



# **Challenges of Access to Justice in Tanzania to Obtain Legal Assistance for Street Children Facing Physical Violence by Police**

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***Disclaimer:***

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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## List of Acronyms

ACRCWC	African Charter on the Rights and Welfare of the Children
CRC	Convention on the Rights of the Children
DIHR	Danish Institute for Human Rights
HRW	Human Right Watch
LAP	Legal Aid Provides
LAS	Legal Aid Secretariat
MCDGC	Ministry of Community Development Gender and Children
MoCLA	Ministry of Constitution and Legal Affair
NCPA	National Costed Plan of Action
NGOs	Non-Governmental Organisation
OCHCR	Office of High Commissioner for Human Rights
PF3	Police Form three
RMC	Residents Magistrate Court
UDHR	Universal Declaration of Human Rights
UNDP	United Nation Development Program
UNICEF	United National Children Fund
USD	United States Dollar
WLAC	Women Legal Aid Centre

## **Abstract**

Having access to justice in obtaining legal assistance and representation is a fundamental right of every child without bias and discrimination of any kind. However, premised on several factors that push children into the streets and the prevalence of violence against them, obtaining legal assistance and legal representation seem crucial to access justice when their rights are being violated. Street children who are victims of violence are entitled to legal assistance for the purpose of justice attainment in rights violation (OHCHR 2011:20 ), which indicates that street children deserves equal right in obtaining access to justice. But the lack of access to justice in respect of having adequate legal assistance and representation for street children when encountered with physical violence remains questionable in Tanzania as the observed gap in child protection laws unintentionally limits their access in obtaining legal assistance and representation.

## **Relevance to the Development Studies**

The growing number of street children is concern in the society and the violence surrounding their daily survival deserves a deeper insight which underlines the street children as people who deserve equality in access to justice. This research calls the attention of policy makers and stakeholders in order to enhance a fair and just environment for all without discrimination or bias as children living in the street are worthy citizens whose rights need to be protected through provision of legal assistance to ensure their access to justice.

## **Keywords**

Street children, physical violence, legal representation, access to justice, and legal assistance.



# Chapter 1: Introduction

## 1.1 Statement of the Problem

The human right watch report of June, 2013 in Tanzania identified that children living in the street belong to the vulnerable groups and they encounter several scenarios of human rights violation by the police which includes arbitrary arrest, torture, assault, rape, and extortion. (Human right watch 2013: 2). Children living in the street often encounter series of physical violence such as beatings and detention when in contact with the police. Premised on their circumstance as vagabonds, they are often victims of brutality and sometimes false arrest during police raid and investigation of any criminal activities especially when it's concerned with hideouts which are the permanent abode of the street children. Whenever vagrancy is declared criminal in the society, the children living in the street face violence being the target of hooligans to be removed by the police (Buske 2011: 99-100); this experience however leads to physical violence against the children living in the street. Prejudice against street children is prevalent among the Tanzanian police because some of them see children living in the street as wayward children and criminals in the society, hence regularly harass and detain into police station (Hamilton et al. 2011: 335).

Several research paper and documentation reports on street children in Tanzania making reference that children living in the street face physical violence. Similarly, reports from NGOs such as UNICEF, interviews with social welfare officer, Police and magistrate pointed out the awareness of physical violence street children experience; however none of this study reports the actual statistic of street children who are victims of physical violence. Though, according to (UNICEF 2009) it was estimated that 1,400 children were detained in adult prison in 2011 and also Street children in police custody often encounter physical violence <sup>1</sup>, as there is inadequate legal assistance and representation available for street children to complain in order obtain justice.

## 1.2 Background of the Problem

Street children in Tanzania face with different kind of physical violence such as being beaten by the police and hard punishment such as carrying heavy stones while in the police custody (Benitez 2007:49). It was reported by UNICEF that there are about 437,500 street children in Tanzania while an estimated number of 3,000 reside in the streets of Dar es Salaam<sup>2</sup>. In addition to this, another report from UNICEF stated that about 25% of Tanzanian children had onetime encountered emotional abuse, while an estimate of 75% experienced physical violence <sup>3</sup> There are several studies which show that street children face physical violence in the hand of police, according to the study conducted by Lugalla and Mbwambo, police officer often arbitrarily harass, round up, beat and detained street children in police stations (Lugalla and Mbwambo 1999: 329). In addition street children are abused and sexual exploited while in police custody (Buske 2011:1). The report by UNICEF on physical violence experienced by children in 2010 is also reflected in the below graph.

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<sup>1</sup> (UNICEF 2009) Justice for children , accessed 02 Oct.2014 at 23:07 pm

[http://www.unicef.org/tanzania/6908\\_10616.html](http://www.unicef.org/tanzania/6908_10616.html)

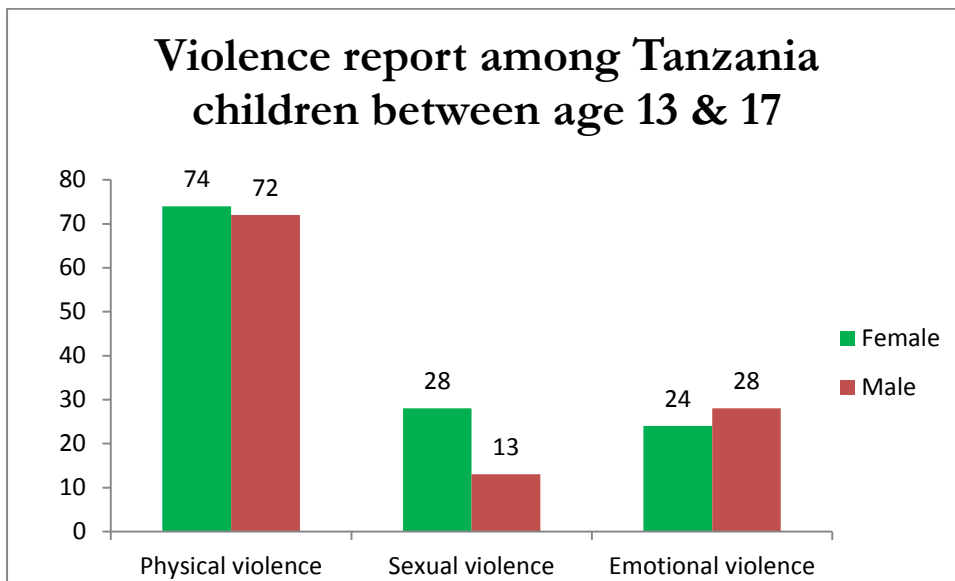
<sup>2</sup> ( Tendwa 2013) Dogo Dogo Centre a home of street children, accessed 02 Oct. 2014 at 18:38 pm

<http://wewriteforrights.wordpress.com/2013/09/11/dogodogo-centre-a-home-for-street-children/>

<sup>3</sup> International day for street children 2013 , accessed 02 Oct.2014 at 19:27pm

<http://www.childhope.org.uk/2013/04/international-day-for-street-children-2013/>

Figure 1: Violence experienced by children in 2010



Source: GOT/UNICEF/CDF 2010<sup>4</sup>

The above graph signifies that 74% and 72% of female and male children between 13 and 17 experience physical violence, while 28% and 13% suffered sexual violence respectively. However, this paper is not about the nature of violence they suffer, but it's about the challenges faced by street children in obtaining adequate legal assistance and representation in order to gain access to justice during physical violence encounter with the police.

Every individual in the category of less-privileged deserves free legal assistance to ensure their access to justice (DIHR 2011: 17). Having access to justice in obtaining legal assistance and representation is a fundamental right of every child without bias and discrimination of any kind. However, premised on several factors that push children into the streets and the prevalence of violence against them, obtaining legal assistance and representation seem crucial to access justice when their rights are being violated. Street children who are victims of violence are entitled to legal assistance for the purpose of justice attainment in rights violation (OHCHR 2011:20), which indicates that street children deserves equal right in obtaining access to justice. But the lack of access to justice in respect of having adequate legal assistance and representation for street children when encountered with physical violence remains questionable in Tanzania as the observed gap in child protection laws unintentionally limits their access in obtaining legal aid assistance and representation.

According to Knaul (2013), the state owns the responsibility to ensure full right realization of all citizens; street children inclusive through the provision of legal assistance<sup>5</sup>. Access to justice in obtaining adequate legal assistance and representation is a crucial and basic aspect of human rights to ensure all individual possesses equal access to justice regardless of status which includes the children who are victims of physical violence in the street. The constitution of the United republic of Tanzania recognise the importance of legal assistance under Article 13 which says everybody deserves to be protected under the law, the word protection under the law necessitates availability of legal assistance for the needs especially for

<sup>4</sup>The multi-sector task force; A national response to violence against children, accessed 11 Oct, 2014 at 19:41pm [http://www.tanzania.go.tz/egov\\_uploads/documents/National\\_Response\\_to\\_Violence\\_Against\\_Children\\_sw.pdf](http://www.tanzania.go.tz/egov_uploads/documents/National_Response_to_Violence_Against_Children_sw.pdf)

<sup>5</sup> Knaul 2013 "Legal Aid, A Right in itself" A report by UN special Rapporteur on the independence of judges and lawyer, accessed on 01 Oct.2014 at 00:37 am <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13382&LangID>

those who are victims of violence which might be limited in practice and application especially in respect of the street children.

