

**PERSISTENT CHILD SEXUAL EXPLOTATION IN ZANZIBAR: A
CRITICAL ANALYSIS ON LAW AND PRACTICE**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS OF THE
OPEN UNIVERSITY OF TANZANIA**

2019

CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by the Open University of Tanzania a dissertation entitled; "Persistent Child Sexual Exploitation in Zanzibar: Critical analysis on Law and Practice" in partial fulfilment of the requirements for the degree of Master of Laws (LL.M).

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Date

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Signature

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Date

DEDICATION

To my Father, Mr. Christopher Kenyunko and entire family for their kind support, patience and invaluable love.

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ABSTRACT

“The true character of society is revealed in how it treats its children”- Nelson Mandela. One of the key tasks of any nation is to enact, promote and monitor the implementation of various laws, policies and institution that fight against sexual exploitation of children. As far as Zanzibar is concern, although have enacted various laws and committed itself to children protection, significant gaps exist in the implementation of protection mechanisms for children and an alarming demand for sex with children remains. This study traces the historical trend of child sexual exploitation and the role of the different treaties, legislation and institution towards preventing such tragedy. These instruments in their generality deliver a legally binding set of multi-disciplinary procedures that provide standards for identifying, referring and responding to cases of child sexual exploitations. The report presented in this study acknowledges the achievements made in Zanzibar in recent years in the fight against sexual exploitation of children, but they also clearly illustrate the challenges. It illustrates that a successive chain of child sexual exploitation begins and occurs within many contexts: under the guise of tradition or culture or incredibly, even in places where a child should feel particularly safe, such as in a shelter or in a family household, (where the pretext of being a domestic worker is in reality a nightmare of abuse and sexual exploitation for children). On the other hand, it has been observed that, it is within the capacity of relevant stakeholders to address and abolish these types of exploitation. New partnerships are also being formed and the work of the private sector in collaboration with government gives hope that any social and economic changes can take a lead role in promoting sustainable and ethical development without facilitating sexual exploitation of children.

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LIST OF TREATIES AND LEGISLATIONS

INTERNATIONAL TREATIES

African Charter on Human and Peoples Rights of 1981.

Convention on the Elimination of All Forms of Discrimination against Women of 1979.

Declaration on the Rights and Welfare of the African Child of 1979.

International Covenant on Civil and Political Rights (ICCPR) of 1976.

The African Charter on the Rights and Welfare of the Child of 1999.

The Geneva Declaration of the Rights of the Child of 1924.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSCCPCP).

The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, 2008.

The United Nations Convention on the Rights of the Child of 1989.

United Nation Declaration on the Rights of the Child of 1959.

United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000.

Universal Declaration of Human Rights (UDHR) of 1948.

LOCAL LEGISLATIONS

Law of the Child Act No.21 of 2009.

Marriage and Divorce (Muslim) Registration Amendment Decree, (Act No. 6 of 1966).

Marriage (Solemnisation and registration) Decree.

Penal Code Cap 16.

Penal Decree (Amendment) Act No. 6 of 2004.

The Children Act No. 6 of 2011.

The Children's Court Rules of 2015.

The Constitution of the United Republic of Tanzania of 1977.

The Penal Code Cap 16.

FOREIGN LEGISLATIONS

The Children's Act 38 of 2005.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of
2007.

The Films and Publications Act 65 of 1996.

Sexual Offences Amendment Act, 2005.

LIST OF ABBREVIATIONS

| | |
|---------|--|
| ACHPR | African Charter on Human and People's Rights |
| ACRWC | African Charter on the Rights and Welfare of the Child |
| CRC | Convention on the Rights of the Child |
| ICCPR | International Convention on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| NGO | Non-Governmental Organisation |
| OAU | Organization of African Unity |
| OPICAC | Optional Protocol on the Involvement of Children in Armed Conflict |
| OPSCPCP | Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography |
| REPOA | Research on Poverty Alleviation |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNICEF | United Nations International Children's Education Fund |

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Problem

Child Sexual Exploitation (herein after referred as CSE) is a crime which is protected under international¹ and national human rights laws.² Protection of children from being sexually exploited is increasingly recognized as integral to the protection of human rights in general,³ and is considered an element of international law.⁴ There is a growing global evidence base concerning child sexual abuse, with an estimated 150 million girls and 73 million boys under the age of 18 reported to have experienced forced sexual intercourse or other forms of sexual abuse involving physical contact.⁵ Zanzibar in particular is one of the area witnessed to have increased incidents of child sexual exploitation.⁶

Thus, there are many incidents pertaining to violation of children's rights that countries (as individual states or as an international community) need to address,

¹The United Nations Convention on the Rights of the Child (UNCRC) legally obliges states to protect children's rights. Articles 34 and 35 require states to protect children against all forms of sexual exploitation and sexual abuse, including coercion of a child to perform sexual activity, prostitution of children, and exploitation of children in pornography, abduction, sale, or trafficking of children. All countries in Africa (except Somalia) have acceded to the UNCRC.

²Willow C.Children's right to be heard and effective child protection. A guide for Governments and children rights advocates on involving children and young people in ending all forms of violence. Save the Children Sweden. (http://www.crin.org/docs/SC_.pdf). Site visited on 23rd Feb 2018.

³23 UN Special Session on Children. Follow-up: National plans of action. (http://www.unicef.org/specialsession/followup_npa/index.html). Visited on 23 Feb 2018. Also The Universal Declaration of Human Rights (UDHR) under article 1 and 2 proclaims that all human beings are born free and equal in dignity and rights, which entitles everyone, including children, to all the rights and freedoms set for in the UDHR.

⁴Save the Children. Protecting Children from Sexual Abuse and Exploitation. London: International Save the Children Alliance. (<http://www.savethechildren.net/alliance/resources/childabuse.pdf>). Site visited on 23rd Feb 2018.

⁵Keesbury J and Aske, I. Towards a comprehensive response to sexual violence in sub-Saharan Africa: Lessons learned from implementation. Presentation available from jkeesbury@popcouncil.org (<http://www2.ohchr.org/english/law/crc.htm>) site visited on 23rd Feb 2018.

⁶TRA Employee Hassan Abuutwalib famously known as Kiringo was arrested by the Police in Zanzibar on 18 Feb 2018 on the allegation of sodomizing a 13 years old boy.

such as child sexual exploitation. While such violation of child rights has been existing as a traditional practice in some communities over the years, governments around the world have attempted to eradicate, but it has continued to exist and increase significantly in many parts of the world including Zanzibar.

1.1.1 At the Global Level

The maltreatment of children in various sphere like being used in war, being used as labor as well as being sexually exploited and effort to protect children internationally as well as nationally. Previously, children had few rights and the less rights children had, the more freedom of action belonged to adults.⁷ It took many years before Children protection efforts were realized and acknowledged as up until the late 19th century, children had a role mainly as quasi property and economic assets.⁸

Together with a developing image of women as separate juristic persons, children stopped being seen as a property of their fathers. As a result of the new roles of parents, states began to intervene in matters that were previously considered to be strictly as of family. Such intervention resulted in the appearance of a link between states and children.⁹ For the first time in history, matters and the well-being of children were started to be handled by the higher authority of states, and not by individual adults, which resulted in an admission of the humanly equality between children and adults. This was an important stage in the development concerning

⁷Early Childhood Education Journal, Vol. 34, No. 1., The Story of Mary Ellen Wilson: Tracing the Origins of Child Protection in America. (<http://www.loc.gov/law/help/childrights/international-law.php>) Site visited on 24th Feb 2018.

⁸Law Library of Congress, "Children Rights: International Laws", (<http://www.loc.gov/law/help/childrights/international-law.php>) site visited on 24th Feb 2018.

⁹Geraldine van Bueren, *The International Law on the Rights of the Child*, Kluwer Law International, The Hague 1998).

protection and welfare of the child.¹⁰

The first international human rights instruments to address the rights of children was the UN Declaration of the Rights of the Child adopted in 1924; the Fourth Geneva Convention of 1949, entitled Children to special protection in times of armed conflict.¹¹ The Declaration of Geneva was non-binding, and did not receive popularity from the states and that was the case because of the reluctance by many states to adopt the text which marked very first attempt to establish a universal framework for children's rights protection.

In 1959 the Declaration of the Rights of the Child¹² was issued again, widening the scope of theoretical framework for children rights protection provided in the Declaration of 1924. One of the key principles in the Declaration on the Rights of the Child is that a child is to enjoy "special protection" as well as "opportunities and facilities, by law and by other means," for healthy and normal physical, mental, moral, spiritual, and social development "in conditions of freedom and dignity."¹³ Despite the creditable struggles to promote children protection, neither the document of 1924, nor the one of 1959 were binding.¹⁴ The problem with children's

¹⁰UNICEF. Sexual Exploitation of Children in Africa: Background Paper Prepared on Legal Frameworks and Law Enforcement for the African Technical Preparation Meeting for the World Congress III Against Sexual Exploitation of Children and Adolescents, 2008, p. 6.

¹¹The 1924 Geneva Declaration of the Rights of the Child, which was adopted by the League of Nations was drafted in 1924 by Eglantyne Jebb (1876-1928), a social reformer and founder of the Save the Children. Who said "Children worldwide experience a varied forms human rights violations, exploitation and abuse. They are forced to fight in wars or labour in intolerable conditions; they are sexually abused or subjected to violence as a punishment; they are forced into child marriage or trafficked into exploitative conditions of work; they are needlessly placed in prisons, detention facilities and institutions."

¹²Declaration on the Rights of the Child, United Nation General Assembly Resolution. 1386 (XIV), (No.16) of (1959). It was more precise and wider in scope regarding the protection of children. The Preamble of the Declaration on the Rights of the Child stated that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

¹³Law Library of Congress, "Children Rights: International Laws", (<http://www.loc.gov/law/help/childrights/international-law.php>) site visited on 24 Feb 2018.

¹⁴Geraldine van Bueren, *The International Law on the Rights of the Child*, Kluwer Law International, The

rights had been that, although recognition of such rights existed, practical implementation by states or by human rights tribunals had not taken place. As a result, the need for an international legally binding treaty arose, which would help in placing children rights protection in practice.

1990 witnessed the adoption of The United Nations Convention on the Rights of the Child (commonly abbreviated as CRC or UNCRC)¹⁵ which is the first legally binding treaty of the UN that is applied only to children as opposed to the treaties adopted before the CRC such as the Convention on the Elimination of All Forms of Discrimination against Women¹⁶ and the International Covenant on Civil and Political Rights (ICCPR).¹⁷ United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children apply to both children and adults. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.¹⁸

Nations that ratify this convention are bound to it by international law. CRC also introduced new rights and reconstructed existing rights to promote a child

Hague1998, p. 10.

¹⁵The 1990 Convention was adopted and, ratification by General Assembly resolution 44/25 of 1989 entry into in 1990.

¹⁶Was adopted by General Assembly resolution 34/180 of 1979 and came into force in 1981, in its preamble provides Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

¹⁷Adopted by the United Nations General Assembly with resolution no. XXI of 1966, and in 1976.

¹⁸The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18. https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child.

perspective, for example the right to give your opinion, and for adults to listen and take it seriously,¹⁹ the right to privacy,²⁰ the right to be protected from being hurt and mistreated, in body or mind.²¹

1.1.2 At Regional Level - The Case of Africa

The first firm attempt to promote the protection of children in Africa was in 1979, when the Assembly of Heads of State and Government (the Supreme Organ) of the Organization of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child.²² The Declaration was not binding; however, it was a step further in the moral sense. Furthermore, the document served as an example of the regional human rights documents covering specific regional issues and urging member states to adopt legal and institutional measures which would abolish cultural practices harmful to children, such as child marriage or female circumcision.²³

After the Declaration on the Rights and Welfare of the African Child, the OAU sped up its movements towards protecting children's rights. In doing so OAU became active on issues such as child labor, children trafficking, and the involvement of children in armed conflict.²⁴ However, at that time, children's rights were not yet the object of an internationally legally binding treaty. The African Charter on Human and People's Rights, which was adopted in 1981, referred to children alongside women's rights in a very vague manner declaring that states are obligated to protect

¹⁹Article 12 of the UNCRC of 1990.

²⁰As above. Article 16.

²¹As above. Article 19.

²²Declaration on the Rights and Welfare of the African Child, OAU Doc AHG/st.4(XVI) Rev.1 1979.

²³Paragraph 3 of the Declaration on the Rights and Welfare of the African Child, OAU Doc AHG/st.4(XVI) Rev.1 1979.

²⁴Julia Sloth 6 Nielsen, *Children's Rights in African: A Legal Perspective*, (Ashagate Publishing Limited, Hapshire.

woman and child as stipulated in international declarations and conventions.²⁵

The turning point in the legal protection of the child was the adoption of the CRC in 1989, which served as an example and a reason for creating a legally binding regional children's rights document, the African Charter on the Rights and Welfare of the Child commonly known as ACRWC. However, the ACRWC has retained some substantive provisions of the CRC which are left rather vague as a result of the wish to satisfy the culturally diverse international community that participated during the drafting and adoption process.²⁶ The demonstrated tolerance towards cultural diversity of the world countries is the possibility for parties to the CRC to decide about the age at which a child reaches majority.²⁷

Generally, CRC does not address on specific regional issues regarding children's rights²⁸ and this lack of specificity about regional realities is the main reason ACRWC was considered a necessary replacement for CRC.

1.1.3 At National Level

Since mid-1990s, Tanzania mainland and Zanzibar have developed national and sectoral policies to promote the welfare of children. Tanzania (including Zanzibar)

²⁵African Charter on Human and People's Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted in 1981 (entered into force in 2001), Under Article. 18 (3).

²⁶Read article 1 of the CRC. The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

²⁷These grounds have been forwarded by L. G. Muthoga 'Introducing the African Charter on the Rights and Welfare of the African Child and the Convention on the Rights of the Child. Paper delivered at the International Conference on the Rights of the Child, Community Law Centre, University of the Western Cape and S. A. Wako 'Towards African Charter on the Rights of the Child' paper delivered at a workshop on the Draft Convention on The Rights of the Child, Nairobi, 9 - 11 May, 1988.

²⁸Frans Viljoen, 'Supra-national human rights instruments for the protection of children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 The Comparative and International Law Journal of Southern Africa, p. 200.

has ratified most of the major international human rights instruments on children. These including the UN Convention on the Rights of Child (CRC) which was ratified on 10th July, 1991, (include the 2 optional protocols), the African Charter on the Rights and Welfare of Children (ACRWC) which was ratified on 9th May 2003 and the UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) which was ratified on 21st August 1985.²⁹ Since then, Zanzibar has been working to improve the legislative³⁰ and policy environment on children's rights.

1.1.4 The State of Children Rights in Zanzibar

Children rights are protected by a number of international and regional agreements. The foremost is the United Nations Convention on the Rights of the Child (CRC) that recognizes the human rights of children.³¹ This convention describes a child as any person from age zero up to 18 years. It states that the government must warrant that all children have protection without any discrimination.³² Additionally, children have to have access to social services such as education and health care, to grow up in a respected environment, to understanding their society and participate in society activities. At regional level, there is the African Charter on the Rights and Welfare of the Child (ACRWC).³³ Among prominent issues it addresses is the discouragement

²⁹Kuleana Center for Children's Rights. Child Sexual Abuse and HIV/AIDS. Where's the justice? In: The launching of the Tanzania Network on Ethics, Law and HIV/AIDS. 2005.(Edited by Simalenga, B.P., Smith, J. K. and Semindu, A. K.), 16 to 18 January 2005, Mwanza, Tanzania. pp. 20 to 40.

³⁰Law of the Child Act No.21 of 2009 for Tanzania Mainland and the Children's Act No. 6 of 2011 for Zanzibar.

³¹The Convention was adopted and opened for signature, ratification and accession by General Assembly resolution

44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

³²See Article 41 of CRC.

³³The Charter was adopted by the then Organisation of African Unity (OAU) in 1990 and was entered into force in 1999. The Children's Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The ACRWC and the CRC are the only international and

of any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations found in the Charter.

