENGES TO
CHILDREN'S RIGHTS IN
THE MTAA MEDIATION
SYSTEM, TANZANIA**

**A CASE STUDY OF KOMBO MTAA
MEDIATION COMMITTEE, ILALA
MUNICIPALITY, DAR ES SALAAM
REGION, TANZANIA**

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HUMAN RIGHTS' RESEARCH PAPERS**

**THE CHALLENGES TO CHILDREN'S RIGHTS IN THE MTAA MEDIATION SYSTEM,
TANZANIA: A CASE STUDY OF KOMBO MTAA MEDIATION COMMITTEE, ILALA
MUNICIPALITY, DAR ES SALAAM REGION, TANZANIA**

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ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
CBO	Community Based Organisation
CDC	Centre for Disease Control
CRC	Convention on the Rights of the Child
CRC/GC	Convention on the Rights of the Child/General Comments
D&D	Decentralisation by Devolution
IJS	Informal Justice Systems
LCA	Law of the Child Act
LGA	Local Government Authority
MCDGC	Ministry of Community Development, Gender and Children
MEO	Mtaa Executive Officer
MSTF	Multi-Sector Task Force
NGO	Non-governmental Organisation
NOLA	National Organisation for Legal Assistance
PCRT	Protect Children's Rights Trust
PMO-	Prime Minister's Office-Regional Administration and
RALG	Local Government
PRI	Penal Reform International
TVACS	Tanzania Violence Against Children Study
UN	United Nations
UNCRC	United Nations Committee on the Rights of the Child
UNICEF	United Nations Children's Fund
UNSG	United Nations Secretary General
UPR	Universal Periodic Review
VAC	Violence Against Children
WEO	Ward Executive Officer

CHAPTER 1

1 INTRODUCTION

1.1 ORGANISATION OF THE REPORT

The report is organised in seven chapters. Chapter one introduces the PCRT, the organisation that conducted the study, the purpose and use of the study, and gives a synopsis of the Tanzanian administrative structure and how the study focus on the mtaa fits into the entire structure and administrative system. This section introduces how the study is organised. Chapter two reviews what other authors and studies have written on mediation systems that draw from informal justice systems and chapter three puts into context issues related to the study. In chapter four I describe the methodology that was used to collect and analyse data while chapters five and six present the findings in the form of illustrative cases. Chapter seven presents conclusions and recommendations.

1.2 BACKGROUND AND OVERALL OBJECTIVES

Protect Children's Rights Trust (PCRT), is a Tanzanian Non-Governmental Organisation (NGO), in Ilala Municipality, Dar es Salaam region. PCRT is also a not for profit organisation, committed to seeing that the dignity and equality of children are respected in Tanzania, through research, training and advocacy. PCRT's mission is to encourage the realisation of children's rights by enabling child-centred methods at schools and at homes, combating violence against children everywhere, as well as improving their day-to-day lives.

This study intends to: (i) examine the challenges to children's rights in the mtaa mediation system in Tanzania; (ii) assess the identified problems in relation to children's rights specifically on the issues of violence against children in family care, corporal punishment as a sanction for petty crimes and procedural violations. Based on this information the study objective is to better understand the mtaa mediation committee system. The findings will contribute to knowledge sharing of lessons learned and to shaping recommendations to policymakers of possible reform initiatives.

The study is based on the mediation practices of the mtaa mediation committee system of the United Republic of Tanzania, and in the following section I will explain the regulations and structure that characterise the mtaa.

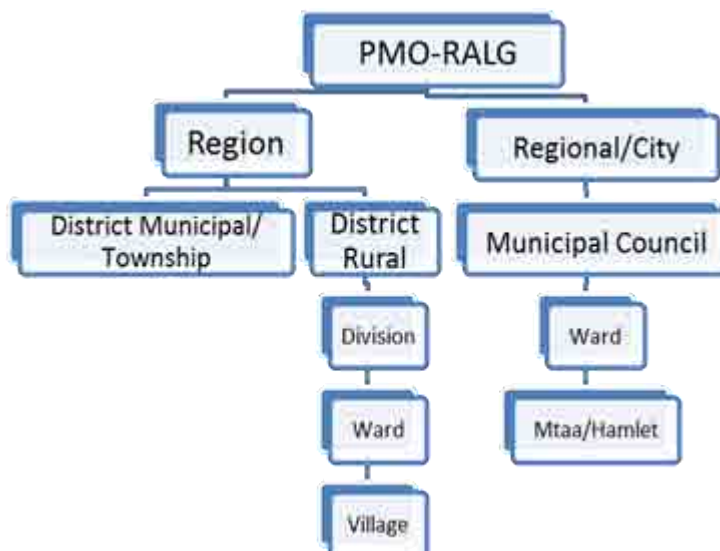
1.3 TANZANIA'S ADMINISTRATIVE DIVISION AND GOVERNANCE

Tanzania is divided into 30 regions, 25 in mainland Tanzania and five in Zanzibar. On the Tanzanian mainland each region is further divided into districts and these are sub-divided into divisions. The divisions are divided further into wards, and the wards are sub-divided into sub-wards known as *mtaa* in the case of urban areas, and for rural districts the wards are subdivided into villages and *vitongoji* which are the lowest level of local governance.

The Government of Tanzania has sought to encourage participatory, bottom-up planning since 1961. During the early 1960s chiefdoms were abolished countrywide. The objective was to give the process of decision making to the people. In 1972 the local government authorities of the colonial administration were abolished. This paved the way for the introduction of the Regional Decentralisation Act of 1972. In 1982 the local government authorities were re-established in order to facilitate the transfer of authority back to the people. The concept of 'decentralisation by devolution' (D&D) enabled the central government to decentralise and devolve powers to local government authorities. At the same time the local government authorities are obliged to involve and empower the citizens' rights and power to participate in planning and prioritisation of development programmes.¹

The Ministry of Local Government Authority is under the Prime Minister's Office – Regional Administrative Local Government (PMO-RALG) on mainland Tanzania. Thus, the local government follows the government-set administrative hierarchy. It is governed by Article 145 of the Tanzanian Constitution which mandates the formation of local government authorities (LGAs) while Article 146 (1) of the Constitution defines the purpose of having local government authorities as, "the transfer of authority to people". In Tanzania the local government authorities are under the Prime Minister's Office – Regional Administrative Local Government – PMO-RALG (see figure 1 below)

¹ Muro, R. 'Implementation of a Community-Based Poverty Monitoring System in Tanzania: a Proposal for CBMS Implementation in Tanzania', p.3. Available at: www.pep-net.org/fileadmin/medias/pdf/files_events/Muro (Accessed on 16th October 2013).

Figure 1: Local Level Decision Making Structure

The local government in mainland Tanzania and Zanzibar is divided into rural and urban authorities. On the mainland, urban authorities comprise city, municipal and town councils. In rural areas there are two levels of authority: district councils and village councils and township authorities. In urban areas the mtaa (also known as sub-ward or hamlet) is the smallest unit within the ward of an urban authority. In rural areas, the smallest units of a village are known as vitongoji (also known as sub-villages or hamlets). In mainland Tanzania there are 22 urban councils and 106 district councils, four cities, 10,364 registered villages, 1,795 mtaa, and 51,000 vitongoji.

District and urban councils coordinate the activities of village council and township authorities, which are accountable to the district for all revenues received for day-to-day administration. In urban areas the recently established mtaa committees, unlike those of the vitongoji, have a fully elected membership comprising a chairperson, six members and an executive officer. These committees provide a grassroots link to the ward structure, and mobilise participation in local development.²

² 'Commonwealth Local Government Forum, Tanzania Country Profile' in *Power Analysis: A Study of Participation at Local Level in Tanzania*. Adalbertus Kamanzi (2012). Available at: www.ascleident.nt. (Accessed on 27th April 2013)

CHAPTER 2

2 INFORMAL JUSTICE SYSTEMS

Keulder in a study of access to justice in sub-Saharan Africa³ argued that when most sub-Saharan African countries became independent in the 1960s, the majority of African citizens were resolving disputes using traditional and informal justice forums. Despite their popularity, these forums were regarded as obstacles to development. It was thought that as Africa modernised they would eventually die out. This did not occur. Informal and traditional modes of settling disputes have remained as widespread as ever.

The following key factors help explain why most African countries continue to look to traditional and informal justice forums to resolve disputes:

- The vast majority of Africans continue to live in rural villages where access to the formal state justice system is extremely limited;
- The type of justice offered by formal courts may be inappropriate for resolution of disputes between people living in rural villages and urban settlements where the breaking of individual social relationships can cause conflict within the community and affect economic co-operation on which the community depends;
- State justice systems in most African countries operate with an extremely limited infrastructure, which does not have the resources to deal with minor disputes in settlements or villages.

Since colonial days, justice in administration in what is now mainland Tanzania has invariably involved an arbitration procedure alongside the more court-based litigation process. The British colonial government in Tanzania (then Tanganyika) systematised and put in place a system of customary arbitration that formed part of the colonial legal system. At first the post-colonial state adopted this system without any alterations, but in 1969 a statutory provision was made for creation of a more formal and village-based structure known as the arbitration tribunals (1969). In 1985, an Act of Parliament (no. 7 of 1985) replaced these with more

³ Sla de. Z. (2000).'

"Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems", p. 1. Penal Reform International. Available at: www.penalreform.org (Accessed 21st October 2013).

formalised and regularised organs called ward tribunals. In contrast to the arbitration tribunals, the later organs are based in wards and are meant to function under the overall control of the district-based local government authorities. This act clearly states that these organs ought to function primarily through mediation and arbitration, as opposed to litigation (sec. 8).⁴

In a study of reintegration of restorative justice, Chaggama argues that at the present time, in spite of recent reforms that have taken place in Tanzania's justice systems, informal ways of doing justice have not been given adequate scholarly attention.⁵

2.1 DEFINITION OF INFORMAL JUSTICE SYSTEMS

Informal justice systems refers to forms of dispute resolution that take place outside formal court systems and that have a certain degree of stability, institutionalisation and legitimacy within a designated constituency. There is, however, no authoritative definition of such systems. A range of terms is used to refer to them, such as non-state, traditional, customary and primary – terms that have different meanings in different places and contexts. The scale from formal to informal is, furthermore, gradual.⁶

The notion refers to a variety of institutions that serve to resolve disputes, and relates to social practices distinct from official state policy. Informal justice systems may be run by traditional or religious authorities, elders or other respected community members. They may, nonetheless, be obliged to adhere to state law, and they can even be formally incorporated into the state court system, such as the Ethiopian 'Kebele' social courts that are formal state organs that provide court-like decisions applying 'shimglina', a traditional mechanism of arbitration. But even if the law formally recognises and incorporates them, these institutions stand out of the official state and are perceived as 'informal'.⁷ Informal justice systems are often more accessible to poor and disadvantaged people and may have the potential to provide quick, cheap and culturally

⁴ Yusufu Q. Lawi, "Justice Administration outside the Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District", *African Studies Quarterly*, introduction section para. 1, available at: www.Africa.ufl.edu/asq/v1/2/1.htm (Accessed 6th October 2013).

⁵ Chaggama, J. "Reintegration of restorative justice: an exposition of parallel criminal justice systems", *Journal of Social Criminology*, vol. 1, issue 1. 2012. available at: <http://crimsoc.org/the-journal/volume-i-issue-1/75-3-reintegration-of-restorative-justice-an-exposition-of-parallel-criminal-justice-systems-joesph-m-chaggama> - <http://crimsoc.org/the-journal/volume-i-issue-1/75-3-reintegration-of-restorative-justi>. (Accessed 15th December 2013).