### **1.3 Justification of the Study**

Despite the ratification and having both domestic and international law which contained important provisions on access to justice for the violation of rights and protection of children against physical violence such as Universal declaration of human rights, Convention on the rights of the children and African Charter on the Rights and welfare of the child, little has been done by the government and other stakeholders who work in the actualization of realising street children rights in obtaining legal assistance and representation when faced with physical violence. This is also supported by NCPA<sup>6</sup> II 2013-2017, where the government included street children as among the vulnerable group that need care protection and access to basic needs like good health, education, welfare, nutrition (Department of social welfare 2012: 1) but the plans overlooked the aspect of access to justice by obtaining adequate legal assistance for the street children who face series of physical violence.

Also, there are observed gaps in the academic literature premised on the fact that no literature takes cognizant of the challenges faced by street children in obtaining legal assistance and representation when they encounter physical violence by the police for the purpose of accessing justice. Furthermore, there is no literature as regards the oversight of the Tanzanian application of the Child Act 2009 in respect of obtaining legal assistance and representation for the street children who are victims of physical violence. This however motivated me to engage in this study because I regard right to access adequate legal assistance and representation as fundamental rights in accessing justice for the children especially for those who are victims of violence. Street children need care and intense protection in every aspect of their lives. Ensuring their access to justice in respect of easing legal assistance and representation is essential in promoting their well-being and equality in the society.

### **1.4 The Objective**

1. The main objective of the study is to explore the possibilities of street children who face physical violence by the police to gain access to justice in obtaining adequate legal assistance and representation.
2. To find out the challenges faced by children who live in the street to access justice in obtaining legal assistance and representation when faced with physical violence by police.

The findings of this study will look into the challenges encountered by street children in gaining access justice by obtaining legal assistance and representation when faced by physical violence. The aim is to regard children who live in the street as those who need protection and care from the community and other stakeholders by realising their rights in obtaining legal assistance and legal representation in order to access justice. Moreover in understanding the challenges encountered by street children in accessing legal assistance and representation, it will enable the government, law maker, and other stakeholder who work with street children to realise that children living in the street are prone to physical violence, hence are also victims of physical violence and they lack access to justice in obtaining legal assistance and representation. This will enable the government to ensure better ways through which the street children can obtain legal assistance and representation when encountered with physical violence especially by the police.

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<sup>6</sup> NCPA means National Costed Plan of Action for most vulnerable children.

## **1.5 The main research question**

How are street children who encounter physical violence by the police able to obtain legal assistance and legal representation?

### **Sub-questions**

1. What are the measures put in place by government to assist street children access legal assistance, when faced with physical violence?
2. How do the practices of the magistrates, home care centres, NGO, and police enhance the ability of street children to obtain legal assistance and representation?
3. Despite these measures and practices, what are the challenges encountered by street children in the course of obtaining legal assistance and representation?

## **1.6 Research Methodology**

### **1.6.1 Area of the Study and Reasons**

The study was conducted at Kinondoni District in Dar es Salaam City. The reasons for selecting Kinondoni District is, firstly, it is largely occupied by children who live and work in the street particularly in the area of Ubungo Terminal. Secondly, due to the high concentration of street children in these areas, police officer round up of street children in the street is prevalent through which many of them they face physical violence. Thirdly, the selected areas are occupied by few home care centres where some street children are being nurtured, and also located in this district are some NGOs that deal with Legal Assistance for children in assisting them to access justice. In addition, government offices related to social welfare of the children are situated in the areas.

### **1.6.2 Secondary Data**

Secondary data include assorted electronic resources, literature from ISS library and other libraries linked to ISS, key stakeholders, organizations, social and welfare institutes in Tanzania that include: The Women's Legal Aid Centre reports (WLAC); and documents from Kinondoni Municipal Social Welfare Office. The researcher also used some research reports from NGOs dealing with legal aid for children and previous research based on street children from the University of Dar Es Salaam. Also, the study contained number of reference to both national and international instruments on the protection of children rights. The data enabled me to examine the challenges they face in accessing justice through the provisions of legal assistance and representation and also circumstances that lead to physical violence of children living in the street.

### **1.6.3 Primary Data**

Ten structured interviews were held with both public and private officials. The interview conducted with the public officials featured welfare officer, police officers, and public prosecutor on Juvenile Court and Kinondoni residents' magistrates' court. The reason for the choice of interviewees is because they are stakeholders in children right administration. On the side of private officials, the interviews were held with the Head of the centre at Watoto wetu Tanzania, the Advocate of WLAC and the former street children at Watoto Wetu Tanzania centre. Furthermore, interview was conducted with the Program officers of WLAC under the program of Juvenile Legal Aid Programme with the primary purpose to find out the extent that free legal

assistance is available to children living in the street in enabling children obtaining justice. Also, interview was conducted with former street children who are currently living in care homes, the information from the former street children assisted the researcher to understand and analyse the kind of violence street children face on the hand of police and in what circumstances, extent and challenge in obtaining legal assistance and representation for the purpose of access justice.

Also, another interview was conducted with the Head of home care centre known as Watoto Wetu Tanzania to gather information concerning the physical violence faced by street children and the role of the home care institute in helping them to have access to justice under legal assistance. Furthermore, the researcher also conducted interview with the Municipal Social welfare officer for most vulnerable children in Kinondoni District, the information from welfare officers assisted the researcher in finding the responsibility of the officers in assisting the children who live in the street in obtaining justice when face with physical violence and to what extent officers help children to access legal assistance.

The researcher also conducted interviews with police officers at Magomeni Police station, the information from the police officers enabled the researcher to analyse the extent to which children living on the street have access to legal assistance in obtain justice by channelling their complaints through the police station, how the police handle the issues of street children who seek legal assistance, and it also unravelled the awareness of the police on violence faced by street children. Also, the researcher conducted interview at Osterbay Police station, which is among the biggest police station at Kinondoni District which has Gender and children Desk that specialise in handling women and children complaints. The researcher's purpose is to explore the extent of awareness of the gender and children desk in respect of physical violence faced by children living in the street and also to know if the desk can assist children living in the street with legal assistance for the purpose of obtaining justice by furthering their complaints before the court of law. These entire information assisted researcher to find out and analyse as to what extent this children have challenge in access to justice through the provisions legal aid assistance when their rights are being infringed.

All the mentioned respondents delved lots of insights in providing information as regard the extent on how children are being assisted with legal assistance in accessing justice and also the challenges faced by these children in obtaining justice through legal assistance.

## **1.7 Limitations of the Study**

### **1.7.1 Challenges Encountered in the Research Field**

Considering the time frame in conducting this study; it was not easy for a researcher to cover every district in Dar es Salaam and other part of the city in Tanzania, therefore the study focused on Dar es Salaam city as sample of the entire Tanzanian metropolis with most data collected from Kinondoni District.

Furthermore, the study was sensitive in nature considering its involvement with government officials as regards information dissemination. This situation made it difficult for me to get some of the information from police stations as they were not straight forward in answering some of the questions and they did not assent to record the interview. In addition, during the interview at the police station, it was hard for the researcher to observe the situation in detention room as a matter of confidentiality. Also in the Juvenile courts, prosecutors and magistrates were busy attending to several issues; it took the researcher lots of time because there were lots of break in conversation owing to the busy schedule of the interviewees. To get permission from the Director of Kindononi Municipal for the purpose of conducting interview

with the social welfare officer took a long process. Furthermore, it was difficult to access documented information from court and police due to the principle of confidentiality. In addition, there were no databases from both the police stations and Kinondoni magistrate court which shows the number of street children who reported physical violence and those who obtained legal assistance, this was an obstacle in knowing the exactly figure of children who face physical violence in the street and who obtain legal assistance. Also, it was difficult to attend the hearing sessions of cases involving child assault and violence; this was due to postponement of the hearings date premised on inadequate investigations and sometimes absence of witness. Furthermore in Kinondoni Residents Magistrate Court, most of the cases involved street children as offender in collaboration with adult offender, and no data base shows any record of street children seeking justice for the physical violence faced in the street, this was an obstacle in assessing the actual number of street children who succeed in having access to justice.

### **1.7.2 How the Challenges were overcome**

Despite the challenges encountered during the field work in the course of conducting interviews with the above mentioned officials, the data was collected successfully. The researcher ensured enormous information gathering from the tight scheduled magistrate and other court officials. The information gathered from all the respondents were concisely interpreted, analysed and used to establish the focal points of the findings and most of all, it proffered answers to the research questions.

Therefore, the findings from this study cannot be generally applied to reflect the problems in the other cities of Tanzania, because it contains a sampled portion of Dar es Salaam which is Kinondoni District. Nevertheless, the problem of physical violence against street children and lack of access to justice in obtaining adequate legal assistance in many cases does not really differ in the entire cities of Tanzania; hence the empirical evidences gathered cannot be overridden.

### **1.8 Ethical Consideration**

Research permission was obtained from International Institute of Social Studies of Erasmus University the Netherland. A permission letter was obtained from the Director of Kinondoni Municipal as regard to interview with Kinondoni Municipal Social welfare officers. The consent of the home care director was sought to grant credence in order to conduct interviews with the former street children. The researcher also introduced herself in certain circumstance with a succinct purpose of the study to gain access to some officials like the police as regard interview and information gathering. The researcher made the participants and respondents to be aware of the purpose of research; this however ensured their comfort to participate and co-operate in providing useful information. Privacy and confidentiality of all information provided by the participants was assured to be treated with utmost confidentiality for academic purpose only.

### **1.9 Structure of the Paper**

The second chapter of this paper reviews the contextual framework of physical violence experienced by the street children and its government response while chapter three takes the international and domestic legal framework of children's access to justice. Chapter four evaluates the challenges of street children in obtaining legal assistance to access justice when encountered with physical violence as regards the findings and lastly, chapter five takes the conclusion and recommendations of the study.

