

*THE SITUATION OF STREET CHILDREN
WITHIN LEGAL SYSTEM; POLICE EXPERIENCE
WITH STREET CHILDREN*

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1.0 THE POLICE EXPERIENCE WITH THE STREET CHILDREN

1.1 INTRODUCTION

The question of street children is a recent creation in Tanzania. Before the 1980s no one ever imagined that such a problem would emerge in our country. But as time passed, especially in the late 1980s, the problem of Street children became very conspicuous in almost all the urban areas of our country. And today, no one passing in the Streets of our major towns can escape the scene of Street children. It is a problem which is there and which needs our attention before it gets out of control.

The fact that Tanzania had no problem of street children in the 1970s and earlier and that now the problem appears to be acute mean that something in our social organisation, political, economical and cultural might have been transformed into new formations which now they are conducive to the creation of street children then before. But before we examine the causes of street children, let us first explore the term "street children".

2.0 DEFINITION OF THE TERM STREET CHILDREN

Unfortunately, there is no legal definition of the term street children. However experience shows that the term "Street children" connotes the existence or presence of children in the streets instead of staying home. In fact and under normal circumstances, children are expected to live together with their parents at home. But where the condition is such that the child disconnects itself from home and opts to live in the streets independently without the Management or control of its parents, such a child is a street child. In this sense, the street becomes the child's working place as well as its home, consequently the word "street" for this purpose is not only the street in the real sense of the word, but it includes any public place available to the children to engage in their various activities such as the beaches, railway stations, bus stations, the squares, the public gardens, areas around markets such as the Karakoo and Tandale markets in Dar es Salaam, areas around religious buildings like churches, mosques and temples, the ghettos, i.e the empty and unfinished or abandoned buildings and vehicles etc.

May be the next question to ask should be who is a child in Tanzania. Unfortunately, there is no one uniform definition of the word child in Tanzania, various legislations have defined the word child by using different ages of the child just to serve the specific purpose of that legislation. For example, the Criminal Procedure Act No.5 of 1985 defines a child in section 2 as a person who has not attained the age of sixteen years. The Evidence ACT No.6 of 1967 uses the term "child of tender years to mean a child of or below the apparent age of fourteen years. On the other hand, the corporal Punishment Ordinance (cap 12) uses the term "juvenile" in section 2 to mean the person under the age of sixteen years whereas the Children and Young Persons Ordinance (Cap 13) defines the word "child" in section 2 to mean a person under the age of twelve years. The same statute also defines the term "Young person" as a person who is twelve years of age or upwards and below the age of sixteen years.

However, there are three legislations which go to provide us with a uniform definition of the word child. The Interpretation of laws and General Clauses Act (No.30 of 1972) defines the word minor in section 3 to mean a person who has not attained

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the apparent age of eighteen years. The law of Marriage Act No.5 of 1971 defines the word "infant or infant child in section 2 to mean a child who has not attained the age of eighteen years. And the Age of Majority (Citizenship laws) Act No.24 of 1970 in section 3 fixes the age of majority at eighteen years. We think that since the other legislation as demonstrated above only go to provide the age limit of a child to not more than 16 years, and whereas, these three legislation provide a uniform standard of the age limit of child not more than 18 years, thus extending the maximum age of a child to mean a person below the age of eighteen years which is in conformity with the United Nations definition of the word child on our opinion we take the child to mean a person below eighteen years.

This being the case a "street child" therefore may be defined as a person male or female whose age is under eighteen years who spends the day time in the streets and later sleeps there, or spends the daytime in the streets, and then returns home for a sleep.

We have used the above definition because research and the police daily activities of patrols in the streets have shown that not all children who live in the streets have severed completely from their homes. Some still retain some contact. In that sense, street children may be categorised into two groups. There are those children who have completely severed direct connection with their families, these are sometimes referred to as full time street children and there are those who still maintain some connection with their families and spend their daytime in the streets but return to their homes at night. They are referred to as "Past-time street children".