In Zanzibar, children's rights are safeguarded under the Zanzibar Children's Act.³⁴ The act incorporates key international child rights standards (particularly those stipulated in the UNCRC and ACRWC) into domestic laws and it is the principal legislation relating to children rights in Zanzibar.³⁵ Furthermore, the Act introduced a number of far comprehensive reforms that establishes a national framework of legal standards and procedures. Since its adoption, Zanzibar has worked to put its provisions in practice in collaboration with stakeholders, notably UNICEF who has taken a keen interest in supporting the government in this respect - with policy development, setting up of structures and capacity building. However, in contravention of the efforts, situation analyses show that sexual exploitation against children is still a serious problem in Zanzibar. For instance, approximately 6-9% of females and 9-13% of males under the age of 18 have experienced sexual violence.³⁶ While approximately 24% of girls aged 18 years are already mothers or pregnant.³⁷

Sexual exploitation of children is a strong social stigma and lack of faith in the justice system prevents children and their families from reporting cases even to traditional and religious systems.³⁸ Internally, cases of sexual exploitation involving

regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights.

³⁴This Act No. 6 of 2011 was enacted on 6th July 2011 and formally gazetted in May 2012,

³⁵https://www.unicef.org/tanzania/SITAN_Mainland_report.pdf.

³⁶Ljungman, C. M. et. al. Evaluation of Save the Children's Child Rights Governance and Protection Projects in Tanzania ó Zanzibar project. SIDA, 2014, p. 18.

³⁷As above.

³⁸As above p. 13.

children are typically dealt with among communities in three major of ways: marriage is arrangement for girl victim and male perpetrator, compensation is paid by the perpetrator or the perpetrator's family to the family of the victim, the matter is settled through discussion (without payment) between the family of the victim and the perpetrator or the perpetrator's family.³⁹

Externally, tourism is considered one of the chief perpetrators of sexual exploitation of children in Zanzibar.⁴⁰ Although child prostitution is strongly prohibited in Zanzibar, sexual exploitation of children under the umbrella of tourism can be vividly observed. This is to say that, Zanzibar is a desirable destination for men who want to have sexual intercourse with young boys and there are certain locations that are well-known for harboring boy prostitutes.⁴¹

The first survey of its kind in Africa entitled *Violence Against Children in Tanzania Study* was commissioned in mainland Tanzania and Zanzibar in 2009 and it was re-launched in 2011.⁴² It was undertaken by a national Multi-Sector Task Force (MSTF) chaired by the Ministry of Community Development, Gender and Children; whereas in Zanzibar it was led by a Multi-Sector Task Force chaired by the Ministry of Social Welfare, Youth, Women and Children Development.⁴³ The research revealed very high levels of physical, sexual and emotional violence in childhood, leading to increased incidence of mental and physical health problems.⁴⁴ Perpetrators

³⁹As above, no 48.

⁴⁰<https://www.state.gov/documents/organization/243562.pdf>.

⁴¹ECPAT, Monitoring status of action against commercial sexual exploitation of children. 2013, p. 11.

⁴²UNICEF Annual Report 2011 for United Republic of Tanzania, 2011, p. 24.

⁴³As above.

⁴⁴United Republic of Tanzania, Violence Against Children in Tanzania Findings from a National Survey 2009 p. 94.

of violence are usually known to children, while uptake of services is low.

1.2 Statement of the Problem

When the United Nations (UN) Convention on the Rights of the Child (CRC),⁴⁵ the African Charter on the Rights and Welfare of the Child,⁴⁶ the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,⁴⁷ read together with national laws the Children Act,⁴⁸ Sexual Offences Special Provisions Act,⁴⁹ and Penal Decree (Amendment) Act⁵⁰ they provide mechanism and manner through which children can and must be protected *inter alia* from sexual exploitation. All these legal instruments embrace the basic human rights that children have everywhere.

Although the United Republic of Tanzania has signed and enacted those instruments, the successful implementation of children rights mechanisms is not always possible. As a result, children who in reality belong to the most vulnerable groups suffer the most. A total of 340 child rape cases were reported in Zanzibar between the year 2014 and 2017. The enjoyment of fundamental rights and freedoms of children must be legally and willingly ensured by governments through its law enforcement agencies like police, judiciary and other stakeholders. Child sexual exploitation in Zanzibar is still rampant, and it sometimes occurs in places normally considered safe

⁴⁵Article 34.

⁴⁶Article 16.

⁴⁷Article 6.

⁴⁸Section 119 (2) of the Act No. 6 of 2011.

⁴⁹Section 12 of the Act No. 4 of 1998 which provides for criminal liability and punishment for child sexual exploitation and liability upon conviction to imprisonment for a term of not less than five years and not exceeding twenty years.

⁵⁰Section 245 E (1) of the Act No. 6 of 2011.

such as homes and schools and in the hands of the people who are known and trusted by the child or families or who have authority over the child.

The instruments mentioned above in their generality deliver a legally binding set of multi-disciplinary procedures that provide standards for identifying, referring and responding to cases of child sexual exploitations, yet child sexual exploitation in Zanzibar is still a threat.⁵¹ As it has been said above, about 340 child rape cases were reported in Zanzibar between the year 2014 and 2017 that is an average of almost 10 child rape cases each month.⁵² Despite having laws prohibiting child sexual exploitation, like the situation is still alarming, and therefore, this study intend to look on the mischief behind. These laws are like The Penal Decree (Amendment) Act No. 6 of 2004 and The Children Act No.6 of 2011.

1.3 Research Objectives

The research objectives have been classified into two groups. These are general and specific objectives.

1.3.1 General Objective

The main purpose of this study was to understand why the magnitude of child sexual exploitation in Zanzibar is high despite of the presence of various national and international laws that protecting child from such sexual exploitation.

⁵¹ Director of TAMWA Zanzibar, Dr. MzuriIssa, said an average of ten child rape cases are reported every month in Zanzibar, Tanzania Media Women Association (TAMWA) has reported only weeks after another report said

more boys than girls suffer the abuse in the Isles.(<http://www.tamwa.org>), site visited on 25 Feb 2018.

⁵²As above.

1.3.2 Specific Objectives

The study was guided by the following specific objectives;

- i. To citrate law that address child sexual exploitation in Zanzibar, and to determines gaps that exist in such laws.
- ii. To propose for a comprehensive response in implementation of laws against child sexual exploitation.

1.4 Research Questions

This study dwells on the following questions

- i. Whether the laws concerning sexual exploitation of children is sufficient to child protection in Zanzibar.
- ii. Whether law enforcement organs relating to child sexual exploitation in Zanzibar fully implement protection roles.

1.5 Research Significance

The proposed study is based on academic work that will conclude researcherø Masters of Laws Degree of the Open University of Tanzania. Further; findings of this study can form a basis for supplementing policies and legal frameworks regarding child protection against sexual exploitation. The findings will also raise awareness in the community members on the importance of children shielded from sexual exploitation, hence, help empower them to be able proactively respond to the vice. The study findings also call for stakeholdersø attention to pertinent issues regarding child rights and promote collaborative measures for safeguarding child rights.

1.6 Literature Review

Despite the fact that violation of children's rights is an old practice, its recognition in recent years is evidenced by an increasing number of publications on human rights, numerous non-governmental and international organizations, bodies and lobbying networks, as well as sensationalist media.⁵³ The subject of child sexual exploitation has also become increasingly urgent and popular covering historical, political, humanitarian, legal and socio-economic dimensions. This section presents a review of some of the literatures regarding this subject.

Armstrong⁵⁴ investigates 36 cases of child sexual abuse among the Shona of Zimbabwe, largely from a legal perspective. She describes the remedies enacted by families to compensate them for the rape of a girl child; for example, the payment of fines or (in 8 of the 36 cases) the marrying of the rapist and victim to fulfill the girl's lobola (bride price). She observes that a girl, who had sexual intercourse, whether consensually or not, has less chance of contracting a marriage that will contribute lobola to the family. However, she has failed to see that, allowing matters like this to be resolved in this way will only accelerate the problem instead of eliminating them. She therefore advised that the perpetrators should be sent to court and be duly punished, so that it can be a lesson to others.

A study of child abuse in the East African region carried out by Fraser and Kilbride⁵⁵ identified three cases of physical abuse among the Samia of Kenya. They detail the

⁵³Derks, A. *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses*. Geneva: IOM, 2000.

⁵⁴Armstrong A. Consent and compensation: The sexual abuse of girls in Zimbabwe. In W. Ncube (Ed.), *Law, culture, tradition and children's rights in Eastern and Southern Africa*. 1998. pp. 129-149. Ashgate Dartmouth: Aldershot

⁵⁵Fraser, G., & Kilbride, P. Child abuse and neglect: rare, but perhaps increasing, phenomenon among the Samia of Kenya. *Child Abuse & Neglect*, 1980. pp. 227-232.

physical and emotional abuse and neglect of children among the society. The authors note that in a society where the absolute taboo of incest includes sexual contact between any blood relatives. To complement the argument, LeVine and LeVine⁵⁶ have written concerning sexual abuse of young girls in their anthropological studies of the Gusii in Kenya.

Consequently, sexual molestation of girls is a known phenomenon in tropical Africa. Among the Gusii Le Vine and LeVine encountered cases, for example, of rape of prepubescent girls by adult men who in many instances are the classificatory fathers of their victims (i.e., they are closely related members of their victims' parents' generation). They also came across actual father-daughter incest. In addition, the seduction of pubescent girls by male schoolteachers is the occasion for recurrent scandals in Nigeria and Kenya.⁵⁷

Kijo-Bisimba,⁵⁸ asserts that violence against children has been a pernicious and critical global problem. In Tanzania, as in many African countries, women and children's rights are affected by some traditions which discriminate against them in matters of inheritance, property ownership, gender-based violence, sexual harassment, child labour and general exploitation. This work reflects some of aspects that are contained in the proposed study, hence despite the fact that it does not per se address child sexual exploitation yet it is useful.

⁵⁶LeVine, S., & LeVine, R. Age, gender and the demographic transition: The life courses in agrarian societies. In A. Rossi (Ed.), *Gender and the life course*. New York: Aldine.1985, pp. 29-42.

⁵⁷The Population Council, *Adolescent and Youth Sexual and Reproductive Health: Charting Directions for a Second Generation of Programming*, the Population Council, 2002. (<http://www.popcouncil.org/pdfs/adolsrh.pdf>). Site visited on 21 Feb 2018.

⁵⁸Kijo-Bisimba, H. *Tanzania Human Rights Situation 2012-2013*. 2013.

Lema⁵⁹ describes 20 cases of child sexual abuse which were presented at the Department of Obstetrics and Gynecology at the University of Malawi between 1984 up to 1994. In this study, half of the cases were of the children less than 10 years old. Lema estimates that these cases were merely the tip of the iceberg, and were reported due to the serious injury caused in the rape of very young children. The researcher in assessing author's argument, it is true that many incidences of sexual exploitation to the child are still unreported.

Mikhail⁶⁰ mentions that child marriage is deeply rooted in cultural values and its practice is celebrated in some communities. The families who engage in this practice consider it to be a way to secure their child's future and at the same time alleviate their own financial responsibilities. Furthermore, child marriage is viewed as a way of preventing girls from initiating sexual relations with unknown men. The honors attached to this practice has traditionally been linked to its central purpose, which is to assure virginity at the time of marriage.⁶¹ However, the author does not acknowledge other factors for child sexual exploitation than child marriage. Other factors like family members, prostitution in some business areas like bars, hotels etc. as well as school environment which have also proved to be major factors for child sexual exploitation.

Ochanda et al,⁶² for instance argues that as far as violations to children's rights is concerned girls trafficking is debatable as not all people may have the intention to

⁵⁹Lema, V.M. Sexual abuse of minors: Emerging medical and social problem in Malawi. *East African Medical Journal*, 1997. pp 743-746.

⁶⁰Susanne Louis B. Mikhail. *Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation, Gender and Development*. 2002. p. 43.

⁶¹As above.

⁶²Ochanda, R. M., Akinyi, V., & Mungai, M. *Human Trafficking and Commercial Sexual Exploitation of Women and Children in East Africa*. Nairobi: MM & KARDS. 2009.

exploit the children. Traffickers in this context are recruiters, transporters; those who exercise control over girls; those who transfer and/or maintain girl in exploitative situation and those who profit directly or indirectly from trafficking and its offenses. Thus child trafficking is interplay of many factors. Some of them are poverty, child fostering and extended family, gender inequality, inadequate registration and poor law enforcement. However, the author does not consider the fact that, sexual exploitation is the main source of trafficking of girls from lowly developed countries to highly developed countries.

UNICEF⁶³ report on women and children in Tanzania noted that in the past, the child protection response in Zanzibar had been fragmented and uncoordinated with no clearly identified primary reference point and services stretched across different ministries, departments and national agencies, including the police, hospitals, schools and community organisations. The abuse and exploitation of children together with the different forms of violence they experience constitutes one of the most challenging problems the Zanzibari society faces today. Although this work contains outdated information on the current legal and policy framework, yet it serves as a useful benchmark in the proposed research work.

LHRC and ZLSC⁶⁴ reports that sexual abuse is often considered to be a hidden crime and families more often prefer to deal with cases at household or community level while the police frequently encourage such cases to be dealt with at the lowest government administrative structure ó shehia or district. Although this work does not

⁶³UNICEF. Children and Women in Tanzania annual report. Volume 2. Dar es Salaam. 2013.

⁶⁴LHRC and ZLSC. Tanzania Human Rights Reports. 2013.

exhaust on the causes and gaps in the current policy and legal framework, it is very important in setting the parameters of the proposed study.

MESWYWC⁶⁵ observes that the percentage of girls aged 15-18 years who are married in Zanzibar is 18.5%. On the other hand, the corresponding figure for boys is 1.2%, suggesting that young girls tend to marry older men. On the other hand, the percentage of women aged 15-18 years who are mothers or pregnant with their first child in Zanzibar is 7.6%. Marriage of young girls often occurs either as a result of pregnancy whereby a girl is forced to marry the father of the child irrespective of the nature of their relationship. Despite the fact that this report does not address legal and policy perspectives, yet it is important as it provides basis for the proposed study.

MESWYWC⁶⁶ reports that there was limited awareness on the system reporting and investigating allegations of abuse, particularly at the community/Shehia level. Consequently, the general community remains semi-ignorant about child protection. This report is very relevant to the study though it does not cover in extensively the legal and policy framework Plant⁶⁷ argues that similarly, the question of exploitation has been much debated because the UN protocol and the national laws do not declare which degree of severity of exploitative actions qualifies the case to be called violation to children's rights and not negligent parenting or bad fostering.

⁶⁵The Revolutionary Government of Zanzibar, working together to stop violence against children in Zanzibar, 2011.

⁶⁶The Revolutionary Government of Zanzibar, Child Justice Reform: A five Years Strategies 2013-2018.

⁶⁷Plant, R. Trafficking for Labour Exploitation: Conceptual Issues and Challenges for Law Enforcement Paper presented at the 5th International Law Enforcement Conference, 2009. Kiev, 31st March -2nd April

In another study, the tradition of child nurturing has been linked with child exploitation. According to Koda,⁶⁸ under the pretext of taking care of orphans and children from poor families, children are recruited by relatives or non-related adults, particularly from rural areas, for domestic work in the homes of wealthier families.

Koda describes a typical domestic servant in urban Centres as;

“a young girl of between nine and eighteen years of age who may have been brought to her employer by a relative, a friend, a village-mate, or a child who has migrated to the urban area on her own .

Child development is a factor in child exploitation. Child fostering turns to trafficking or slavery when the child is deprived of his/her basic rights such as education, health services and basic needs. When she/he is made completely dependent on the caregiver and denied the right to choose.⁶⁹

There are many forms of violations to children's rights that countries need to address. These include: violence, child labor, and sexual exploitation. Although some act of violence are unexpected and isolated, mostly violence against children is carried out by people children know and trust, such as parents, step-parents or parents÷ partners, schoolmates, teachers and employers. Certain groups of children are particularly vulnerable and these includes children with disabilities, children belonging to minority groups, children living on the streets, adolescents in conflict with the law, and refugee and displaced children. More often children who face violence or witness it remain silent out of fear and stigma, and many children accept violence as an inevitable part of life.

⁶⁸Koda, B. O. Democratisation of Social Relationship at the Household Level: the Participation of Children and Youth in Tanzania. In C. Creighton & C. K. Omari (Eds.), *Gender, Family and Work in Tanzania*. 2000. pp. 237- 265

⁶⁹LeJeune, John, and Gerry Mackie, *Social Dynamics of Abandonment of Harmful Practices: A new look at the theory*, UNICEF Innocenti Research Centre, Florence, 2008.