# Chapter 2: Contextual Framework on Physical Violence Faced By the Children Living in the Street

## 2.0 Introduction

This chapter showcases the contextual framework of children living in the street as regards the physical violence they encounter in the street. The chapter contains the definition of street children, categories of children living in the street, the circumstances that push them into the street, the physical violence faced by children especially when they are in contacts with the police and the government response to physical violence encountered by children.

## 2.1 Definition of Children who stay in the Street

In general, the most common definition of children living in the street as defined by UNICEF states that any teenage that lacks appropriate supervision of a parent whose street is his/her home is a street child (UNICEF)<sup>7</sup>. The children who live in the street are viewed and perceived differently by the community. In various cases, these children are seen as the children who perpetrate crimes; this is accentuated by the different names given to them in different places such as “little bugs in Columbia, fruits bird in Peru” (Inciardi and Surratt 1998:1462). For instance, In Dar es Salaam city children living in the street also have been given different bad names such as *watoto wa mitaani*, *wadokozi*, *panya in Swahili* which means pick pockets and rats. (Buske 2011:102)

## 2.2 Categorisation of Children who live in the Street

In understanding the problem faced by the street children in the society it is important to know the different categories of street children. According to literature, children living in the street can be divided into two major categories. One is the children on the street referred as temporary or part-time street children, these children live with parents or guardians, but due to some reasons such as poverty or violence within the households, they stay on the street to beg during the day and return home in the evening. The second category is children of the street; these children are referred as permanent street children whose residence is the streets (Wegner et al. 2012:35). The permanent street children often spend most of their life in the street. In some cases, they lost physical contact with their parents and continually fend for themselves. All the children that fall into this category lack guardians or parental care, and they tend to be helpless with high risk of physical violence such as beating and arbitrary detention in the police station (Lugalla and Mbwambo 1999: 331).

## 2.3 Circumstances that Push Children into the Street

Various circumstances push children into the streets of Dar es Salaam. This varies depending on their family situation. The economic hardship within the household, physical violence such as torture, sexual abuse and severe beatings from their parents are factors advanced as key push causalities for the increasing number of street children (Conticine and Hulme 2007:215-216). The report from Tanzania legal and human rights centre shows that there are about 863 reported cases of child sodomy and sexual abuse faced by children from their caregivers. This situation has pushed many of them into streets to seek refuge; a better option than facing brutality at home (Mlowe and Mikongoti 2014:179).

In addition, orphaned children migrate daily from rural areas to the capital city; Dar es Salaam in search of a better life. Frequent droughts precipitated by global climate change have

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<sup>7</sup> (UNICEF) A study on street children in Zimbabwe, accessed on 02/ November 2014 at 02:59 am [http://www.unicef.org/evaldatabase/files/ZIM\\_01-805.pdf](http://www.unicef.org/evaldatabase/files/ZIM_01-805.pdf)

adversely affected central regions of Tanzania such as Dodoma, Singida and Tabora which caused incessant food insecurity problems which led to several deaths. Premised on this poor living condition in these regions, children from these areas migrate hoping to eke a living off the streets of Dar es Salaam owing to separation from their biological parents and guardians. However, abandonment and dumping of children has so far exacerbated the prevalence of street children. It was estimated that about 250 children were abandoned by their parents in the period of January up to December 2013 (Mlowe and Mikongoti 2014:179).

## **2.4 Physical Violence Faced By Children of the Street**

Physical violence is the use of force with an intention to cause harm or injury to a person, children of the street are recognised globally as children who are at high risk of multiple abuse because they are permanent residents in the street. It is highlighted in many reports from the state of the world Children under UNICEF that the difficult circumstance of children who live in the street includes abuse and different forms of violence (Benitez 2007: 1).

There are different situations that cause the children who spend their live in the street to face violence from police officer or citizen. In situation of round-up of the vagabonds and beggars in Dar es Salaam especially in Kinondoni District, police beat street children and also detained them into police station. The study conducted by Lugalla and Mbwambo shows that in many situation street children are harassed by police, detained, beaten and in some cases are repatriated back to their rural home (Lugalla and Mbwambo 1999:329). Also in the context of Buske (2011), arrest and assault of street children is rampant in Arusha city in Tanzania the police rampage commonly known as round-up. Any apprehended street kid would be kept in police nest for weeks or months without an attempt of judicial case review of the detainee. The detained children are subjected to severe beatings, abuse and sexual exploitations while in police custody (Buske 2011:1).

The perception of the police and other community member about these children as hooligan and nuisance in the city contributed much to their neglects and physical violence against them. Little attempt from the government to know where these children come from, their reason of being in the city and how they survive to meet their daily basic needs aggravate the increase in the number of street children which aids the continuity of violence encountered by the children living in the street. Due to the nature of their life in the street, these children find themselves in different situation in the course of survival. They sometime find themselves in situations that signifies breach of laws and, at times they are caught around the vicinity of the crime, this indicates that in occurrence of any crime that needs investigation, the police arrests everyone in suspected criminal hide-outs which happens to be the abode of the street children who in some cases might not necessarily be involved in the crime.

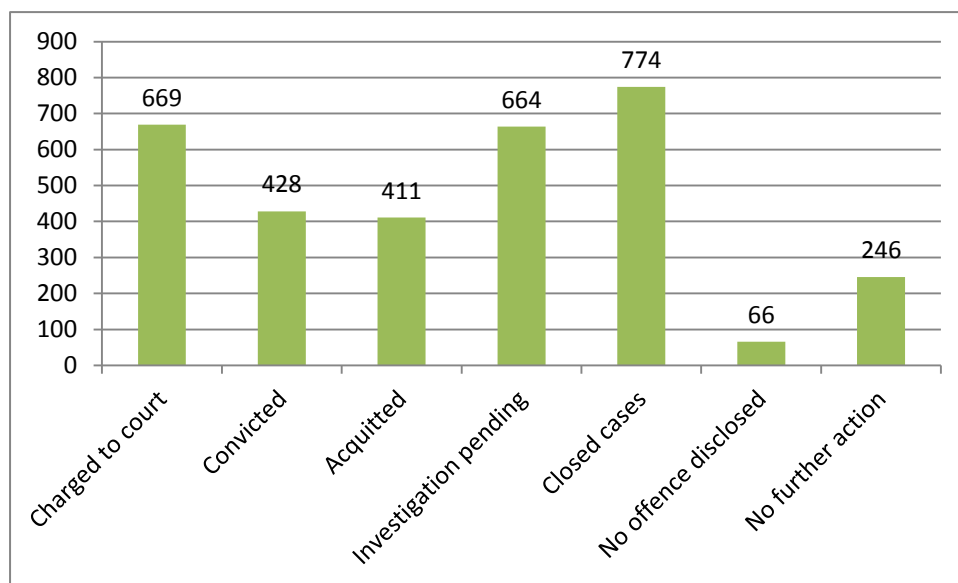
Police patrol team often raid abandoned buildings where street children reside and each occurrence leads to severe beatings of the street children by the police (Wegner et al. 2012: 42). In the research conducted by Lockhart in Urban Tanzania which focused on the life of street children shows various abuse and physical violence experienced by these children who are living in the street. He asserted that street children who sleep in abandoned houses after working or wandering all day in the street encounter brutality from some police officers and night guards. Lockhart's research showcased how children living in the street face physical violence from the people who are regarded as peace makers and civilian protectors. In his research, he narrated the death of one of the street children who was killed by some unknown *sungu sungu* which means police night guard. The victim was beaten to death, and no action whatsoever was enforced to unravel the murderer, because the deceased was a mere street vendor who had no parents to cater for his well-being, therefore the case was not attended to (Lockhart 2008: 105-106).



The acts of brutality and physical violence are not only experienced by street children who reside in Dar es Salaam. The street children living in other parts of Urban Tanzania also face the same challenges. In 2001, the Council of Arusha City ordered police round up, arrest, detention and imprisonment of street children for the aim of sanitizing the city to ensure safety and cleanliness ( Benitez 2011: 60-61). Street children round up is violation of human rights as child rights violation occur during the round up. In the operation of cleaning the city for the purpose of security and safety, the homeless children are the major sufferers as they are more affected because they had no place to recourse to and this led to some of them being abused by the police and some eventually ended in prisons.

In various situations these children are at higher risk when in contact with the police, police use force on the verge of arrest and also inflict violence and torture on them during interrogation in the police station as they are coerced in making confession in situations of suspicion and accusation. The acts of arrest and detention of street children sometimes are not recorded in the police case file. In addition, these children spend some days before their release or sometimes end up in prison and in some cases, the police are bribed before the detained street kids are released from the police custody, however children who are arrested and abused by police in the street lack legal assistance and legal representation in the police station proceedings in order to access justice (Anderson 2012: 8-11). Also this is supported by Van De Meene who believe that inadequate legal assistance is major hindrance in accessing justice (Van De Meene 2008: 10-11)

Figure 2: The profile of children arrested by police in Tanzania between 2008 and 2010.



Source: Penal Reform International 2012

Figure 2 shows the incidence profile of arrested children in Tanzania from the study conducted by the International Penal reform 2012 which states that about 3,258 Tanzanian children are arrested between 2008 and 2010. Figure 2 also shows that about 669 are charged to court following their arrests while about 664 cases are pending and an estimated 246 children are in police custody without further action taken to adjudge their cases. In addition also figure 2 shows that 441 acquitted, 66 no offence disclosed, 774 closed case. The implication of the children arrests as shown in figure 2 signifies that many children especially those living in the

street are caught by police officers without proper investigation to ascertain those who are offenders in conflicts with laws and those who are not, this might be contributed by bad perception over the street children who are seen as criminals. The above number of children arrested arbitrarily without a proper investigation is a justification to show that children living in the street face physical violence unnecessarily while in street and also during arrest and in the detention room.(Penal reform International 2012: 10-11). The reflection of figure 2 also shows the lack in the access to legal assistance and representation of children in Tanzania especially as regards those who live in the street. The data provided by MoCLA<sup>8</sup> also shows that many of the children who are arrested face their ordeal as a result of poverty, lack of parental care and they mostly found themselves in the hands of police being seen as guilty of vagrancy, loitering, touting etc ( Penal reform International 2012:11 ).

