

Police round-ups of street children in Arusha are unjust, inhumane and unconstitutional

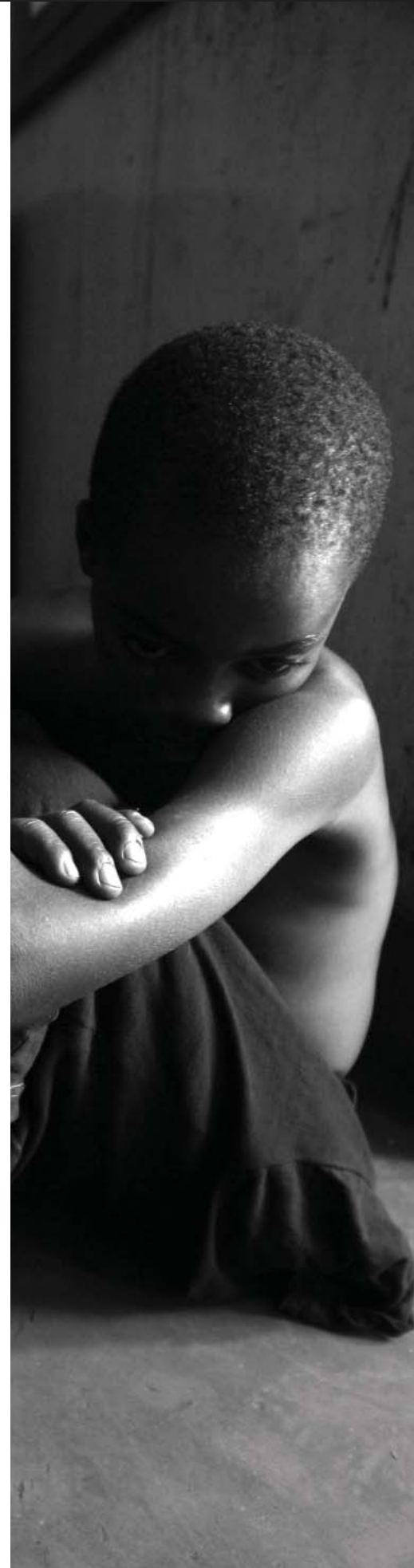
(i) Introduction

The number of Tanzanian children who live on the streets has increased dramatically in recent years, while concurrently, the services available to these children (i.e. family-based care, employment opportunities, material support for school and linkage to community-based support systems) has consistently diminished.¹ In fact, since September 2001, the response of the Arusha City Council to the street child issue has been to order police round-ups of Arusha's street children as "vagrants" consistent with the 1944 Townships (Removal of Undesirable Persons) Ordinance.² According to the Arusha Municipality, the arbitrary arrest, detention and imprisonment of street children is a "safe and clean cities issue"³ - an issue that has also been explained by District Commissioner (DC), Fulgence Saria, as "legally implementing the regional defence and security committee directive".⁴

Importantly, this type of superficial and sanitised approach to a complex social problem actually exacerbates pre-existing and related issues of police prejudice toward marginalised youth,⁵ lack of police training and sensitisation to the situation of street children, and the need for appropriate child protection and juvenile justice services in Tanzania.⁶ As such, it is the position of the Arusha Caucus for Children's Rights that the street child round-ups currently practiced in Arusha are urgently problematic for several reasons: firstly, because significant and severe violations of human and child rights occur during the round-ups; secondly, because the antiquated Tanzanian law used to justify street child round-ups actually conflicts with tenets of the United Nations Convention on the Rights of the Child (UNCRC); and thirdly, because local and national Governments consistently fail to understand and address vulnerable social groups, and to establish an appropriate juvenile justice system.

This paper contributes to a current project of Mkombozi and the Arusha Caucus to improve juvenile justice services for children in contact / conflict with the law, to facilitate the integration of international law⁷ into national law, and to resolve the current contradictions among national laws. This paper also supports the impact litigation recently initiated by the Arusha Caucus to recognise the Removal of Undesirable Persons Ordinance as unconstitutional. Specifically, this paper provides an overview of:

- ⊙ the Arusha street child round-ups in current, social context;
- ⊙ the specific violations of domestic and international law that occur during the arrest, detention, police custody, court process and remand stages of the round-up procedure;
- ⊙ recommendations in the short, medium and long term to ensure that street child round-ups are stopped, that police training and legal reform are undertaken, and that Tanzania's children (including the vulnerable and those already on the street) ultimately achieve appropriate child protection and juvenile justice services.



(ii) Background & Social Context

"(The police) took us to the police station and beat us. Me and other children had to carry very big stones on our heads. They punished us and were happy."

(13 year old street child rounded up in Arusha on August 26, 2005)

Street child round-ups can be traced back to September 2001, when DC Bertha Mende ordered one of Arusha's most widely reported police round-ups of the city's street children - an undisclosed number of street children were taken into police custody on charges of *uzururaji* (loitering) and locked in a remand facility for over a month before they were released back to the streets.⁸ Since this time, Arusha's street children have been subjected to ad-hoc round-ups by police on several occasions:

⊙ In a round-up which coincided with the President of Germany's visit to Arusha on March 17, 2004, 18 street children and 3 beggars⁹ were arrested at approximately 10a.m. and taken to court. At Maromboso Primary Court, the Magistrate who heard the matter ordered the children's release. Despite the release order, the street children were driven back to the police station, where they were harshly beaten before being released under threat of further action if they were seen on the streets again.¹⁰

⊙ In May 2005, 20 street children were arrested in Arusha, 7 of whom were taken to court. After several weeks in remand, they were released under the custody of CHISWEA - a non-governmental organisation (NGO) established to assist street children. However, the children were released back to the streets by CHISWEA on the same day, with no constructive alternative.