⁶ DANIDA (2010). "How to note on Informal Justice Systems", p.2, available at: [Um.dk/en~/media/UM/English-site/Documents/Danida/Activities/Strategies](http://um.dk/en~/media/UM/English-site/Documents/Danida/Activities/Strategies) (Accessed on 13th October 2013).

⁷ Roder T. J. "Informal Justice Systems: Challenges and Perspectives". p.58, available at: http://worldjusticeproject.org/sites/default/files/informal_justice_systems_roder, (Accessed on 11th October 2013).

relevant remedies. Informal justice systems are prevalent throughout the world, especially in developing countries. They are the cornerstone of dispute resolution and access to justice for the majority of populations, especially the poor and disadvantaged, in many countries, where informal justice systems usually resolve between 80 and 90 per cent of disputes.⁸

In many rural and poor urban areas of the world, people do not have access to state-administered justice and security institutions, or choose not to use them. Instead, they rely on a mixture of tradition, customary norms and practices, community relations, and sometimes religious law, to provide justice and resolve disputes. The level of formalisation and institutionalisation, including the relationship between such systems and the state, varies considerably from country to country and within countries. In fact, some such systems are state sanctioned or regulated. Legal pluralism is a term sometimes used to reflect the complexities involved in contexts where a diverse range of formal and informal legal systems and practices are used to deliver justice and resolve disputes.⁹

Common characteristics of informal justice systems are:

- The problem is viewed as relating to the whole community as a group – there is strong consideration for the collective interests at stake in disputes
- Decisions are based on a process of consultation
- There is an emphasis on reconciliation and restoring social harmony
- Arbitrators are appointed from within the community on the basis of status or lineage
- There is often a high degree of public participation
- The rules of evidence and procedure are flexible
- There is no professional legal representation
- The process is voluntary and the decisions are based on agreement
- They have a high level of acceptance and legitimacy
- There is no distinction between criminal and civil cases, informal justice systems often deal with both
- Often there is no separation between informal justice systems and local governance structures – a person who exercises judicial authority through an informal justice system may also have executive authority over the same property or territory

⁸ Wojkowska, E. (2006), "Doing Justice: How Informal Justice Systems can Contribute?" p.5. Executive Summary. United Nations Development Programme and Oslo Governance Centre. Available at: <http://www.undp.org/oslocentre/docs07/doingjusticeEwaWojkoska>. (Accessed 11th October 2013).

⁹ "United Nations Rule of Law: Informal Justice", p.1, available at: www.unrol.org/article.aspx?article_id=30 (Accessed 15th October 2013).

- Enforcement of decisions is secured through social pressure

Furthermore, informal justice systems often apply normative frameworks based on custom and religion, but some draw on elements of the national legal framework or international human rights norms and standards.¹⁰

When referring to informal justice, the term ‘disputants’ or ‘parties’ is used to describe not only what may be regarded as the plaintiff and respondent under the formal civil justice system, but also the victim and accused, defendant or offender under the formal criminal justice system.¹¹

2.2 THE INFORMAL JUSTICE SYSTEM: PURPOSE AND JUSTICE NORMS

Informal law involves restitution, reconciliation between the parties, and the rehabilitation of the offender. By contrast the emphasis under the formal system is on the punishment of the wrongdoer by the state.¹² As mentioned earlier, the main purpose of traditional arbitration is to restore social harmony and reconcile the parties. The penalties, therefore, usually focus on compensation or restitution in order to restore the status quo, rather than punishment.¹³ However, sometimes traditional justice forums may order the restitution of, for example, twice the number of the stolen goods to their owner, especially when “the offender has been caught in flagrante delicto” and fines may be levied.¹⁴ Imprisonment has never existed as a penalty for any offence. Corporal punishment, however, has been and continues to be administered by a number of traditional systems in Africa – almost invariably on juvenile offenders, but never on women or girls.¹⁵

But what has been described as the quintessence of traditional African jurisprudence is the recognition that in most disputes: “No party is totally at fault or completely blameless. As such, a high value is placed on reconciliation and everything is done to avoid the severance of social relationships. Where men must live together in a communalistic environment, they must be prepared for

¹⁰ Wojkowska, E. (2006), “Doing Justice: How Informal Justice Systems Can Contribute” United Nations Development Programme and Oslo Governance Centre, p.16, available at: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EwaWojkowska.pdf>. (Accessed on 11th October 2013)

¹¹ Slade Z. (2000). “Access to justice in Sub-Saharan Africa: the role of tradition and informal justice systems”. p.12 Penal Reform International. Available at: <http://www.penalreform.org/resource/access-justice-subsaharan-africa/> (Accessed on 21st October 2013).

¹² Ibid. p.9

¹³ Ibid. p.33.

¹⁴ Slade Z. (2000). “Access to justice in sub-Saharan Africa: the role of tradition and informal justice systems”. p.33, Penal Reform International. Available at: www.penalreform.org (Accessed on 21st October 2013).

¹⁵ Ibid. para. 1. p.33.

give and take relationships and the zero-sum, winner-take-all model of justice is inappropriate in their circumstances”.¹⁶

The Kathmandu School of Law has argued convincingly that, in traditional societies, the system of justice is often guided by lofty or idealistic goals of ‘social security’ or ‘public interest’. Such a thinking pattern can blindly encourage justice officials to concentrate on ‘consequences’ of the act but not on the state of the actor – the cause inducing the actor to commit such an act may be fully ignored. As per this theory, a child is subject to criminal liability because the consequences of his/her act are prohibited by the law as a crime. Hence no element of age, mental condition, and causes inducing a child to commit such an act are taken into account by the justice authorities. Due to this looming misperception, the state institutions are prepared to subject a child to a harsh punishment.¹⁷

Two types of mediation systems are prominent at the grassroots level in the case of urban local governance authorities in Tanzania: mtaa and ward tribunals. Most of the disputes are resolved by grassroots institutions at mtaa and ward level.¹⁸

¹⁶ Ibid. p.24

¹⁷ See “*Baseline Survey on Juvenile Justice System in Nepal*” (2010), p.14. Conducted by: Kathmandu School of Law (KSL).

¹⁸ Kombe, W.J. (2001), “Informal Land Management in Tanzania and the Misconception about its Illegality”. a paper presented at ESF/N-Aerus annual workshop, “Coping with Informality and Illegality in Human Settlements in Developing Countries”, in Leuven and Brussels, May 23–26, 2001, p.8, available at: www.aerus.netweb/sat/workshops/2001/kreibich (Accessed on 16th October 2013).

CHAPTER 3

3 THE MTA A MEDIATION COMMITTEE SYSTEM

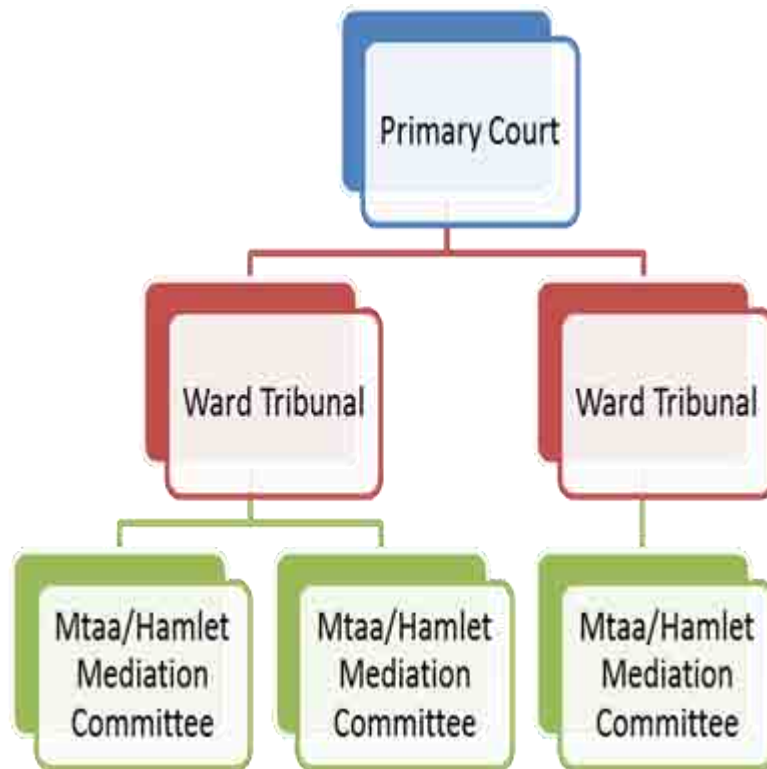
The starting objective of the study is to better understand the mtaa mediation committee system and provide knowledge about it in order to assess the problems and be able to recommend reform initiatives. The general objectives of the study are:

- To review the challenges to children's rights in the mtaa mediation committee system in Tanzania;
- To assess the identified problems in relation to children' rights such as violence against children in family care, corporal punishment as a sanction for petty crimes and procedural violations and to be able to recommend reform initiatives.

My study focused on the Kombo Mtaa mediation committee. The procedure of setting the structure for these authorities takes place at mtaa level. Most disputes start at the mtaa (though there are other disputes that start directly at the ward tribunal). Thus, as already mentioned, most of the disputes are resolved by grassroots institutions at the mtaa and ward levels. When the Ward Disputes Resolution Committee fails to resolve a dispute, the cases are referred on to the Primary Court (disputes referred from mtaa, ward and primary court level are mostly disputes of civil nature such as over land)¹⁹ (See figure 2).

¹⁹ Kombe, W.J. (2001), "Informal Land Management in Tanzania and the Misconception about its Illegality", a paper presented at ESF/N-Aerus annual workshop, "Coping with Informality and Illegality in Human Settlements in Developing Countries", in Leuven and Brussels, May 23-26, 2001, p.8, available at: www.aerus.netweb/sat/workshops/2001/kreibich (Accessed on 16th October 2013).

Figure 2: Structure of the Mediation System in the Urban Local Government Authority



3.1 THE MTAA GOVERNANCE SYSTEM

In Tanzania, as noted above, the mtaa governance systems were established in urban areas as the lowest unit of the government under section 14 (3) of the Local Government (Urban Authorities) **Act No. 8 of 1982**. The act stipulates that the area of an urban ward shall be divided into ‘mtaa’, consisting of a number of households, which the urban authority may determine. A mtaa is administratively under the ward. The mtaa government functions under the Mtaa Assembly in which all mtaa residents of 18 years old and above possess the mandate to formulate and approve by-laws and policies for the development of their mtaa. The assembly works under a chairperson who is administratively assisted by the Mtaa Executive Officer (MEO) in terms of planning and executing approved policies. The Mtaa Executive Officer (MEO) is appointed by the urban authority under subsection 3 of the Local Government (Urban Authorities) Act No. 8 of 1982.

3.2 ELIGIBILITY OF THE MTAA GOVERNANCE LEADERSHIP

The mtaa mediation committee system comprises seven members, all of whom are local citizens, aged 21 and above. They must be able to read and write in Swahili (the national language) or English, from the same community, with a good behaviour record in the community and have a spirit of volunteering. They are sponsored and elected on a political (party) basis (one chairperson and six members) for a term of five years. The members then elect a secretary of the mediation committee from amongst their number. Representation of women in leadership positions at mtaa level is ensured, as there is a legal requirement to reserve one-third of all seats for women.²⁰

Like the local authority council, the mtaa governance also works through a system of committees such as the safety and security, education, healthcare, environment, women and children, water and discipline committees. The governance, as another structure of strengthening harmony – promotes representative and participative democracy and it detects and resolves any disagreements that may arise amongst the mtaa residents, including children. Thus each mtaa has established a dispute resolution committee for dispute resolution.²¹ This committee uses the system of mediation to resolve disputes. Thus, at the local level, the popular mtaa mediation committee systems retain some of the features or common characteristics of the informal justice systems.²²

3.3 MANDATE IN RELATION TO CHILDREN

The mtaa mediation committee systems can hear, resolve and make orders on most disputes relating to a child reported to have done wrong. These range from petty disputes of a criminal nature: theft, school truancy, minor assault and injury, threats, escaping from home, prostitution, child labour, smoking marijuana and abusive language. As for disputes of civil nature, children reports problems such as child neglect, parents failing to pay school fees, not providing basic needs (like food and clothing), abuse by a parent or other people, and maltreatment.