### **2.4.1 Physical Violence Encountered By Street Children in the Hands of Police**

There are various situations that results to the violation of street children rights. In the acts of arrest, police beat them and harass them unnecessarily as street vendors in the offence of loitering and vagrancy. In any situation of criminal acts, these children are often the victims as no proper investigation is enforced to know the actual culprits of the crime. In the process of investigation, they arrest these children, detain them in the police station, force them to confess the crimes which some of them do not commit. They are beaten brutally if they don't admit as regard to the commitment of the offence. According to the study conducted by Kirsten Anderson shows that children living on the street are mostly the victims of physical violence; police detain them for some hours and then release them after being abused while in the police custody, sometimes some of the police demand for money as bribes prior to their release. (Anderson 2012: 9).

In addition the same report shows that these children mix up with adults in the detention, this situation exposes them to more physical violence and abuse as some of the children are beaten or hit by adult detainees. Street children who are detained lack access to professional lawyers who can represent them during the detention and this result to further maltreatment. Against national law and international law, police often detain children more than 24 hours in police custody because the investigation takes more time before they make decision in proceedings with the charges, while the children face physical violence during detention. The study conducted by Anderson who had interviews with the children shows that some of the detained children are admitted to hospital followed by brutality encountered in police custody (Anderson 2012:10) and the report by UNICEF on justice and child protection in Tanzania finds that police station is not friendly for the children as a result of abuse<sup>9</sup>.

## **2.5 Response to Physical Violence against Children by the Government**

Under the National Response on Violence against Children in Tanzania, the government formulate three comprehensive strategies for prevention and providing service so as to make sure that children are protected against all forms of violence. This strategy includes all Tanzanian children be it those who live with their parents and those who live alone in the street.

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<sup>8</sup> MoCLA means Ministry of constitutional and Legal affair

<sup>9</sup> (UNICEF 2009 ) Justice for Children accessed on 04/ November 2014 at 01:37 am  
[http://www.unicef.org/tanzania/6908\\_10616.html](http://www.unicef.org/tanzania/6908_10616.html)

Figure 3: The government strategies in response to physical violence

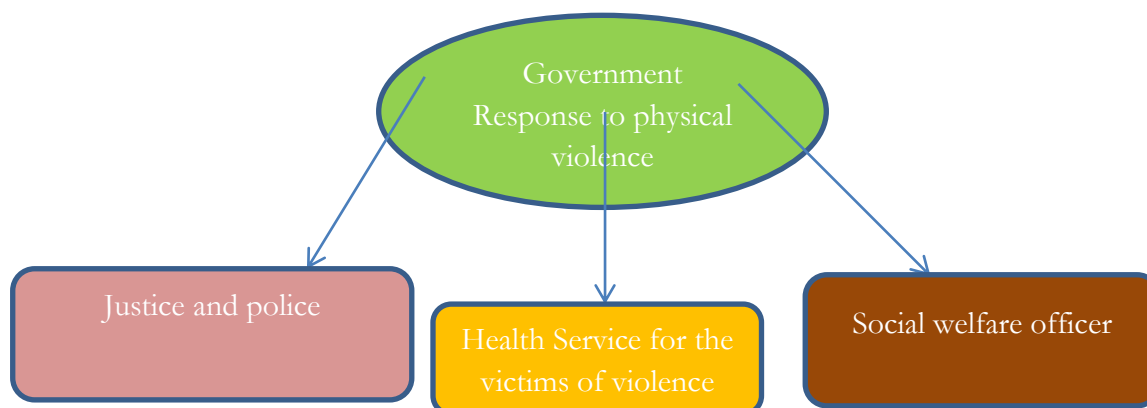


Figure 3 shows the government strategies put in place to respond to physical violence encountered by children. The First strategy is Justice and Police, in response to the physical violence under this strategy the government creates Gender and Children Desk in all police Station (MCDGC 2010: 9) the gender and children desk is created for the aim of providing conducive environment for women and children to freely channel their complaints into police stations, the desk is mostly occupied by police women. Under this strategy, police are regarded as essential people in providing justice and protection to all children, due to the fact that police are seen as first contact persons by victims of violence. The strategy is good as the preliminary methods of including women and children in seeking legal assistance and in the promotion of children access to justice. However, due to the poor relationship between police and those children living on the street, it is difficult for the children to institute claim through the police station (Buske 2011: 1). Therefore, the strategy is not really helpful for the children who live in the street as they lack confidence in channelling their complaints to police officers.

The second strategy is access to health services; health access is important in ensuring that children who are victim of abuse can have immediate access to health treatment (MCDGC 2010: 9). In order to access health services in Tanzania, especially for those who face physical violence there are some requirements needed in hospital prior to service. Police form three is part of the requirements and procedure for conducting medical examination reports at hospital and also to keep records of all kind of violence. The police form known as PF3<sup>10</sup> can only be obtained at the police station. This is also a good method in response to the physical violence on the side of the government to ensure that children who are victims of physical violence can have access to health service at preliminary stage, but then, as mentioned earlier it can be difficult for children living in the street to seek PF3 from police station and also the necessity of that form can hinder children in having health service when face with physical violence. This also supported by the reports from human right watch in Tanzania, which shows that the necessity of PF3 form hampers access to health services for the victims of violence (Human right watch 2013:75)

The last one is Social welfare officer; this is another strategy from the government as to the response of physical violence against children. The function of the officers are provided under the Tanzanian law of the child Act 2009 under Section 20, as they have duty to support

<sup>10</sup> PF3 is the police form three, which must be fill out by police for most Tanzanian hospital to treat the victims of physical violence

children who are victims of violence by providing them with adequate information and other procedure necessary in protecting their rights (MCDGC 2010: 11) . Under this strategy, street children are incapable of having access to those social welfare officers because the strategy does not openly state how and where to seek protection from social welfare officer especially for the children living in the street.

In the above strategy on response and protection of children against violence especially in regarding police officer as the essential people in providing justice, it remains questionable because not all police are good to the street children as discussed above and the government is not taking cognizant of that. For instance several study including the one conducted by Lugalla shows that these children who live in the street are abused by the same police who are meant to be law enforcement agents (Lugalla and Mbwambo 1999: 329). This posits an obstacle for these children who face difficulties in the street to channel their complaints to police station as they don't have good relationship with police; this can hinder their access to justice.

The ratification of international instruments namely the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) means Tanzania is obliged to safeguard the rights of all children in harmony with these principles. But is the Government doing enough to protect the children's rights as stipulated in these instruments? Tanzania is in principle committed to ensuring that the rights of children are respected, of which right to be protected and access to justice is included. Nevertheless the challenge remains the use and translation of laws and policies effectively to deliver equitable and lasting results in protection of the children who work and live in the street, this is imperative due to the physical violence, harassment, assault, arbitrary detention encountered by the street children from police and other members of the public (Lugalla and Mbwambo 1999: 338).

Facts from UNICEF on Tanzania demonstrate that while significant steps have been taken to improve the legal framework for the protection of the rights of children in Tanzania, street children are still prone to physical violence and abuse. Commonly, the very institutions and public officials that are supposed to protect people such as police and night guards are cited as the perpetrators of the physical violence (Mlowe and Mikongoti 2014:221).

# **Chapter 3: Legal Framework on Access to Justice in Obtaining Legal Assistance and Representation for Children Facing Physical Violence**

## **3.0 Introduction**

This chapter takes the breakdown of the application of the legal framework at international and domestic level as it concerns the access to justice in obtaining legal assistance and legal representation of the children who are victims of physical violence. The Tanzanian government ratifies the convention on the right of the children on the need to protect children's rights including access to justice in obtaining legal assistance. This however outlines the effectiveness and limitations of the existing laws in the mention of Tanzanian Child Acts 2009 and Tanzanian legal assistance provider towards obtaining legal assistance and representation for the poor people which include children living in the street. The Tanzanian Child Acts recognized the rights of children by necessitating that parents are responsible for the care and protection of their children but failed to capture the essence of considering children that live on the street without parents. The existence of the penal code of Tanzania which frowns against vagrancy, vagabonds and loitering is crucial in maintaining order and sanity in the Dar es Salaam city, but the other side of the implication of implementing punitive measures of the penal code against offenders seem not considered, because children living in the street are perpetually guilty of vagrancy and vagabonds being permanent residents of the street. This chapter also showcases the UNDP framework for access to justice.

## **3.1 The International Laws on Access to Justice in Obtain Legal Assistance and Legal Representation**

The convention on the rights of children was formulated in recognition of the need to ensure equality and indiscriminate in the rights of children including access to justice in obtaining legal assistance when their rights are violated. This was enforced to harness legal assistance for the purpose of obtaining justice for the children who face physical violence. In Article 37 (d) together with Article 40 paragraph 2 (iii) of the Convention provided for the rights of legal access for the purpose of accessing justice for the children, the convention calls for a state party to ensure that children have access to legal assistance, this is to ensure equality before the law for the children especially for those who are victims of violence because children living in the street whose rights are violated are not capable of having legal representation which results into more abuse at the hand of police while in the street or during arrest and detention in police stations.