⊙ At approximately 1p.m. on August 26, 2005, 15 street children were arrested and taken into police custody. After one night in detention in an adult facility, the children were reportedly beaten by police officers with a "caning stick", and they were forced to clean the police station and carry large stones on their heads as a means of punishment.¹¹ Before the children were released back to the streets, they were forced to sweep the court room and cut the court compound lawn.¹²

According to Mkombozi social workers, the round-ups of street children in Arusha tend to follow a similar - and troubling - pattern: street children are arrested for "loitering" or "vagrancy" without warrant; they are detained in police lock-up alongside adult criminals;¹³ they are subjected to violence and abuse at the hands of police officials; they are handled without understanding or appropriate services in adult courts; and finally, children are released back to the streets without any productive alternative or link to community services.¹⁴

Despite the fact that Tanzania ratified the UNCRC in 1991,¹⁵ and that Articles 37 and 40 of the Convention provide detailed guidance for the treatment and rights of children in relation to justice, the fact is that Tanzanian police officers are ill equipped to work within a child rights context. There is no police training with respect to the treatment of children once police graduate from training college and there are no officers in stations who specialise in child protection work. Police officers often do not understand the complex dynamics and factors that push children to the streets and into situations where they may have to beg, steal or "sleep rough". As such, prejudice towards street children is common amongst the Tanzanian Police Force, who generally regard such youth as "delinquents" and "criminals".

Although juvenile courts are slowly being established in Tanzania,¹⁶ there are no current plans to establish one in Arusha or Moshi. As such, children are currently tried in adult courts without legal representation. Moreover, legislation relating to children is out-dated, non-existent, or unknown by personnel in the juvenile justice system. Taken together, these factors result in unfair and inconsistent knowledge and application of:

- ⊙ procedures to be applied by the courts when hearing cases involving young persons;
- ⊙ the types of punishment that may be awarded to young offenders;
- ⊙ the circumstances under which young offenders may be apprehended and taken to court;
- ⊙ institutional rehabilitation of young offenders.

(iii) The Legal Problem

From a legal perspective, the problem of street child round-ups in Arusha is threefold:

- ⊙ firstly, in terms of the antiquated law used to rationalise these actions;
- ⊙ secondly, with respect to the unfair application of this legislation;
- ⊙ thirdly, in terms of the gross violations of human and child rights at each stage of the round-up procedure (i.e. arrest, detention, court process, and remand facility).

Arusha's street children are rounded up on the basis of the Townships (Removal of Undesirable Persons) Ordinance, enacted in 1944. This antiquated legislation - originally designed to benefit colonial interests by empowering district authorities to exclude "undesirable persons" from their district - is used as justification to remove street children for "vagrancy" and "loitering". The arrest and charge of street children on the basis of "vagrancy" and "loitering" is problematic because no distinction is made between children in conflict with the law (i.e. suspected offenders) and children in need of care and protection (i.e. street children and other vulnerable children in contact with the law). The arrest and charge for "loitering" is also discriminatory because no distinction is made between "offenders" and "indigents" - and, in fact, discriminative measures are harshly proscribed in Tanzanian and international legislation.

In itself, reduction of the complex social dynamics that produce street children to a criminal label contravenes the principles of "restorative justice" and the "best interests of the child" enshrined in the UNCRC. More specifically however, the arrest and charge of street children according to the Townships (Removal of Undesirable Persons) Ordinance is, in fact, unconstitutional. The offence of "loitering" is actually based on the "danger" that a person poses to community safety; that is, it is based on the "risk of an action". Thus, the offence of loitering is based on actions that have not yet taken place. But, according to legal principle,¹⁷ without action, a person cannot be responsible - and without responsibility, a person cannot be considered guilty. Simply stated, the offence of loitering is incompatible with one of the maxims of legal principle and is, as such, unconstitutional.

In fact, the Nyalali Commission of Inquiry into the Political System has identified Tanzania's (Removal of Undesirable Persons) Ordinance as "repressive legislation" which constrains and denies the rights and freedoms of children. Interestingly, according to Spanish Organic Law 10/1995 (November 23, 1995), the national legislation which provided for arrest on the basis of loitering/vagrancy was declared unconstitutional because it violated the principles of non-discrimination and legality.

The Nyalali Commission also identifies Tanzania's Minimum Sentences Act as repressive and requiring repeal or review. The Minimum Sentences Act permits the use of corporal punishment on persons as young as 16, in direct violation of the Convention Against Torture, the ICCPR and other international instruments that enforce the right to not be subjected to cruel, degrading or inhumane punishment.

Similarly, Tanzania's continued allegiance to punitive legislation such as the 1937 Children and Young Persons Ordinance and the Penal Code results in situations of unfairness and inconsistency that contravene international law. For instance, according to Tanzania's Penal Code, a child as young as 12 can be considered "criminally responsible",¹⁸ and according to the Children and Young Persons Ordinance, children are only protected from legal treatment as adults until the age of 16. However, according to international standards,¹⁹ all children under the age of 18 are considered "children" and must be protected from adult criminal procedures.

Overall, Tanzania's maintenance of dated and repressive legislation with respect to children indicates that the issue of juvenile justice is not a national priority - indeed, Tanzania has yet to table a Children's Statute before Parliament. In effect then, Tanzania's marginalised youth are being criminalised as a means of avoiding a challenging social problem.

Although the United Republic of Tanzania has signed and acceded to several key international instruments, including the UNCRC, the ACRWC and the ICCPR, Tanzania is a common law country, and therefore does not automatically apply international instruments without first translating them into domestic legislation. Of course, with respect to juvenile justice, the translation of international law into domestic legislation has not occurred in Tanzania. Importantly however, it is the responsibility of Tanzania's courts to safeguard and apply the letter and spirit of the international instruments that have been ratified by Government even though such humanitarian instruments are not a direct source of law.²⁰ That is, international covenants cannot be cited by name in court, but their principles are of compulsory application in courts' decisions.