UNICEF estimates that 150 million children 5 to 14 years old worldwide are engaged in child labour.⁷⁰ This estimate is based on data from 102 countries. Child labour is most common in Sub-Saharan Africa, where more than a third of children work. Understanding Children's Work, an inter-agency project of the International Labour Organization (ILO), the World Bank and UNICEF, has reviewed the data from several countries for which comparable data exist on child labour. It observed a reduction in children's engagement in economic activities in most countries, including countries such as Brazil, India and Mexico. Consequently, in several countries, the trend is stable or child labour has even increased.⁷¹

Rwezaura⁷² argues that children have suffered from various forms of discrimination perpetrated not only by third parties but also by the children's own parents and relatives. Daniel⁷³ reports about manifestation of negligence, irresponsibility and loss of parental love, whereby parents leave⁷³ their children unattended. There are also other cases like, the father is alive, and mother married a man who did not like to take care of the step children.

A study by Lachman⁷⁴ reveals that violence is also common in juvenile justice facilities. There have been reports of torture of children in detention as well as the use of children for espionage by the police. It is, in addition, not difficult for children

⁷⁰United Nations Children's Fund, *Children in Detention: Calculating global estimates for Juvenile Justice Indicators 2 and 3*, Programme Division, UNICEF, New York. 2007.

⁷¹NICEF & ANNPCAN. *Analysis of the situation of sexual exploitation of children in the Eastern and Southern Africa region*. 2001. www.focalpointngo.org/yokohama/latestnews/CSECEastSouthernAfricaDraft.

⁷²Rwezaura, B. *The Value of a Child: Marginal Children and the Law in Contemporary Tanzania* International Journal of Law Policy and Family. 2000, pp. 326-364.

⁷³Daniel, M. *Report on Humanitarian Aid to Vulnerable Children in Makete and Iringa, Tanzania*. Bergen: Research Centre for Health Promotion, University of Bergen. 2008.

⁷⁴Lachman, P. *Child protection in Africa: The road ahead*. Child Abuse & Neglect, 1996. pp. 543-6547.

inside detention facilities to obtain weapons. According to Okeahialam⁷⁵ whose study is on child abuse in Nigeria, violence on children took the form physical abuse such as excessive corporal punishment, infanticide, and female circumcision. Again, the sexual abuse of children is not addressed in the study.

A report by UNHCR and Save the Children-UK in Guinea, Liberia and Sierra Leone reveal alarming levels of sexual violence and exploitation of refugee children.⁷⁶ Allegations were made against UN peacekeeping forces, international and local NGOs, and government agencies responsible for humanitarian response. Most of the allegations involved male national staff, trading humanitarian commodities and services, in exchange for sex with girls under 18 years old.⁷⁷ The children most vulnerable to sexual exploitation were those without the care of their parents, children in child-headed households, orphaned children, children in foster care, children living with extended family members, and children living with just one parent. A number of the men interviewed believed that sex with a virgin could cleanse a man from infection.

Although governments around the world have attempted to eradicate child marriages, it continues to exist to a significant extent as a traditional practice in rural areas and amongst people living in poverty.³⁷ Most of these people lack the resources to change the course of their futures and due to deprived circumstances, they find it

⁷⁵Okeahialam, T. Child abuse in Nigeria. *Child Abuse & Neglect*, 1984. pp. 69-73.

⁷⁶UNHCR & SC-UK. Notes for implementing and operational partners by UNHCR and Save the Children-UK on sexual violence and exploitation: The experience of refugee children in Guinea, Liberia and Sierra Leone based on initial findings and recommendations from Assessment Mission 22 October-30 November 2001. Geneva: UNHCR & SC-UK. 2002.

⁷⁷As above.

difficult to see any other alternatives. According to UNICEF's approximations, more than 60 million children worldwide are affected by child marriage.⁷⁸ The International Center for Research on Women states, reports that if the present trends continue, 100 million girls will marry over the next decade. That's 25,000 girls married every day for the next 10 years.⁷⁹ UNICEF mentions that though in general child marriage is becoming less common, the pace of this change is slow.⁸⁰

The Innocent Digest reports that the practice of child marriage varies depending on a society's view of the family; its role, structure, pattern of life, and the individual and collective responsibilities of its members.⁸¹ The report explains that the idea of what family is and its function is different to each country's social groups. For instance, Ursula Ebenhöh⁸² explains that throughout Western Europe and North America's history, marriages take place later in life and because women and men marry as adults with experience of life, it is alien to accept unquestioningly a parental choice of spouse.⁸³ On the other hand, amongst some groups in Asia, the Middle East, and North Africa marriage after puberty is common; in parts of Western and Eastern Africa, and Southern Asia some girls marry before puberty.⁸⁴

⁷⁸UNICEF. Early Marriage: A Harmful Traditional Practice: A Statistical exploration. UNICEF. 2005, (http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf), site visited on 18 Feb 2018.

⁷⁹International Center for Research on Women. Child Marriage Facts and Figures, (<http://www.icrw.org/child-marriage-facts-and-figures>).site visited on 21 Jan,2018.

⁸⁰UNICEF, Early Marriage: Child Spouses, Innocent Digest 7 2001: 5, (<http://www.unicefirc.org/publications/pdf/digest7e.pdf>). Site visited on 19 Feb,2018.

⁸¹UNICEF, Early Marriage: Child Spouses, Innocenti Digest7 2001: 5, visited on February19, 2018.

⁸²Ursula Ebenhöh, Family History: Historical Changes and Regional Differences on that what is called family (Germany: GRIN Verlag, 2004.

⁸³As above.

⁸⁴As above.

Susanne Mikhail⁸⁵ mentions that child marriage is deeply rooted in cultural values and its practice is celebrated in some communities. The families which engage in this practice consider it a convenient way to secure their child's future and at the same time alleviate their own financial responsibilities. Furthermore, child marriage is viewed as a way of preventing girls from initiating sexual relations with unknown men. The honor attached to this practice has traditionally been linked to its central purpose, which is to assure virginity at the time of marriage.⁸⁶

A research on child marriage in Indonesia and Nepal reveals that the social group that had the highest amounts of child marriage cases was the most traditional among the other provinces.⁸⁷ In many African cultures, parents of a virgin bride are recompensed with gifts and the virgin is valued by her husband and honored by his family. There is unjustified belief that a child bride comes to learn and venerate her husband from a very early age and will become firmly attached to him as she grows older.⁸⁸

Bamgbose⁸⁹ states that the increase of girls seeking help because of abuse and other situations they are involved in proves that this belief fails to hold truth because instead of drawing the young wife towards her husband, the violence and the situation tend to force such girl to distance herself from the husband. Poverty,

⁸⁵Susanne Louis B. Mikhail, *Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation*, Gender and Development 10 2002, p.43.

⁸⁶As above no.112.

⁸⁷Minja Choe Kim, ShyamThapa, and SulistinahAchmad, *Early Marriage and Childbearing in Indonesia and Nepal*. East West Center 108 2001, visited on February 19, 2018.

⁸⁸As above.

⁸⁹Olujemisi Bamgbose, *Legal and Cultural Approaches to Sexual Matters in Africa: The Cry of the Adolescent Girl*, University of Miami International and Comparative Law Review 127., visited on February 19, 2018.

protection of girls, fear of loss of virginity before marriage and related family honor, and the provision of stability during unstable social periods are suggested to be significant factors in determining a girl's risk of becoming married as a child.⁹⁰ Most parents make their sons-in-law promise not to have sexual intercourse with their daughters until they start to menstruate.

Bamgbose argues that in many cases, this promise is disregarded. For example, Yemeni law allows girls to marry at any age but prohibits sexual intercourse until the girl is physically mature.⁹¹ In African countries, there are laws that forbid sexual intercourse with any girl under the age of fourteen.⁹² As it has been observed that a young child five or six years goes to her marriage home and she is nursed and generally brought up by her husband and that husband does not have sexual intercourse with her until he thinks she is ready for it and certainly when she not below the age of twelve.

Forbes *et al.*, argue that child trafficking is a another common form of children's rights violation in many states.⁹³ Children are trafficked both within and between countries for the purposes of forced labour, prostitution, forced marriage, domestic work, begging, use by armed groups and many other forms of exploitation. Statistics are hard to gather and often unreliable. Children trafficked into domestic work, for

⁹⁰As above.

⁹¹Carla Power, Nujood Ali & Shada Nasser win Women of the Year Fund 2008 Glamour ward, Yemen Times, August 12, 2009, visited on February 16, 2018.

⁹²International Humanist and Ethical Union. Child Marriage: A Violation of Human Rights. April 23, 2007, (<http://www.iheu.org/child-marriage-a-violation-of-human-rights>). Site visited on 19 Feb 2018.

⁹³Forbes, B. and D. Lau, E. Oswald, T. Tutnejevic. A systems approach to child protection: A World Vision discussion paper. Monrovia, CA: World Vision International, 2001. p. 3.

example, are hard to document due to the privacy of the home and because such work may not be regulated. Children who are trafficked for sexual purposes are also difficult to document because of the hidden nature of the crime. Continued misconceptions of the difference between trafficking and prostitution, and between trafficking and illegal migration, also affect data reliability.

The multiple factors that contribute to the violation of children's right to protection including poverty and gender inequality, harmful traditional practices, inadequate legislation and policies, and unresponsive government services are evidence that child protection cannot be addressed on the basis of a single happening and source rather, it must be embraced systematically and holistically. According to Eldring et al.,⁹⁴ the most commonly cited reasons for child exploitation are poverty, failure of the education system and lack of legislative enforcement agencies. For in Malawi, for example children work for a wage on tobacco estates as this seems the only survival strategy available to them and their families whose lives are characterized by constant struggle for survival.⁵⁷

Additionally, parents who are unable to pay for their children's education substitute this situation for child labour.⁹⁵ Thus, as long as household income is too low to meet the basic needs, it is inconceivable that a household will financially support education activities. Child work remains the only realistic way to survive their economic condition. Another reason for child exploitation is that children provide

⁹⁴Eldring, L., S. Nakanyane and M. Tshoedi. Defending the vulnerable group : Child labour in the tobacco-growing sector in Malawi . Child Labour in the Tobacco Growing Sector in Africa, Report prepared for the IUF/ITGA/BAT Conference on the Elimination of Child Labour, Nairobi 8-9th October 2000.

⁹⁵As above.

cheap labour which is on high demand in a majority of states. Jobs which children do are seasonal while adults work almost on a permanent basis. Job security is hugely compromised by child labour illegality. This illegality augments give employers power to hire and fire as labour laws do not protect working children.

The other factor which has often been denied space or simply ignored in most research on the violation of children rights is the influence of certain cultural practices. For instance, most parents attitude towards child labour is indifferent believing it provides public space for socialization and character development. Children also feel they have an obligation to help their parents in many ways possible.⁹⁶ Preventing and responding to violence, exploitation and abuse are essential if children's rights as set out in the Convention on the Rights of the Child are to be guaranteed. Abusive practices against children aggravate poverty, social exclusion and the transmission of HIV, and create an unwelcome legacy for succeeding generations. By contrast, where children are protected, their health, education and well-being are improved as well as their ability to contribute to society as future parents and citizens.

Ochanda et al.,⁹⁷ writing on Human Trafficking and Commercial Sexual Exploitation of Women and Children in East Africa study the global magnitude and trends of child exploitation in Kenya and Tanzania. They made an inventory of institutions that deal with trafficking; and examined the requirements in material, financial and

⁹⁶Dottridge, M. and L. Stuart. Child labour today, UNICEF: Hobbs the Printers Ltd. 2005.
 Ochanda, R. M., Akinyi, V., & Mungai, M. *Human Trafficking and Commercial Sexual Exploitation of Women and Children in East Africa*. Nairobi: MM & KARDS. 2009.

human resources as well as possibilities of collaboration in combating human trafficking. These authors aimed at understanding how faith based organizations, NGOs and other civil associations are involved in advocacy and awareness raising on child exploitation.

As of May 2009, 131 countries had ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which criminalizes all forms of sexual exploitation of children and emphasizes support to children who are victims.⁹⁸ The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2008) commits governments to a set of specific, time bound goals to prevent and stop sexual exploitation of children and adolescents, and to protect exploited children.⁹⁹ Thus it is the imposed duty to states to adhere to not only this declaration but any other international treaties by creating good environment for the well-being of the child.

Therefore, in these scholarly works above have assessed the incidents of and the risks of child sexual exploitation. Most of them indicate that, cultural practices, commercial factors and failure of parenting role contribute to child sexual exploitation. But they did not consider factors like corruptions, *lacunae* in legal system as well as lack of strong will of various stakeholders in prohibiting and eradicating child sexual exploitation.

⁹⁸UNICEF. Beyond Child Labour: Affirming Rights, New York: UNICEF Division of Communication. 2001.

⁹⁹As above, no 125.

1.7 Research Methodology

According to Strauss and Corbin¹⁰⁰ a research method is a set of procedures and techniques for gathering and analyzing data. A method may be quantitative or qualitative. The study is doctrinal research in the sense that first, it look on the provisions of the laws and treaties concerning child protection from sexual exploitation. Second, it analytically examines the effectiveness of the law enforcement agencies.

In this study information was gathered largely by using secondary method of data collection (library based research) but also by primary method. Secondary data included data gathered from documents such as media reports, analysis and review of published books, journals, papers, periodicals, and unpublished works, internet as well as government's official documents. The findings from these secondary data once collected were analyzed using content analysis.

The researcher consulted valid documents which provides reliable information. International treaties like The United Nations Convention on the Rights of the Child of 1989, Universal Declaration of Human Rights (UDHR) of 1948 and the 1924 Geneva Declaration of the Rights of the Child of 1924. Also some local legislations like The Constitution of the United Republic of Tanzania of 1977, the Penal Code Cap 16, the Law of the Child Act No.21 of 2009, the Children Act No. 6 of 2011, Sexual Offences Special Provisions Act, Act No. 4 of 1998, the Penal Decree (Amendment) Act No. 6 of 2004 and the Children's Court Rules of 2015.

¹⁰⁰Strauss, A., & Corbin, J. Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory (2nd ed.). London: Sage Publications.1998.

Documentary review was employed to examine the secondary legal sources such as textbooks, journal articles, legal newspapers, comments and reviews by legal practitioners and academicians. Different libraries were visited and reviewed such as at the Open University of Tanzania and State University of Zanzibar (SUZA). The researcher also use group discussion to obtain information about personal and group perceptions and opinion which are useful as far as child protection from sexual exploitation is concerned. The groups consisted of parents, children themselves, adults, police, legal practitioners, and academicians. These participants were consulted from Zanzibar.

1.8 Scope and Location of the Study

The study was specific on child sexual exploitation in Zanzibar. It was conducted in Urban West District, located in Urban Region which is among five regions found in Zanzibar. The 2012 census approximated the population of Zanzibar to be 1.3 million, whereby around 40% of the entire population was approximated to be under the age of 16 years hence potentially children.¹⁰¹ Zanzibar is made up of two major islands of Pemba with two regions and Unguja with three. Each region has two districts. There is a total of 335 *Shehias* (villages in rural areas or hamlets in urban areas).¹⁰²

Approximately 58% of the whole population reside in Unguja where the capital Stone Town is situated.¹⁰³ Zanzibar is largely a Muslim society with approximately 98% of the whole population being Muslim. In parallel with the formal justice

¹⁰¹<http://www.nbs.go.tz/>

¹⁰²Ljungman, C. M. et. al 2014, p. 12.

¹⁰³As above.

system, Zanzibar also has traditional and religious legal systems at the community level known as *Shehia*. The head of *Shehia* is known as *Sheha* and he is afforded authority of dealing with reconciliation and settlement of all social and family disputes by observing the cultural and customary values of the particular locality.

1.9 Chapterisation

This study has the total of five chapters, and it traces the historical trend of child sexual exploitation and the role of the different treaties, legislation and institution towards preventing such unbecoming incidences. Child sexual exploitation has emerged as a human rights emergency with various global dimensions. In Zanzibar, statistics available suggests that it is alarming and has to be given special attention. In chapter one is about background of the study. It explicitly addresses the persistent occurrences of child sexual exploitation especially in Zanzibar (through statement of the problem) as well as the need to protect children from such exploitation. Effort adopted to resolved problem for the full protection and promotion of child welfare. The review of other relevant reference material on the overall understanding of children's sexual exploitation has been done. The methods adopted during the study and what this study would bring have been clarified.