Experience has also shown that there is always a third group of street children, which infact it is trapped in between the above two groups. This is a group of children who spend the day-time in the street but later return home for sleep and other times decide to sleep in the street. They may be referred to as the "on-and-off street children or street children in the transition".

The first group of street children, which is a "full-time street children" is as group of children

who have lost contact with the family may be due to death of parents, migration of parents seeking refuge due to political or tribal wars in their country or the home is so much unbearable for the child to continue connection with it due to cruelty, poverty etc. Whereas the part-time street children are found from homes where though the conditions at home are unfavorable, for the child to continue living there, yet it can be tolerated sometimes. For example where one of the parent is a step mother or father who is cruel to the child, the child may choose to avoid him/her in the day and come back in the night to sleep. And the on-and-off street children group may be found in families where the home may be because of poverty, or the neglect or disregard to the child, creates sometimes unfavorable conditions to the child by not providing it with enough food, clothes, school materials etc, thus tempting the child to go elsewhere to fill the gap and when successful returns home. This group is easy to reform than the other two above.

From this analysis, the question of children electing to abandon their families in order to go to live in the streets is not their free choice. It is a forced condition imposed on those children by their parents or the environment in which they live. It is a social creation in which the children find themselves as victims of the social circumstances of which by themselves they are not to blame. Being a social problem, all of us, at all our positions and at all our places of residence, at our homes, our families, our neighbors, our places of work or business, have a role to play in order to alleviate the situation. It won't help us by pointing blaming fingers to some parents, individuals or departments. We are all trapped in. We might in one way or another have contributed to this problem being aware or unaware, intentionally or unintentionally. We must therefore explore more into the causes of street children so that we may be able to prescribe the right treatment.

3.0 CAUSES OF STREET CHILDREN

From the above observations, it is not true to say that some children elect to abandon their families

women and children to suffer the most and helpless. We see such example in the countries like Rwanda, Burundi and now Zaire. Fortunately, we don't have such a political situation in Tanzania, but we still pay much to host the influx of refugees from these countries where the children are the main victims.

Sometimes, poor political leadership may provoke wars with neighboring countries. When this happens, a lot of children get orphaned with no one to help. So street life becomes automatic. What happened in Angola, Mozambique and Ethiopia should serve us as living examples. Fortunately again we don't have such a problem in Tanzania..

3.2 ECONOMIC CONSTRAINTS

Economic constraints are the major causes of poverty in the families and unemployment in the poor countries. No country whether developed or a developing one can boast of being spared by economic problems. But when it comes to the developing countries, the problems of poverty, inability of government to provide social services and the unemployment question are felt directly by

the people. Thus poverty in the family may result into failure by the family to provide enough food or school needs to its children, which may cause the children to get into the streets in search of food to fight hunger or abscond school in search of petty employment and when they don't succeed may end up frustrated in the streets.

Either the problem of unemployment may lead youths to migrate into urban areas looking for jobs. On failure to get jobs they may engage in unbecoming activities such as theft of various kinds, alcoholism, drug abuse and prostitution and the street being their residence. Police experience shows that most of the people who get caught in patrols day and night as loiterers, rogues and vagabonds drug pushers, prostitutes, suspects of committing crimes such as house breaking burglaries, stealing from motor vehicles and snatching up ornaments or watches, many range between the ages of 15 to 25 years, thus covering the age limit of 18 years for children. Police reports also show that most children in the streets during patrols are found to have committed one or more of these offences. And when they are asked the reasons for committing those crimes they always reply that they

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were helping themselves commonly in Kiswahili saying that "Tukale wapi".

3.3 SOCIAL FACTORS

Apart from economic reasons, the society in which the child finds himself has a major influence not only to him but also to his family and the neighbors. The family is the first institution where the child finds itself, hence it has full responsibility to undertake children's care and care. The first experiences the child gets from its family may later determine its personalities, personal outlook, habit and character and respect to itself and towards others.