In ensuring the protection and promotion of the welfare of children, Tanzania ratified various instrument of child protection. The convention on the right of the children is one of the major instruments concerning the protection of the rights of children. Large part of the convention states that the state should take responsibility as regard to the welfare of the children. In Article 37 (b) of the Convention of the rights of the children, a state is called to ensure protection of the children against all kinds of degrading treatment, detention and arrest. The act of physical violence by police against children falls under this category which is violations of international laws in children rights to protection.

African charter on the rights and welfare of the child (ACRWC) under Article 16 also provide for the protection of the children against all forms of abuse and torture including physical violence, ACRWC under Article 17 on Administration of Juvenile justice, it is stated that legal assistance is necessary in accessing justice, by the provisions of legal assistance it will empower children to know their rights and it will also enable them to access justice. All these

instrument aim at protecting child right in accessing justice, but due to inadequate provision and weakness of the domestic laws. Children who are living in the street face bunch of physical violence as mentioned earlier and also they lack access to adequate legal assistance and representation.

For the purpose of meeting international standards on human right law, access to justice through the provisions of legal assistance and representation for children who are victims of physical violence require necessary provision for the information which enables children to claim their rights when it is being violated and attain justice for the same. Due to inadequate legal assistance and representation regarding their rights and how to fight for the redress, children living in difficult circumstances require the creation of legal framework and enforcement mechanism to ensure their access to justice ( Grandjean 2010: 265 ). Children empowerment of legal rights will enable them to seek assistance in case of violations of their rights (Hamilton et al. 2011:10). As the case of all individuals in a particular state, children whose rights has been infringed should have effective legal assistance supported by court of competence or other institution that deal in the provisions of legal assistance and representation. Children awareness of the legal rights and provisions of legal assistance will help reduce the violence against them as no individuals will take them for granted.

Access to justice for children through the provision of legal assistance can be found on various international human rights laws such as declaration on human rights and UN convention on the rights of the children. Both of these instruments emphasize on access to justice. Globally the term access to justice is recognised as one instrument in the promotion of human rights (Francioni 2007:11). This indicates that every individual has the rights to access legal assistance for the purpose of obtaining justice which also applies to children living in the street, to access justice necessitates having free legal assistance and representation for the children.

In the provision of Article 10 of the Universal Declaration of Human Rights which provides for the equal right and fairness in the public hearing means right to access all necessary procedure to reach justice which include legal assistance and representation. Pursuant to this Article 10 under UNDHR, the constitution of Tanzania under Article 13 (1) also points out the need for equal access to justice for all citizens regardless of their economic and disability factors. Despite the fact that Tanzania has some of legal assistance provisions through NGO, the challenge lies in the administrative costs and insufficient fund to finance the free legal aid which hampers its access justice to the teeming number of needy (Bowd 2009:3)

## **3.2 Domestic Legal Framework for Addressing the Plight of Children**

### **3.2.1 The Tanzanian child Act 2009 and its gaps**

Tanzania officially recognised the importance of domesticating the international instruments on the rights of children by developing a Child Act. The formulation of this special law is purposely to protect and promote children well-being. The Child Act of 2009 recognises the rights of Tanzanian children however; there are gaps in some of the provisions under the Act especially in the protection of the children who live in the street. The Act which seems to be formulated with the children resident in family homes in mind is silent on the Governments obligation to protecting the other categories of homeless children, especially their rights to access justice in obtaining legal assistance and representation for those living in the streets when face violence. Section 8 (1) of the Child Act 2009 stipulates that parents bear the responsibility and duty to maintain children. Section 9 sub-section (1) of the Child Act stated that parents have the duty of provision of shelter for their children. But, some pertinent questions need to be asked. What

about orphans who lost their parents and other children who live alone in the street of Dar es Salam? What about street children who became street urchins as a result of the poor economic state of their households? Did the law consider these entire categories?

Section 9 sub-section (3) of the Child Act 2009 also provides for the protection against discrimination, violence and abuse of children. The duty of protection against violence is once more tilted towards parents. The burden rests with their parents or any other individuals and/or organizations that are sympathetic to them. This seems insensitive to the needs of those children who live in the street that face multiple forms physical violence.

In the provision of Section 18 of the Child Act which provides for the caring order of the child who is suffering from physical abuse and any harm. Caring order provided under the Child Act gives power to the social welfare officer to take responsibility by transferring the parental right to a person who is fit in taking care of the child. The social welfare officer has power to determine the right place for the child which can be either in an approved house or any person who is fit to take care for the child. The Law does not mention or provide the same power to social welfare concerning the children who live in the street that face physical violence. In this scenario the children who live in the street are not really considered as they have nobody to advocate for their rights.

However, Child Act protect the children against torture and degrading treatments under Section 13, but it fails to foresee and provide friendly environment on how those children who are facing physical violence in the street can access their rights to justice in seeking legal assistance and representation. This is also contributed by the fact that the procedure to channel complaints are complicated especially for the children who live alone without parents, because they are required to open charges into police station before the case is filed to the court.

The rights to legal representation also recognised by the Child Act under section 99 paragraphs (f) which provide for the rights to legal representatives to the children. This could help in ensuring that children have legal rights and also a good recognition of children right in seeking legal assistance. Nevertheless, there is an obstacle for the street children in accessing those professionals who can help them in free legal assistance. This means that both the international laws together with the national law recognised children rights to access justice through legal representatives but the problem lies on the implementation of the laws by the governmental official to ensure that children having access to free legal assistance.

### **3.2.2 The Tanzanian Penal Code and Its Gaps**

In the formulation of penal code the law makers overlook the circumstances of children living in the street, according to the Tanzanian penal code vagrancy, vagabond, loitering are forbidden. However, children living in the street are inevitably guilty of the aforementioned crimes due to the fact that they are homeless and these results in one of the reasons they encounter physical violence with the police especially in the course ensuring vagrancy and loitering is prohibited. Section 177 of the Penal Code prohibits vagabond and rogues with strict measures punitive for same. However, Tanzanian street children fall into this category of miscreants because the street is their permanent home. However, the offences prohibited in the penal code are the attributes of the children living in the street because they mingle with the miscreants on the verge of their survival which exposes them to physical violence and punitive measures by the government. (Freeman 2000:9). Without considering all categories of children living in the street, the penal code unintentionally imposes harsh punishment to the person who is liable for the offence. For instance, three month imprisonment and repeat offenders are liable for up to one year in prison. Inadequate legal assistance and representation result to more physical violence of street children when in contact with the police due to the aforementioned offences.

### 3.3 The UNDP Access to Justice Framework

Access to justice has become part of UNDP under its commitments on Millennium Development goal to work for those who are poor and disadvantaged including women, children and the minority by empowering them to seek remedies for injustice. For the purpose of this study, UNDP defined access to justice as “the capability of individuals to seek remedy, be it obtained through formal or informal institutions of justice” (UNDP 2004: 3-4). The word remedy comprises free legal assistance especially for the victims of physical violence who seek to access justice for rights violations. In another sense, Francioni states that “access to justice can be used to describe legal assistance” (Francioni 2007: 11). Therefore legal assistance and representation for the children is of importance in order for the children to access justice. Access to justice for UNDP includes legal representation, legal empowerment, legal awareness and legal assistance. However, the components of the aforementioned terms are all inter-woven to ensure access to justice. In practical ways in order to access justice, the following below explanation are practical factors as created by UNDP for the determination of access to justice, this practice is necessary for everyone in accessing justice especially for the poor children living in the street .

The principle of equality before the laws and presumption of innocence entails freedom from detention and fair public hearing (UNDP 2004:5) which means that every individual including children has the rights to be freed from detention unless proven guilty. This principle prohibits children detention in the police station as regards international law of the child. The report from UNICEF acknowledges that Police station is not friendly for children and exposes them to more abuse (UNICEF 2009)<sup>11</sup> . The principle of equality before the law and the presumption of innocence make it open and clear that the acts of police to detain children in the police station is against national and international standards and it also reveal the inadequacy of legal assistance and representation which equals to the facts that street children encounter denial of their right to access justice.

The second category is Judicial independence, under this category, the state is required to provide enough resources on judicial institution including provision of legal assistance to enable the judicial system to properly perform its duty (UNDP 2004:5), and also the national laws must guarantee the prohibition of interference of judicial process by other organs. The prohibition of interference of judicial process is the way to improve justice administration as no individual is above the law; this principle enhances and enforces equality in the society regardless of age limits and status of any kind.

The third category implies the responsibilities of the lawyers; on this principle it is required of the government to ensure equal access to lawyers for the poor and most disadvantaged people (UNDP 2004:5) including children who live in the street. Nevertheless, the plaintiff would still incur some cost to prosecute the offender despite that the legal access is free. This principle is very crucial in harnessing children access to justice especially those who live in the street and those who are victims of physical violence considering their financial status.

Lastly, the code of conduct and law enforcement officials, this requires all official to defend human rights and provide help for all individuals who are in needs regardless of their economic and social circumstances. (UNDP 2004: 5). Based on this, the state is required to provide access to justice for all citizens especially for the children who are living on the street faced with violence day and nights. The main important practice on access to justice formulated by UNDP is on the side of law enforcers which are police, prosecutors and magistrates. These officials are very important to ensure that children have access to justice, by helping to realize

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<sup>11</sup> (UNICEF 2009) Justice for children, accessed on 23 July 2014 at 17:32  
[http://www.unicef.org/tanzania/6908\\_10616.html](http://www.unicef.org/tanzania/6908_10616.html)



their rights through the provision of friendly environment for the children who do not have guardian and parents to channel their complaints on their behalf.