In chapter two, various international instruments like the United Nations Convention on the Rights of the Child of 1989, the African Charter on the Rights and Welfare of the Child of 1990, the Optional Protocol on the Sale of Children of 2000 as well as the Child Prostitution and Child Pornography of 2000 which Tanzania (including Zanzibar) have ratified. Protection of children by these instruments and the obligation imposed to member states on the efforts toward safeguarding and

improving welfare of the child in their respective countries. These instruments in their generality deliver a legally binding set of multi-disciplinary procedures that provide standards for identifying, referring and responding to cases of child sexual exploitations, yet child sexual exploitation in Zanzibar still a threat. For this reason, the present study was conducted to investigate the mischief behind this situation. The ratification of these instruments marked the serious beginning of children protection in Tanzania and Zanzibar in particular. It facilitated the enactment of several legislations and was greatly accountable to the erosion of the established cultural myth which undermined children in some aspects of life

In chapter three, shed light on the impact of those international instrument in child protection form sexual exploitation, and the national legislative and policy efforts in protecting children. These domestic legislations policy and institutions are Zanzibar Constitution, Penal Decree (Amendment) Act of 2004, the Children Act of 2011, Children Court Rules of 2015, National Plan to Respond to Violence against Children in Zanzibar, which in most cases compliment to the protection of several fundamental rights of children including the right to life, the right to privacy, the right to play, the right to education and the freedom of expression. For the case of chapter four, it provides the insights and findings of the study which highlight the specific groups or individuals, reasons and factors, challenges experienced in implementing laws available which prohibit child sexual exploitation in Zanzibar.

However, it has been illustrated that a successive chain of crime begins and occurs within many contexts like under the umbrella of tradition or culture (such as the practice of child marriage, which is common in Zanzibar) or incredibly, even in

places where a child should feel particularly safe, such as in a shelter or in a family household, (where the pretext of being a domestic worker is in reality a nightmare of sexual exploitation). On the other hand, good practices from the government show that it is within the capacity of relevant stakeholders to address and eliminate these types of exploitation.

The last chapter (five) which has conclusion and recommendations. For it suggests the way forward, thus this study is a contribution to highlighting the presence of violations to children's rights in Zanzibar especially in sexual exploitation and showing how it is conducted hence helping in planning and policy making. The reports presented in this study acknowledge the achievements made in recent years on Zanzibar in the fight against sexual exploitation of children, but they also clearly illustrate the challenges. The participation of various actors to ensure children's right to actively and meaningfully participate in social change and work against sexual exploitation has demonstrated significant impact in Zanzibar. New partnerships are also being formed and the work of the private sector gives hope that as the tourism boom in Zanzibar develops, the travel industry and tourism sector can take a lead role in promoting sustainable and ethical economic development without facilitating sexual exploitation of children.

CHAPTER TWO

INTERNATIONAL AND REGIONAL INSTRUMENTS RELATING TO THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION

2.1 Introduction

There are full range of international instruments which caters for provision and protection of human rights in general and these instruments narrow to child sexual exploitation. These hosts of international laws and conventions have been developed in relation to children rights. Signatories to the convention are obligated to fulfill its recommendations, a number of which refer explicitly to sexual exploitation.¹⁰⁴ Children's rights experts and advocates argue that the convention needs to be taken as a whole, and that the combination of provision, protection and participation needs to be remembered in any policy development on specific areas. These legal instruments are elaborated below.

2.2 The United Nations Universal Declaration of Human Rights of 1948

The UDHR stipulates that all human beings are born free and equal in dignity and rights.¹⁰⁵ They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. It further stipulates that; everyone has the right to life, liberty and security of personö. These articles do not exclude children from such rights. In order to develop and attain their full potential, children deserve full human rights similar to adults. Furthermore, by virtue of their vulnerability they need to be protected.

¹⁰⁴United Nation Convention on the Right of the Child, Article 19 and Article 34.

¹⁰⁵See Article 1 UDHR.

2.3 The United Nation Convention on the Right of the Child of 1989

In terms of rights recognized, the CRC is considered to be the most detailed and comprehensive universal human rights document that deal with children. The CRC is a unique binding international treaty, because it incorporates civil and political, as well as economic, social, and cultural rights, and places equal emphasis on all of them.¹⁰⁶ Scholars categorize the contents of the CRC into four categories, which involve guiding principles and three categories of substantive rights: survival and development rights, protection rights, and participation rights of children.¹⁰⁷

The guiding principles cover general requirements for all rights. CRC¹⁰⁸ establishes that a child is every human being who is below the age of eighteen years, but adds, unless under the law applicable to the child, majority is attained earlier. Such a provision, in this author's opinion, needs clarification, as it is not entirely based in favor of the child. By Article 1, State Parties are left with the privilege to decide themselves on the age at which a child stops being a minor, and loses protection under the CRC. The CRC leaves the possibility for State Parties to use the document in favor of the state, and not in favor of the child, as the length of the time for childhood can be shortened.

Furthermore, among the guiding principles, is the non-discrimination provision, which prohibits the unfair treatment of a child on any basis.¹⁰⁹ Article 3 also

¹⁰⁶"Rights" are things every child should have or be able to do. All children have the same rights. These rights are listed in the UN Convention on the Rights of the Child. Almost every country has agreed to these rights. All the rights are connected to each other, and all are equally important. Sometimes, we have to think about rights in terms of what the best is for children in a situation, and what is critical to life and protection from harm. As you grow, you have more responsibility to make choices and exercise your rights.

¹⁰⁷Stephen N. Achilinu. Do African Children Have Rights? A comparative and Legal Analysis of the United Nations Convention on the Rights of a Child, (Universal-Publishers, Florida),2010. p. 31.

¹⁰⁸Read article 1 of the United Nations Convention on the Rights of the Child of 1989.

¹⁰⁹As above, Article 2

expresses an important requirement as it says that individuals as well as public institutions should act as if the best interest of the child is a primary consideration. Although, emphasizing the purpose of the CRC preserving the best interest of a child is reassuring, the combination of Article 1 and Article 3 of the CRC shows that deciding what qualifies as "a best interest of the child" is left too widely in the hands of the state's parties. As it will be more clearly explained later in this thesis, the freedom of the state's parties to interpret the provisions of the CRC was left intentionally.

The opinion of the author in this is that, the main advantage of leaving certain provisions open for the States Parties' interpretation, is that by having some freedom, government of a State can apply the provisions of the CRC in a manner that results in the effect needed for that certain state. However, any freedom given to the States Parties can back fire, when a state is more eager to please governmental issues, and not to protect children's rights. In such a case, having the right of wide interpretation can result in an avoidance of obligations of the state parties.

Following that, the CRC puts an obligation on the State Parties to recognize "that a child has an inherent right to life," and to "ensure to the maximum extent possible the survival and development of the child."¹¹⁰ Lastly, what is considered to be the general requirement, is the given possibility for children to express their own views in matters concerning them, and the opportunity for these children to defend their interests in judicial and administrative proceedings.¹¹¹ In short, the guiding

¹¹⁰Article 6 of the United Nations Convention on the Rights of the Child.

¹¹¹As above, Article 12.

principles establish the very basis on which a child can act as the subject of international human rights law.

The main protection rights cover among other things all forms of sexual exploitation or sexual abuse.¹¹² The value of protection rights is that they acknowledge the fact that children's rights violations like sexual exploitation are happening. However some matter arising in Africa were not sufficiently taken into account, certain socio-economic conditions, such as illiteracy and low levels of sanitary conditions common in Africa needed more addressing, the community's inability to engage in meaningful participation in the planning and management of basic programs for children was not taken into account as well as the negation of the role of the family by the CRC in the upbringing of the child, and in matters of adoption and fostering.¹¹³

2.4 The Optional Protocols to the CRC

The CRC is accompanied by two Optional Protocols, dealing with specific issues of children's rights. These protocols are called optional, because they do not become automatically binding for states who ratify the CRC.¹¹⁴ The Optional Protocols add and elaborate on the obligations expressed in the CRC, and states can choose themselves whether or not to become party to the Optional Protocols.¹¹⁵

¹¹²As above, Article 34.

¹¹³Danwood Mzikenge Chirva, 'The Merits and demerits of the African Charter on the Rights and Welfare of the Child', *The International Journal of Children's Rights* 10: 157 ó 177, 200 (Kluwer Law International), 2002, p.143.

¹¹⁴The examples of the latter are the cases of the USA and Somalia. Neither of those states have ratified the CRC, however, the USA is a party to both Optional Protocols and Somalia is a party to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

¹¹⁵United Nations International Children's Emergency Fund, 'Optional Protocols to the Convention on the Rights of the Child' <http://www.unicef.org/crc/index_protocols.html> accessed 25 Feb 2018.

The main reason why the Optional Protocols are needed is that they elaborate on especially painful and serious violations of children's rights. However, the freedom that is left for the States Parties to the CRC in deciding whether to become a party to the Optional Protocols contradicts with the purpose of such protocols which is strengthening children's rights. Having said that, this author does not want to imply that adoption of the Optional Protocols was unnecessary. On the contrary, in some situations can guarantee, that although children's rights are not protected by the CRC, the child is still guarded against certain gross violations covered by the Optional Protocols.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSCCPCP),¹¹⁶ was meant to elaborate the contents of the CRC, and strengthen its implementation. The main purposes of OPSCCPCP are to ensure that Article 34 (obligation to protect children from all forms of sexual exploitation and sexual abuse)¹¹⁷ are respected, to provide the necessity for the State Parties to criminalize such acts as sexual exploitation of the child, transfer of organs of the child for profit and engagement of the child in forced labour, as well as to protect the rights and interests of child victims, and to emphasize the importance of international cooperation in regard of crimes mentioned.¹¹⁸

Violations, covered by the OPSCCPCP are serious and in need of strengthened protection, because they target a child's perception of self-value and do severe

¹¹⁶Article 6 of the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49). U.N. Doc. A/ 54/49, Vol. III (2000), entered into force January 18, 2002

¹¹⁷United Nations Convention on the Rights of the Child.

¹¹⁸Under article 10 of the United Nations Convention on the Rights of the Child.

damage to a person psychologically.

2.5 The African Charter on Human and Peoples Right (1981)

Being the principal treaty concern human rights in Africa, charter provides for the rights of all people, including the children. Under article 1, the treaty requires member states to recognizes the rights, duties and freedom which have been enshrined in the charter. Also under article 18(3) provides that states shall ensure the elimination of every discrimination against woman as well as the protection of woman and children rights as it has been stipulated in international conventions and declarations. Therefore, through this it paved the way to other treaties to cement on the continent obligation to provides for the protection of human rights and specifically children.

2.6The African Charter on the Rights and Welfare of the Child (1990)

The African Charter on the Rights and Welfare of the Child (ACRWC), the first regional and comprehensive binding instrument proclaiming the human rights of children, was adopted less than a year after the CRC, and came into force in 1999.¹¹⁹ Africa, to this day, is the only continent with a region-specific children's rights instrument.¹²⁰ The ACRWC was created in order to compliment the CRC and to fill the legal gaps in child protection that were left by the universal children's rights treaty.¹²¹ Because of the importance of the listed arguments,¹²² the AU (formerly

¹¹⁹Pan-African Voices for Freedom and Justice, "Regional Protection of Child Rights in Africa" (<http://www.pambazuka.org/en/category/comment/44416>) site visited on 25 Feb 2018.

¹²⁰Advancing Children's Rights – A Guide for African Civil Society, Archivists Watch, (<http://thearchivistwatch.wordpress.com/2011/03/22/advancing-childrens-rights-a-guide-for-african-civilsociety/>), site visited on 25 Feb 2018.

¹²¹Magdalena Sepulveda, et al, Human Rights. Reference book, University for Peace 2004. p. 168.

OAU) set up a working group of African experts to prepare a draft of the ACRWC. All listed omissions from the CRC were, at least partially, addressed by the ACRWC.¹²³ The adoption of the ACRWC in 1990 is unique in the sense that it took such a short period for the African States to reach an agreement; however, the ACRWC did not come into force until almost ten years later. Only 1999, after it received the requisite fifteen state ratifications,¹²⁴ the regional document became legally binding.¹²⁵

2.6.1 The Basic Features of the ACRWC

The regional nature of the ACRWC shows itself as it is stated that African cultural heritage, historical background, and values should inspire and characterize the concept of the rights and welfare of the child.¹²⁶ Such provisions suggest the possible differences between the CRC and the ACRWC. The first notable difference between the ACRWC and the CRC lies already in the concept of 'a child.' According to the African document, the child is 'every human below the age of 18 years,'¹²⁷ and no exceptions, like in the case of the CRC, are provided. As a result, all people under

¹²²Danwood M. C. The Merits and demerits of the African Charter on the Rights and Welfare of the Child, *The International Journal of Children's Rights*. Kluwer Law International), 2002. p. 145.

¹²³As above.

¹²⁴Treaty Ratification and Committee Recommendations, (<http://www.acerwc.org/treaty-ratification/>), site visited on

25 Feb 2018. To date, forty-five out of fifty-three African States have ratified the ACRWC. The Central African Republic, Djibouti, the Democratic Republic of Congo, the Arab Democratic Republic, Somalia, Sao Tome and

Principe, Swaziland, and Tunisia have not ratified the treaty yet, mainly because of the political instability in those countries and constant notorious practices concerning the denial of human rights.

¹²⁵Read Article 47(3) of the African Charter on the Rights and Welfare of the Child, which provides the present Charter shall come into force 30 days after the reception by the Secretary- General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

¹²⁶Article 7 of the African Charter on the Rights and Welfare of the Child. OAU Doc CAB/LEG/24.9/49. 1990. adopted 11 July 1990, entered into force 29 November 1999.

¹²⁷As above, Article 6.

the age of eighteen are guaranteed the unconditional protection of the ACRWC. In this author's opinion, the establishment of the fixed age of minority is directly linked with the principle of the best interests of the child.

The Preamble of the ACRWC recognizes "that the child occupies a unique and privileged position in the African society, that the child should grow up in a family environment in an atmosphere of happiness, love and understanding,¹²⁸ and acknowledges that the situation of African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger.¹²⁹ ACRWC was intended to satisfy the needs of important socio-cultural and economic realities of the African experience, as A. Lloyd notices, the ACRWC yet was inspired by the trends evident in the UN system" and should play the role of a complementary mechanism to that of the UN in order to enhance the enjoyment of the rights of children in Africa.¹³⁰

Similarly, as in the CRC, core principles of children's rights protection can be distinguished. The main of these principles is a rule against discrimination, stating that the enjoyment of the rights and freedoms recognized in the ACRWC must be guaranteed to every child equally.¹³¹ Also there is the rule of the best interest of a child. This means that in any action undertaken regarding children, the child must be

¹²⁸African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49. 1990, adopted 11 July 1990, entered into force 29 November 1999, Preamble par. 4.

¹²⁹As above, par. 3

¹³⁰Stephen N. Achilinu. *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of a Child*, (Universal-Publishers, Florida), 2010. p. 70.

¹³¹Article 3 of the African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49. 1990, adopted 11 July 1990, entered into force 29 November 1999.

in *the* primary consideration.¹³² Compare to CRC, which points towards *a* primary consideration of child's best interests, the ACRWC gives a stricter and more specific obligation.¹³³ Moreover, it elaborates on the matter, and not only requires the elimination of social and cultural practices that are harmful to the health or life of the child and are discriminatory, but also states the minimum age for marriage as eighteen, and demands for the official registration of all marriages.¹³⁴ The establishment of a strict age to reach the majority in the ACRWC is linked to the child marriages which are very popular in this continent. More than forty percent¹³⁵ of girls are married before the age of eighteen in Africa; moreover, there are parts of West and East Africa, including Zanzibar where girls are forced to marry even before they reach puberty.¹³⁶

2.6.2 Communication of Grievances under ACRWC

According to the Guidelines for the Consideration of Communications Provided for in Article 44 of the ACRWC, the children themselves (and/or their parents), if the rights of a child under the ACRWC have been violated can submit a complaint to the African Committee.¹³⁷ Such a given right to a child shows that African States

¹³² As above, no 154, Article 4(1).