²⁰ "Country Profile: Local Government System in Tanzania". p.164–165, available at: www.clg.org.uk/userfiles/file/Tz_local_Government_Profile2013_CLGF.pdf. (Accessed 8th September 2013).

²¹ Kombe, W.J. (2001). "Informal Land Management in Tanzania and the Misconception about its Illegality", a paper presented at ESF/N-Aerus annual workshop, 'Coping with Informality and Illegality in Human Settlements in Developing Countries' in Leuven and Brussels, May 23-26, 2001.p.8, available at: www.aerus.netweb/sat/workshops/2001/kreibich (Accessed on 16th October 2013).

²² Wojkowska, E. (2006), "Doing Justice: How Informal Justice Systems Can Contribute", United Nations Development Programme and Oslo Governance Centre. p.16. Available at: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EwaWojkowska.pdf>. (Accessed on 11th October 2013)

3.4 THE CHILDREN'S DISPUTE RESOLUTION PROCESS

In petty disputes of a criminal nature, disputant children generally enter the mtaa mediation committee system and the procedure begins with: (i) reporting and (ii) the child disputant is caught in order to secure their attendance and taken to the mtaa mediation committee. Child disputants can be caught by their teachers, parents, community members, mediators, and the community police or militia men/women. As the mediator of the mtaa mediation committee described during the interview, after getting information about where truanting schoolchildren are hiding, or children who have escaped from their homes, sometimes the mtaa authority will tell the community militia men/women or the community police to conduct a raid in the late evenings. If they are caught they may be kept in police custody until the next day for the mediation hearing meeting at the mtaa.²³

²³ Interview with a mediator of the Kombo Mtaa mediation committee on 22nd June 2013 and with children participating in the focus group discussions on 15th July 2013.



Figure 3: Citizens waiting to attend the Kombo Mtaa Mediation Committee

As noted above, the rules of evidence and procedure are flexible in the mediation system. The mtaa mediation committee may convene a mediation hearing with all the concerned parties to reach an amicable settlement. Each party is given an opportunity to be heard, to call witnesses and to adduce evidence. The meeting started with the child disputant victim or an adult disputant being asked to explain orally what happened. Then the child disputant wrongdoer is asked if he/she accepts responsibility for carry out the acts alleged by the child disputant victim or adult disputant. If the child disputant wrongdoer accepts the responsibility for doing the alleged act, the committee can make an order. If he/she does not accept responsibility of doing the alleged act, the committee listen to both sides, giving the child disputant victim or adult disputant complainant a chance to explain what happened, calling the witnesses to support his or her evidence and bringing in any existing exhibit(s). Then the child disputant defendant will get a chance to explain or defend him/herself and call witnesses if available, and then the mediation committee make their decision. A child disputant wrongdoer, child disputant victim, and parents of both sides are entitled to attend the hearing of the disputes and are always required by the mtaa mediation committee to be present.²⁴

If the mediation committee determines that the child disputant has carried out the alleged act, then the following remedies can be granted by the mtaa mediation committee:

- Release the child subject to conditions such as warning them not repeat that act, daily reporting to a mtaa mediation committee system and signing the register (i.e. school truanting child);
- Order the child to do community service (i.e. to clean up the classroom, or do the watering of flower or vegetable gardens for a certain number of days);²⁵
- Order and direct the teacher to administer a limited corporal punishment (e.g. four strokes) to a child.²⁶
- The mediation committee can also order the parent of the child disputant wrongdoer to pay medical expenses to the child disputant victim, or compensation for damaged property.²⁷

In minor disputes of a civil nature the procedure begins with reporting to the mtaa mediation committee. Children disputants in civil disputes approach the mtaa mediation committee with the support of their parents or near relatives.

²⁴ Interview with the Mtaa mediation committee mediator, on 22nd June 2013.

²⁵ Interview with a female mediator of Mtaa mediation committee on 22nd June 2013.

²⁶ Interview with the Ward Executive Officer on 24th June 2013.

²⁷ Child Participant (wrongdoer) in the focus group discussion, 14th July 2013.

The mediation committee will ask the child disputant claimant to state orally the nature of their claim against the disputant defendant. The letter summoning the disputant defendant is then issued and the date of hearing is set.

In hearing a civil dispute the mtaa mediation committee may convene a mediation hearing meeting with all the concerned parties to reach an amicable settlement. Like in petty disputes of criminal nature, each party is given an opportunity to be heard, to call witnesses and adduce evidence.

In civil disputes the mediation committee can order the disputant defendants (most are adults): to provide basic needs to a child disputant such as food, clothing, paying school fees and taking a child disputant to school. As indicated earlier, issues not satisfactorily resolved by the mtaa mediation committee (as a first instance), are referred to the ward tribunals. An appeal can be made by: the child, or the child's parent or guardian on their behalf.

Figure 4: The Mediation Committee Meeting Kombo Mtaa in Progress



CHAPTER 4

4 RESEARCH METHODOLOGY AND DATA COLLECTION ON THE MTA

4.1 RESEARCH DESIGN

Qualitative research was most suitable for this study, as it is the most feasible way to gather information on an informal system, which cannot be based on written sources and descriptions. The study was based on interviews with child disputants (wrongdoers) involved in petty disputes of a criminal nature, with children disputants caught up in disputes of a civil nature, children disputant victims, mediators, parents and key informants with experience in mtaa mediation committee systems.

Qualitative research methods are more suitable for this project because of the openness of the approach, which determines 'what exists' rather than 'how much' of it is there (Patton, 1990). Moreover, as Patton, (2002) points out, "qualitative data describe. They take us, as readers, in to the time and place of the observation so that we know what it was like have been there. They capture and communicate someone else's experience of the world in his words (...) qualitative data tell a story". This allowed the research participants to define and voice social reality from their own experiences, opinions, perceptions, perspectives and meanings, rather than hearing the voice of the researcher alone. As Flowers & Moore (2003) affirm, "The primary objective of qualitative research is to obtain information by exploring, identifying, and examining an issue by questioning, engaging (...) those individuals involved with affected by, and or familiar with the issues under study".

4.2 SOCIAL CHARACTERISTICS OF STUDY AREA

The study area is Kombo Mtaa mediation committee in Kombo Mtaa governance, Vingunguti Ward, Ilala Municipal Council in the Dar es Salaam region. The Ilala municipal council is where much of commerce, banking, and national and international offices are located. The residents are from more than 120 tribes of all the parts of Tanzania and from different nations all over the world. The Kombo Mtaa mediation committee system is the case study area and was selected because it is a special area, notable for the high number of cases of children involved in minor petty disputes of criminal nature. In the immediate environment of the community there is large abattoir; in fact the only available abattoir for the Dar es salaam region and it is situated very close to the Kombo

community in Vingunguti ward. Cattle and goats are brought by business people from all corners of mainland Tanzania to be slaughtered here. So a great many children are attracted into joining in doing business in the abattoir such as selling plastic bags, prostitution, and looking after goats. This leads to many children dropping out of school. In addition, it was chosen for the reason that in this area there are many children who born out of wedlock who live in the streets because nobody is taking care of them and, as a result, these children are involved in petty disputes of criminal nature. I also live and work in Ilala municipality.

Moreover, the Vingunguti ward where Kombo Mtaa is situated has a particularly high and dense population for Tanzania. According to the 2012 census the ward has a total population of 106,946. The ward is made up of four mtaa governances, namely: Kombo, Mtambani, Mtakuja and Miembeni.

4.3 QUALITATIVE DATA COLLECTION METHODS

With regard to the collection of primary data, different methods for collecting qualitative data were developed. I prepared four different types of individual face-to-face interview guides and two types of focus group discussion guides in advance. All were prepared in Swahili and English language versions (for children, parents, mediators and government ministry officials). The interview guides included lists of questions or issues that were to be explored, and suggested probes for following up on key topics. The interview guides helped me during the interviews to give each respondent an equal chance to express their views freely. All participants were interviewed in Swahili, as they all speak the Swahili language, and their responses were noted in English.

4.4 PILOT SURVEY

This involved visiting the research area. I initially visited Vingunguti Ward tribunal and following this visit I had a discussion with the Ward Tribunal Secretary and Ward Executive Officer (WEO) and requested them to link me with the Kombo Mtaa mediation committee. At Kombo Mtaa mediation committee I asked the authority to link me with three children and three adults with experience of the mtaa mediation committee system, in order to conduct a pilot test of the draft of two interview guides. The aim was to ensure that the study instruments were clear, not difficult to answer and that I would be able to collect appropriate findings from the targeted participants. Thus the pilot test was conducted with this small sample.

Based on the pilot test, some revisions were made to the interview guides.

- I developed separate interview guide and focus group discussion guides for children;
- In the child interview guide, I moved the first difficult question, making it the second question, and started with the easier question of: (i) *“If I was*

a child what would I need to know to grow up well here in Kombo Mtaa community?” While the second question was, (ii) “What kinds of things are most challenging for you growing up here?”

- I prepared four different types of interview guide: for children, for parents, for mediators of mtaa mediation committees, mtaa governance and ward tribunal staff; and for government officials.

4.5 SAMPLING SIZE AND SAMPLING PROCESS

The total size was 26 respondents with 14 respondents involved in in-depth interviews, while the 12 remaining respondents were included in two different focus group discussions. Purposive sampling was used. Purposive sampling was preferred for the selected respondents, for the study included ten children. Six girls and four boys of 11–17 years of age participated in the study: one boy-child disputant victim in a civil dispute civil, one girl-child disputant victim in a dispute of criminal nature, one girl-child disputant victim in inheritance rights and a boy-child disputant (wrongdoer) dispute of petty criminal nature. Six children had experience of attending public hearings. In addition, sixteen adults participated in the interviews. These included mediators of the mtaa mediation committee, parents, community members, community leaders, government officials including a social welfare officer, community development officer, mtaa executive officer, ward executive officer, ward tribunal secretary, an assistant director for child development as well as representatives from the Ministry of Community Development, Gender and Children, a Director under Prime Minister’s Office – a representative of the Ministry of Local Government, and the Principal Children Program Officer under the same ministry. This small purposeful sample size is typical of qualitative studies (Punch, 2000). Fewer respondents enable researchers to gain very detailed insights into experiences and perceptions of informants. On the other hand, very few examples of cases may mean lack of representativeness.

A list of key informants was prepared with the guidance of ward and mtaa governance authorities. One mtaa mediator was assigned by the ward secretary to explain the research to the listed key informants in the Kombo community and asked if they wanted to participate. The community residents who wanted to participate in the research were put in touch with the researcher. The residents were informed of their rights as research participants. Moreover, for the children who were identified, ethical issues, such as informed consent, needed to be observed. Thus parental consent was verbally obtained from parents. In addition children were asked for their assent if they had expressed an interest in participating in the interviews. Furthermore, one child with experience as a child disputant criminal victim was also identified by the mediator during the in-depth

interview and taken to a confidential spot for in-depth interviews (Maxwell, 1996).

Sampling techniques were used to select the mtaa governance where the study would take place, under the guidance of the Social Welfare Officer of Ilala Municipal council. One mtaa governance out of four mtaas was selected.