## **Chapter 4: Evaluating the Challenges of Street Children in Obtaining Legal Assistance and Representation for the Purpose of Access Justice when Faced with Physical Violence**

### **4.0 Introduction**

This chapter analyses and discusses the study findings as regards the challenges of children living in the street in obtaining adequate legal assistance and legal representation when faced with physical violence and the practices of the magistrates, NGOs and police in ensuring children living in the street obtain legal assistance and the structure put in place by the government to enable justice for children living in the street when their rights are being violated. The findings showcased the extent and lack of their legal assistance as regards the challenges they encounter in channelling complaints to access justice and also shows the gaps in the provisions of the government for legal assistance in respect of insufficient social workers, requirements of 20 USD as advocate transport per court visit, low sensitization of rights awareness, and improper juvenile judicial system on child right violations.

### **4.1 The Challenges of the Children Living In the Street in Obtaining Legal Assistance and Representation When Faced With Physical Violence**

The study findings on the physical violence faced by the children living in the street reveal that, children who live in the street face multiple forms of violence from police, other citizens such as drug users and some members of the community. Interview with former street children on their experience of physical violence noted that, during the arrest or any investigation acts by the police officer, police arrest all children who are living on the street and detain them in police station. In the police station, they are forced to confess on allegation and in the process of interrogation, police beat them and sometimes encounter the same abuse from adult detainees who beat and harass them. This is also corroborated by the study conducted in Tanzania by Kristen Anderson which revealed that children are badly beaten and maltreated while in police custody and they are forced to confess and sign allegations they don't know (Anderson 2012: 10-11).

Reflecting on the above findings, a former street child currently under the care of Watoto Wetu Tanzania centre said:

“I lived at Ubungo Terminal, as you know that in Ubungo there are a lot of travellers, most times travellers claim that their properties are stolen, so in many cases police visit the place for inspection and arrest everyone in Kijiweni, in Swahili it means; the place that idle citizens stay . I was taken too, because Ubungo is the place where I used to sleep and I spent almost 8 years there before coming to this centre; Watoto Wetu Tanzania. After the said operation, police beat me and detained me in police station for two days, then the following day they took me to Kigamboni Primary Court for the charge of armed robbery which I didn't commit..., after the Magistrate read my case for the first time in the court, the Magistrate said that my case isailable and I have to fulfil all requirements for bail, but I didn't have access to guarantors and money, then I went to prison and spent six months before the Magistrates released me because there was

no enough evidence on the side of the public prosecutor.” (John 2014: Personal Interview)<sup>12</sup>. This is corroborated by the 2010 report of the African committee of experts on the rights and welfare of the child that lack of access to legal assistance alongside inadequate legal representation and support for victims of rights violation is the inherent factors limiting access to justice of children in obtaining justice when encountered with violence (Hamilton et al. 2011: 11). This is an indication that having access to adequate legal assistance and representation when faced with rights violation is crucial to enable access to justice for children living in the street. The victim in this context would not have spent another six months in prison if there was access to free legal assistance in terms of representation in the legal proceedings of obtaining justice.

In respect to the findings, there are some street children who are victims of police rampage, and they face unwarranted abuse from police. In some cases, children living in the street actually find themselves in conflicts with laws due to the circumstances they are encompassed with thereby caught in breach of laws, this was noted by another former street child who admitted to steal because he needed money to buy food and was caught by the community members, according to Mahando the community member beat him and set him afire but fortunate to be rescued by some people (Mahando 2014: Personal Interview)<sup>13</sup>. It was gathered that children living in the street face physical violence and violence are for both who are offenders and those who are not offenders; victims of violence.

The findings were supported by the words of Mahando who was previously a street child but currently residing at Watoto wetu Center who said:

“Life in the street was very harsh, I suffered a lot. I want to be honest with you, not all police beat me, some of them have sympathy but some of them beat me, they don’t have mercy with children. I was caught by police five times and I was beaten like a dog. Then, they took me to the police station and took all the money I earned, you know I wash cars and to be honest sometimes if I don’t have anything to do, no job and no money to eat to be honest, I steal money; pickpocket. In some situation police caught me because I was truly guilty, but in some cases they just arrest me while I am innocent but because they have already marked my face. If anything happens in the neighbourhood, they come for my arrest because I live in the same Kijiweni, so it was easy to be caught in several times by police. In different situation, I just stayed in police station for one day or two days then they release me. I never went to court or to prison, and sometimes I pay them before they release me. I hate police and I don’t think they are human being, they harassed me as if they don’t have children back home, I don’t have a good feeling about the police and wherever I see them I feel bad” (Mahando 2014: Personal Interview). This justifies that poor investigation of police officers as a result of stereotype might cause violence against the children living in the street, as the above assertion of a former street child shows that he was arrested repeatedly having being once guilty of stealing, this also boils down on the lack of legal assistance and representation of the children living on the street. This also supported by Johnson that in many cases poor people don’t have access to legal representation to obtain justice (Johnson 1998:488).

Children living in the street who are victims of physical violence have obstacles and challenges in accessing legal assistance to obtain justice as seen in the previous chapters; these children face various challenges in accessing justice due to lack of information and awareness

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<sup>12</sup> Personal Interview with Michael John on the circumstances and experience on physical violence on the hand of police and the challenge in access justice through the provision of legal assistance held on 9/ 07/ 2014 Michael John is former street child living under the care of watoto wetu Tanzania center.

<sup>13</sup> Personal Interview with Sospeter Mahando on the circumstances and experience on physical violence on the hand of police and the challenge in access justice through the provision of legal assistance held on 9/ 07/ 2014 Sospeter Mahando is former street child living under the care of watoto wetu Tanzania center.

which hinder them in seeking legal assistance (Hamilton et al. 2011: 10). This is also supported in the assertions of Khan that legal empowerment is crucial in ensuring that people obtain legal assistance in access to justice (Khan et al. 2009: 203). This is evident in the case of Mahando who happens to be a victim of false arrest during police rampage. Legal assistance for the children on their rights and how to obtain assistance is an important way of ensuring their access to justice. Also, poor relationship with police is also a challenge that hampers them to access justice to obtain legal assistance. It was revealed that children living in the street are incapable of opening charges in police station because they are afraid of police officers. Assistant superintendent of police Mr Denis Mujumba<sup>14</sup> views that “In many cases children living in the street are afraid of police and it is hard for them to institute complaints, the police further noted that many of children who face violence get assistance from their parents who enabled them in seeking justice”( Mujumba 2014: Personal Interview).

The judicial system in juvenile court focus more on children who are offenders, this means that children who are victims of violence has to channel their complaints to different courts other than juvenile court especially when children rights are being violated by adults, this process posits a huge obstacle for children due to the complication of the requirements in processing the charge through other courts (Kapinga 2014: Personal Interview)<sup>15</sup>

Police, magistrates, NGOs, and social welfare are found as instrumental in ensuring that the children whose rights are violated have access to justice through legal assistance and representation. However, in real situations, the children living in the street are not so considered by law enforcer such as police, magistrates, prosecutor and NGOs in protecting their right to access justice in obtaining legal assistance. This is as a result of fall out of the conception of the laws protecting children which did not spell out its consideration as regards the street children in their travails of justice seeking. This is supported by sections under part two of the law of the child Act which placed duty on parents as regards the rights and welfare of the child as provided under Section 8 of the Act duty to maintain a child, also under section 9 of the Act Parental duty and responsibility, but the Act does not consider those street children who do not have parents and guardian to take care of them.

The social welfare officers are very few in Kinondoni municipal, it was found that the small number of social welfare officer are incapable to administer lots of children in need at Kinondoni District, this is supported by McAlpine who stated that the social workers have the responsibility to ensure legal assistance for abused children, but the availability of social welfare workers in Tanzania is insufficient in comparison with the rising number of children in need despite that about 437 people are currently employed by the government as social welfare officers (McAlpine 2014: 151-152). This signifies that insufficient social welfare officers is among the challenges children living in the street encounter in obtaining legal assistance from social welfare officers because the welfare officers are not handy enough to go to the street to see the situation in order to help children except the children decide to come to the social welfare office, which has been evidenced to be difficult for the children living in the street.

Shaban Muhali who is the social welfare officer for most vulnerable children in Kinondoni Municipal comments “that children living in the street are mostly brought by a good Samaritan to the office, except on rare occasions when the subject are found by welfare officers in the street” (Muhali 2014: Personal Interview). Mr Muhali further noted that lack of awareness and legal assistance for children on their rights might be reasons for not channelling their

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<sup>14</sup> Personal Interview conducted with Mujumba on police awareness of physical violence face by children, reported cases of such violence and how the police assist them to access justice through the provision of legal assistance. Mujumba is the assistant superintendent of police at Kinondoni District. The interview was held on 21 July 2014.

<sup>15</sup> Personal Interview with Kapinga, a Public Prosecutor at Kisutu Juvenile Court Dar es Salaam on 14 July 2014.

complaints appropriately for the purpose of access to justice (Muhali 2014: Personal Interview)<sup>16</sup>. This is also supported by Khan that legal empowerment is crucial in enabling people to obtain legal assistance in access to justice (Khan et al. 2009: 203). I do agree with Khan that among the factors that hinder the access to justice for children living in the street in Tanzania is inadequate legal assistance and legal representation. Lack of awareness of legal rights in obtaining legal assistance and representation among street children is high and this hampers their ability to understand the laws and its procedures (Bowd 2009: 2), as the law terminology suggest that “*Ignorantia of the laws non excuse*” meaning it is the individual’s duty to know and understand laws. Therefore, children who lack legal empowerment might encounter difficulty in accessing justice without adequate legal assistance and representation. In this regards, many of the children who are the victims of physical violence in the street might not be able to access justice without obtaining legal assistance. The children living in the street need legal representation when faced with physical violence in assisting them to access justice because they are incapable to understand laws, so if these children lack access to legal assistance and representative, it might become an obstacle for them to access justice. According to UNDP legal assistance and representation is an important embodiment of access to justice (UNDP 2013:5).