In turn, this means that all dispositions in force and effect in Tanzania must be understood and exercised according to overriding principles enshrined in domestic and international law (such as the United Republic of Tanzania (URT) Constitution and the UNCRC, respectively). It also means that discretionary powers afforded to District Authorities to maintain peace and order must be exercised in harmony with these principles. As such, the following characteristics of the handling of street children in Arusha are called into question:²¹

- Ⓞ arrest of children as young as 12 and 13 without warrant;
- Ⓞ denial of release under bail for detained street children;
- Ⓞ use of corporal punishment; and,
- Ⓞ detention of children in adult facilities.

Even in its practical application by police and judiciary, however, Tanzania's repressive legislation is unfair and fails to adhere to its own conditions. For instance, Article 2 (1) of Tanzania's Minimum Sentences Act indicates that corporal punishment may be used, but that it should not be applied to anyone under the age of 16. In fact, street children as young as 12 and 13 have reportedly been beaten and physically "punished" by police during the Arusha round-ups.²²

Similarly, despite obvious grievances towards the legality of arrest without warrant in Tanzania,²³ the Criminal Procedures Act (CPA) specifies that the arrest without warrant is only lawful if the provisions under Part II are fulfilled. That is, the arrest without warrant will only be lawful if it is in presence of the police officer in charge of the police station, a subordinate (after an order specifying the person, the offence or cause of the arrest), a magistrate (who believes that the person has committed an offence under his jurisdiction) or by a private person (in the case of flagrant act). Furthermore, detention should only be prolonged if the police officer in charge of the police station believes it is necessary, and if so, he must specify the reasons. Finally, the arrested person must be brought before a court within 24 hours, unless charged for a serious offence.²⁴

It goes without saying that these conditions are neither met nor respected during the police round-ups of street children - despite the fact that children are removed on grounds of "loitering" and "vagrancy", they are detained and treated as serious offenders, they are held alongside adult offenders, they are not educated as to their rights or options, and in many cases, they are detained for much longer than 24 hours.²⁵

In fact, an alarming array of rights violations can be identified at each stage of the process by which street children are rounded up. Stages of round-up include:

- Ⓞ arrest,
- Ⓞ detention,
- Ⓞ court process,
- Ⓞ remand facility.

Refer to the **Appendix** for a detailed matrix of specific violations of domestic and international law (by rule / article / section) at each stage of the round-up process. Refer to the right for an overview of the specific human / child rights that are violated during round-up. ▶▶▶

Human Rights Violations During Round-ups of Street Children:

1. Arrest:

- Presumption of innocence
- Right to humane treatment
- Right to know the offences of which you are accused (and to understand them)
- Right to be informed of your rights (and to understand them)
- Freedom from arrest without warrant
- Freedom from arbitrary arrest
- Right to appeal against the removal order
- Curtailing of basic freedoms and rights

2. Detention:

- Right to notify next of kin or guardian
- Rights during interrogation (not to be compelled to confess guilt or to testify against yourself)
- Right to know the charge prepared
- Right to be submitted to detention pending trial as a last resort
- Right to be held in a facility different from adults
- Right of *habeas corpus* (protection from illegal and extended arrest)
- Right to be released within 24 hours (unless charged with a serious crime)
- Right to be submitted to a judicial process as a last resort
- Right to humane treatment
- Right to lawful custody

3. Court process:

- Right to be tried in a competent court (in this case, a juvenile court)
- Right to understand the details of the charge and the witnesses' statements
- Right to have legal representation and counsel
- Not to be held or conveyed together with adults
- Right to be tried taking into account special circumstances
- Duty to have a minimum age under which children shall be presumed not to have capacity to infringe the penal law
- Right to ask for presence of parent or guardian in court
- Right to be heard in open court
- Right to due process of law
- Right to be sentenced to imprisonment only as a last resort (right to diversion)
- Right to freedom from corporal punishment
- Right to review and appeal the court's decision

4. Remand facility:

- Right to be sent to a remand facility with a valid order from a competent authority
- Right to be informed of the facility rules
- Right to be held in a different facility than adults
- Right to adequate communication with the outside world
- Right to have duration of confinement determined at the time of the order of placement and for the minimum necessary period
- Right to access further legal assistance
- Right to access complaint mechanisms
- Duty of all personnel of the remand facility to respect the rights of the juveniles
- Least possible use of institutionalisation
- Right to most appropriate placement

As indicated in the Appendix, each of the human/child rights violated during round-up is guaranteed by a specific rule / article / section of domestic and / or international legislation (especially the URT Constitution, Penal Code, CPA and the UNCRC, ICCPR, ACRWC, respectively). It is apparent, therefore, that the round-ups of street children in Arusha violate a disturbing number of humanitarian points of law, including the underlying legal principles of restorative justice, non-discrimination, proportionality, dignity of the person, equality,²⁶ effectiveness, legality and rule of law.

Using a broader lens of analysis, it can also be shown that the round-ups of street children in Arusha - and, in fact, the overall failure of Tanzania to establish an appropriate juvenile justice system - actually contravenes international humanitarian law at several key points related to children. For instance, with respect to the "right to measures of special protection", Article 18 of the African Charter on Human and People's Rights states: "The State shall ensure... the protection of the rights of the... child as stipulated in international declarations and conventions..." and Article 17 of the ACRWC describes the: "...right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others."

Similarly, with respect to the "right to not be denied rights entitled by national and international law", Rule 13 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNJDJL) requires that: "Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty".

And finally, with respect to the "best interest of the child", Article 3(1) of the UNCRC demands that: "In all actions concerning children, (...) the best interest of the child shall be a primary consideration".