¹³³ Danwood Mzikenge Chirva. *The Merits and demerits of the African Charter on the Rights and Welfare of the Child*, *The International Journal of Children's Rights*. Kluwer Law International. 2002, at p. 160.

¹³⁴ Under article 21 of the African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49.

1990; adopted 11 July 1990, entered into force 29 November 1999.

¹³⁵ *Child Marriage: What We Know?* Public Broadcasting Service, 2016, (<http://www.pbs.org/now/shows/341/facts.html>), site visited on 25 Feb 2018. 118 *Child Marriage*, UNIFEC, (http://www.unicef.org/protection/index_earlymarriage.html), site visited on 25 Feb 2018.

¹³⁶ *Child Marriage*, UNIFEC, (http://www.unicef.org/protection/index_earlymarriage.html), Site visited on 25 Feb 2018.

¹³⁷ Read chapter 2, at Article 1(1) of the Guidelines for the Consideration of Communications Provided for Article 44

understand the autonomy of the child as an independent subject to a law and with this understanding comes the better protection of a child.

Also, legal representatives of a child, group of persons or NGO recognized by the African Union, by a Member State or by any other institution of the UN system can submit a complaint on behalf of the child, even without the consent of the victim, if it is proven that the author of the communication is acting according to the best interest of the child.¹³⁸ It is necessary to let a child to be helped to, because, firstly, the victim of maltreatment, being a minor, could not realize that his or her rights are being violated, and secondly, even if such understanding existed, it is very unlikely that a child would know where to go and whom to talk to in order to file a complaint.¹³⁹ In such an event, children or party representing them have the right to file a complaint under universal human rights treaties that such State is a party to.

2.7 Treaty Monitoring Bodies

Establishing the rights of children as well as the duties of states through several treaties (as previously discussed)¹⁴⁰ is only half of the work and the other half is to create a treaty implementation mechanism which will oversee the implementation of those rights. As has been already seen, the CRC, as well as the ACRWC are two instruments which are legally binding among its member states. The mechanism for the implementation of the treaties is made up of the following supervising bodies;

of the African Charter on the Rights and Welfare of the Child, ACERWC/8/4. (<http://www.acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>), site visited on 25 Feb 2018.

¹³⁸As above, no 160.

¹³⁹Ruth E. Children's Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare

of the Child, 33, (<http://repository.up.ac.za/upspace/bitstream/adebola.pdf>), site visited on 25 Feb 2018.

¹⁴⁰Refer to Chapter two, paragraph 2.2, 2.3, 2.4 and 2.5.

2.7.1 The UN Committee on the Rights of a Child (CRC Committee)

The CRC Committee is made out of eighteen experts of high moral standing and recognized competence in the field covered by the CRC.¹⁴¹ The main function, of this Committee,¹⁴² is to receive reports from State Parties concerning measures that are adopted to give effect to the rights recognized by the CRC and on the progress made on the enjoyment of these rights. State Parties who have acceded to the two Optional Protocols to the Convention must also submit additional reports on the implementation of these protocols.

First report has to be submitted within two years of the entry into force of the CRC for the State Party; afterwards, the reporting must be done every five years.¹⁴³ The General Guidelines provide reporting States with the requirements of the report.¹⁴⁴ The reporting State, after giving basic information on its population, general institutional and judicial framework of the country, has to provide relevant information on taken measures to ensure children's rights on eight broad topics:¹⁴⁵

The goal of initial and periodic reports is to show what is being done by States Parties to comply its laws and administrative practices with the CRC. The reports are necessary not only because they urge States Parties to take their obligations under the CRC seriously, but also because these reports provide State Parties and the CRC

¹⁴¹Article 43(2) CRC.

¹⁴²Article 44 CRC.

¹⁴³As above.

¹⁴⁴General Guidelines for Periodic Reports: CRC/C/58, adopted by the Committee on the Rights of the Child On 1996, (http://www.nanoq.gl/emner/landsstyre/departementur/departement_for_sociale_anliggender), site visited on 25 Feb 2018.

¹⁴⁵Read Article 11-166 of CRC, these topics are general measures of implementation, definition of the child, general principles, civil rights and freedoms, family environment and alternative care, basic health and welfare, education, leisure and cultural activities, special protection measures.

Committee with the basis of a discussion. After examining the reports, it provides concluding observations, where general evaluation of the report is given. However, such observations are not legally binding to the States Parties, but rather authoritative. The decision whether to follow the instructions of the CRC is left to governments of states parties as the CRC Committee has no powers to enforce any legally binding measures on the States Parties.¹⁴⁶

However, from the concluding observations, adopted as responses to the most African states' reports, it is clear that biggest problems in implementation of the CRC are discrimination of girls, as a result of harmful cultural practices; shortages in educational and health systems; non-registration of newborns, especially in rural areas; issues of child labor; and unfavorable position of juvenile offenders.¹⁴⁷ Although the matters that general comments elaborate on are directly relevant to the African states because of the situation of children's rights protection there, the CRC Committee, having no binding powers, lack the effect on the States Parties.

2.7.2 The African Committee of Experts on the Rights and Welfare of the Child (African Committee)

The African Committee consists of 11 members who work to promote and protect the rights and the welfare of the child.¹⁴⁸ Article 42 of the ACRWC stipulates main functions of the African Committee to be, to collect and document information, to commission interdisciplinary assessment of problems in Africa regarding rights and

¹⁴⁶Paragraph 34 of the Overview of the Reporting Procedures, The Committee on the Rights of the Child, CRC/C/33, of 2004 (<http://daccess-ddsny.un.org/doc/>), Site visited on 25 Feb 2018.

¹⁴⁷Frans Viljoen, *International Human Rights Law in Africa*, Oxford University Press. 2007. p 144.

¹⁴⁸Article 32 and 33 of the African Charter on the Rights and Welfare of the Child.

welfare of the child, to organize meetings to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa. To strengthen the protection of a child, the African Committee is also enabled to cooperate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.¹⁴⁹

The African Committee, like the CRC Committee, not only guards and promotes children's rights, but also monitors the implementation of such rights.¹⁵⁰ The African Committee also has powers to interpret provisions of the ACRWC by the request of State Party or an institution of the Organization of African Unity.¹⁵¹ The State reporting procedure under the ACRWC resembles the one provided by the CRC: State parties to the ACRWC must provide information on the implementation of the ACRWC, according to the protection of certain groups of children's rights.

Guidelines for Initial Reports for state parties¹⁵² under the ACRWC sets the following topics to report on: general measures of implementation of the ACRWC - State's legislative and administrative practices regarding implementation; definition of a child; general principles of non-discrimination, best interest of the child, the right to life, survival and development, respect for the views of the children, and provision of information to children and promotion of their participation; civil rights and

¹⁴⁹ Article 42.

¹⁵⁰ Article 42(b).

¹⁵¹ Article 42(c).

¹⁵² Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Committee/ACRWC/2 II. Rev2, <http://www.africaunion.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>, site visited on 25 Feb 2018.

freedoms; family environment and alternative care; health and welfare; education, leisure and cultural activities; special protection measures; and responsibilities of the child.¹⁵³ As it can be noticed, extra section of reporting, compared to the General Guidelines for reporting under the CRC, is added ó States Parties have to indicate taken measures to guarantee the implementation of children's duties.¹⁵⁴

The reporting period for the first report under the ACRWC is the same as under the CRC, two years, however, there are reports which must be submitted every 3 years.¹⁵⁵ Such obligation is well thought because the African Committee is able to monitor the protection of children's rights in shorter periods of time than it is able to be done under the CRC. Given the intensity and frequency of violations of human and, in particular, children rights, those are happening in Africa, the obligation to submit a report for example after every five years would make it more difficult to follow up these violations and to prevent them from happening again.

Basically, states which are parties to the CRC as well as to the ACRWC, have to submit to the African Committee, the report for the CRC as well as the material representing additional regional requirements. However, if the State Party has not submitted its report to the CRC Committee full report must be prepared and submitted to the African Committee.¹⁵⁶

¹⁵³ Article II ó X of the Guidelines.

¹⁵⁴ Article XI (24) of the Guidelines for Initial Reports of States Parties, Prepared by the African Committee of Experts on Rights and Welfare of the Child Pursuant to the Provision of Article 42 of the African Charter on the Rights and Welfare of the Child, Committee/ACRWC/2 II. Rev2, <http://www.africaunion.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf>, site visited on 25 Feb 2018.

¹⁵⁵ Article 43 (b) of the African Charter on the Rights and Welfare of the Child.

¹⁵⁶ Rule 70 of the Rules of Procedure of the African Committee of Experts on the Rights and Welfare of the Child

2.8 Observation from the Chapter

It can generally be said that, under the sphere of international community, efforts has been done in recognizing, providing as well as protecting the rights of children from whatever form of discrimination including sexual exploitation. Also the international community have argued member states to do the same in their municipal laws so that children can be safe.

CHAPTER THREE

**LEGISLATIVE AND INSTITUTIONAL FRAMEWORK RELATING TO
THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION
IN ZANZIBAR**

3.1 Introduction

Tanzania and Zanzibar in particular has made significant progress in the harmonization of children's laws in the last ten to eight years. As it has been pointed out in the abstract (paragraph three) the ratification of these instruments intensified the beginning of children protection in Tanzania and Zanzibar in particular. It facilitated the inclusion and enactment of several legislations and was greatly accountable to the erosion of the established cultural myth which undermined children in some aspects of life. These local legislations are;

3.2 The Constitution of Zanzibar (Revised edition of 2010)

Being a fundamental law of Zanzibar, the constitution provides general rights to all individuals regardless of age, colour, religion, gender etc. It declares that,

*All persons are equal before the law and are entitled Equality without any discrimination, to protection and equality before the law and no law shall make any provision that is discriminatory either of itself or in its effect.*¹⁵⁷

Also the constitution requires that, every person in Zanzibar without prejudice to that person's tribe, place of origin or domicile or any other relations whatsoever, political lineage, colour, religion or sex has the right and duties to enjoy fundamental human rights and personal freedom provided that personal freedom shall not be exercised in

¹⁵⁷Article 12(1) and (2) of the Constitution of Zanzibar.

a manner that neither infringes upon the rights and freedoms of others nor the public interest, that person shall be entitled to get and receive protection of each¹⁵⁸ Therefore, the constitution sets the benchmark for observing human rights without considering factors like age, religion etc., and that includes children. The following laws in Zanzibar, therefore, observe adhere to the standard set by this constitution.

3.3 The Children Act No.6 of 2011

In accordance with international and regional instruments, the Children Act No.6 of 2011 was passed by Zanzibar's House of Representative in March 2011.¹⁵⁹ It enshrines fundamental rights of children and lays the foundation for a child protection system that will oblige a range of bodies to prevent and respond to sexual exploitation of children. The Act has four general principles in implementing their obligations under international law that are relevant for children's rights.

- (i) Non-discrimination: The principle of non-discrimination and equality has been domesticated in Tanzania. This is entrenched in the Constitution. The Constitution of the United Republic of Tanzania (1977) and the Constitution of Zanzibar (1984) prohibit discrimination of any kind in Articles 13(5) and (6) and Article 12(4) and (5), respectively.
- (ii) The right to life, survival and development: The right to life is found in Tanzania and Zanzibar Constitutions. Article 13 of the Constitution of Zanzibar (1984) and Article 12 of the Constitution of the United Republic of Tanzania (1977) provide for this right.

¹⁵⁸Article 25(1).

¹⁵⁹The enactment of this law was direct reflection of article 9 of UN convention on the Right of the Child 1989 and article 16 of African Charter on the Right of Welfare of the Child 1999.

- (iii) Respect for the views of the child: Article 18 of the Constitution of the United Republic of Tanzania and the Zanzibar Constitution provide for the right to freedom of expression.
- (iv) The Law of the Child Act provides for the child's right to a name, nationality and to know his biological parents and extended family. In fact, the law has also extended this principle to include prohibition on a person to deprive a child of the right to a name, nationality and to know his biological parents and members of extended family subject to the provisions of any other written laws. The Birth and Death Registration Act of 2006, *inter alia*, requires a child to be registered within 42 days after birth.

The law brings Zanzibar close to fully domesticating its obligations under international law that are relevant for children's rights, which include (a) rights to registration of birth (b) right to a name and nationality (c) rights to be provided with certain condition of living and (d) right to live with parents.

The realization of children's rights in the country now mainly depends on the extent to which these and other laws are implemented, and poverty and marginalization are addressed.¹⁶⁰ Until the new law was passed, legal protections for children in Zanzibar were scattered among many statutes that provided scarcely any protection for children at risk.¹⁶¹ The best interest of the child is touted as the main concern of

¹⁶⁰UNICEF. Child Protection and Justice, 2011.

¹⁶¹These pieces of legislation included the Penal Act No 6, 2004; The employment Act, No 11, 2005; The education Act, No. 4 1993; Children and Young Persons Act (chapter 58); Spinster and Single Parents Child Protection Act, No. 4, 2005; and Sexual Offences Special Provisions Act, 1998.

parents and guardians in taking care of their children. This Act obliges parents to have a common responsibility for taking care and protection of a child through provision of food, shelter, clothing, education, medical care, liberty and right to play and leisure.¹⁶²

3.4 Penal Decree (Amendment) Act No. 6 of 2004

This Act was enacted in 2004, so as to amend and repeal some provisions of the Penal Decree, Cap 13. Thus it shall be read together with Chapter 13 of the Laws of Zanzibar. It has provisions which guarantee the welfare and safety of the child against any form of sexual exploitation. It declares that,

“Whoever being a person in position of authority, takes advantage of his official position and commits rape on a girl or woman in his official relationship or wrongfully restrains and commits rape on a girl or woman.”¹⁶³

The Act goes further by adding a new section 145E so as to compliment and strengthen the enforcement of children rights in Zanzibar. Any person who, with intention, assaults or by use of criminal force, sexually harasses another person, or by the use of words or actions, cause sexual annoyance or harassment to such other person, commits the offence of sexual harassment and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings or to both the fine and imprisonment, and may also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.¹⁶⁴

Thus under this section it cover any act of assault which does not amount to rape.

¹⁶²See Section 10.

¹⁶³Section 26, which amended section 120 of the Penal Decree.

¹⁶⁴Section 31, it added section 245 E in the Decree.

3.5 The Children’s Court Rules of 2015

The overriding objective of the Children’s Court Rules is to establish a uniform practice and procedures for the children’s courts of Zanzibar and to assure that the rights of the child as provided in the Children Act are protected.¹⁶⁵ It further requires and applicable to any court that is constituted or sitting as a children’s court, unless otherwise provided.¹⁶⁶ This Rule has created an atmosphere enabling court to permit a child who is a victim or witness to a crime and who is giving evidence before the court to be assisted by an intermediary in the best interests of the child.¹⁶⁷

It also provides another platform through which matters involving children can be instituted in court. Apart from the victim or parent/relative, the Director of Social Welfare may make an application in court where the following circumstances prevail;

- (a) the welfare officer has reason to believe that the child concerned is in need of immediate protective services or protection which can only be provided by the court;¹⁶⁸ or
- (b) the person infringing the child’s right has failed to take action or to refrain from certain forms of action, as required by the welfare officer within the time specified;¹⁶⁹ and
- (c) the issue cannot be dealt with under any other provisions of the Act.¹⁷⁰

¹⁶⁵Rule 4(1).

¹⁶⁶Rule 4(3).

¹⁶⁷Rule 73(1) and (2).

¹⁶⁸Rule 114(2) (a).

¹⁶⁹Rule 114(2) (b).

¹⁷⁰Rule 114(2) (c).

However, despite such efforts like, having a number of legislations relating to child sexual abuse and exploitation, a number of complaints have been reported to various institutions. For example Zanzibar Female Lawyers (ZAFELA) received 32 complaints, ZLSC received 25 complaints and the Women and Children Protection Desks, which received 149 cases.¹⁷¹ The then Ministry of Social Welfare, Youth, Women and Children Development, currently known as ministry of Empowerment, Social Welfare, Youth, Women and Children (MESWYWC) reported that about 1,005 child sexual abuse incidents were reported at the One-Stop Centre between July 2012 and June 2013, the figure which included 480 rape cases, 274 molestation cases, 176 teenage pregnancy cases, 53 sodomy cases and 22 abduction cases.¹⁷²

3.6 Experience from other Jurisdictions

It is imperative to relate the policy and legal environment on rights of children in Zanzibar with other jurisdictions. Under this juncture, Tanzania Mainland and South Africa are chosen as they serve as best and realistic samples. Tanzania being in the same union with Zanzibar,¹⁷³ while South Africa being a developed nation in Africa.¹⁷⁴

3.6.1 Tanzania Mainland

Tanzania was estimated to have a population of 50 million people in the year 2016.¹⁷⁵ About half of Tanzania's population is children whom by legal definition

¹⁷¹See combined reports from LHRC and ZLSC, and Zanzibar Female Lawyers (ZAFELA), 2010.