Mr Evance Tegete; the Director of Watoto wetu Tanzania; one of the Centre that provides shelter for the children comments that, “to help seek justice for the children who face physical violence in the street is costly and time consuming, as the police ignores the complaints especially in the situations when police themselves are involved in the acts” (Tegete 2014: Personal Interview). Based on the above findings, it was noticed that children who live in the street encounter challenges and lack access to justice in obtaining legal assistance and representation from NGOs when faced with physical violence especially with police.

In my own conviction having reflected on the assertions of Tegete as regards the procedure of obtaining legal assistance for street children, I do not agree with the view of the above mentioned interviewee premised on the fact the street children have to open charges and often ensure follow-up by themselves considering their aforementioned challenges in an attempt to report through police stations. However, this necessitates the efforts of the NGOs in ensuring that free legal assistance is easily obtainable for street children regardless of the challenges involved. This is supported by Cramton that the poor also deserve the right to legal representation to ensure access to justice (Cramton 1975:670-671) which is also corroborated by Hobbs that legal representation is crucial in ensuring access to justice (Hobbs 2004:938).

The Tanzanian Juvenile Court was established under the Law of the Child Act of 2009, with section 98 of the Act underlying its purpose of administering justice in cases that involve children. However, there is only one Juvenile Court in Dar es Salaam, which comprises few magistrates and prosecutors (Anderson 2012:7). This court deals with children who are in conflict with laws, which means that the court deals or hear criminal charges against children, this is ordained under the power to hear criminal charges provided under Section 98 of the Child Act. For those children who do not have parents, there is free legal assistance provided under Juvenile Justice legal program under UNICEF in corroboration with WLAC for the purpose of representing the children. However, the program focus on children who are offenders and not as victim of violence and in case the child is required to pay fine, the parents is responsible in

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<sup>16</sup> Personal Interview with Muhali on the practices of social welfare officer in protecting street children against physical violence and also in assist them in provision of legal assistance in order to access justice held on 17 July 2014. Muhali is the Social welfare officer for most vulnerable children at Kinondoni District

paying the fine but there is no provision for payment of fine for children offenders who have no parents despite the free legal aid (Kapinga 2014: Personal Interview)<sup>17</sup>.

In support of the importance of free legal assistance to the needy, Women Legal Aid Centre (WLAC) is among the non-governmental organisation in Dar es Salaam which helps children especially those who are not capable of accessing advocate by providing them with free legal assistance under Juvenile Justice Legal program. Benjamin Kalume who works with children under this program noted that the program assists children with free advocate or representatives. However in most cases, the program is meant for those children who are offenders. Benjamin Kalume noted that the programme is not based on the children who are victims of violence (Kalume 2014: Personal Interview). This shows that children who are victims of physical violence in the street lack access to justice in obtaining legal assistance with NGOs.

It was gathered that children who are victims of physical violence are supposed to follow normal procedure which is to channel their complaints to police station, afterwards obtain a charge sheet from police, then the case would be channelled to the court for further proceedings where special chamber of hearing children complaints is seated (Kapinga 2014: Personal Interview). It was found that the process of opening charges through the police station is so not friendly for the street children, as many of them are being abused by the same police; hence they are afraid to lodge complaints. The interview granted by one of police officers signified that children living in the street faced multiple forms of physical violence. He mentioned that citizens and other criminals like drugs users are those who abuse the street children and also noted that children are afraid of police and hence cannot institute their complaints through the police (Mujumba 2014: Personal Interview). The statement from Mr Mujumba clearly signified the police awareness on physical violence faced by children living in the street, yet no particular strategies are put in place to assist children with legal assistance to obtain justice, and also the statement shows how police are not resourceful in providing children with legal assistance. The fact that street children are afraid of police officer signifies their encounters with the police in terms of physical violence experience and this however stand as a huge challenge for them to access justice when faced with physical violence especially with the police.

In furtherance to the above findings, it was found on the side of magistrates that sometimes magistrate make adjustment in cases involving children to ensure a friendly judicial environment for the victims to understand the procedures in clear language. However, it is not always in all cases which means that it depends on the individuality of the magistrate. This could underestimate children's right to obtain justice which includes access to have fair procedures before the court of laws (Anderson 2012: 15). This is supported by the report from Danish Institute for Human Right in Tanzania that shows judicial malpractice posit a major bottleneck in the actualisation of justice (DIHR 2011:36). This however hinders access to justice especially for those children living on the streets when faced with physical violence.

Though, the Juvenile Court which is regarded as the court to protect children legal right on accessing justice, but it does not take cognizant of other children who are victims of violence as it only deals with children who are offenders. In addition to that, it was gathered that the jurisdiction of the court under section 98 of the Child Act does not widely cover the legal rights of the children who are the victims of physical violence especially those children who are living on the street. Although the law is open for complainants to channel cases to other court apart from Juvenile Court especially when perpetrator is adult, the procedure seems cumbersome for children who do not have parents or guardian to open case on their behalf, therefore it stands as

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<sup>17</sup> Personal Interview with Kapinga on the access to justice for children living in the street when encounter with physical violence held on 14 July 2014. Kapinga is the public prosecutor at Kisutu Juvenile Court situated in Dar es Salaam

barriers for these children who work and live in the street to further legal procedure so as to access justice.

Also, children are incapable of channelling their complaints in police station at special desk for Gender and Children. It was observed in police station where two parents and one child were making complaints to Women Police officers, this shows that children who face physical violence are brought by their parents / caregiver. This is supported by the words of Farida Mdowe a policewoman who is specialised in women and children matters under Gender and children Desk at Osterbay Police station stated that “gender and children desk receives a lot of case about children abuse, but rarely in records children living in the street . I am very aware of the physical violence they face in the street, but what will I do if they don’t come to report on their violation. However, in a very few situation I receive cases concerning street children but in many situations they are brought by a good Samaritan, and after recording their complaints, my responsibility is to report the problem to the social welfare officer for further actions” ( Mdowe 2014:Personal Interview ).

Based on Mdowe statements, it shows that street children cases are not so considered by the gender and children desk in police stations due to the children’s weakness in understanding laws and procedure in opening charges and also on the other side, police are reluctant in taking the issue of physical violence for the street children serious as they forward the matters to social welfare officer instead of helping to seek legal assistance. Furthermore, the creation of the gender and women desk is appropriate but the gap lies in the point that it seem to benefit the children who have adult assistance to aid their complaints.

The Kinondoni Residents Magistrate Court do not have data base as regards the complaints from the children living in the street who are victims of physical violence and in many situation they receive cases which involve children as offender of the crime and not as victims . Mr Credo Rugaju who is a public prosecutor at Kinondoni Residents Magistrate court comments that, there is no data base which shows that street children open case files for the purpose of obtaining justice and seek legal assistance. According to his experience, children accused of offence committed in collaboration with adult offenders have case files recorded in the court, but the court does not keep record of children who are victims of physical violence (Rugaju 2014: Personal Interview)<sup>18</sup>, this signifies that children living in the street don’t have access to justice and it seem that these children are ignored and no concern is shown to them as the police are aware of what happen in the street but the parameters in administering legal assistance for their justice tend to be inefficient .

## **4.2 Other Factors That Might Be Challenges in Accessing Justice through the Provision of Legal Assistance for Street Children**

Access to justice can be defined as the ability to obtain a just and timely remedy, the word remedy is very broad which however includes appropriate free legal assistance and representation especially for the victims of violations of rights as put in national and international standard including conventional on the rights of children. The provisions of both legal assistance and legal representation for the children are the most appropriate measure to promote their access to justice (Hamilton et al. 2011: 7-9). In general access to justice refers to the equity for which every individual from different background can enjoy (Bowd 2009:1). Under the international law, all individuals have the right to be treated equally before the law. Therefore in order for children to

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<sup>18</sup> Personal interview conducted with Rugaju, a public prosecutor at Kinondoni resident magistrate court to examine the roles of prosecutor in assisting street children who are victims of physical violence to access justice and also to know the number reported physical violence cases encountered by street children. The interview was held on 28 August 2014.

be treated equally, provision of legal assistance is important for the access of justice. According to UNDP, access to justice improves an individual's access to legal representation in which children living in the street are included (UNDP 2004:6). Provision of legal assistance is crucial to access justice to all especially the poor who are more prone to societal misdemeanour (Kuehn 2006:1039) In addition legal assistance is means to gain access to justice (Sage et al.2008: 168 ).

Access to justice is necessary to bring equal opportunity among children whose rights are violated, According to Michael Anderson who argued that there are two determinant factors for an individual's to access justice which are economic status of an individual and capability in understanding legal system, these are among the important factors necessary in accessing justice especially for the developing nations Tanzania included. However, due to the circumstances and environment surrounding children living in the street, these two important factors can stand as obstacles for them to access justice, thus free legal assistance and representation is of crucial essence to assist street children in obtaining justice.