4.6 DATA COLLECTION PROCESS

Four approaches were used for collecting the required data:

- I. Literature review and online research: such as published material on international instruments, and local laws and policies on the rights of children disputants involved in minor disputes of petty criminal or civil nature in the mtaa mediation committee system;
- II. The study was based primarily on individual face-to-face interviews and focus group discussions. Individual face-to-face interviews are similar to focus group discussions because both involve talking with interviewees, although the ways of interviewing differ. For example, in the individual face-to-face interviews I was talking to one person at a time and had more time to discuss topics in detail; giving the interviewee full attention. Individual face-to-face interviewing allows a researcher to probe the interviewees' attitudes, beliefs, desires, and experiences and this enabled me to get a deeper understanding of the mtaa mediation committee system. On the other hand a focus group discussion (FGD) is a good way to gather together people with similar backgrounds or experiences to discuss a specific topic of interest. The group of participants was guided by a moderator (researcher) who introduced topics for discussion and helped the group to participate in a lively and natural discussion amongst themselves. The strength of FGDs relies on allowing the participants to agree or disagree with each other so that it provides an insight into how a group thinks about an issue, about the range of opinion and ideas, and the inconsistencies and variation that exist in a particular community (such as Kombo Mtaa) community in terms of beliefs and their experiences and practices.
 - i. Individual face-to-face interviews were conducted in a semi-structured form, based on the interview guides. They were conducted at one of the Kombo Mtaa governance premises, and at the Vingunguti Ward tribunal offices. Officials from two different Ministries were interviewed in their respective offices, and the interviews lasted for 45–60 minutes with each respondent.

- ii. Focus group discussions involved six children and six adults. The discussions lasted for 60–70 minutes with each group. Both focus group discussions were conducted at the one of the mtaa governance premises. The children participants in the individual face-to-face interviews and focus group discussions were asked to talk about their personal experiences of the mtaa mediation committee system and how it is being conducted for disputes involving child disputants. Also, the adults participating were asked to talk about how the mtaa mediation committee system is being conducted in disputes involving child disputants;
- iii. Observations were carried out during site visits at the mtaa mediation committee by using prepared guidelines. Things observed included infrastructure (facilities and services such as water, toilets, electricity and telephone services), the mtaa mediation premises – space, suitability and surroundings – and photographs were taken with informed consent of the respondents (The mtaa mediation committee).

4.7 LIMITATIONS ON DATA COLLECTION

During data collection I countered two limitations:

Timing: The schools were on holiday therefore I was unable to observe the dispute resolution process during mtaa meetings; also I was unable to interview some of the experienced teachers. Thus, I missed being able to make observations on the procedure used in resolving children's disputes: children's participation in the mediation hearing meetings, whether children are given the feedback of the decisions made over them and the types of punishment given to or action taken in the case of a child.

CHAPTER 5

5 FINDINGS

5.1 INTRODUCTION

This study examines the challenges to the children's rights found in the mtaa mediation committee system in Tanzania. The study focuses on different groups of children who are being involved in disputes in Kombo Mtaa mediation committee system: those who are involved in petty disputes of criminal nature; those who are involved in minor disputes of civil nature; and those who are involved in petty disputes of criminal nature as children disputant victims. Despite the mtaa mediation committee system's involvement in resolving most disputes involving children in the urban community in Tanzania, we don't have enough information in this field on the rights of children. Therefore this study intends to provide a better understanding of the mtaa mediation committee system. The findings will contribute to the knowledge base in this area and recommend possible reform initiatives to policymakers.

5.2 ILLUSTRATIVE CASES FROM THE MTAA MEDIATION COMMITTEE SYSTEM

In interviews and focus group discussions, children described their understanding of how the Kombo Mtaa mediation committee system conducts the mediation meetings to resolve disputes involving child disputants. They shared their experiences as disputants, for instance of being child (wrongdoers) disputants in petty disputes of a criminal nature, child disputants in minor disputes of a civil nature and child disputant victims in petty disputes of a criminal nature. Therefore, from their shared experiences, four cases were selected for presentation as illustrative cases. These cases provide the knowledge to determine which challenges to children's rights are present.

Cases on:

1. Violence against children in family care: two cases
2. Corporal punishment as a sanction for petty crime – examples
3. Family civil disputes

5.3 CASES 1 AND 2 – VIOLENCE AGAINST CHILDREN IN FAMILY CARE

During an individual face-to-face interview with a 17 year-old boy, he shared his experiences of being a child disputant in a minor civil dispute claiming basic needs (i.e. food, payment of school fees and communication) against his father (adult disputant). The mtaa mediation committee made an order to the father to provide the disputant with the basic needs (i.e. food, paying school fees) and to start communicating with the youth.

CASE 1

“(...) one day there was a serious quarrel and fight between my father and my mother. My mother was alleging that my father was not faithful in their marriage and this led my father to force my mother out of the house. My mother went to live with her parents in Gongo la Mboto area here in Dar es Salaam. Then our father invited his woman friend to come and live with us in the house. This woman was a barmaid working in our mother’s bar. Then father handed over the bar business to the woman. But the business was our mother’s because she borrowed the money from the community bank in order to run the bar business. Also our father cut off communication with me and my younger sister. He stopped paying my school fees and stopped providing us with food or clothes. He has other two children out of wedlock whom he takes care of with everything. We were eating food from our neighbours. Our neighbours informed our mother about the whole situation.

With the support of our mother, we reported him to the mtaa mediation committee for neglecting to provide us with basic needs. He was summoned to appear in the meeting convened by the mediation committee. He attended and was asked if our allegations are true, he denied everything. But the mediation committee gave its decision in our favour and ordered our father to pay my school fees (because my school is private), communicate with us and to give us food. Instead when we went back home, during the night, at about 10.00 pm, my father started beating me, and threw me out of the house. He said: “You have embarrassed me, you are not my son, a real son cannot report his father to the mtaa governance or police, your mother got you from another man”. He was nearly killing me. Our neighbours saved my life and called my mother. My mother sent her two brothers who came immediately and took me to where she lives with her parents. Then I had to stay with my mother until now.

After that act of beating me, with the support of my mother, I again reported him to the mtaa mediation committee. My father attended the meeting which was convened by the mtaa mediation committee but the matter was not resolved because he has (...) this sort of arrogant character of being rich. He was behaving

badly on that day: like not replying to the committee's questions. This led the mediation committee to refer the matter to the Buguruni Police Station. This happened in November 2012 but up to date the case has not been taken to the court of law and I have not even called to record my statement". (Individual interviewee participant, 17 year-old boy child)

This information was confirmed through the interviews with the mother of the child and also by the mediator of the mtaa mediation committee, who accepted what he said and gave the reasons for the outcome as that: *"Usually when a child reports his/her father in the mediation committee, a child is blamed. Even I as a mother I am blamed too. The child is blamed by the father, near relatives of the father (aunties, uncle even grandmothers). Also the members of community blame a child, even neighbours who assisted the child. They blame a child when he or she has reported his father".*

She further stated, *"Parents of this type, they beat up children in order to silence their children so that they should not report them again in the mtaa mediation committee. And children became afraid because they feel threatened"* (mother of the child).

"Children are blamed by their parents as well as by some neighbours and near relatives, at how a child can report his/her parents to the authorities or anywhere. While others are blaming the parents' act of punishing the child. Thus children who are not getting support from anywhere end up living on the streets" (female mediator, mtaa mediation committee).

CASE 2- A GIRL-CHILD BEATEN BY HER DRUNKEN MOTHER

This illustrative case for was revealed during the individual face-to-face interviews with the children. Children with experience of being disputant criminal victims in the mtaa mediation committee system generally expressed concern that the mediation committee is making simple orders to parent disputants (wrongdoers). A typical example, in this case the mother was simply given a warning not to do it again, compared to stronger orders given to children disputants (wrongdoers) such as corporal punishment. This particular case was that of a very young girl-child disputant. The 11-year-old girl was beaten and injured by her drunken mother. She reported her to the mtaa mediation committee. The girl-child shared her own experience.

"(...) Last year my mother was drinking too much beer, she was going out to drink beer at the bar at least every evening, and came back home late during the night and sometimes she was coming back on the following day. When she was coming back home late during the night, she used to knock the door, but most of

the time I was fast a sleeping. So because I was not hearing her when she was knocking the door, I was sometimes opening the door for her at 4.00 though I am not so sure with the time. After opening the door she used to beat me while asking me where I have been and what I was doing. I used to tell her that I was sleeping and I didn't hear her knocking on the door.

It just took some time, until one day, but I cannot remember the date, but I think in August 2012, my mother came from the bar drunk and it was after midnight, yes, I am sure. I heard a hard knock on the front door and she was calling my name in a loud voice I wake up and opened the door for her. After entering inside the room, she held my hand and asked me, 'why you have refused to open the door for me?' I replied her that, but mother I have opened the door for you and now you are inside. She didn't listen to what I was telling her and started beating me up all over of my body by using her hands and legs, knocking my head on the wall. I sustained injuries on my head. Because I was screaming and crying, my auntie, my nieces who are living other rooms came in to rescue me even our neighbours came.

I was taken to the hospital by my aunties, my niece, my neighbours and my friends. At the hospital I was given medicines to use for seven days. Thereafter, we went to the Kombo Mtaa mediation committee to report my mother for the act she did to me. At the mtaa mediation committee we were given a letter calling my mother to appear at the mtaa mediation committee meeting. She came in the following day. Also I came back and attended the mediation committee meeting with the company of my aunties, my niece and my friends. I told the people of mtaa of what my mother did to me on that night. My mother had nothing to say; she was feeling generous to me. The mtaa told my mother to stop drinking too much beer and coming late during night also to stop beating me. She is still drinking but not too much beer and she is coming back home early but she is not beating me anymore". (A girl-child, 11 years old).

This information was confirmed through the interviews with the cousin of the disputant child victim who added:

"It depends with the cases in which children may personally participate in mtaa mediation committee. For example, my cousin who is eleven years old, accused her mother of beating her and causing serious injuries to her head. Our neighbours advised the child to report her mother to mtaa mediation committee. I, and other children and other people, we accompanied her because she was so young and helpless. Her mother was called. After hearing the child and her mother, the committee found the mother was wrong. The mediation committee warned the mother not to repeat drinking alcohol and causing injuries to her

child. The child was also warned that she should have good manners and respect her mother. So according to the decision it shows that children's voices are heard because my cousin was heard and the decision was given. But we didn't understand why the mediation committee warned the mother as a punishment because the mtaa was supposed to report the matter to the police station because she had caused serious harm to my cousin.

Hearing both of them well was fair, but the decision and the punishment was not fair to a child who was suffering from injuries caused by her mother. But maybe the mediators know better why they gave such decision". (The cousin of a girl-child, 14 years old).

On the other hand the mediator of the mtaa mediation committee gave his opinions on the order made by the committee to the mother:

"I think the mediation committee decision and order was in that way in order to encourage the good relationship between the mother and the child. So the order was fair to both the mother and the child. If the mother could have been referred to police and later be charged to court, the child could have faced difficulties such as where to live, food and other important needs to a child". (Mtaa committee mediator).

Challenges appearing from case 1:

- The implementation of the order given by the mtaa was not executed because of the traditional strong position of the male head of the family. This restricts children from speaking out against abusive practices committed by their male parents. These acts are not recognised as violation of the rights of the child by the community. This practice is often defended as being normal and necessary because it is protecting the status of the father who is regarded as the family breadwinner, head of the family and decision maker. This weakens the system when it comes to protecting children against family violence if the breadwinner is the perpetrator. This is a special challenge for the mtaa mediation committee system to cope with, in such local power structures.
- Even the formal system seems to face the same challenges in handling cases of child violence of this nature. This case had been referred to the police station about a year prior to our encounter but no action has been taken. This case reveals the urgent need for child protective procedures under the mtaa level to provide child protective referral services for responding to violence, abuse and exploitation of children in order to avoid re-victimisation and ensure protection.