Sociologists and criminologists argue that a stable and respectable family is likely to produce children of good behavior than unstable and shaky families. Experience has shown that most children who forsake home to live in the streets come from broken homes, that is where parents have divorced thus causing the children to lack good care and love from both parents which is necessary for their security, and good direction for the values and norms required in the society. Either, practice

has shown that children taken care by a single parent, or where one parent or both are dead may easily turn into the streets because of lack of proper control to discipline the child or failure to provide the child with the basic needs. So also, consistent quarrels and cruelty of parents may be a cause of a child to turn into the streets to look for comfort or consolations.

Apart from the family, there are other social problems that incapacitate the family to have effective control of their children. People from this school of thought argue that the question of street children is one of deviant or anti-social behavior which may result due to "social disorganisation". That is controlling children without the help of traditional sanctions and guides may lead them to turn into the streets in order to commit crimes because they were not properly brought up. They argue that in the traditional societies, the influences surrounding a person were relatively harmonious, uniform and consistent. But the modern society lacks that uniformity. Groups outside the home may have standards of conduct quite different from those within the home.

In fact this is a kind of a culture conflict which refers to social conditions characterized by a lack of consistency and harmony in the influences which direct the individual. That because of mobility of different people the old social relations and standards of behavior which had been adequate for control become inadequate. The story in Chinua Achebe book titled "Things fall Apart" where the Ibo father was complaining about the collapse of the Ibo norms and culture after the white man has penetrated in that community is an example to what also happened in our country.

In fact the reasons for street children life are endless, what we have demonstrated here is just some of them. Suffice it to say that they all play a major role in influencing the child into that way of life, not by his free will but being imposed on him. Any real solution to arrest or reduce the incidence of street children must be directed into reducing or removing those causations.

4.0 POLICE EXPERIENCE WITH THE STREET CHILDREN:

The Tanzania Police Force is constituted in the Police Force ordinance cap 322. Its main duties

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are to maintain law and order, to keep the peace and to protect life and property. In fact the force has general powers in all matters pertaining to criminal matters. In order to be effect in its duties, the police have been given by law such powers like those of arrest, search, interrogation detetion and prosecution of persons suspected to have committed crimes.

In exercising these powers, the Police deal with the members of the public in two ways, first, by using these powers to deal with criminal suspects and two by using those powers to receive complaints from victims of crimes. Consequently, the Police comes into contact with the street children in the like manner. That is, it may deal with street children as suspected criminals or as victims of crimes committed against them. May be, let us examine each method herein below:-

5.0 POLICE DEALING WITH STREET CHILDREN AS SUSPECTED CRIMINALS

Since it is the duty of the Police to protect law and to keep the peace, any attempt by any person to infringe the law of the land will automatically

attract the attention of the police. In order to ensure that the police don't abuse their powers, there are various statutes that define what acts or omissions may be termed criminal. The principle statute in Tanzania pertaining to criminal offences is the Penal Code Cap 16 of the laws. Of course there are with many statutes which create offences to serve specific purposes. Once these offences are committed by any person, the police have been given powers to arrest, detain, interrogate and prosecute such persons in the courts of law.

However, certain safeguards have been provided by various statutes to ensure that no body is arrested or arbitrarily deprived of his liberty by the police. Hence the police have to follow certain procedures as laid down in the law of procedure and evidence in dealing with persons suspected to have committed crimes. The main laws in this regard are the Criminal Procedure Act of 1985 and the Law of Evidence Act of 1967.

The real situation where the police may come into contact with street children as criminal suspects is when they appear to have breached the law of the land. Since as we have observed above, street

children come into the street in search of their basic needs that they have failed to get at home they are likely to commit some crimes in order to satisfy that purpose if they can't get good samaritans to offer them help. Practice has shown that most of the offences committed by street children include use of abusive language, thefts of various kinds, gambling, affray, assault, loitering in streets rogues and vagabonds, drug abuse alcoholism, prostitution etc.

These type of offences are so much negative to the good order and peace of the society if they are left unchecked. It is therefore the duty of the police to make sure that non of those offences are committed or if that is not possible then the incidence of the commission of such crimes must be very much reduced to the minimum. One way of preventing recurrent of such crimes is by the police using the law.