¹⁷²Omar, A. M. et. al. Fighting Child Sexual Abuse in Zanzibar through Provision and Sharing of Child Protection Information, UDSM, 2016, p. 5.

¹⁷³See Section 4 of Union of Tanganyika and Zanzibar Act No. 22 of 1964.

¹⁷⁴See (<https://www.oxfordbusinessgroup.com/overview/two-decades-while-much-has-been-achieved-more-remains-be-done-20-years-after-end-apartheid>). Site Visited on 19 Feb 2018.

¹⁷⁵See (<http://www.worldbank.org/en/country/tanzania/overview>) Site visited on 19 Feb 2018.

are persons under the age of 18 years.¹⁷⁶ Prior to enactment of the Law of Child Act of 2009, children rights and protection mechanisms were found in a host of statutes, lacking cohesion and they were weak. The enactment enshrines basic children rights and lay a basis of child protection mechanism at par with the international framework. The law put on notice a host of stakeholders to ensure and uphold children rights while preventing and responding to violence, abuse and exploitation of children.

In essence, the law effectively domesticates the United Nations Convention on the Rights of the Child which the country ratified way back in 1991. Notably the law provides for the following emphasis as far as rights of children are concerned; it provides for the principle of non-discrimination as entrenched in the Constitution of United Republic of Tanzania (1977) as it was amended. The Constitution prohibits discrimination of any kind and provides for the right to life, survival and development.

Furthermore, children views are also upheld as per Article 18 of the Constitution of Tanzania which guarantees the right to freedom of expression. In addition, the law provides for the child's right to a name, nationality and to know his biological parents and extended family. In fact, the law has also extended this principle to include prohibition on a person to deprive a child of the right to a name, nationality and to know his biological parents and members of extended family subject to the provisions of any other written laws.

¹⁷⁶Section 4(1) of Law of Child Act No. 21 of 2009.

Children sexual exploitation is a gray area for government and stakeholders alike. They have both undertaken measures to combat the same, including pronouncement of laws and policies. The government measures to address such gaps have led to Multi Sector National Plan of Action to Prevent and Respond to Violence against Children 2013-2016.¹⁷⁷ Apart from sexual violence, the law introduced and widened the offences including trafficking in persons; sexual harassment; and a prohibition on FGM which was the first time for Tanzania to take legislative action against the practice.

It also introduced severe punishments for sexual offences including imposition of a minimum sentence of 30 years imprisonment and compensation to a survivor of sexual violence and life imprisonment if the girl raped is less than 10 years old.¹⁷⁸ Moreover, gang rape is recognized as a special crime punishable with life imprisonment for each person in the group, regardless of that person's role in the rape.¹⁷⁹ Others include gross indecency, with a punishment of not less than ten years imprisonment; sexual exploitation of children, with a punishment of imprisonment from five to twenty years, grave sexual abuse, with a punishment of imprisonment for fifteen to thirty years, but if the victim is less than fifteen years old, imprisonment from twenty to thirty years.

Section 138 B of the Penal Code provides that,

“A person is liable upon conviction to imprisonment for a term of not less than five years and not exceeding twenty years if he commits the offence of

¹⁷⁷United Republic of Tanzania, Multi Sector National Plan of Action to Prevent and Respond to Violence in Children July 2013-June 2016. Dar es Salaam: United Republic of Tanzania, (http://www.togetherforgirls.org/wpcontent/uploads/Tanzania_FINAL3_year_national_plan).

¹⁷⁸As above, no. 203, Section 138A.

¹⁷⁹As above, Section 131A (1) & (2).

exploitation of children.”

This offence is committed in the circumstances where the offender -

- (a) Knowingly permits any child to remain in any premises for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show; or
- (b) Acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse, or indecent exhibition or show; or
- (c) Induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse, or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means; or
- (d) Takes advantage of his influence over, or his relationship to, a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show; or
- (e) Threatens, or uses violence towards, a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show; or
- (f) Gives monetary consideration, goods or other benefits to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show.

The only area where Tanzania has failed to enshrine the rights of children is on marriage and domestic violence. The law of marriage retains provisions that permits early marriages for a girl child of 15 years save for the consent of parents.¹⁸⁰ This

¹⁸⁰See Section 13 and 17 of the LMA.

contradicts the spirit of the law of child enacted back in 2009 which term a child as anyone below the age of 18 years.

There are national plan and project such as the project which supports the National plan of Action for the Prevention and Response to Violence against Children (2013-2016) as well as the National Costed Plan of Action for Most Vulnerable Children (2013-2017). The programme aims to achieve a long-term, sustainable system for identification, prevention, response and rehabilitation of children by embedding the system into the Local Government Authorities (LGAs) and community structures using the results generated to advocate for a regular budget allocation for child protection at the district level. At national level, the programme aim to strengthen the capacity of the Departments of Social Welfare on the mainland and Zanzibar to provide technical support to LGAs on child protection system strengthening.¹⁸¹

The access to justice and equality for women and children in Tanzania is dome so as to promote respect and make people aware of legal rights, human rights and gender issues and influence practice that encourages gender equality, it has shown some promise. They are effective in reducing recidivism and other indicators of antisocial behavior amongst various subgroups of serious offenders, including sexual offenders.¹⁸²It has advocated the involvement of a range of agencies including the Departments responsible for court services, health, education, social services, and

¹⁸¹Kisanga F, Nyström L, Hogan N, Emmelin M. Parents' experiences of reporting child sexual abuse in urban Tanzania. *Journal of Child Sexual Abuse*, 2012. p. 27.

¹⁸²Kameri-Mbote P & Mutembei K. Access justice and equality for women and children in the Kilimanjaro region, Tanzania. *Evaluation Report Project*, 2014. p .22.

police.

Basic sex offender treatment generally involves group work and individual therapy, and is based on cognitive and behavioral modification principles. It is geared towards offenders accepting responsibility for their actions, and the exploration and implementation of mechanisms to prevent further offending.¹⁸³ International organizations have also supported national efforts, for example UNICEF, Plan International (PLAN) and Save the Children International (SCI) have implemented an initiative funded by the EU to the tune of 4 billion TSH (1.8 million EUR), in Kisarawe, Kibaha, and Shinyanga rural districts on the mainland and West district of Zanzibar. SCI, PLAN, in partnership with local authorities and civil society organizations have taken the lead towards this struggle.

3.6.2 South Africa

South Africa population estimates stands at 55 million.¹⁸⁴ The number of children is estimated to be at 19 million which is equivalent to 34 per cent of all population. Soon after the demise of apartheid, South Africa embarked on a more inclusive legal and policy reforms.¹⁸⁵ In late 1990s the South Africa Law Commission, with vigorous participation of civil society; inter alia consolidated the law on children of 2005 which significantly enhanced their protection. Significantly, the law set the following legal parameters: It defines child exploitation as the procurement of a

¹⁸³UNICEF. Childhood Poverty in Tanzania: Deprivation and Disparity in Child Well- being Dar es Salaam: UNICEF. 2009.

¹⁸⁴Phumzile M. P. SA's growing population estimated at 55.9 million Thursday 25 August 2016 (<http://www.sabc.co.za/news/a/4f486d804dfedec09519b55173dc1eac/SAs-growing-population-estimated-at-55.9-million-20160825>).

¹⁸⁵<http://www.gov.za/about-sa/history>.

child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whatever that reward is claimed by, payable or to be shared with the procurer, the child, the parent or care giver of the child, or any other person or trafficking in a child for use in sexual activities, including prostitution or pornography.¹⁸⁶ South Africa is a state party to both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Thus the South African government has an obligation to take effective measures to protect not only South African children but all children within its borders.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the Films and Publications Act 65 of 1996 as well as the Children's Act 38 of 2005 contain measures to protect children from being sexually exploited. However, some events create special circumstances for practices such as sex tourism, and an influx of child pornography and prostitution based on the demand for cheap sex. The prompt prosecution of individuals charged with those crimes is an essential part of protecting children from being sexually exploited during international events, since they usually span over a period of only six to eight weeks.¹⁸⁷

The Sexual Offences Act No 32 of 2007 contains various prohibitions relating to brothels and prostitution. Those offences are not specifically aimed at children, but those sections have been interpreted so that children may also be regarded as victims of or involved in those offences. It criminalizes various acts relating to prostitution

¹⁸⁶Section 17 of the South Africa Sexual Offences Amendment Act, 2005.

¹⁸⁷Anderson and O'Connell Davidson 'Is Trafficking in Human Beings Demand Driven? Multi-Country Study. 2007. p.45.

on children. It stipulates that a person is guilty of an offence if this person:

- (i) procures or tries to procure a woman or a young girl to commit unlawful carnal intercourse with another person (excluding the pimp);
- (ii) in any way helps to bring about such intercourse;
- (iii) inveigles or entices a woman or young girl to a brothel for the purposes of unlawful carnal intercourse or prostitution;
- (iv) hides the inveigled or enticed woman or young girl in such a house or place; procures or tries to procure a woman or young girl to become a common prostitute; procures or tries to procure a woman or young girl to become an inmate of a brothel;
- (v) applies or administers a drug, intoxicating liquor, matter or thing to a woman or young girl or causes her to take it with the intent to stupefy her¹⁸⁸

Child exploitation is further ascribed to all forms of slavery or acts pertaining to slavery, not limited to debt bondage, forced marriage, servitude, forced labour and removal of body organs. It defines and prohibits the trafficking of children and criminalizes actions which facilitate trafficking in children. It provides provisions that assist in the physical, psychological and social recovery of victims of trafficking. Thus, a child who is a victim of trafficking must be referred to a designated social worker for investigation and should be placed in temporary safe care.

Similarly, a trafficked child who is not a citizen of South Africa may not be returned to the child's country of origin or the country from where the child has been

¹⁸⁸Section 10.

trafficked without giving due consideration to the availability of care arrangements and the possibility that the child might be trafficked again, harmed or killed.¹⁸⁹ In addition, the Criminal (Sexual Offences and related Matters) Amendment Act No. 32 of 2007 contains a chapter on sexual offences and children.¹⁹⁰ Conferencing is a widely used form of restorative justice that has been adopted specifically for sexual assault, and involves victims, offenders, and their family and friends meeting after intensive preparation. Anecdotal evidence indicates that offenders gain insight into their own behaviour and the harm they have caused, and are able to make positive changes as a result.

A diversion programme for young sex offenders, the South African Young Sex Offenders Programme(SAYSOP), was developed in 2000, and has been implemented at the Stepping Stones Project in Eastern Cape Province. It is also used by the provincial Department of Social Development in Western Cape, South Africa.¹⁰⁸ A 2002 evaluation of SAYSOP suggested that it had developed an intervention useful for holding children who have committed sexual offences accountable and providing them with an opportunity to reflect on their abusive behaviour. The sessions appeared to be fairly successful in accomplishing their individual aims and objectives. In particular, the children assessed seemed to have developed insight into their victim's feelings and realized the importance of responsible decision-making. Group work seemed to be a necessary and beneficial aspect.

¹⁸⁹Jamieson L, Bray R, Viviers A, Lake L, Pendlebury S & Smith C (eds) South African Child Gauge 2010/2011

¹⁹⁰It is provided under chapter 3 of the Act.

As very few adult offenders are ever apprehended, the majority of adults who commit sexual offences against children never engage with rehabilitation programmes. Thus, prevention programmes that halt the perpetration of sexual offences against children in the first place are critical. School-based life skills education programmes that include information about child rights and human rights, as well as impulse management and education on responsible sexual behaviour to all learners at every level of the educational process are important, as it is information and skills-training on responsible parenting.

Programmes such as that offered by the Stepping Stones programme are also useful. The Stepping Stones programme for HIV prevention aims to improve sexual health through building stronger, more gender-equitable relationships with better communication between partners. It uses participatory learning approaches to build knowledge of sexual health, awareness of risks and the consequences of risk-taking and communication skills, and provides opportunities for facilitated self-reflection on sexual behaviour.

The South African Constitution states that every person has a right to dignity,¹⁹¹ this right includes the protection of children against physical and mental abuse, especially sexual abuse. Children are supposed to be granted special protection by the law and cannot be treated or dealt with in a similar way as adults within the criminal justice system. To eradicate this, a wide range of behaviors have been criminalized in an attempt to protect children from sexual abuse and against their inherent vulnerabilities. The legislator attempted to criminalize all forms of sexual

¹⁹¹Section 10 Constitution of the Republic of South Africa ,1996.

abuse relating to child pornography. Actions taken by the state, NGOs, and the private sector, often focus on children who have been sexually exploited.

However, it is essential to also take into consideration the other side, namely the causes for the demand for children's sexual exploitation, as well as the conditions that, and the persons who create and fuel the demand. In addition, there is also a need to establish intervention strategies that will reduce the demand from sex exploiters, in an effort to understand the complexity of the sexual exploitation of children. It is clear that the legislature has taken the necessary measures to protect children against sexual exploitation. The conditions that make children vulnerable to child sexual exploitation should however be taken into account, and effective measures to combat this should be put in place.

3.7 Summary of the Chapter

Adherence to international community that demands the protection of children against any form of sexual exploitation has been received by Tanzania. Thus as far as legislations point of view this has been positive. Though the challenges now come on the implementation of those laws, as we shall see in the following chapter where more efforts should be done in terms of law enforcement institutions like police and judiciary. This signifies that, it is an important call that not surprising for Tanzania, specifically Zanzibar also to join in this race of safeguarding child rights from sexual exploitation.

CHAPTER FOUR

PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction

Zanzibar West District is one of the two districts of the Zanzibar Urban/West Region of Tanzania. It is bordered to the north by the Zanzibar North Region, to the east by the Zanzibar Central/South Region, to the south by Kiwani Bay, and to the west by the Zanzibar Urban District. As of 2012, the population of Zanzibar West District was 184,710.

4.2 Sexual Exploitation of Children in Zanzibar Urban West District

The first specific objective of this study intends to summarize the current scenario about sexual exploitation of children in West District, Zanzibar. The context is characterized by the social, economic and political crises that have affected Zanzibar for several years. One official from ZLSC commented that;

“It is often that we get reports of incidents involving children exploitation.... I have been experiencing the incidents of and sometimes visit the victim’s family and make a follow up on cases. However, most affected families tend to remain silent especially when the culprits are related to the victim.”

The same kind of information was also revealed by officers at the Police Gender and Children’s Desk, One Stop Centre and the Department of Public Prosecutors. Most of them pointed out that, they have been attending a number of incidences of child sexual exploitation several times. The foregoing quoted argument implies that the problem of child sexual exploitation is ripe in Urban West District.

4.3 Areas behind Child Sexual Exploitation in Zanzibar

Sexual exploitation of children in Zanzibar as one of human rights violations is

massive, recognized and has become a barrier to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of shortened lives, poor physical and mental health and educational problems including dropping out of school. The following are leading areas of child sexual exploitation

4.3.1 Child Sex Tourism

There is a high prevalence of child sex tourism (CST) in Zanzibar. Cultural and economic conflicts have left many families in Zanzibar economically and socially fragile. In this volatile state, families must struggle for survival and children become more vulnerable to commercial sexual exploitation. Children often have to contribute to family's income as well as to take care of their siblings and other family members. In this way they easily become victims of child sex tourism and sometimes trafficking of children for sexual purposes. Child prostitutes are found in tourist places like hotels and more generally in the entertainment industry. Owners of these places would give girls fake jobs as they utilize them to attract more male customers.

According to ECPAT International's African network members, the following countries are mostly affected by child sex tourism: Benin, Cameroon, Côte d'Ivoire, Ghana, Kenya, Madagascar, Mauritius, Morocco, Nigeria, Senegal, South Africa, The Gambia and Tanzania (Zanzibar).¹⁹² Currently, there is a major push to promote tourism development in Zanzibar, especially by key players such as the African Travel Association, African Union (AU) and the United Nations World Tourism

¹⁹²Sakulpitakphon, P. African Tourism Development and the Commercial Sexual Exploitation of Children in ECPAT International, *Confronting Commercial Sexual Exploitation of Children in Africa*. 328 Phayathai Road Ratchathewi Bangkok 10400 THAILAND, at p. 5.