On the other hand, the situation is different where it is the mother who is a wrongdoer, for instance in case 2 where the mother assaulted a child and caused her bodily injuries. The community members and the mtaa mediation committee system were better suited to protect the child. For instance the child was heard in the case in the mtaa, and supported by relatives and neighbours. Thus, the situation is different where it is the mother who is a wrongdoer as this case compared in the case of the male head of the family who is a perpetrator. Also, the mother wrongdoer obeyed the order given by the mtaa mediation committee system. This again reveals the traditional strong position of the male head of the family. This is a special challenge for the informal justice system.

The strengths appearing in case 2:

The mtaa mediation committee system decision was based on the ‘best interest of the child’ as the primary consideration, and in this case that meant not separating the child from the mother wrongdoer (Art. 3 of the CRC). The mediator of the mtaa mediation committee system said that their decision was primarily centred around thinking about how to encourage a good relationship between mother and child. The act committed by the mother to the child is a crime and is punishable by the law in Tanzania. But the mtaa decided not to refer the dispute to the formal justice system in order to keep a good relationship between the mother and the child. Therefore, to discuss the best interest of the child in this situation, where a parent is the one responsible for the welfare of the child, perhaps we need to ask ourselves some questions such as: What is the best interest of the child in this situation? What alternative carers are available? Is there another relative can live with the child or maybe child should be included in the decision? There are usually no easy answers.

5.4 CASE 3 – CORPORAL PUNISHMENT AS A SANCTION

In focus group discussions children revealed that in the mtaa mediation committee system, corporal punishment is used as a form of sanction in petty disputes of a criminal nature. A 12 year-old child nicknamed ‘The Needle Boy’ was a disputant (wrongdoer) alleged of injuring his fellow student using a sewing needle. ‘The Needle Boy’, shares his own experience of the case.

THE CASE

“I am in standard four at Kombo Primary school here in Kombo Mtaa governance. One day in February this year I was in my classroom with other students. It was break time at about 10.30 am and I was sitting on my desk. Everybody was talking, so there were many noises in the class. From nowhere John came near my desk and started beating me on my face with a fist. I stood up to defend myself. I squeezed his shirt on his chest. Then suddenly, John started crying loudly while saying that I have injured him on the chest and the blood was all over his

chest. One of our teachers came in our class, caught me and took both of us to the mtaa mediation committee system, which is very close to our school (just behind our school).

At mtaa mediation committee I was accused by John of injuring him on his chest by using a sewing needle. I and John, we are in the same class. Our parents were all called. There was only one mediator of the committee. John was asked to tell what had happened to him. Then I was given a chance to say about what happened also. I denied to have injured him with a needle because the needle was in his shirt pocket so when we were fighting, I squeezed his shirt and that was when the needle injured him on his chest. John started the fight by himself. I had to fight in order to defend myself. We were heard in the presence of our parents. Even children who went to call our parents were there. After hearing both sides, the mediator who was conducting the hearing warned both of us not to fight again. He ordered my parents to pay the medical expenses to John. Also he gave an order to my teacher that I should get four strokes of corporal punishment and the punishment was to be administered by my teacher. I was punished with corporal punishment of four strokes in the presence of my teachers at the school compound while the students were in classes.

Children are not told by the mediation committee the reason why they decide for that punishment. For example in my case, there was only one mediator. After hearing both sides he ordered my parents to pay medical expenses to John, in addition he ordered my teacher to punish me with four strokes of corporal punishment. But up to date I am still not satisfied with that decision, because I did not injure John with the needle because John put the needle himself in his pocket". (‘The Needle Boy’, 12 years).

Challenges appearing from case 3:

- The mtaa mediation committee is unaware of international standards that require children disputants to be treated with dignity and worth, and justice has the aim and priority of their rehabilitation and reintegration into society and not of punishment (Art. 40 of CRC).
- The mtaa does not see corporal punishment as going against the dignity and worth of the child because is based on the typical approach to children rearing in Tanzania, which may include corporal punishment.²⁸ Thus, the mtaa decision and order in this case didn't take into consideration the best interest of the child regarding how the dignity and worth of the child would be affected by their decision (Art. 3 of the CRC).

²⁸ UNICEF Tanzania (2011). "Violence Against Children in Tanzania". p.16. Report on Findings from National Survey of 2009, Dar es Salaam.

5.5 CASE 4 – CIVIL FAMILY DISPUTES INVOLVING CHILDREN

The fourth illustrative case is that of the dispute over inheritance rights between a 17 year-old girl–child disputant and her elder brother. The girl-child is a form four student, at Zingiziwa Private Secondary School, in Ilala Municipality in the Dar es Salaam region. The case was revealed during individual face-to-face interviews with the girl-child disputant. This is an example of the experience of a child disputant victim in a civil dispute expressing her satisfaction with how she was treated by the mtaa mediation committee system and the order that was made to solve the problem of inheritance rights between her and her brother. This is her account of how her dispute was resolved:

“Children’s voices are heard in mtaa mediation committee system. A good example is when I had an inheritance rights dispute with my brother. My father died a long time ago when I was a child and left behind my mother, my elder brother and myself. The only property my father left for our inheritance was a five room house situated in Kombo Mtaa area. Three rooms are rented to tenants. The remaining two rooms, I and my mother share one room, while my brother lives in the second room. I am a student at Zingiziwe secondary school. It is a private school. When I entered form four in January this year there was a problem of where to get money for paying my school fees. My mother suggested to my brother that all the rent from three tenants that we will collect for this year had to be used in paying my school fees.

My brother was against my mother’s suggestions and said that he was planning to use the money from the rent in his shop business and not to pay my fees. This caused a family misunderstanding because my brother further said that he does not recognise anybody in the rights of inheritance of the house. I was confused. I complained about the issue to the mtaa governance. The mtaa mediation committee gave me a letter to call my mother and my brother to appear at the mediation committee meeting the following day. We all attended the mediation meeting, and my brother was asked why he was refusing to release this year’s rent in order to pay my school fees. His reply did not solve the problem. My mother was also heard. After hearing my mother and my brother, the committee advised my mother to convene a meeting for our close relatives in order to solve our conflict of inheritance rights. My mother convened a meeting for our close relatives. At the meeting our relatives also asked my brother why he was against the suggestion of my mother of using the rent in paying my fees. In replying my brother changed and replied that he wanted to pay my school fees by himself. Thus our relatives were able to solve our inheritance rights by explaining my brother that even I and my mother have equal rights to the house.

At the end of the meeting my brother was able to understand and agreed the money from rent to be used to pay my school fees. My school fees were paid and now I am going on with my studies. The matter was closed". (Form four student, In-depth interview participant, 17 years).

Strengths appearing from case 4:

Despite some cultural barriers, and despite the fact that in most of the communities in Tanzania including Kombo Mtaa community girl-children are denied their inheritance rights, this girl's complaints were heard and given weight by the mtaa mediation committee system, which then called the elder brother and the mother of the child. After hearing the parties the mtaa mediation committee referred the dispute to the near relatives of the girl by advising the mother to convene the meeting. Family group conferences are one of the most respected restorative justice models operating as a part of local social welfare.²⁹ Thus the action taken by the mediation committee was focused on the key principles of the 'best interest of the child' and that the child has a 'right to be heard in decisions affecting them and their views taken into account and given due weight according to their age and maturity'. Thus, and in accordance with the Convention of the Rights of the Child, the girl-child was included in the decision. Here it shows the advantage of the mtaa mediation committee system when their decision is good. The child feels that justice reached a solution to the problem. We cannot come to any conclusion based on what is only one case. There may be other solutions to other cases. From other informants we did hear that it is usually normal for girl-children to be heard. Moreover, in this case, the whole process could be handled quite well with a decision according to the convention.

²⁹ Zernova, 2007 in M.J.Chaggama, "Reintegration of Restorative Justice and Exposition of Parallel Criminal Justice Systems", para.21, available at: crimsoc.org/the_journal/volume-i-issue-1/75-3-reintegration-of-restorative-justice-an-exposition-of-parallel-criminal-justice. (Accessed 18th November 2013).

CHAPTER 6

6 OTHER FINDINGS AND ANALYSIS

6.1 INTRODUCTION AND EXPLANATION OF RELEVANT CRC ARTICLES

The United Nations Convention on the Rights of the Child (CRC) is a comprehensive, internationally binding agreement on the rights of children, which was adopted by the United Nations General Assembly in 1989. When countries ratify the Convention on the Rights of the Child, they enter into a binding agreement to meet its provisions and obligations. Having ratified the UNCRC the Government of Tanzania is obliged to undertake all necessary steps, including legislative, social, administrative and other measures, to implement the convention's stated rights, including the rights of all children to live free from violence, abuse, exploitation and neglect. This is specified in CRC, Art. 19.

In my study on the challenges to children's rights in the mtaa mediation committee system, I have selected four articles of the CRC in relation to procedural aspects: Articles 3, 12, 37(c), and 40.

Article 19 of the CRC states: *“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.*

Article 19 (2) states: *“Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.*

Article 19 (1) Requires children to be protected from being hurt and mistreated, physically or mentally and insists that governments ensure children are properly cared for and protected from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 19 (2), meanwhile, provides that such measures should include, as appropriate, effective procedures *for the establishment of social programmes*: specific social programmes promoted by the committee in its comments on states' reports include education/information campaigns on positive no-violent relationships with children and on the prevention of sexual abuse and exploitation. In addition to its general call for all those working with or for children to receive training in the principles and provisions of the convention, the committee also proposes special training in relation to child protection, to “(...) *train parents, teachers, law enforcement officials, care workers, judges, health professionals in the identification, reporting and management of cases of violence and abuse, using a multidisciplinary and multi -sectoral approach*”.³⁰

Article 40 of the CRC states:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 40 of the CRC defines the purpose of justice as rehabilitation and reintegration, not punishment and the primacy of best interest of the child. In all decisions taken within the context of the administration of juvenile justice, the best interest of the child are to be a primary consideration; in its General Comment No. 10 on ‘Children's rights in Juvenile Justice’, the committee emphasises that rehabilitation and restorative justice are objectives, not retribution or repression.³¹

As we can see from the above, the juvenile rehabilitation process is designed to educate and reintegrate, and ultimately lead to the child assuming a constructive role in society. This is what mtaa mediation committee system should adopt and implement.

³⁰ *“Implementation Handbook for the Convention on the Rights of the Child”*, pp. 265–266. Fully Revised Third Edition. Prepared for UNICEF by: Rachel Hodgkin and Peter Newell September 2007.

³¹ CRC/C/GC/10, para.4. in *“Implementation Handbook for the Convention on the Rights of the Child”*, p. 260 para. 2. Fully Revised Third Edition. Prepared for UNICEF by: Rachel Hodgkin and Peter Newell September 2007.

6.2 THE CRC POSITION ON CORPORAL PUNISHMENT

The Committee on the Rights of the Child defines corporal punishment in paragraph 11 of the General Comment: “The Committee defines 'corporal' or 'physical' punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however, light. Mostly this involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the convention. These include for example, punishment that belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.³² The Committee on the Rights of the Child has paid particular attention to challenging the legality and social acceptance of corporal punishment of children since it began examining reports. The committee frequently emphasises to individual states that no form or level of corporal punishment should be permitted “however light” and that it should be prohibited.³³

Corporal or physical punishment is the most common form of violence experienced by children, and it is clearly identified as an obvious violation of their rights and as a harmful practice by the Committee on the Rights of the Child. The Committee on the Rights of the Child recognises that “[...] different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school contexts reinforce one another. Action against violence therefore must take a holistic approach and emphasise non-tolerance of all forms of violence. Physical violence and other, more severe, forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another”.³⁴

³² “*The Convention and its Treaty Body – The Committee on the Rights of the Child Comments*”, prepared by: Global Initiative to End All Corporal Punishment of Children. p. 1 para. 11. Available at: www.endcorporalpunishment.org/pages/hrlaw/crc_session.html. (Accessed 15th November 2013).