There are various provisions in the criminal Procedure Act of 1985 and the Penal Code Cap 16 which empower the police to arrest a person before he has actually committed a crime. For instance under section 47 of the Criminal Procedure Act of

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1985, every police officer may intervene for the purpose of preventing, and shall to the best of his ability prevent a breach of the peace or the commission of any arrestable offence (i.e. an offence for which a police officer may arrest without warrant).

Section 28 of the same statute also empowers the police to arrest rogues and vagabonds. It provides that any officer in charge of a police station may arrest or cause to be arrested:-

(a)

(b) Any person within the limits of such station who has no ostensible means of subsistence who cannot give satisfactory account of himself.

(c)

The law also empowers the police to arrest any person without warrant whom he finds lying or loitering in any highway or yard at night and unable to give a satisfactory reason, or any person having in his possession house breaking instruments with intent to break into any house, or any person whom he suspects of being a loiter in contravention of the provisions of the Human Resources Deployment

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Act of 1983 (see section 14 of the criminal procedure Act).

By reading these section, the chances of street children being raided by the police become greater than any other persons because of the environment in which they may be found.

However, once such people are arrested, if they cannot be found with any other incriminating evidence, the police may take them before a magistrate where they may be required to execute a bond with or without sureties for keeping the peace or for good behavior for such period as the magistrate may deem fit. (Section 70,71,72 and 73 of the criminal procedure Act 1985)./ But where the police officer incharge of a station finds that there is no crime that has been committed, he may release them without any condition.

However, there are safeguards in the law which guide the police when dealing with children as offenders to ensure that their rights are protected. These safeguards range from legal responsibility, time of arrest, detention and the

mode of prosecuting children. They are as follows:-

i) Criminal Responsibility:

Under section 15 of the Penal Code, a person under the age of seven years is not criminally responsible for any act or commission.

This means that a police officer cannot arrest and charge a young person below that age.

Further the same section provides that a male person under the age of twelve years is presumed to be incapable of having carnal knowledge. This means that a police officer cannot charge for the offence of rape or defilement unless that presumption is rebutted.

So also a person under the age of twelve years is not criminally responsible for any act or omission unless it is shown that at the time of doing the act or making the omission he had capacity to distinguish from right to wrong.

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Where the police discovers that the person below that age had no capacity to understand the nature and quality of his acts/omissions they release him or/her without making any charges.

(1) Rights of children during arrests:-

Section 55 of the Criminal Procedure Act requires a police officer when effecting arrest to treat a person with humanity and respect for human dignity. under section 56 (1) of the same statute after the child becomes under or restraint a police officer shall cause a parent or guardian of the child to be informed.

However, this may not be problem when the arrested child resides at home, but in the case of street children it may sometimes be difficult to inform the parent or guardian especially when the child might have severed connection with his/her family.

Under sections 64 (3) of the same law and section 4 of the Children and Young Persons Ordinance a person under fifteen years is to be released on

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bail after his parent or guardian has entered into a recognizance on his behalf. This again may be defeated by practical problems where the parent or guardian cannot be found and there is no body else volunteering to stand on behalf of the child. Either bail may not be granted where it appears that the security of the child detained may be jeopardized if released on bail.

Despite that bail may not be granted in the following cases:-

- (a) if the charge is homicide punishable with imprisonment for a term exceeding seven years.
- (b) If it is necessary in the interest of the child to remove him from the association with any undesirable person, and
- (c) If it is believed that the release of such person would defeat the ends of justice.

iii) Rights of children while in remand custody:

Where a child is detained in a police custody,

a duty has been cast on the Inspector General of Police to make sure that such child is segregated from adults. That while in custody he should not associate with adults other than a relative.

Where a child or young person who is remanded or committed for trial by the high court is not released on bail, the court may instead of committing that child to prison order him to be handed over the care of some fit person or institution willing to be responsible for the custody of that child. Usually it is the Remand Home.

(iv) Rights of a child when charged and an prosecution in a court of law:-

(a) The child has a right to be heard.

(b) the child has the right to be interviewed in the presence of parents of guardian.