(iv) Arusha Caucus for Children's Rights' Recommendations

On the basis of first-hand research and experience, the Caucus firmly asserts that the round-ups of street children in Arusha contravene national and international law, and that they provide a clear example of human and child rights violations by local authorities. As such, the Caucus strongly recommends that a three-tier plan of action be urgently undertaken with short-term, medium-term and long-term objectives. In this way, the legal reforms, police training, awareness raising, and human rights education that are required to stop street child round-ups and to establish juvenile justice in Tanzania can begin immediately. Specifically, the Caucus recommendations are as follows:

1. SHORT-TERM ACTION PLAN:

The Caucus recommends the fulfillment and respect of humanitarian principles enshrined in domestic and international law - Arusha's marginalised youth and those in contact / conflict with the law must be protected from further rights violations.

Strategies:

- ① Prevent and avoid the arrest of street children by:
 - ~ applying (correctly and fairly) the legal provisions already in force and effect (i.e. conditions stipulated by Sec. 12, 14, 15, 21 and 32 CPA for lawful arrest without warrant);
 - ~ exercising DC discretionary power to stop round-up orders;
 - ~ issuing "police warnings" or "behaviour contracts" to street children in conflict with the law;
 - ~ respecting the child's right to appeal against the removal order.
- ① Divert children from police custody by:
 - ~ referring street children to NGOs, social services or substance abuse programs;
 - ~ respecting the child's right to be released under the responsibility of a parent or guardian;
 - ~ encouraging conditional or unconditional release.
- ① Improve the court processing of street children by:
 - ~ respecting the child's right to be submitted to judicial process only as a "last resort";
 - ~ respecting the child's right to a fair and equitable trial;
 - ~ respecting the child's right to be tried in a competent court (i.e. a juvenile court established in a separate room or building);

- ~ respecting the child's right to have free legal representation and counsel;
 - ~ ensuring the "proportionality" of the response;
 - ~ taking into account special circumstances (age, state of maturity, family situation);
 - ~ taking into account the gravity of the offence,²⁷ and if child is a first-time "offender".
- ① Protect street children during court processing by:
 - ~ respecting the child's right not to be subjected to corporal punishment if under the age of 16;
 - ~ respecting the child's right to diversion - to be imprisoned only as a "last resort".
 - ① Divert street children from detention in remand facilities by:
 - ~ respecting the child's right to probation;
 - ~ respecting the child's right to social care, temporal supervision, guidance;
 - ~ respecting the child's right to re-integration in the community.
 - ① Improve the conditions of street child confinement in remand facilities by:
 - ~ respecting the child's right to be informed of the rules of the remand facility;
 - ~ respecting the child's right to be held in a different facility than adults;
 - ~ respecting the child's right to adequate communication with the outside world;
 - ~ respecting the child's right to receive humane treatment;
 - ~ respecting the child's right to access social care, education and drug abuse prevention;
 - ~ respecting the child's right to have duration determined at the time of placement;
 - ~ respecting the child's right to have duration of confinement for the minimum necessary period;
 - ~ respecting the child's right to access complaint mechanisms;
 - ~ respecting the child's right to unrestricted access for inspectors;
 - ~ respecting the child's right to access further legal assistance.

2. MEDIUM-TERM ACTION PLAN:

The Caucus recommends that key stakeholders in Arusha's juvenile justice and child protection systems (including police, judiciary, Government, public servants) are educated about the rights and responsibilities inherent in national and international legislation, and trained to develop a working model of good practice in juvenile justice.

Strategies:

- ① Develop and deliver appropriate training in child rights and child protection to key stakeholders in juvenile justice (e.g. NGOs, police, magistrates, lawyers, remand home, and jail staff).
- ① Improve the capacity of the police force through training in child rights, child protection and the needs of vulnerable youth in contact / conflict with the law.
- ① Educate judges and magistrates in the interpretation of domestic law according to the governing nature of international, humanitarian principles.
- ① Strengthen the role of Civil Society Organisations (CSOs) in advocating for the abolition of laws that are contrary to the UNCRC and that violate children's basic right to protection.
- ① Engage NGOs and CSOs in the critical task of innovating and testing alternative ways to work with vulnerable groups.
- ① Establish mechanisms for children, the Government and civil society to monitor the provision of juvenile justice services.
- ① Ensure greater responsibility towards children in contact / conflict with the law.
- ① Educate marginalised youth about their legal rights and responsibilities.
- ① Facilitate awareness-raising and advocacy campaigns so that the complex dynamics that produce street children are better understood in Tanzanian society.
- ① Build systems and attitudes to ensure that children in need of care are protected, supported and empowered to make the best of their difficult circumstances, that they are treated fairly, and given the opportunity and guidance to take responsibility for their behaviour.

3. LONG-TERM ACTION PLAN:

The Caucus recommends that Tanzania's legislation is reviewed, updated and reformed, and that a socially-relevant, child-friendly juvenile justice system is formally established.

Strategies:

- ① Declare Tanzania's 1944 Townships (Removal of Undesirable Persons) Ordinance unconstitutional.
- ① Review and amend laws, policies and national strategies to the best interests of children, especially the Minimum Sentences Act, the Children and Young Persons Ordinance, the Preventive Detention Act, the Penal Code, and the CPA. In particular:
 - ~ Harmonise age limits for criminal responsibility and child / youth protection.
 - ~ Repeal the legality of arrest without warrant.
 - ~ Enforce the amendments proposed²⁸ to the discretionary powers around detention of persons.
 - ~ Decriminalise discriminatory offences such as begging and loitering.²⁹
- ① Translate international instruments into domestic legislation.
- ① Enforce the respect of "legal hierarchy" such that Tanzanian legislation is interpreted and applied according to overriding humanitarian principles of international laws and treaties, especially principles of proportionality, the best interest of the child and the right to a fair and equitable trial.
- ① Advocate for the Children's Statute to be tabled in Parliament.
- ① Develop, implement and monitor a model of good practice in juvenile justice.
- ① Continually adapt and deliver appropriate training materials in child rights and child protection for each juvenile justice stakeholder group (e.g. NGOs, police, magistrates, lawyers, remand home, and jail staff).
- ① Demand, under the law, that all agencies working with children, whether schools, police, social welfare or care centres, be legally obliged to have clear child protection policies and procedures in place.
- ① Demand, under the law, that action is taken against District authorities who order the round-up of street children in direct violation of domestic and international law.
- ① Advocate with relevant Ministries and the general public for local and national policy agendas that are responsive to children and young people's concerns so that future generations of Tanzanian children can be treated fairly, and with dignity and respect when they come in contact with the juvenile justice system.