Organization (UNWTO).¹⁹³ During the Tourism Africa meeting held in Geneva September 2016, it was stated that, the aims of tourism development were: to foster investment in African tourism projects; promote African tourist destinations; and preserve African heritage.¹⁹⁴ Although tourism in itself is not a direct cause of child sexual exploitation if new developments take place without proper protective mechanisms, sex tourism of children in Zanzibar may continue and improve.

4.3.2 Commercial Sexual Exploitation of Children

Commercial sexual exploitation of children is defined as sexual abuse by an adult with remuneration in cash or in-kind to the child.¹⁹⁵ It constitutes a form of violence against children and is a criminal practice that violates children's rights.¹⁹⁶ The issue of consent is irrelevant because the victim is a child and he/she cannot consent to.¹⁹⁷ Most incidents of commercial child sexual exploitation occurs at a place frequented visited by men looking for children for sex.¹⁹⁸ There are locations that are well known for having prostitutes, both girls and boys.¹⁹⁹

It has been observed during this study that, children are either tricked into accepting jobs that are tied to sexual exploitation while on the other hand they are sometimes

¹⁹³Tourism in Zanzibar has been growing at annual rate of 15 and now contributes 25 of the island DGP. It provides jobs for 11,500 workers and with additional 45,000 people engaged in tourist activities. Said by President of Zanzibar, Dr. Ali Mohamed Shein, in Zanzibar Looks for Future: Tourism of the Future for the Island, PAA Magazine, March 2012, at p. 22.

¹⁹⁴Akama, J. "The Efficacy of Tourism as a Tool for Economic Development in East Africa."

¹⁹⁵ECPAT International. Questions & Answers about the Commercial Sexual Exploitation of Children. (3rd ed.) Bangkok. 2016, 2006.

¹⁹⁶Human Rights Watch. Violence against Child Domestic Workers. (<http://hrw.org/english/docs/2017/02/20/global15343.htm>) Site visited on 18Feb 2018.

¹⁹⁷Commercial Sexual Exploitation - Boom has Effect on African Child. Global Travel Industry News (eTN). (<http://www.travelindustryreview.com/news/5220>). Site visited on 18 Apr 2007.

¹⁹⁸Ms. PERUFFO, International Organization for Migration, 20 October 2015.

¹⁹⁹MALLYA, ILO/IPEC, 2016

forced to engage voluntarily as a mean of survival. On the other hand, children involved in prostitution may have already made their own decisions and developed strategies for coping and surviving. They may have concluded that they have no options but to engage in the business and to remain doing that for a long period of time.

There are several organizations behind the commercial sexual exploitation of girls. One fundamental layer is the recruitment of vulnerable girls by the so called big mamas.²⁰⁰ These women make a business out of girls. They house girls and in return they earn a lot of money from their engagement in sex with clients and to ensure that the girls stay and continue to work for them the big mamas ensure a continuous financial bond with the girls or they intimidate them to scare them from running away. The girls arriving in urban areas from impoverished rural areas are disoriented and highly conspicuous. They often do not last twelve hours on the street. They are picked up directly by other girls working for big mamas. These girls will exploit the new girls and force them to earn money for them.

4.3.3 Sexual Exploitation for Children Domestic Workers

When it comes to the risks of child sexual exploitation, no child is necessarily safe, regardless of their background. It can take place anywhere: in nightclubs, hostels, bars, hotels, on the street, in public areas, schools and offices as well as in a place where children should feel especially safe and protected ó in the home.²⁰¹ During this

²⁰⁰PACCA, Reporting of Child Protection and Child Abuse in East Africa, Handbook and Protocols for Manitoba Service Providers, 2016.

²⁰¹UNICEF. Child protection from violence, exploitation and abuse: Child Trafficking. (http://www.unicef.org/protection/index_exploitation.html). Site visited on 18 Feb 2018.

study, it was discovered that, a number of children involved in domestic works in Zanzibar is unquantifiable due to the hidden nature of the work, but it runs into hundreds. Many of these children are girls. Child domestic workers are thus at high risk of sexual abuse, they are vulnerable to sexual harassment and sexual exploitation from men and boys living in or associated with the households.²⁰² The situation is even worse as many of them are often confined to their employer's household, with no access to external sources of help.²⁰³

Child domestic work in Zanzibar involves girls who normally came from rural to urban as young as 12 years old who are made to work up to 14 hours a day and frequently under verbal, physical and sexual abuse by their employers. Such acts of violence are rarely reported and even when they do so to their employer little or no attention is given. The magnitude of the problem, however, needs significant prevention efforts, starting with a basic understanding of a child domestic worker's situation.

Young, and often illiterate, child domestic workers frequently lack ways and opportunities to seek help on how to leave abusive workplaces. Hidden away in private homes, most do not attend school, and have infrequent contact with their families. Some girls are brave enough to risk running away but many choose to put up with the abuse because they lack money and ability to return home, they fear employer's threat, they fear getting lost or attacked if they try to make it home on

²⁰²Human Rights Watch. Violence against Child Domestic Workers. (<http://hrw.org/english/docs/2017/02/20/global15343.htm>) site visited on 18 Feb 2018.

²⁰³Anti-Slavery. The relationship between child domestic servitude and sexual exploitation of children. (<http://www.antislavery.org/archive/submission/submission2016-childlabour.htm>).

their own and others may just feel they must remain silent about the violence they endure than losing their jobs due to financial pressures.²⁰⁴ Generally, it can be said that, the impunity available to many perpetrators allows them to continue sexually violating the children in their households.²⁰⁵ Factors that facilitate sexual exploitation of children include: the amount of time the child spends in the house, often when the female employer is absent; the perception that the child is the property of the employer and that he/she has some implicit right to use her for sexual purposes.

4.3.4 Child Marriage

The United Nations Convention on the Rights of the Child (CRC) states that a child is anyone under the age of 18 years old. This definition means that any marriage with a person under 18 years old can therefore be classified as child marriage.²⁰⁶ This convention gives the child the right to express his or her views freely in all matters affecting the child, in accordance with age and maturity, and this includes marriage.²⁰⁷ The African Charter on the Rights and Welfare of the Child further condemns child marriage as not only inhibiting a child's physical growth and restricting his/her freedom, but also violating his/her rights to education necessary for the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential.²⁰⁸

²⁰⁴ Research recently carried out by the Tanzanian Media Women's Association (TAMWA - Zanzibar) suggests that 60 per cent of female domestic workers, known as 'house girls', are sexually abused in their workplaces. The house girls are often very young and feel they can do little to prevent the abuse.

²⁰⁵ Dickinson, Daniel. Tanzania 'housegirls' face sexual abuse. BBC News. 10 May 2017. (<http://news.bbc.co.uk/2/hi/afrrica/3015223.stm>), site visited on 18 Feb 2018.

²⁰⁶ Child Marriage 'could be banned' BBC News. (http://news.bbc.co.uk/2/hi/uk_news/politics/4214308.stm), site visited on 18 Feb 2018.

²⁰⁷ Article 12 of the United Nations Convention on the Rights of the Child.

²⁰⁸ Article 11(2)(a).

Contrary to popular held views, child marriage is practiced globally in different forms and is not limited to developing countries or immigrants from such countries.²⁰⁹ However, the magnitude and general tolerance of the practice vary across many regions. Child marriage is particularly high in Sub-Saharan Africa, Asia and the Middle East.²¹⁰ The situation is particularly acute in Zanzibar.²¹¹ In 2015, the United Nations Population Fund (UNFPA) indicated that, on average, 23 to 65 per cent of young women, (aged 15-24) were married before the age of 18.²¹²

The only area where Tanzania has failed to enshrine the rights of children is on marriage and domestic violence. The law of marriage retains provisions that permits early marriages for a girl child of 15 years save for the consent of parents.²¹³ This contradicts the spirit of the law of child enacted back in 2009 which term a child as anyone below the age of 18.²¹⁴ However, in some *ndoa za kukamatiwa*, or *ndoa za mikeka* parents, especially on girls side, arrange a trap to arrest a boy, who is believed to have sexual relations with their girl or even close friendship and when the boy is caught he is forced to marry the girl without his consent and with or without the consent of the girl.²¹⁵ Such kind of marriage is also common when there is pre-marital pregnancy or accusation of sexual offence like rape or abduction. The

²⁰⁹The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been signed and ratified by all African countries, and is fully applicable to girls under 18 years of age. Article 16.2 of CEDAW provides that the betrothal and marriage of a child shall have no legal effect and that all necessary action, including legislative action, shall be taken by States to specify a minimum age for marriage, and to make the registration of marriages in an official registry compulsory.

²¹⁰Sergio Pinheiro, Paulo. World Report on violence against Children - The UN Secretary-General's Study on Violence against Children. Geneva. 2016.

²¹¹Marriage and Divorce (Muslim) Registration Amendment Decree, Act No. 6 of 1966.

²¹²UNFPA. Child Marriage (http://www.unfpa.org/swp/2015/presskit/factsheets/facts_child_marriage.htm), site visited on 18 Feb 2018.

²¹³See Section 13 and 17 of the LMA.

²¹⁴Marriage (Solemnisation and registration) Decree section 17A.

²¹⁵Interview with Ustadh Abdallah Talib, 10 October 2010. Others have the views that the involvement of the prospective in laws in the marriage has added effect of establishing the needed networks that are expected from couples as they participate in family activities, including funerals, weddings, and other social gatherings in which expenses by custom must be shared

accused is given option to face a criminal charge or marry the victim. Since no one is willing to face the charge the result is that the accused opt to marry to escape criminal liability.²¹⁶

4.3.4.1 The Role of Poverty in Child Marriage

In countries such as Zanzibar, which have high rates of child marriage, there are also high rate of poverty and births and deaths greater incidences of conflict and civil strife, and low levels of overall development, including schooling, employment and health care. Major reasons for commercialization of young girls or boys bodies are economy. For girls working in prostitution, poverty is the prime reason for leaving home and this was observed in thirty percent of studied cases.²¹⁷ Poverty makes children extremely needy and therefore vulnerable to act of prostitution as a means for survival. Their families are also involved in this process as they often send their young children to work and support themselves or become bread earners for their families.²¹⁸

In addition to poverty, many children feel the effects of relative deprivation when faced by tourists, businessmen and foreign and national military personnel, who are comparatively wealthier.²¹⁹ Rather than meeting basic needs, children may be engaged in paid sexual activities for the sake of extra pocket money. A number of

²¹⁶An excellent example is demonstrated by Suleiman NungaLalunga who commented on the situation by saying "before the revolution, Arab men could marry any African -Mswahili but after the revolution we are all equal, there are no Arabs, no Asians, no Mswahili. You can marry any one." Suleiman NungaLalunga, former member of ASP. Interview with Suleiman NungaLalunga 10 September 2010.

²¹⁷NGO Forum 2016.

²¹⁸Asha Haji Makame, a resident of Kichungwani, she suggested that, in order to eliminate early marriage, it is for the government to retain the services of free education to all. Headmaster of Kangagani secondary school, Muhidin Haji Khalfan, says the source of early marriage for students, is the presence of bad law which not guarantee child protection, especially for the girls.

²¹⁹Lalor, K. Sex Tourism Thrives Unabated, 31 March 2015; ILO, 2017.

observations related during the key informant interviews support the theory of relative deprivation. First of all, children are often motivated to leave their rural area by stories from visitors about luxuries, such as electricity and running water, and the excitement of the city.²²⁰ Poverty has come out as a source of child exploitation; many children who are involved in prostitution, child labour and any other form of child abuse come from poor families. This is revealed through the inability of parents to support their children. The parents are either under-or unemployed, and because of this they possess fewer means to fulfill their role and obligations.

4.4 Form of Child Sexual Exploitation experienced in Urban West

Child sexual exploitation can take place in any ways and forms, mainly depending on the intention of the perpetrator or sometimes circumstances beyond perpetrator's wish and desire. Sometimes it involves sexual intercourse or sexual touching.

4.4.1 Sexual Touching

Sexual touching (also called fondling) emerged from the finding here as a significant problem in Urban West. In a presentation made at the 18th Meeting on Child Abuse and Neglect held in 2017, Director of TAMWA Zanzibar indicated that, rates of sexual touching were cited in Zanzibar of which 7% males and 28% of females reported unwanted touching.²²¹

²²⁰ UNICEF ó Update of the Analysis of Women and Children in Zanzibar, 2014.

²²¹ Director of TAMWA Zanzibar, Dr. Mzuri Issa, said, an average of ten child rape cases is reported every month in Zanzibar, Tanzania Media Women Association (TAMWA) has reported only weeks after another report said more boys than girls suffer the abuse in the Isles. (<http://www.tamwa.org>), site visited on 25 Feb 2018.

4.4.2 Penetrative Sexual Abuse

Although it can be sound awkward, and many people are often reluctant to acknowledge it, the evidence confirms that many children are sexually active from their early age. A TAMWA publication on children's rights and sexuality in the context of the HIV/AIDS pandemic cites several studies providing evidence that children in Zanzibar are sexually active, and that some of this activity may be consensual. It was found in 2017 that 46% of girls and 37% of boys between the age of 15 and 19 years Urban West have had sex. Analysis from the finding showed that at least 15% of girls reported having sex before their fifteenth birthday. However, in at least some of these cases, the sexual activity is likely to have been coerced, and could include rape. It has been noted that coercion may play an important role in compelling young women to engage in sexual intercourse at an early age.

A population-based study found that, among sexually experienced respondents aged 14 to 24 years, the first sexual experience of 21% of females and 11% of males was coerced, with intimate partners being the perpetrators in most cases. The coercion involved either deception or partner insistence in the face of the reluctance of the victim. These findings suggest that respondents may understand forced sex differently from rape, with the latter being seen as perpetrated by strangers. Data collected from respondents reveals that the problem is big yet it is somehow underreported. A culture of shame and silence currently engulfing communities in Zanzibar has made it difficult to measure the prevalence of violent assaults against children.

4.5 Factors Associated with Child Sexual Exploitation in Urban West

It was learned that, the factors on child sexual exploitation in Zanzibar at large has resulted in the neglect of the more pervasive sexual abuse of children perpetrated in their own homes, neighborhoods and communities, frequently by peers, teachers, parents, legal guardians and other relatives. Factors that are examined here are those of age, gender, social conditions and settings for the child and the perpetrator.

4.5.1 Age

Children of all ages appear to be at risk of sexual exploitation. In this study pertaining to sexual exploitation in Urban West, it was noted that the average age of victims was 12 years. The study indicated that 46.1% of cases of sexual abuse involved children aged 11 to 15 years, and that 37.3% of the aggressors in these cases were aged 21 to 25 years. The youngest victim was only 4 years old, and the person who raped her was himself a child aged 14.²²² However, the important thing here is half the victims were children under the age of 18 and a quarter were under the age of 13 years. Police statistics in Zanzibar show that 20% of sexual offences cases in 2016 involved children aged 0 to 6 years.

4.5.2 Gender

In almost all areas around Urban West sexual exploitation is perpetrated against both girls and boys, although, in general, girls are more at risk. This study revealed that 3.5% of young men have been sexually abused in their childhood. For young girls have been more subject to sexual comments, witnessing genital exposure, being

²²²TAMWA ó Zanzibar report. 2016. p. 56.

forced to view sexual acts or pornographic materials, being forced to remove their clothing and experiencing insertion of objects into their genitals and anus.

4.5.3 Family Care Arrangements

During the study, it was discovered that living arrangements are one of the core component of vulnerability, referring in particular to the large numbers of children no longer living with their biological parents (and in particular their biological mothers. Becoming orphaned have serious negative implications for children's development and protection. This is especially true in situations of conflict and displacement.

4.5.4 Home and Family

Children are at significant risk of sexual abuse within their own home, and this applies across several types of abuse. Child marriage is also perpetrated in home; it was observed several cases of sexual abuse where girls under 15 years were married (with these marriages sanctioned by local religious Islamic elders). Some of these marriages came to light some years later when the victims were at risk of death due to complications associated with pregnancy. It was noted that, 33.3% of girls aged 13 to 17 years reported that their first sexual experience was forced, and stated that it took place in their own homes, with the most common perpetrators being men or boys from the respondent's neighborhood.