³³ UNICEF, “*Implementation Handbook for the Convention on the Rights of the Child*”, (Fully Revised Third Edition), p. 260, prepared for UNICEF by: Rachel Hodgkin and Peter Newell, 2007.

³⁴ *ibid.* para 6., p. 250

6.3 THE LEGALITY OF CORPORAL PUNISHMENT IN TANZANIA

The identified challenges in relation to children's rights in the mtaa mediation committee system are one among many types of violent acts against children in Tanzania. Below we mention some legal frameworks that justify corporal punishment to children:

- Rights of Parents in Homes – Corporal punishment is lawful in the home in mainland Tanzania. Provisions against violence and abuse in the penal codes and other laws are not interpreted as prohibiting corporal punishment in child rearing. In mainland Tanzania, the Law of the Child Act (2009) states that parents should protect children from all forms of violence (Article 9), including beatings which cause harm. In the definition of child abuse (Article 3) it prohibits “torture, or other cruel, inhuman punishment or degrading treatment” in homes (Article 13). However, it allows for “justifiable” correction (Article 13) and does not exclude all forms of corporal punishment from such correction.³⁵
- School Rights – Corporal punishment is lawful in schools in mainland Tanzania and is regulated by the National Corporal Punishment Regulations (1979) pursuant to Article 60 of the National Education Act (1978), which authorises the minister to make regulations "to provide for and control the administration of corporal punishment in schools". The Law of the Child Act does not repeal this provision or prohibit corporal punishment in schools. Government guidelines in 2000 reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations.³⁶

Tanzanian legal system and statutes

Despite the above-mentioned human rights laws, other provisions make corporal punishment lawful in mainland Tanzania. For instance, the Tanzanian legal system has laws which authorise sentences of corporal punishment, such as the *Corporal Punishment Ordinance* (1930), the *Minimum Sentences Act* (1963), the *Sexual Offences (Special Provisions) Act* (1998) and the *Penal and the Criminal Procedure Codes* (1985). The *Minimum Sentences Act* amends the *Corporal Punishment Ordinance* (Article 12) to allow for administering corporal

³⁵ “United Republic of Tanzania: Global Initiative to End all Corporal Punishment of children” – Country Report. p.2. Report prepared by the Global Initiative to End All Corporal Punishment of Children. September 2012. Available at: www.endcorporalpunishment.org/pages/pdfs/states-reports/UR%20Tanzania/pdf. (Accessed 24 October 2013).

³⁶ “United Republic of Tanzania: Global Initiative to End all Corporal Punishment of children” – Country Report. p.2. Report prepared by the Global Initiative to End All Corporal Punishment of Children. September 2012. Available at: www.endcorporalpunishment.org/pages/pdfs/states-reports/UR%20Tanzania/pdf. (Accessed 24 October 2013).

punishment in instalments. Under Article 8 of the ordinance, juveniles may be given up to 12 strokes (up to 20 for adults) and the punishment may be inflicted in the open courtroom. The Minimum Sentences Act does not apply to females or to juveniles under the age of 16 years (Articles 2 and 3). The Law of the Child Act provides for criminal charges against children to be heard by a juvenile court (Article 98). It prohibits "torture, or other cruel, inhuman punishment or degrading treatment" (Article 13) and does not explicitly provide for corporal punishment as a sentence of the court. However, the Act does not prohibit judicial corporal punishment for child offenders or repeal the above-mentioned laws which authorise such sentences.³⁷

6.4 THE PUBLIC ATTITUDE TO CORPORAL PUNISHMENT – INFORMANTS' STATEMENTS

On the reasons why child disputants are punished with corporal punishment, the responses of children, mtaa mediators, community leaders, parents, social welfare officers and the ward executive officer, gathered during individual face-to-face interviews and focus group discussions, were as follows:

"It is because without it the child doesn't have the energy to do the same community work as adults, i.e. cleaning road streets" (child in focus group discussion, 12 years old).

"The mediators are ordering teachers to administer corporal punishment to us because they know well that teachers are interested in beating children" (child in focus group discussion, 12 years old).

"Because we have no money for paying fines" (child, focus group discussion, 12 years old).

"There is no other punishment for children who are school absconders or prostitutes" (child interviewee participant, 14 years old).

"This is a proper punishment for them. Corporal punishment is a must, like Ten Commandments of Moses. Anybody who commits a crime must get a punishment which is fair to a child. For example, the school absconding child will be reconciled with whom? That is the reason we are saying that such a kind of a child must be punished by corporal punishment and that the head of school must administer that punishment" (ward executive officer, 53 years old).

"Because they are still young and the only punishments are those mentioned" (female mtaa committee mediator, 40 years old).

³⁷Ibid. p. 2.

“The basic need of the child with bad behaviour is to get corporal punishment, because even us, when we were young, we used to be treated the same way. If not corporal punishment what else?” (community leader in focus group discussions).

“For a child to be punished by strokes is a must because, mentally, it is still young, so this kind of punishment is to build the child’s foundation for a better life in future” (female parent in focus group discussions).

“Sometimes parents request and convince the mediation committee to give an order of corporal punishment to their children by insisting that their children have bad behaviour that needs to be corrected by corporal punishment only” (ward social welfare officer).

6.5 TANZANIA’S DIALOGUE WITH THE COMMITTEE ON CORPORAL PUNISHMENT

When Tanzania came for examination before the United Nations Committee on the Rights of the Child, the committee expressed concern at the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. The Government of Tanzania testified, and justified that corporal punishment (caning) is only applied to disruptive students and is controlled.

Canning is applied to unruly students in Tanzania in schools. The application of the punishment is regulated and it does not in any way amount to degrading or inhuman treatment of misbehaving pupils in schools. For example, the Corporal Punishment Regulations (1979) made pursuant to section 60 of the Education Act (1978) authorise the minister to make regulations “to provide for and control the administration of corporal punishment” mean punishment is by striking a pupil on his hand or on his normally clothed buttocks with a light, flexible stick, but excludes striking a child with any other instrument or on any other part of the body.³⁸

Rejecting the recommendation to prohibit made during UPR in 2011, the Tanzanian government defended corporal punishment as a sentence, stating, *“it is provided for by laws as part of our systems and is administered under The Corporal Punishment Act and Regulations made under the Act, as well as the Prisons Act for persons who have been convicted of certain offences. This punishment is not applicable to females and males who are over fifty-five years.*

³⁸ CRC. C.TZA.3-5 (3). *“Tanzania 3th, 4th and 5th Reports on the Implementation of the Convention on the Rights of the Child” (CRC) 2005–2011*, p. 50. Submitted to the United Nations Committee on the Rights of the Child by the Ministry of Community Development, Gender and Children (Mainland) and Ministry of Social Welfare, Youth, Women and Children Development (Zanzibar) January 2012.

*The procedure for administration of the punishment has strict controls to eliminate any likelihood of arbitrariness and to ensure the protection of the health of the concerned”.*³⁹

6.6 THE CRC POSITION ON VIOLENCE AGAINST CHILDREN

In promoting the implementation of the UNCRC, the Committee on the Rights of the Child conducts a review and monitoring process every five years with each ratifying country. To date the Tanzanian Government has already submitted performance reports five times. Following each submission, the UN Committee on the Rights of the Child have taken up the issue of violence against children in family care and corporal punishment. In its *General Comments* on the rights of the child to protection from corporal punishment and other cruel or degrading forms of punishment,⁴⁰ the committee urged the state party to (a) prohibit all forms of corporal punishment in the family, schools, the penal system and other institutional settings and alternative care systems, as a matter of priority; (b) To sensitise and educate parents, guardians and professionals working with and for children, by carrying out public educational campaigns about the harmful impact of corporal punishment; and (c) To promote positive, non-violent forms of discipline as an alternative to corporal punishment.

On abuse and neglect,⁴¹ including physical and psychological recovery and social reintegration,⁴² the committee recommended the Tanzanian government should (a) strengthen its existing measures to prevent child abuse and neglect; (b) strengthen the capacity of the Children’s Desk within the Commission for Human Rights and Good Governance to investigate, review and respond to child rights complaints; (c) follow up on recommendations of the Commission for Human Rights and Good Governance, which resulted from its public inquiry into violence against children; (d) consider establishing a toll-free, nationwide telephone helpline for children, resourced with well-trained professionals and volunteers; and (e) stimulate the creation of networks and partnerships aimed at eliminating violence against children.

The committee also recommended that Tanzania should use the outcome of the UN Secretary-General’s in-depth study on the question of violence against children (see General Assembly resolution 56/138) to take action, in partnership

³⁹ “United Republic of Tanzania –Country Report”, report prepared by Global Initiative to End All Corporal Punishment of Children, p.3, available at: www.endcorporalpunishment.org/pages/pdfs/states-reports/UR%20Tanzania/pdf. (Accessed 24th October 2013).

⁴⁰ (CRC/GC/2006/8) in *CRC. C.TZA.3-5 (3). Tanzania 3th, 4th and 5th Reports on the Implementation of the Convention on the Rights of the Child (CRC) 2005–2011*, p. 50. Submitted to the United Nations Committee on the Rights of the Child by the Ministry of Community Development, Gender and Children (Mainland) and Ministry of Social Welfare, Youth, Women and Children Development (Zanzibar) January 2012.

⁴¹ Article 19 of the CRC

⁴² Article 39 of the CRC

with civil society, to ensure the protection of every child from all forms of physical or mental violence, and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.⁴³

Attitudes to Corporal punishment in an African context

Starting with Sweden in 1979, over 20 countries have prohibited all forms of corporal punishment to children, with the latest being Costa Rica, which prohibited corporal punishment in 2008. To date, no African country has done so. Corporal punishment is allowed in alternative care settings in 51 of the African Union Member States, and is permitted as a judicial sentence in 35 Member States, and is lawful in school settings in 21 Member States.⁴⁴

6.7 TANZANIA’S LEGAL AND OTHER PROTECTION FOR CHILDREN

In responding to the recommendations of the UN Committee on the Rights of the Child, there have been a number of important developments such as:

- Enactment of the Law of the Child Act by The Tanzanian Parliament in November 2009, aimed at protecting the rights of children in Tanzania. The law effectively domesticates the UN Convention of the Rights of the Child (CRC) and addresses fundamental issues related to children’s rights in Tanzania.
- Launch of Agenda ya Watoto (Children’s Agenda) in June 2010 by the Minister for Community Development Gender and Children;
- Launch of Tanzania Violence Against Children Study (TVACS) on 9 August 2011, through the Ministry of Community Development, Gender and Children, together with the Ministries of Education, Health and Social Welfare, and Justice, the Tanzania Commission for Aids, and the Office of the Prime Minister – Local Government and NGO partners.

Violence is prohibited under Article 9 of the Law of the Child Act (2009), which states that parents should protect children from all forms of violence. Article 3 includes “beatings which cause harm” in the definition of child abuse, while Article 13 prohibits “torture, or other cruel, inhuman punishment or degrading treatment”. However, also in Article 13, the law allows for “justifiable” correction

⁴³ CRC. C.TZA.3-5 (3). *Tanzania 3th, 4th and 5th Reports on the Implementation of the Convention on the Rights of the Child (CRC) 2005–2011*, p. 62. Submitted to the United Nations Committee on the Rights of the Child by the Ministry of Community Development, Gender and Children (Mainland) and Ministry of Social Welfare, Youth, Women and Children Development (Zanzibar) January 2012.