(v) Conclusion



Arusha's most vulnerable children are being criminalised and "cleaned" from the streets in a simplistic attempt to hide and deny a growing social problem. The police round-ups of street children that have occurred in Arusha since 2001 are destructive on several levels:

- ① they mask the failure of Tanzanian Government and civil society to understand and address the needs of vulnerable children (those at risk, and those already on the street);
- ① they reinforce stereotypical perceptions of street children as "criminals" and "delinquents" requiring punishment and correction; and,
- ① they enable gross violations of human and child rights through the perpetuation and application of unconstitutional, repressive and dated Tanzanian legislation.

In the course of the Arusha round-ups, street children have been arrested for "loitering" and "vagrancy" without warrant, detained in police lock-up alongside adult criminals, beaten and abused by police officials, tried and sentenced in adult courts, and ultimately released back to the streets without any productive alternative or link to community services. Inadequate training, poor governance and lack of options at police stations mean that specific needs and rights of boys and girls in contact / conflict with the law are inadequately provided for and protected. The Arusha Caucus urges that street child round-ups are stopped so that justice can begin - the Tanzanian Government and CSOs must earnestly begin to grapple with issues of child protection and juvenile justice, and to take necessary action when instances of abuse (of children, of child rights, and of police power) are identified. The Caucus strongly recommends that international laws are integrated into national law and that current contradictions among national laws are immediately resolved. In particular, the Caucus recommends that the antiquated Townships (Removal of Undesirable Persons) Ordinance - currently used to justify street child round-ups - be deemed unconstitutional. With a view to establishing fundamental changes to Tanzanian juvenile justice, the Caucus recommends that the public servants' skill base be strengthened (with emphasis on child protection) and that key community and family-based social services are established for children and youth.

When 50% of a country is comprised of children, and when 30% of those children are currently at risk of migration to the streets,³⁰ it is common sense that police round-ups of street children can no longer be tolerated as a judicial response to an urgent social issue. The time is at hand to begin the extensive police training, legal reform, awareness raising and advocacy that are essential to achieving true juvenile justice for Tanzania's children.

(vi) Endnotes

1. Mkombozi Census 2005. Note also that the United Nations Committee on the Rights of the Child (UNCRC), after considering the reports submitted by the United Republic of Tanzania under ART. 44 UNCRC, is particularly concerned about "...children in conflict with the law, children living in institutions, children living and/or working on the streets... and their limited access to adequate health, education and other social services" (Concluding Observations of the Committee on the Rights of the Child, Tanzania. (2001), UN Doc. CRC/C/15/Add.156.
2. Chapter 104 of the Laws of Tanganyika.
3. The Citizen, April 13, 2005.
4. Arusha Times, 17-23 April 2004.
5. Rule 80 UNJDL reads: "Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles."
6. Improving Juvenile Justice Services in Arusha, Tanzania (Proposal submitted to DFID by ChildHope UK and Mkombozi, 2005).
7. Particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights (ICCPR), the UNCRC and the African Charter on the Rights and Welfare of the Child (ACRWC).
8. J. C Mashamba (2004), "Concept Paper on Undertaking a Test Case against the District Commissioner's Rounding up and Detaining Street Children in the Arusha Municipality, Tanzania." National Organisation for Legal Assistance (NOLA), page 9.
9. District Authorities regard street children and beggars as a single group, since both are deemed a "safe and clean cities issue".
10. Information obtained by Mkombozi social workers during interviews with rounded up street children on March 17, 2004.
11. Information obtained by Mkombozi social workers during interviews with rounded up street children on September 5, 2005.
12. Ibid.
13. In May 2005, Mkombozi identified 21 children imprisoned in Kisongo adult jail.
14. Information obtained by Mkombozi social workers during interviews with rounded up street children on September 5, 2005.
15. Tanzania signed the UNCRC on June 10, 1991.
16. To date, this includes Dar es Salaam, Mwanza and Mbeya.
17. Feuerbach stated this idea in the following principle: "Nulla poena sine culpa" (No punishment without guilt).
18. Disturbingly, even this incredibly young age for criminal responsibility has been violated; for instance, in the case of Mohamed Abdullah, a 9 year old boy was charged with rape and sentenced to life imprisonment.
19. ART 1 UNCRC, Rule 4 of the Beijing Rules, and Rule 5 UNJDL.
20. Sec.13 of the Summary Record of the 1689th meeting of the Human Rights Committee.
21. Information obtained by Mkombozi social workers during interviews with rounded up street children on September 5, 2005.
22. Ibid.
23. Sec. 12, 14, 15, 21 and 32 CPA.
24. Street children are charged for loitering, which is classified as minor offence under Secs.35, 176 and 177 CPA.
25. Information obtained by Mkombozi social workers during interviews with rounded up street children on September 5, 2005.
26. The right of not being denied rights to which a person is entitled by Domestic and International legislation.
27. According to Secs. 35, 176 and 177 CPA, loitering is catalogued as a misdemeanour, *id est*, a minor offence.
28. By the Human Rights Committee on the execution of the ICCPR.
29. As previously noted, Spanish Organic Law 10/1995 (Nov 23, 1995) declared the law which enabled arrest for loitering and vagrancy unconstitutional on the grounds that it violates the principles of non-discrimination and of legality.
30. Mkombozi Census 2005.