Financial factor is the most important factor in accessing justice; this is the ability of hiring advocate or legal representatives, and also the capability to afford other judicial cost to ensure follow up on the case before the court of laws such as transportation cost etc. In this sense, individual inability to offset necessary cost might be a barrier in accessing justice, people with low income lack representation because they can't afford to pay (Johnson 1998:484). As the case of children who live in the street, the fact that they can't afford to pay for representatives is the biggest challenge for them to access justice. The study conducted by Michael Anderson on access to justice supported this on the basis that economic status of an individual is determinant factor in obtaining justice (Anderson 1999: 18) In other words it can be hindrance for poor children in accessing justice.

Furthermore, Tanzanian Legal Aid providers which aim at providing legal assistance and representation for the needs requires 20 USD as a transportation fee for advocate (Legal Aid Secretariat 2014: 2), this acts as limitation in obtaining justice through the provision of free legal assistance and representation by the children living in the street based on their incapability to pay the representation requirement fee. According to Johnson on his study about access to justice he believes that "there can be no justice for all, unless there lawyers for all " (Johnson 2000:2), which implies that the poor people require free legal assistance and representation to obtain effective access to justice.

Personal capability of understanding legal system is another factor that determines individual access to justice. A person who seeks justice in designated institute need to understand all procedure and jargons used by the magistrates and other court staff (Anderson 1999: 18). Therefore, this also form a challenge especially for the poor children. Hence, in order to unblock this obstacles, free legal assistance and representation is needed to help street children seeking their justice for the rights violation.

### **4.3 The Practices of Non-Governmental Organisation in Providing Legal Assistance and Representation to Street Children**

Dar s Es Salaam city especially in the District of Kinondoni which is occupied by many street children has several non-governmental organisations both national and international that provide Legal assistance to individuals who need assistance. These NGOs focus on different program in assisting women and children by providing legal assistance.

In understanding different challenges faced with the children who live in the street, the women Legal Aid Centre, under Juvenile Legal Aid Program aim at providing assistance through the provision of free legal assistance to children. The program focuses more on children who are offenders. In other words the program assists children who are criminals / offenders. Rwegasira



who is the Advocate of WLAC under the project of Children in Conflict with Law comments that the “program focus more on children who are offenders especially those who are living in the street because in many circumstance these children are poor, hence engage themselves in criminals acts, and some of them found themselves in the hand of police officers or citizens in various situation” (Rwegasira 2014: Personal Interview).

Reflecting on the assertions of Rwegasira, it shows that children who are victims of physical violence are responsible in search for their rights. Mr Juvenal Rwegasira further noted that there is a challenge for the administration of legal assistance to children who are victims of physical violence because it is difficult for the NGOs to know if they are seeking for legal assistance if they are silent on their encounters of violence. In his view, “to seek legal assistance in order to obtain justice is not an issue to the street children because they have a lot of problems and they are used to it” (Rwegasira 2014: Personal Interview).

However, on the side of the children who are not offenders, the NGO does not provide legal representation. Mr Rwegasira said that “these children need to be sensitized of their rights, because they ought to complain at the right places about their problem as it is not easy for NGO to know if they have problem” (Regwasira 2014: Personal Interview). The general implication of the statement is that, children who live on the street have responsibility to fight for their rights and they are supposed to take necessary steps and procedures for themselves in order to access Justice or legal assistance. This was also supported by Mujumba who is the assistant superintendent of police who comments that, in many circumstances of children faced with violence, their parents would open the case on their behalf, and those who live in the street are afraid to come to police stations to complain, according to Mr Mujumba who asserted not to have experienced any of the street children who come alone to open charge against an offender of assault or any form of physical violence (Mujumba 2014: Personal Interview). This suggests that children living in the street are incapable of accessing justice alone; they need someone who can assist them.

#### **4.4 Observed Gaps in Obtaining Legal Assistance and Legal Representation**

Tanzania identifies the essence of free legal aid to the needy through the provision of legal assistance to enable children whose rights are violated premised on physical violence to procure justice; this inspired the creation of LAS<sup>19</sup> which was officially launched in 2012 by the Deputy Minister of constitutional and legal affair. The Pro Bono aid service was formulated by LAS in conjunction with the Tanganyika law society for the purpose of coordinating and regulating the provision of legal assistance in the country. The legal assistance service desk has advocates whose function is to represent individuals whose rights are impinged. They represent the clients wherever the proceedings of justice administration entails with a transport stipend of 20 USD per court visit (Legal Aid secretariat 2014: 2). Legal assistance is important in ensuring the improvement of affected children in the travail of access to justice in obtaining rights (Maru 2010: 265). Hence, I support the idea of the government in the creation of LAS for the purpose of “coordinating and regulating provisions of Legal Aid Providers in the country” (Legal Aid secretariat 2014:1). Nevertheless, the fee of 20 USD dollars per court visit poses a huge obstacle and challenge for the children who are living in the street. Though the cost of representation is borne by the legal assistance desk, but the fact is that 20 USD is a lot of money for street children who strive for survival.

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<sup>19</sup> LAS means Legal aid secretariat, the main function is to coordinate and regulate the provisions of legal assistance in Tanzania

Access to justice in obtaining legal assistance and representation especially for children who are victims of physical violence entails having an understanding of one's deserved rights as a citizen. Such knowledge is crucial to enable a person to procure justice based on legal right when being violated, also it's important that the sufferer knows the necessary steps involved in seeking legal assistance in an event of violation which physical violence is inclusive. In order for the children living in the street access to justice, it is essential they are sensitized on the need to understand their rights and the procedures on the steps involved in the actualization of such claim.

Providing legal assistance to children whom are sufferers of physical violence is crucial in helping them to procure justice. Legal assistance and representation is imperative to ensure equality of access to justice in the protection of people especially the less privileged to access justice when their rights are being violated. (Banik 2009: 123-124). Though the provision of laws to protect the rights of children facing physical violence is useful and important, but the laws are not entirely enough to enhance the access to justice therefore legal assistance is necessary so as to obtain justice by the children. Sensitisation of children towards legal empowerment is crucial to enable them realize their rights which will also aid them in the process of obtaining justice when their rights are abused (Knan et al. 2009: 202-203). Particularly as it concerns Street children who are often encountered with physical violence challenges during their struggle in the streets need to be empowered to access justice and this entails provision of legal assistance and legal representation.

## Chapter 5

### 5.1 Conclusion

Children living in the street encounter challenges of physical violence in the course of their strife for survival in hands of the community members and police. The violence encountered by the children living in the street ranges from arbitrary arrest, detention, beatings, sexual harassment and so on. However, though the government put in place measures in terms of provisions and laws to enable children whose rights are abused to obtain legal assistance when faced with physical violence, but the laws seems not be effective entirely as it does not capture nor consider the children living in the street and there is inadequate legal assistance available to the children living in the street. The children living in the street are sometimes seen as criminals by the police thereby they are not confident in confronting the law enforcement agents in reporting their cases in an event of rights violation and this stand as a major challenge in obtaining legal assistance.

The provisions of legal assistance and legal representation tend to marginalise the children living in the street as they don't have access to legal assistance and the level of their rights awareness and sensitization in terms of knowing what is obtainable and the process to take in an event of physical violence is poor. The street children as persistent victims of physical violence deserve access to justice in obtaining legal assistance but the level of availability of legal representation as professed by the law is not fair and adequate enough and this makes it difficult for them to be administered justice when faced with physical violence in their course of survival and also the NGOs that deals with children rights realisation are mainly focused on children who are offenders.

The measures implemented by the government for children to access justice in obtaining legal assistance when faced with physical violence seems not to be obtainable for children living in the street as cases of child rights violation is rarely reported in gender and children desk of the police station which is meant for women and children to channel their complaints in order to obtain legal assistance except if such case is being reported by the abused child's parent, guardian or any volunteer. The social welfare officer responsible for ensuring legal assistance for abused children are limited in number; thereby limit their capacity to administer legal assistance to the growing number of street children in the country.

The roles of magistrates goes a long way in ensuring that legal assistance is obtained for these victims in a fair manner which involves ensuring a conducive environment for the children through the use of clarified jargon that can be misconstrued bearing in mind that the sensitisation level of the children is low as regards their rights, understanding of laws and its embedded proceedings and terminologies. However, while some are considerate and fair enough in considering the conducive environment of the court hearing, some magistrates are unconcerned about the ease of the abused children in terms of the process of administering justice.

The Tanzanian legal provisions in respect of child protection and legal assistance unintentionally do not recognize the need to include children living in the street to gain access to justice in obtaining legal assistance which stands to be the major cause of the lapse in the administration of complaints and giving legal assistance to the children living in the street by the stakeholders.

## 5.2 Recommendations

On the basis of the above conclusion and findings, the recommendations were made. The law enforcer especially police officers should perceive children living in the street as the children who need more protection from physical violence and they should promote access to legal assistance in order to obtain justice in respect of their violence suffering to make sure that they have legal rights assistance.

Firstly, the judicial system in Tanzania should ensure the availability of free legal representatives for the children who are victims of physical violence. The government should establish conducive ways that will enable children to channel their complaints rather than police station such as child right violation report centres which can be established in Kinondoni district to ease the process of reporting any case of violence against children in the society. The centres can be resourcefully empowered with legal representatives and some law enforcement agents to enhance proper administration of complaints. Furthermore, the magistrate and other court officials should work with all hand on deck in assisting the children by providing friendly environment in enabling the children to have access to justice by obtaining adequate legal assistance. The legal assistance provider either from the government or from non-governmental Organisation should consider the other side of the children as victims of violence.

Secondly, there is crucial need for the government and non-governmental Organisation to raise awareness in the society as regards the rights of the children who live in the street. Special program should be created to advocate the rights of these children; this will help to reduce the stigma and discrimination towards children living in the street which will also reduce physical violence against them.

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