⁴⁴ “The Southern African Network to end Corporal and Human Punishment of Children: promoting Positive Discipline”. Available at: www.rapcan.org.za/sanchpc (Accessed 5th November 2013).

and does not exclude all forms of corporal punishment from such correction.⁴⁵ The 2009 Law of the Child Act did not repeal this provision or prohibit corporal punishment in schools. In 2000, government guidelines reduced the number of strokes administered to children from six to four, and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations.⁴⁶

6.8 PUBLIC OPINION ON PROTECTION OF CHILDREN FROM VIOLENCE.

A study of violence against children in mainland Tanzania argues that the practice of violence against children (VAC) is further reinforced by the legal norms in Tanzania, which legitimise the disciplining of children in homes and in schools.⁴⁷ In this study violence and corporal punishment are defined as different forms of violence against children, but violence nonetheless. The study was a population-based survey measuring all forms of violence (sexual, physical and emotional) against both boys and girls.⁴⁸ The main findings of the study show that, approximately 1 in 7 males and nearly 3 in 10 females have experienced sexual violence prior to the age of 18. In addition, almost three-quarters of both males and females have experienced physical violence during childhood from an adult or intimate partner, and one quarter have experienced emotional violence during childhood from an adult.⁴⁹

In families in Tanzania, according to the findings of the UNICEF study, nearly 60 per cent of Tanzanian girls and boys report physical abuse (being punched, whipped or kicked). Most named a relative as a source, and fathers and mothers were the most common perpetrators.⁵⁰

The UNICEF Tanzania⁵¹ report findings note that there is a deep-rooted cultural and social practice which finds it socially acceptable to use physical punishments in child rearing, such as beating, kicking and whipping. There is no clear demarcation in practice, and harsh methods, such as those mentioned in our case studies, are generally accepted as forms of corporal punishment.

45 UNICEF Tanzania (2011). *"Violence Against Children in Tanzania"*, p. 16, para 5. Report on Findings from National Survey of 2009, Dar es Salaam.

46 Ibid. p.16, para 7.

47 Ibid. p.16.

48 UNICEF Tanzania (2011). *'Violence Against Children in Tanzania'*, p. 16, para 4. Report on Findings from National Survey of 2009, Dar es Salaam

49 UNICEF Tanzania (2011). *'Violence Against Children in Tanzania'*, p. 16, para 6. Report on Findings from National Survey of 2009, Dar es Salaam.

50 Ibid. p. 10, para 3.

51 Ibid. p. 16, para. 3.

6.9 THE CRC IN RELATION TO DISPUTE RESOLUTION AND PROCEDURAL ASPECTS

Article 3 (1) *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*.⁵² In its General Comment No. 5 on “General measures of implementation for the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)”. The Committee emphasises the importance of ensuring that domestic law reflects Article 3(1) together with the other identified general principles (para. 22). The Committee states that the best interests principle

.... requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be effected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children but indirectly affect children”.⁵³ “The Committee (...) recommends the further training of personnel in all institutions, such as social, legal or educational workers. An important part of such training should be to emphasise the promotion and protection of the child's sense of dignity and the issue of child neglect and maltreatment.”⁵⁴

This has implications for the mtaa, where the committee mediators lack training on the rights of children. The knowledge gained from such training could enable them to promote and protect the rights of children when handling disputes involving disputant children with dignity and without neglect and maltreatment.

Article 12 of the CRC states:

States Parties shall ensure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The Committee highlights traditional and cultural attitudes to children as the major obstacle to acceptance of the child as a holder of rights and to

⁵² UNICEF *'Implementation Handbook for the Convention on the Rights of the Child'*, (Fully Revised Third Edition), p. 35, prepared for UNICEF by: Rachel Hodgkin and Peter Newell, 2007

⁵³ Ibid. p. 37, para. 1. UNICEF *'Implementation Handbook for the Convention on the Rights of the Child'* (Fully Revised Third Edition) p. 37, para. 1, prepared for UNICEF by: Rachel Hodgkin and Peter Newell, 2007.

⁵⁴ Ibid. p. 42.

implementation of article 12 in states in all regions. It calls for a social climate conducive to children participation⁵⁵

The Committee notes with concern that, due to traditional and paternalistic attitudes still widespread in the country, children are not encouraged to express their views and that, in general, their views are not heard nor given due weight in decisions affecting them in the family, at school and in the community and in social life at large.

The Committee's observations are right and a good example of this is the case study of 'needle boy', the alleged child wrongdoer. He told the committee that he didn't injure the victim but his views were not heard not given due weight, not even by calling any witness. Instead the mtaa proceeded to give a decision and punish him. A second example, as a participant in the family, is the child disputant victim in the dispute in inheritance rights, where her brother rejected her views about using the money from the house rent to pay her school fees. The last example is that of the child disputant in the civil dispute with abusive father who has been powerless within his family.

6.10 THE MTA A PROCESS IN LIGHT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

During the children's focus group discussion, the children who took part complained that children disputants (wrongdoers) involved in petty disputes of criminal nature and being caught during the night, are kept at the police posts in custody while waiting, to secure their attendance at the mediation meeting the following day. They explained that most of the police posts in the nearby mtaa mediation committee are unsecure as they do not have sufficient space for sleeping, no clothing for protection from cold, poor sanitation and washing facilities, with no privacy; and exposure to exploitation, abuse and violence at the hands of adult detainees.

"At the police posts children are being locked in same room with adult suspects. Children should be separated from adults at the police post. So I will advise them that if there will be many children suspects then the adults should be taken to the police central and leave children at the police post". (A girl-child in the focus group discussion).

⁵⁵ Recommendations, para. 9 in UNICEF 'Implementation Handbook for the Convention on the Rights of the Child' (Fully Revised Third Edition) p. 150, para. 3, prepared for UNICEF by: Rachel Hodgkin and Peter Newell, 2007.

“At the police posts children are left to sleep anyhow, either on the floor or on benches. But it is cold and there are a lot of mosquitoes, no separate toilets for adults and children”. (A boy-child in the focus group discussion).

Article 37 (c) of UNCRC states that: *“Every child deprived of liberty shall 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. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;”*

The United Nations Secretary-General's Study on Violence against Children report states: *“In keeping with the provisions of the Convention of the Rights of the Child, national legislation in most countries requires separate facilities for children in conflict with the law in order to prevent abuse and exploitation by adults”.*⁵⁶

6.11 TANZANIA – REGULATION OF PROCEDURAL RIGHTS

Penal Reform International, in a review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Tanzania,⁵⁷ argue that the Tanzanian Law of the Child Act No. 21, 2009 (LCA) is of particular importance when considering the rights of children in conflict with the law. It enshrined child rights for the first time in national law, including a number of key international juvenile justice standards. Under the LCA, all persons under the age of 18 years are considered to be children and are therefore entitled to additional legal safeguards and to be treated differently from adults when they come into conflict with the law. While the LCA does not establish a separate system for juvenile justice, as required by international standards, it does establish a special court for the purpose of hearing and determining child matters which is known as the Juvenile Court. This Juvenile Court may dispose of all criminal cases involving accused children except homicide. It is worth noting the gap between the provisions of the LCA and reality on the ground. In spite of the LCA, children are still committed to adult prisons by courts. This creates significant problems since there is no law explicitly governing the treatment of children held in adult prisons and prisons are not set up to meet the specific needs of under-18s.

⁵⁶ A/61/299, para. 63 in UNICEF *“Implementation Handbook for the Convention on the Rights of the Child”* (Fully Revised Third Edition) p. 564. para 7. Prepared for UNICEF by: Rachel Hodgkin and Peter Newell, 2007.

⁵⁷ *“A Review of Law and Policy to Prevent and Remedy Violence Against Children in Police and Pre-trial Detention in Tanzania”*. Carried out by Penal Reform International (PRI) with the assistance of the National Organisation for Legal Assistance (NOLA) 2012. p.16. Available at: www.penalreform.org/.../A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-tanzania (Accessed on 31 November 2013).

6.12 ATTITUDES AMONG MTAА MEDIATORS AND OTHERS IN CHARGE OF CHILDREN'S PROCEDURAL RIGHTS

Training is a major need for those who are involved in the mediation work, especially on how to conduct dispute resolution involving children disputants. The lack of basic knowledge of mediation and children's rights was repeatedly emphasised as a major weakness by the mediators of the mtaa mediation committee during the interviews. No institutionalised mechanism is in statute to ensure that the mediators would be trained in mediation procedures and children's rights. Also no sensitisation was done to prepare the committee members for their new duties. Mediators' responses were as follows:

- (i) *It is important to have knowledge of children's rights and human rights in order to learn how to treat children who are appearing in the mtaa. I am saying so by putting into consideration that it is possible that we are doing things that we do not know or we can be reminded of in the course of learning*
- (ii) *ii) In hearing and resolving disputes we are just working by using experiences from our homes (....) I would like to add that we need more training on children's rights (...) Children are very important because every child has his/her own challenges. There other children who are in child labour, others are child wives; this is the situation we have in Kombo–Vingunguti Community. (A male mediator of the mtaa mediation committee)*

"... the human rights knowledge is very necessary for mediators because it will guide us in our work of resolving disputes. The government should plan training or sensitisation on human rights and children's rights and on how to conduct children's cases". (A male mediator of the mtaa mediation committee)

"It could be much better if we learnt the children's rights (...) in fact I do not know the procedure of hearing the children's disputes (...) because nobody taught us on how to hear and give decisions on disputes involving children. I thought by sitting closer with a child and hearing him/her it is a proper way". (A female mediator of the mtaa mediation committee).

Similarly, concerns were raised about mediators' lack of basic knowledge on children's rights. Children revealed during the focus group discussions that there is little awareness of child rights and for that reason their (children) rights are not protected in the mtaa mediation committee's meetings.

"Our rights in the mtaa mediation committee are not protected even our parents are not protecting our rights, I think this is the reason why the mtaa mediation

committee are treating children the way they like, maybe because it seems that they don't know the rights of children". (A girl-child participant in focus group discussion).

"Our parents are not making any follow up to what is happening to us in the mtaa mediation committee or on our education. For example after school parents are not asking to check the exercise books. The rights of children are not protected" (A boy child participant in the focus group discussion).

"Some of children's rights are protected but other children, their rights are not protected and because our words are not taken seriously they think that what we are telling them is not true". (A boy-child participant in focus group discussion).

"Parents who are not protecting the rights of their children are the main cause of school dropouts. But parents are saying that children are impossible. But the main reason is parents are not making a closer follow up on what their children are doing at school. I think they need children's rights education". (A boy-child participant in the focus group discussion).

The importance of training for the mtaa mediation committee in relation to children's rights and how to conduct dispute resolution involving children was strongly voiced. The ward tribunal/mtaa social welfare officer urged, *"The Municipal Council should organise a seminar for mediators in order to learn and understand the rights of children and human rights and their laws. They are supposed to understand how to conduct the disputes. Even though the law indicates that mediators must be laypersons, they should still be assisted in order to do their work well and not to work based only on their experiences from their homes". (A female ward social welfare officer – Vingunguti ward).*

When interviewed about whether there are any established guidelines with procedures to follow in resolving children's disputes, mediators stated, *"We have no specific guidelines of procedures to follow in resolving children's disputes. But, we were provided with guidelines from different institutions for using in resolving disputes of all people with disputes including children. For example, we are using Tanzania Marriage Act 1971, The Law of Child Act of 2009, and the Law of Inheritance Rights. But, in general, in hearing and resolving all disputes we are directed to take guidance from the Local Government Authority, no. 7 of the Ward Tribunals Act". (A male mediator, mtaa mediation committee).*

"Yes, the guideline we are using is the Law of Child Act of 2009. It is about the rights of children. So the procedure of hearing the children's disputes is by sitting

with the child closer, in making the child relax. We are giving a child a soda or a juice to drink". (A male mediator, mtaa mediation committee).