(vii) Bibliography

Cases:

- ① THE PEOPLE OF THE STATE OF NEW YORK v. Alan BERCK. (1973) 32 N.Y 2d 567.
- ① THE STATE OF WASHINGTON v. MARTINEZ (July 1975) 85 Wn. 2d 671, 538P.2d 521.

Oral Sources:

- ① Street children rounded up March 17, 2004. Interview by Mkombozi Social Workers. (March 17, 2004).
- ① Street children rounded up August 26, 2005. Interview by Mkombozi Social Workers. (Sept. 5, 2005).

International Instruments:

- ① African Charter on Human and People's Rights (1981).
- ① African Charter on the Rights and Welfare of the Child (1990).
- ① American Convention on Human Rights (1978).
- ① The Charter of the United Nations (1945).
- ① Convention relative to the Protection of Civilian Persons in the Time of War (1949).
- ① Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1985).
- ① Convention on the Treatment of Prisoners of war (1949).
- ① European Convention for the Protection of Human Rights and Fundamental freedoms (1950).
- ① International Covenant on Civil and Political Rights (1976), General Assembly resolution 2200A (XXI).
- ① UN Convention on the Rights of the Child (1989), General Assembly resolution 44/25.
- ① UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (1985) General Assembly Resolution 40/34.
- ① UN Document of the Plight of Street Children, (1993) General Assembly Resolution 48/136.
- ① UN Guidelines for Action on Children in the Criminal Justice System (1997), Economic and Council resolution 1997/30.
- ① UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990), General Assembly resolution 45/112.
- ① UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) General Assembly resolution 43/113.
- ① UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985), General Assembly Resolution 40/33.
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(viii) Appendix

Specific violations of domestic and international law at each stage of street child round-ups (i.e. arrest, detention, court process, remand facility)

1. ARREST

Rights violation	Domestic law	International law
Presumption of innocence	-ART 13.6 (b) URT Constitution	-ART 40.2 (b)(i) UNCRC -ART 11.1 Universal Declaration of Human Rights -Rome Statute ART 66 -ART 14.2 ICCPR -RULE 17 UNJDL (<i>UNJDL applies to every child deprived of their liberty, defining child as those less than 18 years old, without any reference to national age standards.</i>) -RULE 7 Beijing Rules -ART 7 African Charter on Human and People's Rights -ART 17.2 (c) (i) ACRWC
Right to humane treatment (This refers to the excessive use of force in effecting the arrest as well as the arbitrary use of police power.)	-ART 13.6 URT Constitution -SEC 19 Penal Code (" <i>...the court shall, in considering whether the means used were necessary or the degree of force used was reasonable for the apprehension of such person, have regard to the gravity of the offence...</i> ") -SEC 21(1) CPA -SEC 12 CPA -SEC 21 Sexual Offences Special Provisions Act (<i>Addition of new section to SEC 169 A Penal Code by SEC 21 of the Sexual Offences Special Provision Act: "Any person who, having the custody, charge or care of any person under 18 years of age, ill treats, neglects or abandons that person or... procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, ... or any mental derangement, commits the offence of cruelty to children."</i>)	-ART 2 UNCRC (" <i>State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment...</i> ") -ART 37 UNCRC -ART 5 Universal Declaration of Human Rights -Rome Statute ART 55 -RULE 10.3 Beijing Rules -RULE 87 UNJDL -ART 5 of the African Charter on Human and People's Rights -ART 16 ACRWC -ART 17.2 (a) ACRWC -The Third and Fourth Geneva Convention -Declaration on the Protection of All Persons From Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (<i>(Although the United Republic of Tanzania is not a State Party to this Convention, its main principles are considered to have acceptance among the community and are binding in that they are ius cogens - since the Nuremberg Trials of 1950, any norm of the ius cogens is enforceable against both states and individuals.)</i>)
Right to know the offences of which you are accused (and to understand them)	-CPA	-ART 40.2 (b) (ii) UNCRC -ART 9.2 and 14.3 ICCPR -ART 17.2 (c) (ii) ACRWC
Right to be informed of your rights (and to understand them)	-SEC 53 CPA	-ART 23 Riyadh Guidelines -ART 11 (b) Guidelines for Action on Children in the Crim. Justice System -ART 9 and 25 ACHPR
Freedom from arrest without warrant	Legal according to Tanzanian law, but must follow the provisions as specified in Sec. 12, 14, 15, 21 and 32 CPA.	
Freedom from arbitrary arrest		-ART 37 (b) UNCRC -ART 9 Universal Declaration of Human Rights -ART 9.1 ICCPR -ART 55.1 (d) Rome Statute -African Charter on Human and People's Rights
Right to appeal against the removal order	-Sec 5(1) Townships Ordinance	
Curtailling of basic freedoms and rights	-ART 13, 29 and 30 URT Constitution	

2. DETENTION

Rights violation	Domestic law	International law
Right to notify next of kin or guardian	-SEC 54 CPA	-RULE 10 Beijing Rules -RULE 92 UN Standard Minimum Rules for the Treatment of Prisoners
Rights during interrogation (not to be compelled to confess guilt or to testify against yourself)	-ART 13 (d) URT Constitution	-ART 14.3 (g) ICCPR
Right to know the charge prepared		-ART 17.2 (c) (ii) ACRWC
Right to be held in a different facility than adults	-SEC 5 Children and Young Persons Ordinance Act	-ART 10.2 (b) ICCPR -RULE 13.4 Beijing Rules -RULE 29 UNJDL -ART 17.2 (b) ACRWC
Right to be submitted to judicial process as a last resort		-ART 40.2 (b) (vii) (b) UNCRC -ART 11.1 Beijing Rules
Right to lawful custody	-SEC 5 CPA	