(c) When sent to court, the court must sit as a juvenile court, that is a district court must sit in a room or building

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which is different from that in which ordinary sittings of the court are held, unless the child is charged together with adults.

- (d) No person except with the leave of the court, shall attend a juvenile court unless he is a member or officer of the court or a parent, guardian or relative. The court may require the attendance of parents or guardians.*
- (e) During hearing of the case, the court may give consent to any one of the parents, guardians or relatives to assist the child in the conduct of his examination and cross examination of witnesses.*
- (f) On conviction the court must get information as to the character and homelife of the child. The court must seek the advice of probation officers before sentencing. Where it is necessary, the child must be sent to an approved school.*

6.0 POLICE DEALING WITH CHILDREN AS VICTIMS OF
CRIME

Just like any other members of the our society, the street children are not immune from the criminal. And when we understand that street children are exposed in the streets, scattered here and there in the urban centers in seach of food the without means to have it, they are vulnerable to many attacks from the criminal in various ways.

The street child may be a victim of crime committed to him by a fellow street child who may be older than him, e.g by beating him or taking by force the little money or food he might have been successful to obtain form sympasizers. Or he may be a victim of criminal adults who are also present in the streets looking for opportunity. That is, the child may be robbed of his properties or money or in the case of a male child he may sexually be abused against the order of nature, or in the case of a female child she may be raped. These and many other illegal acts may be committed against the street children and they

all expect the protection of the police.

There are many offences that have been created in different legislations in order to ensure the security of children. They range from parents duty to provide the basic necessities of life to children, assaults to children, sexual offences like rape defilement and incest, abductions, indecent assault to boys under fourteen years indecent assault to females and unnatural offences etc.

Once it is reported to the police that a street child has been wronged, immediate actions are taken without discrimination to arrest the offender and prosecute him accordingly.

Police statistics show:-

Police statistics show that in 1995 a total of 1615 crimes in which 2000 children of varying ages were were victims of crimes were reported to and dealt with by the police throughout the country. Between January and June, 1996 a total of 1068 crimes in which 1,400 children

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of varying ages were involved as victims were reported to and dealt with by the police throughout the country. The total number of crimes reported with the same period was 233,200. The number of crimes in which children were victims represents 0.44% which of course should be taken by care due to the problem of the dark figure of unreport cases.

Though these figures represent children of all classes, those at home and those in the streets, it is an indication that, there are of interest however is section 25 of the children and Young persons ordinance which empowers an administrative officer or police officer above the rank of Sub-Inspector to bring before a juvenile court any child or young person who has committed no crime, but due to circumstance confronting the child, he needs the support and care of a fit person, relative or institution until where the child attains the age of 18 years or 21 years.

The circumstances are that the child may be found in the street begging or receiving alms wandering and not having any home or settled place of abode

without visible means of subsistence and having no parent or guardian, or is found destitute or is under the care of parent or guardian of criminal or drunken behavior, or frequent the company of any reputed thief, or common reported prostitute or is being persistently ill-treated or neglected y his parent or guardian or is lodging or residing in a house accused for prostitution etc.

Under the circumstances the police in their daily patrols do surround and take these children to the police station where after careful inquiry, some may be released, some may be sent to court if found with incriminating evidence and other may be referred to the juvenile court for the court to make order to such children to be under the care of fit, person, relative or institution.

Apart from these members of the public have also contributed to some extent to the problems and sufferings of the street children. Members of public have developed a habit of taking the law into their own hands to punish the would be suspects of theft, burglary or robbery without prosecuting them into a court of law. The result has been to burn people alive to death, beat them

to death or seriously maim them and leave them to undergo much sufferings. Some of these victims have been the street children and when investigation is done, it is found that the only crime the victim had committed was his presence in the streets begging for alms or being idle or loitering.

As a matter of illustration the number of street children below the age of 18 years that were burnt to death in Dar es Salaam alone in 1994 were 2. Those who were seriously injured by beating in 1994 were 4, in 1995 were 6 and in 1996 were 4. All these victims of cruelty were either killed or made to suffer badly injuries under the merciless members of the public in the name of fighting against criminals. All of them were not given the right or opportunity to be heard. We think that this is not the correct way of combating crime. If at all it has been successful it has managed to plant fear and hatred in the minds of these young people to the society, which it has the effect of not making them reform but may come to revenge later.