"Yes, we have guidelines which we are following in resolving children's disputes: a child must be heard, if a child has parents, parents must be called and must be present during hearings". (A female mediator, mtaa mediation committee).

On the other hand, the interviews with the government official (the Principal Children Program Officer under the Prime Minister's Office of the Ministry of Local Government Authority) revealed that there are no established guidelines with procedures to follow in resolving children's disputes for the mtaa mediation committees. As he states, *"I am not sure with it but there is The Law of Child Act, 2009 and its regulations are used. (...) It is important and it is needed, the only way is to prepare copies of The Law of Child Act, and distribute them to the councils".*

6.13 RECORDING OF PROCEEDINGS AND DECISIONS

Recording of proceedings and decisions of the mediation process is important for reasons of accountability and transparency. In principle, there should be a record, or at least a simple summary. For instance, who was a disputant complainant? What was the allegation? Did a child have anything to say, and was a decision reached? The interview with the mediator on the recording of proceedings and decisions revealed that, *"Yes we are keeping the dispute proceedings in one book (known as the counter book). As we have no funds to purchase stationary. We don't have a case register". (Male mediator, mtaa mediation committee).* In addition, a female mediator states, *"Yes, we have good record keeping of mediation proceedings. We write the proceedings in the counter book, then lock it up in the bookshelf. We cannot afford case files because we are receiving so many cases".*

In relation to the actual record keeping, the mtaa executive office said that, *"child case proceedings are not recorded because these are minor cases. What we do at a hearing is we are calling the parents of children, and then we are hearing disputes, reaching decisions, and making orders. We are doing all these verbally. We are writing only the execution of the order on which the child is signing during the implementation. We do record adults' disputes, because these are major disputes". (The mtaa executive officer).*

This was confirmed by the child disputant ('Needle Boy') who stated, *"During the hearing of my case they didn't write anything; they did everything verbally". (A Boy-child Participant in focus group discussions).*

In their responses to the reasons causing the mtaa mediation committee not to record and keep details of proceedings involving child disputants, the children revealed some of the factors contributing to this: *“Because children are not being taken seriously compared to adults”*. (A boy-child participant in focus group discussion).

“Mediators are under estimating children so they see no reason to keep records of proceedings for disputes which involve children”. (A girl-child participant in focus group discussion).

They consider the children’s disputes as minor issues so they do not need record keeping. (A boy-child participant in focus group discussion).

“Children are seen as persons who have no major problems compared to adults”. (A boy-child participant in focus group discussion).

On the other hand another girl-child, when giving her opinions on why it is important to keep a record of proceedings, even for children disputants, urged, *“In the mtaa mediation committee (...) a child must get the same rights like adults. When a child appears in mtaa mediation committee meeting (...) he or she should be heard and the information be recorded and kept well. This will help in avoiding that a child be judged twice. If there were any allegation of such repetition at the mtaa mediation committee, they could peruse the records and see”*. (A girl-child participant in focus group discussions)

6.14 ENFORCEMENT AND MONITORING SYSTEM OF PROCEDURAL LAW

According to the interviews held with the mediators of the mtaa mediation committee, there is no enforcement and monitoring system of procedural law in disputes involving children in the mtaa mediation committee system. A typical response was:

“There is no kind of that thing”. (A male mtaa mediator).

“I have never seen such kind of procedure”. (A male mtaa mediator)

“This procedure is not there”. (A female mtaa mediator).

This information was confirmed by the Director under Prime Minister’s Office – Ministry of Local Government Authority, and the Principal Children Program Officer under the same Ministry who stated, *“There no monitoring system”*.

6.15 MTA A GOVERNANCE PREMISES AND SURROUNDINGS

As the photographs taken by the researcher illustrate, the place used by the mediation committee to convene meetings for the hearing of children’s disputes

at the Kombo Mtaa governance has limited space and there is no electric power, no toilets and no water supply.

7 RECOMMENDATIONS

The intention of this study was to examine the challenges to children's rights in the mtaa mediation committee systems in Tanzania.

The following are the recommendations put forward in the light of the study findings.

7.1 PROTECT CHILDREN AGAINST FAMILY VIOLENCE

The study findings show that there is a lack of protection of children against family violence in a situation where it is the breadwinner who is the perpetrator⁵⁸

- Establish inter-sectoral team coordination at mtaa level: including the mtaa mediation committee, teachers, police (from the police post), community police and militia group, social welfare officer and the health officer in order to develop a linkage of local support services to enable them to make referrals of children and respond to violence, abuse and exploitation of children.
- Develop a special training manual in relation to child protection, to train the inter-sectoral team on the role of each player towards appropriate identification, reporting and management of cases of violence and abuse, using an inter-sectoral approach.
- In addition, provide a special training to all those working with or for children such as mtaa mediators, mtaa police (at the police post), community police/militia group, teachers and social welfare officer and parents. Training should educate them on the CRC and the Law of the Child Act (2009) and be aimed at protecting children against violence in the family. It will propose positive non-violent relationships with children in parenting and education, and will be addressed to parents, other carers and teachers.
- Public awareness should be enhanced to ensure that members of the public are capable of reporting cases of violence against children in family care.

⁵⁸ Article 19 of CRC

- Promote cooperation with local NGO, CBO in order to enhance the services and support provided to children.

7.2 INVOLVEMENT OF CHILDREN IN DETERMINING SOME OF THE CASES

The findings reveal that there is a lack of proper involvement of children in some cases, for instance, in our example case 3 of the petty crime of 'Needle Boy'.⁵⁹ There is a need to:

- Review the way in which children are treated during mediation hearing meetings of the mtaa mediation committee system and to build the capacity of the mediators on the rights of children and the Law of the Child Act.
- Emphasis needs to be placed on recognising that the child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.
- Training and discussions can help achieve these aims by focusing on traditional and cultural attitudes to children that seem to constitute the major obstacle to acceptance of the child as a holder of rights and to implementation of Article 12.

7.3 REDUCE THE USE OF CORPORAL PUNISHMENT IN SCHOOLS AND IN THE LEGAL SYSTEM

The findings show that the mtaa mediation committee system is too much focussed on punishment, including corporal punishment, and that there is a lack of rehabilitation efforts.⁶⁰

For this purpose comprehensive awareness-raising about children's right to protection and about the laws that reflect this right not to be inflicted with corporal punishment and other cruel or degrading forms of discipline requires sustained action:

- To sensitise and educate parents, mtaa mediators, teachers and professionals working with and for children, by carrying out public educational campaigns about the harmful impact of corporal punishment with the aim of transforming attitudes. Traditions and culture which normalise corporal punishment should be identified and targeted;
- Training and capacity building of those working with children such mtaa mediators, teachers, militia groups, community police and professionals working with and for children and families. The training should highlight

⁵⁹ Article 12 of CRC.

⁶⁰ Article 40 of the CRC

children's rights to protection from a sanctioned corporal punishment-based practice.

- Raise awareness of the mtaa mediation committee members in order to end the handing down of punishment orders to children disputants instead of rehabilitation and reintegration into society.
- Promote the use of positive, non-violent forms of discipline as an alternative to corporal punishment.
- Promote cooperation with the local civil society and NGOs to undertake advocacy by involving the media in playing a valuable role in awareness raising and public education, challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline.

7.4 REDUCE PROCEDURAL VIOLATIONS

- i. Reduce incidence of keeping children locked up overnight with adults and without proper care and security

The study findings show that there is a lack of protection in procedures when children are put behind bars during the night (as well as at other times) together with adult detainees and without proper conditions.⁶¹ It needs to be ensured that child detainees are separated from adult detainees in mtaa police post cell.

- This can be achieved through providing training to educate the mtaa mediators, the police at the mtaa police post, community police, community militia group, teachers and community leaders on the rights and needs of children who are being put behind bars; and on the requirement of the application of the best interests of the child principle by systematically considering how children's rights and interests are or will be effected by their decisions and actions.
- Improve sanitary conditions at the mtaa police post.

- ii. Improve the recording of proceedings and decisions

The study findings reveal that there is a lack of recording of mediation proceedings and decisions of children disputant disputes.

- Ensure that child disputant proceedings and decisions are recorded for keeping records to ensure accountability and transparency.
- iii. Build the capacity of mediators to understand guidelines and rights of children

⁶¹Article 37 (c) of CRC

The study findings show that there is a lack of adequate knowledge about rights of children relevant to mtaa mediation committee system.

- The mtaa mediation committee members should receive special training on the CRC and the Law of the Child Act (2009). Training should emphasise the CRC guidelines in order to create awareness that children disputants need to be treated with dignity and worth, and justice has the aim and priority of their rehabilitation and reintegration into society rather than of their punishment.
- However, mediation committee should be supported with a sitting allowance that will motivate those working longer hours.

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ANNEXES

ANNEX 1: INTERVIEW GUIDE FOR USE WITH CHILDREN WITH EXPERIENCE OF THE MEDIATION

1. *If I were a child what would I need to know to grow up well here in Kombo Mtaa community?*

Probing Questions:

- i. What role do religious organisations play in your life?
- ii. What do other members of your family think about the way you live your life, your beliefs (such as regarding gender roles, etc.)?
- iii. How do you handle changes, both at an individual level, and the changes taking place for everyone in your community?
- iv. Do you identify in any way(s) with your culture? Can you describe your culture?

2. *What kinds of things are most challenging for you growing up here?*

Probing Questions:

- i. Are you or people you know exposed to violence? How do you avoid this in your family, community, and with peers?
- ii. How does the government play a role in providing for your safety?
- iii. How tolerant is your community of problem behaviours among people of your age? What are some of these behaviours?
- iv. Do you feel safe and secure here? How do others protect you?
- v. Do you feel equal to others? Are there others you do not feel equal to? How do these others make you feel?

3. *Can you tell me the aim of establishing the Mtaa mediation committee system?*

Probing Questions:

- i. Do they exist in your area/community? What kind of cases involving children are heard and resolved there?
- ii. Who brings the cases that involve children?
- iii. Do children approach the mtaa mediation committee system for redressal of their grievance?
- iv. Are children's voices heard on decisions that affect them?
- v. What is the attitude of mediators towards children? Are they treated fairly?

4. Are you familiar with the term 'human rights'?

Probing Questions:

- i. What does it mean? What rights do you think people have? What about human rights of children in the mtaa mediation committee system, are they different to adults?
- ii. What rights you think children have? What rights you think children should have?
- iii. Do you think the mtaa mediation committee system respects and protects the human rights of children in conflict with the law?

5. What are the United Nations Conventions on the rights of the child?

Probing Questions:

- i. What rights do you think children have?
- ii. Does the mtaa mediation committee system conduct its proceedings according to the standards of children's rights?
- iii. What would you do if you thought your rights were being threatened or you were not being allowed your rights at the mtaa mediation committee system? What do you think would happen?
- iv. What more could the parents/adults do to support you or other children when they think that the rights of a child are being threatened in the mtaa mediation committee system?
- v. What sorts of things would you change if you could in the mtaa mediation committee system?

6. If you could be the president of the United Republic of Tanzania for only one day, what would you do to better support and protect the children in conflict with the law and in civil disputes in the mtaa mediation committee system?

Probing Questions:

- i. What things would most help to protect the rights of children in the mtaa mediation committee system?
- ii. How would you make this happen?
- iii. Is there anything else that you would like to add? Is there anything you didn't have a chance to say earlier?

Thank you so much for your participation!

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