Right to be submitted to detention pending trial as a last resort	-SEC 54 CPA	-RULE 13.1 Beijing Rules -RULE 19.1 Beijing Rules -RULE 17 UNJD ("...the institutionalisation of young persons should be used as a measure of last resort and for the minimum necessary period, and the best interest of the young person should be of paramount importance.") -RULE 6 Tokyo Rules ("...alternatives to pre-trial detention shall be employed at as early stage as possible") -ART 43 Guidelines for Action on Children in the Criminal Justice System -Resolution 4 of the Sixth Congress on the Prevention of Crime and the Arrest of Offenders
Right of habeas corpus (protection from illegal and extended arrest)	-SEC 390 CPA ("...that any person illegally or improperly detained in public or private custody within the limits of the United Republic of Tanzania be set at liberty.") -SEC 32 (1) CPA -SEC 32 (1) CPA ("... (right to) appear before a court within 24 hours, if it is not possible... (to be) released unless (he is accused of a) serious crime") -SEC 4 Children and Young Persons Ordinance	-ART 37 (d) UNCRC -ART 40.2 (b) (iii) UNCRC -Rome Statute ART 67.1(c) -ART 9.3 ICCPR ("...the right to be brought promptly before a judge or other officer authorised by law (...) It shall not be the general rule that persons awaiting trial shall be detained in custody.") -ART 17 UNJD ("Detention before trial should be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures (...) When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.") -RULE 10.2 Beijing Rules -ART 17.2 (c) (iv) ACRWC -ART 7 (d) ACHPR
Right to be released within 24 hours (unless serious crime)	-SEC 32 (1) CPA	-ART 40.2 (b) (iii) UNCRC -Rome Statute ART 67 -ART 9.3 ICCPR ("...the right to be brought promptly before a judge or other officer authorised by law (...) It shall not be the general rule that persons awaiting trial shall be detained in custody.") -ART 17 UNJD ("Detention before trial should be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures (...) When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.") -RULE 10.2 Beijing Rules -ART 17.2 (c) (iv) ACRWC -ART 7 African Charter on Human and People's Rights
Right to humane treatment	-ART 13.6 (e) URT Constitution -SEC 55 CPA	-ART 5 Universal Declaration of Human Rights -ART 17 ACRWC

3. COURT PROCESS

Rights violation	Domestic law	International law
Right to be tried in a competent court (<i>The competent court for trying children and young persons is a Juvenile Court and not a Primary Court.</i>)	-SEC 140 CPA -Juvenile's Court Act -SEC 3 (1) Children and Young Person's Ordinance Act (Cap. 13) ("(The juvenile court shall) ... sit in a different building or room from that in which the ordinary sittings of the court are held.") -SEC 6 Children and Young Person's Ordinance ("...for any other offence other than homicide.")	
Right to understand the details of the charge and the witnesses' statements	-CPA -SEC 8 Children and Young Persons Ordinance	-ART 40 (b) (vi) UNCRC -ART 14.3 (f) ICCPR -ART 14.2 Beijing Rules -ART 17.2 (c) (ii) ACRWC
Right to have legal representation and counsel	-310 CPA	-ART 12 .2 UNCRC -ART 11.1 Universal Declaration of Human Rights -Rome Statute ART 67 (1) (d) -ART 14.3 ICCPR (<i>Right to "...have legal assistance... assigned, in any case where the interest of justice so require, and without payment by him in any such case if he does not have sufficient means to pay it for."</i>) -RULE 7 and 15 Beijing Rules -RULE 18 (a) UNJD -ART 93 of the UN Standard Minimum Rules for the Treatment of Prisoners -ART 7.1 (c) African Charter on Human and People's Rights -ART 4.2 and 17.2 (c) (iii) ACRWC
Not to be held or be conveyed together with adults	-SEC 187 CPA -SEC 28 Sexual Offences Special Provision Act -SEC 3 (4) Children and Young Persons Ordinance	
Right to be tried taking into account special circumstances	-SEC 337(1) CPA ("...having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, ... or to any extenuating circumstance under which the offence was committed (...) the court may direct that he be released on his entering into a bond, (...) and during such period, not exceeding 3 years, to appear and to receive sentence when called upon, and, in the meantime, to keep peace and good behaviour.")	-RULE 16 Beijing Rules (<i>Right to be tried considering a "...pre-sentence report as indispensable aid."</i>) -RULE 17.1 (a) Beijing Rules (<i>"The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the juvenile as well as to the needs of society."</i>) -RULE 2.3, 3.2 and 7 (<i>Provides for the use of social inquiry reports.</i>) Tokyo Rules -ART 14.4 ICCPR -ART 17 ACRWC -Principle of Proportionality
Right to be heard in open court	-ART 13.6 and 30.1 URT Constitution	-ART 10 Universal Declaration of Human Rights

Duty to have a minimum age under which children shall be presumed not to have capacity to infringe the penal law		-ART 40.2 (b)(vii)(a) UNCRC -ART 17.4 ACRWC
Right to ask for the presence in court of a parent or guardian	-SEC. 3 (5) Children and Young Persons Ordinance	-RULE 7 Beijing Rules
Right to be sentenced to imprisonment only as a last resort (right to diversion)	-SEC 7 (1) and 22 (2) Children and Young Persons Ordinance (<i>"No young person shall be sentenced to imprisonment unless the court considers that none of the others methods in which the case may be dealt with ...are suitable"</i>)	-ART 37 (b) UNCRC -RULE 17.1 (c) (<i>"...deprivation of liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or persistence."</i>) and 11 (<i>Right to diversion and redirection to community support service at any point</i>) Beijing Rules -RULE 1 and 2 UNJDL -ART 46 and 58 Riyadh Guidelines -RULE 2.4, 8.1 and 14.4 Tokyo Rules -ART 42 Guidelines for Action on Children in the Criminal Justice System -ART 17.3 ACRWC -RESOLUTION 4 on the Sixth Congress of the UN
Right to freedom from corporal punishment	-SEC 2(1) Minimum Sentences Act (<i>"Nothing in this Act shall be applied to a juvenile" (id est, a child under 16years old)."</i>)	-ART 7 ICCPR -RULE 17.3 Beijing Rules -RULE 67 UNJDL -Declaration on the Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (<i>Although the United Republic of Tanzania is not a State Party to this Convention, its main principles are considered to have acceptance among the community and are binding in that they are ius cogens.</i>)
Right to review and appeal the court's decision	-ART 13.6 (a) URT Constitution -SEC 359 CPA -SEC 5 Townships Ordinance (<i>"...(Right to) appeal against the Removal Order."</i>)	-ART 40.2 (b) (v) UNCRC -ART 14.5 ICCPR -RULE 7 Beijing Rules -ART 7.1 (a) African Charter on Human and People's Rights -ART 17.2 (c) (iv) ACRWC