We are of the view that the problem of the street

children is a social problem which cannot be solved through violence and crisis. Just like any other social problem it needs a scientific approach which is guided to reduce or remove the factors which cause children to leave their homes and opt for the streets. We need to understand the problems in the families in which these children come from, we also need to know the environment in which they were brought up and most of all to understand how the social and economic conditions might have contributed to their problems.

We applaud the ways taken by some organizations like religious organizations non-governmental organizations and all those individuals who have taken the trouble of establishing centers of rearing and caring for these needy people. It is a good approach which needs the support of all of us present here and elsewhere. We must unite forces to support these organizations bearing in mind that it is our duty to do so.

Practice has shown that the chances of street children growing into potential criminals in the future are greater than to many other groups in the society. We all agree that we need peace and

security in our society. But we will be pretending to love peace while we are creating conditions to our young people which are conducive to criminal behaviors. We have to remove and rehabilitate them back to their homes as good citizens.

However while we applaud these organizations, we also note that they are dealing with human beings who are subject to weaknesses. The leaders and runners of those centers should have effective means of controlling the children who are already in their centers so that they don't go out for the purpose of committing similar crimes as when they were out in the streets. For example, of the 37 children in the Dar es Salaam Remand Home between July, 1994 to June 1995, 17 came from the Dogodogo Center, and of the 50 children in the same center between July, 1995 and June, 1996, 35 came from the Dogodogo center.

We understand the problems and the difficulty of keeping such people, but we hope that some strict measures should be taken by the center authorities, not of course of depriving the children of their liberties, but to ensure that they don't abuse the opportunity they have acquired.

We in the police, understand that street children is a social problem which in fact is one of the child abuse cases. While we have been prosecuting parents for neglect of duty to keep their children, and while we have prosecuted individuals for abusing children's rights, we are also duty bound by law to make sure that there is order and peace in the streets so that every person enjoys his freedom of movement etc.

While we feel sympathetic to the street children, there is evidence that most street children to indulge in law breaking by attacking innocent people and snatching their warches, handbags or other or naments. Some indulge themselves in bhang smoking, alcoholism, prostitution and drug abuse. The police won't let these illegal acts pass unattended because in doing so we will be blessing incidences of crime at the expense of other people who have also the right to be protected by the police. When these occur, the police will arrest anyone suspected to have committed the crime irrespective of his position in the society. And infact it would look ridiculous if we let street children commit crimes and then keep quiet because

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they have suffered a lot in their families or out there in the streets. In fact we won't be helping them either to be law abiding citizens. Thus while rehabilitative and correctional measures will continue to be taken by other organizations and the social welfare department, we on our part will continue fighting crime in liaison with other government department and such other organizations willing to cooperate so that at the end of the day we may create a peaceful atmosphere for all our people to enjoy. At the same time we promise to take serious disciplinary/lead measures to any police officer who will be reported to have abused his powers while dealing with street children.

Lastly, while we do not intend to point a blaming finger to any person or organization, it is our feeling that any intention to form a non governmental organization to look and take care of the street children, must be formed solely for that purpose without some ulterior motives of personal gains. Such organizations are formed by the people willing and ready to sacrifice for the sake of those who are acrying in the wilderness asking for help. We say that because there has been incidences where non-governmental organizations

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were formed but later collapsed or the children ran away from it back into the streets because the runners of the organizations were greedy for personal gain, and as a result they took or spent the money or other properties for themselves which were given or contributed to support the needy children. We recommend that formations of such organizations needs sacrifice and commitment.

With those remarks, we wish to conclude by expressing our utmost thanks to the organisers of this very important workshop, indeed there was no better time for the workshop to be held than now. It is therefore our sincere belief that the participants would contribute positively and come out with strong and practicable recommendations on how best to alleviate the problem of street children thus averting a time bomb.

Thank you all for listening.