4. REMAND FACILITY

Rights violation	Domestic law	International law
Right to be sent to a remand facility with a valid order from a competent authority		-RULE 20 and 21 UNJDL
Right to be informed of the rules of the remand facility		-RULE 24 UNJDL -RULE 12.3 Tokyo Rules
Right to be held in a different facility than adults	-Prisons Act	-ART 37 (c) UNCRC -ART 10.2 ICCPR -RULE 26.3 Beijing Rules -RULE 29 UNJDL -RESOLUTION 4 on the Sixth Convention of the UN Congress
Right to a complete and secure record of himself		-RULE 19, 21 and 22 UNJDL
Right to adequate communication with the outside world		-RULE 26.5 Beijing Rules -RULE 22, 56, 59 and 60 UNJDL
Right to unrestricted access for inspection		-RULE 72 UNJDL
Right to access to further legal assistance		-ART 24 UNJDL
Right to access complaint mechanisms		-RULE 75 and 87 UNJDL
Duty of all personnel of the remand facility to respect the rights of the juveniles		-RULE 74 and 87 UNJDL
Least possible use of institutionalisation		-RULE 19.1 Beijing Rules -RESOLUTION 4 and 8 of the Sixth Congress of the UN -ART 46 Riyadh Guidelines -ART 36 Guidelines for Action on Children in the Criminal Justice System (<i>"... the placement of these children (children in the need of special protection measures) in institutions should be proscribed as much as possible."</i>)
Right to be held in the most appropriate placement		-ART 18.2 UNCRC -RULE 27 and 30 UNJDL
Right to humane treatment	-ART 25 URT Constitution -SEC 55 CPA -SEC 169 A (<i>"Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person (...) in a manner to cause him suffering or injury to health, (...) or any mental derangement, commits an offence of cruelty to children."</i>)	-ART 32 UNCRC -RULE 12,18,44 ,63, 64, 67 (<i>"All disciplinary measures constituting cruel, inhuman or degrading treatment or punishment shall be strictly prohibited."</i>), 70 and 87 UNJDL -RULE 54 Riyadh Guidelines -ART 5 ACHPR -ART 16 ACRWC -ART 3 European Convention of Human Rights (<i>Although the United Republic of Tanzania is not a State Party to this Convention, its main principles are considered to have acceptance among the community and are binding in that they are ius cogens.</i>)

Right to drug abuse prevention and rehabilitation programmes		-RULE 54 UNJDL -ART 28 ACRWC -ART 25, 36 and 59 Riyadh Guidelines
Right to education	-Education Act	-ART 28 and 29 UNCRC -RULE 38 UNJDL -ART 11 ACRWC
Right to access to social care and upbringing		-ART 20 UNCRC (" <i>...a child temporarily deprived of his and her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.</i> ") -ART 39 UNCRC (<i>Rehabilitative care.</i>) -ART 40.4 UNCRC (<i>Alternatives to institutional care.</i>) -ART 25.2 URT Constitution -RULE 8, 14 and 80 UNJDL -RULE 18, 24 and 26 Beijing Rules -RULE 13.4 Tokyo Rules -ART 24 ACHPR -ART 33 and 34 Riyadh Guidelines
Right to have duration of confinement determined at the time of the order of placement and for the minimum period		-RULE 2 and 21 (c) Beijing Rules -RULE 11.1 Tokyo Rules
Right to diversion	-SEC 18 Children and Young Persons Ordinance -SEC 337(1) CPA (<i>Right to probation: "...having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, ... or to any extenuating circumstance under which the offence was committed... the court may direct that he be released on his entering into a bond, with or without sureties, and during such period, not exceeding 3 years, to appear and to receive sentence when called upon, and, in the meantime, to keep peace and good behaviour."</i>)	-RULE 9.1 and 9.2 Tokyo Rules (" <i>Post-sentencing dispositions may include: (a) Furlough and half-way houses; (b) work or education release; (c) various forms of parole; (d) remission; and (e) pardon.</i> ")

LIST OF ABBREVIATIONS:

ACHPR=African Charter on Human and People's Rights

ACRWC=African Charter on the Rights and Welfare of the Child

Beijing Rules=United Nations Standard Minimum Rules for the Administration of Juvenile Justice

Cap=Chapter of the Laws of Tanganyika

Children and Young Persons Ordinance=Chapter 13 of the Laws of Tanganyika

CPA=Criminal Procedure Act

CSO=Civil Society Organisations

DC=District Commissioner

ICCPR=International Covenant on Civil and Political Rights

NGO=Non-governmental organisation

NOLA=National Organisation for Legal Assistance

Removal of Undesirable Persons Ordinance=Township (Removal of Undesirable Persons) Ordinance, Chapter 104 of the Laws of Tanganyika

Riyadh Guidelines=United Nations Guidelines for the Prevention of Juvenile Delinquency

Standard Minimum Rules=United Nations Standard Minimum Rules for the Treatment of Prisoners

Tokyo Rules=United Nations Standard Minimum Rules for Non-Custodial Measures

UN=United Nations

UNCRC=United Nations Convention on the Rights of Child

UNJDL=United Nations Rules for the Protection of Juveniles Deprived of their Liberty

URT Constitution=United Republic of Tanzania Constitution