4.5.5 School Environment

It has been observed that, child sexual exploitation in school is a serious problem, which mostly impacts on girls, but not exclusively. It involves sexual favours in

exchange for good grades as well as transactional sex where the victim is coerced into sexual activity in return for educational benefits such as school fees and materials. Generally, they are called sexually transmitted marks being in common usage in secondary schools.²²³ It has been revealed that school violence, including sexual exploitation, has spread in Urban West. It is multifaceted and embedded in violence and gender discrimination at family and community level. It is a complex societal issue, in which the power relationships, and the domination and discrimination practices of the community and wider society are reflected. Teachers were found to be seducing school girls and also some sexual harassment of school girls by school boys was identified as a problem in some schools.²²⁴

4.6 The Effects of Child Sexual Exploitation

Child Sexual Exploitation has immediate and long-term consequences. These include physical injury, sexually transmitted infections (including HIV), emotional trauma and even death. In the older child, it may result in unwanted pregnancy and unsafe abortion with its attendant complications.²²⁵ Other social outcomes include poor school performance, rejection by family and society, family disharmony, poor parenting and abusive behavior in later life.²²⁶

²²³ Reports from the Ministry of Education Pemba show that there are 19 students from Urban West districts that they married from 2013 to September 2015.

²²⁴ The local resident, Siti Khatib Ali, says that it discouraged, because some girls wanting to own valuable items like phones, while they have no source of fund. Sheikh Said Ahmad Mohamed from Mufti's office, he said, a settlement of this problem is for parents to be educated about the importance of education for their girl. "If we act quickly to help female students academically they will do better," she said. Bishop Benjamin Kissanga, says everyone is free to access to education.

²²⁵ Neelofur-Khan D. Adolescent pregnancy: unmet needs and undone deeds, a review of the literature and programmes. WHO. (http://whqlibdoc.who.int/publications/2007/9789241595650_eng.pdf) Site visited on 18 Feb 2018. 2007. p. 61.

²²⁶ Mugawe D & Powell A. Born to high risk. Addis Ababa: African Child Policy Forum. 2016.

4.6.1 HIV/AIDS and other STIs

HIV epidemic has had a significant negative impact on children's vulnerability in sexual exploitation and it continues to do so. It has been reported that half of the sexual exploitation of children is detected through Sexual Transmitted Diseases and some have HIV. Given the scale of the HIV pandemic and the close links between HIV and child sexual exploitation, the Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV 2010-2014 is particularly relevant.²²⁷ The framework focuses on advocacy, capacity strengthening and fund raising to deliver a comprehensive set of measures to address the needs and rights of women and girls in the context of HIV.

The frequency of STI transmission was variable, between 10 and 67% of children suffering from STIs had been sexually abused, while between 15 and 30% of sexual abuse cases were linked to STIs. The rape and sexual coercion of young girls is often associated with more severe genital injury than is the case with adult women. In addition, when pregnancy does result, many young girls seek illegal terminations of pregnancy, despite the fact that abortion is prohibited in Zanzibar. These can result in serious problems and even in death.²²⁸

4.6.2 Reproductive Health Consequences

According to the WHO, adolescent pregnancy can result in pregnancy-induced hypertension, anaemia, infections (including malaria and HIV), premature labour

²²⁷ As above.

²²⁸ Jewkes R, Dunkle K, Nduna M, Jama N and Puren A. Associations between childhood adversity and depression, substance abuse and HIV and HSV2 incident infections in rural South African youth. *Child Abuse & Neglect*. 2015. p. 34.

and delivery, low birth-weight, peri-natal and infant mortality, maternal mortality, and obstructed and prolonged labour (common in immature girls who bear children). It was found that 88% of women suffering from fistulae were married between the ages of 15 and 17 years. These consequences have poor health and well-being outcomes for pregnant adolescents, and are often exacerbated by the risks associated with unsafe and illegal abortion. These risks are further compounded by the fact that pregnant adolescents often delay seeking a termination until the pregnancy is considerably advanced. More than a quarter of unsafe abortions in Africa are performed on girls aged 15 to 19 years. The risk of physical injury to the genitals and reproductive organs is also higher in young children, due to the small size, inelasticity, and lack of lubrication of the vagina and cervix; this is exacerbated if there is exposure to frequent, unprotected, or forced sexual intercourse.

4.6.3 Psychosocial Consequences

Mental health consequences of child sexual exploitation include debilitating fears, anxieties, regressive behaviors, nightmares, withdrawal, depression, anger and hostility, self-injurious behaviours, low self-esteem³⁴ and inappropriate sexual behaviour, and severe psychiatric disorder.³⁶ These consequences often leave children unable to benefit from educational opportunities or having to leave school due to pregnancy and early motherhood.²²⁹

They are prone to ending up in violent and sexually abusive relationships through their lives, they engage in high risk taking behaviour, including drug and substance

²²⁹Killian B and Brakarsh J. Therapeutic approaches to sexually abused children. Richter, L, Dawes A, and Higson-Smith, C. Sexual abuse of young children in southern Africa. Cape Town: HSRC Press. 2004. p 21.

abuse and prostitution psychosomatic symptoms such as unexplainable illnesses, suicide, delinquency, and further victimization. Boys who have been victimized were found to share the same range of negative psychological consequences as girls.²³⁰ Apart from those long term effects, there are short-term emotional consequences of child sexual exploitation, which includes fear, lack of concentration, flashbacks, phobias, and anger. In some cultural contexts, survivors may also face social stigma and possible rejection by their families or community, because of the high cultural value attached to sexual purity. These can result in lost educational, skills training and employment opportunities, and reduced chances of marriage, social acceptance and integration.²³¹

In addition to the psychological and physical effects, victims of physical abuse during childhood have high risk of becoming violent offenders themselves.²³² Failure to protect children undermines national development and has costs and negative effects that continue beyond childhood into individuals' adult life. While children continue to suffer violence, abuse and exploitation, the world is likely to fail in its obligations to children and will also fail to meet its development aspirations as laid out in such documents as the Millennium Agenda with its Millennium Development Goals.²³³

²³⁰Spataro J, Mullen P, Burgess P, Wells D, & Moss S. Impact of child sexual abuse on mental health. *British Journal of Psychiatry* 184, 2004. pp 416-421.

²³¹Jewkes R, Dunkle K, Nduna M & Shai N. 2010. Intimate partner violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: a cohort study. Published online DOI, accessible at www.mrc.ac.za/pressreleases/2010/lancet_incidence_hiv.pdf. 2010. p 140.

²³²Adults Surviving Children Abuse, Child Abuse Professional help line. 2015.

²³³Zanzibar National Survey Violence against Children in Zanzibar (From "Violence against Children in Tanzania. 2009.

4.7 The Magnitude of the Problem

It is often said that the magnitude of child sexual exploitation in Zanzibar and in the world at large is unknown.²³⁴ This is largely related to the fact that it is seriously under-reported, as noted by a number of stakeholders in previous occasions. WHO, for example, refers to it as ãa silent health emergency that goes unnoticed, is grossly under-reported and poorly managed and surrounded by a culture of silence and stigma.ö.²³⁵ Although not specific to Urban West district, a recent report from Zanzibar confirm that accurate statistics on all forms of sexual abuse are not known due to low reporting rates, as a consequence of stigma and a lack of systematic management protocols and guidelines, which (among other negative consequences) impedes the ability to prosecute.²³⁶

4.8 Responses to Child Sexual Exploitation in Terms of Treaties, Legislation, Policy and Practice

4.8.1 International Response

At the highest level, rights are protected by international and regional treaties, and this is also true of the rights of children. The rights of African children are enshrined in the United Nations Convention on the Rights and Welfare of the Child (the UNCRC) and the African Charter on the Rights and Welfare of the Child (the African Charter) as well as Universal Declaration of Human Rights. Responses to

²³⁴Rogena EA, Mugo N & Odongo FN. The characteristics and presentation of rape survivors in Kenya: Study report. Unpublished report accessible from Amnesty International, Kenya. 2005, p. 12.

²³⁵WHO Regional Office for Africa. Child Sexual Abuse ó A Silent Health Emergency. Report of the Regional Director to the 54th Session of the Regional Committee for Africa. AFR/RC54/15 Rev. 1. 2004, p. 32.

²³⁶TAMWAø Programme Officer, ShifaaIbuni.

this tragedy is therefore governed by the full range of international and regional rights treaties²³⁷ for which Tanzania and Zanzibar in particular are parties to those treaties.

Obligations are placed on state parties to protect children from all forms of violence, cruelty, exploitation and abuse under both the UNCRC and the African Charter. When a country signs a treaty or convention, still the country is not obliged to the treaty or demands but once a country has ratified a treaty or a convention, it must domesticate it or in other words enshrine it in domestic laws and report regularly to the relevant UN or AU Committees, Zanzibar being part of Tanzania adheres to such obligation.

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.²³⁸ Article 19 also gives States the duty of ensuring that these protective measures include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have to care for the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial

²³⁷Pereda, N, Guilera, G, Forns, M & Gómez-Benito, J. The international epidemiology of child sexual abuse: A continuation of Finkelhor. *Child Abuse & Neglect*, 2009. pp 33: 3316342.

²³⁸To implement this, the first World Congress against Sexual Exploitation was held in Stockholm, Sweden, in August 1996, and the second took place in Yokohama, Japan, in December 2001. The Yokohama Global Commitment reaffirmed the urgency of acting against the sexual exploitation of children and facilitated the development of several regional commitments to this end, 1994, p. 82.

involvement.²³⁹

4.8.2 National Plans and Response (specific to Zanzibar)

4.8.2.1 Legislative Response

The Constitution of Zanzibar of 2010 provides general rights to all individuals regardless of age, colour, religion, gender etc. It provides, all persons are equal before the law and are entitled Equality without any discrimination, to protection and equality before the law. before the law and no law shall make any provision that is discriminatory either of itself or in its effect.²⁴⁰ Therefore, the constitution sets the standard for observing human rights without considering factors like age, religion etc., and that includes children. This platform must be observed by all laws of Zanzibar.

Moreover, the Children Act No.6 of 2011 was passed by Zanzibar's House of Representative in March 2011²⁴¹ and it enshrines fundamental rights of children and lays the foundation for a child protection system that will oblige a range of bodies to prevent and respond to sexual exploitation of children. The Act has four general principles in implementing their obligations under international law that are relevant for children's rights. The best interest of the child is touted as the main concern of parents and guardians in taking care of their children. This Act obliges parents to have a common responsibility for taking care of and protecting a child through

²³⁹ Read Article 19 and Article 16 of the United Nations Convention on the Rights and Welfare of the Child (the UNCRC) and the African Charter on the Rights and Welfare of the Child (the African Charter) respectively.

²⁴⁰ Article 12(1) and (2) of the Constitution of Zanzibar.

²⁴¹ The enactment of this law was direct reflection of article 9 of UN convention on the Right of the Child 1989 and article 16 of African Charter on the Right of Welfare of the Child 1999.

provision of food, shelter, clothing, education, medical care, liberty and right to play and leisure.²⁴²

There is Penal Decree (Amendment) Act No. 6 of 2004 which was enacted so as to amend and repeal some provisions of the Penal Decree, Cap 13. It has provisions which guarantee the welfare and safety of the child against any form of sexual exploitation and it claims that "Whoever being a person in position of authority, takes advantage of his official position and commits rape on a girl or woman in his official relationship or wrongfully restrains and commits rape on a girl or woman."²⁴³

Furthermore, the Children's Court Rules of 2015 established a uniform practice and procedures for the children's courts of Zanzibar to assure that the rights of the child as provided in the Children Act are protected.²⁴⁴ It further requires and applicable to any court that is constituted or sitting as a children's court, unless otherwise provided.²⁴⁵ This Rule has created an atmosphere enabling court to permit a child who is a victim or witness to a crime and who is giving evidence before the court to be assisted by an intermediary in the best interests of the child.²⁴⁶

4.8.2.2 Judicial and Institutional Response

The study has found out that in accordance with the spirit of Act No. 6, a juvenile court with adequate facilities essential for adjudging children cases has been established. The court caters for friendly environment for victims, witnesses or

²⁴²See Section 10.

²⁴³Section 26, which amended section 120 of the Penal Decree.

²⁴⁴Rule 4(1).

²⁴⁵Rule 4(3).

²⁴⁶Rule 73(1) and (2).

offenders by affording support and security required when they appear in court. Furthermore, the Zanzibar University through Institute of Continuing Education offers special tailored course at a certificate level on child rights protection and a number of law enforcement agents, government officials and civil society stakeholders dealing with children protection have benefited from it.

In 2013 there was an establishment and opening of a child friendly court in Zanzibar as part of the Child Justice reform. The establishment began with the renovation of the rooms to establish the pilot child friendly closed court at the High Court in Stone Town was done, and appropriate furniture and appropriate audio visual equipment were purchased and installed in 2012.²⁴⁷ The court is set in a child friendly environment and although it is located in the High Court building, it is separate from the other courts. The Court, which is unique in Tanzania, is meant to provide children with the support and security they need when they make their appearance in court either as victims, witnesses or offenders.

Since 2012 Zanzibar University offers a Diploma course in child rights and child protection and the course has benefited and continues to benefit law enforcement professionals (Police) and government civil servants such as Social Welfare Officers.²⁴⁸ Due to increased demand for a high level cadre with higher knowledge in the area of child rights and protection, Zanzibar University is exploring ways to establish a degree course in child protection. These are meant to enhance the understanding of child abuse and child protection.

²⁴⁷TAMWA ó Zanzibar Report of 2015, p. 56.

²⁴⁸As above.

An average of ten child rape cases is reported every month in Zanzibar and a total of 340 child rape cases were reported in Zanzibar between the year 2013 and 2016. This reminded the public and responsible authorities that the shocking rate of child rape cases only represents the reported cases and that the reality on the ground is more likely than not, far worse. The availed figured she said were obtained from the High Court in Vuga in the Urban District where 159 cases had been heard in the said three years, from Mwera District Court in Western Urban District where 111 cases were heard and 70 cases were heard at the Mfenesini District court.²⁴⁹

4.8.2.3 Police Reaction to Child Sexual Exploitation

The police in Zanzibar are not held in high esteem when it comes to fighting serious crimes, such as child sexual abuse and child sexual exploitation. Respondents for this study labeled the police as uncommitted and ignorant, corrupt and involved in the sexual exploitation of children.²⁵⁰ It has been reported that rather than investigating child exploitation, the police are, at times, involved in these very activities. Furthermore, the police have been accused of both accepting bribes and ignoring commercial sexual exploitation.²⁵¹ When enforcing the law, the dependability and effectiveness of the police and judicial system is essential. Corruption and lack of capacity within these government institutions hinders the implementation of the law. Adding to the low levels of law implementation is the

²⁴⁹Tanzania Media Women Association (TAMWA) has reported only weeks after another report said more boys than girls suffer the abuse in the Isles. The report was made public at a news conference mid this week in the Isles as part of the ongoing 16 days of activism against gender violence.

²⁵⁰Urban West Regional Police Commander, Hassan Nassir Ali, has continued to call on the community to cooperate with law enforcement agencies to control those actions.

²⁵¹The one known instance of TRA Employee Hassan Abuutwalib famously known as Kiringo who previously was alleged parents to have abused some children but when go to police he was released without any action on him. But recently been arrested by the Police in Zanzibar on 18 Feb 2018 on the allegation of a 13 years old boy.

tendency by the police to direct cases towards reconciliation. This means that the police will suggest that the perpetrator pay the victim or that the families involved exchange proper gifts. This practice is in line with protecting family honor, often done at the expense of a child's rights. On the other hand, the police that were interviewed during this investigation seemed committed.

4.8.2.4 Policy and Plans Response

The outcomes document of the UN General Assembly Special Session (UNGASS) on Children held in New York in May 2002,²⁵² *A World Fit for Children*, and its associated Plan of Action called for the development of national plans of action (NPAs) and, where appropriate, regional plans by the end of 2003.²⁵³ These were to be based on specific, time bound and measurable goals, take the best interests of the child into account, be consistent with national laws and uphold human rights and fundamental freedoms set forth in the UNCRC. Most countries including Zanzibar have prepared National Plan of Actions for the protection of children and established coordinating bodies to follow up and monitor these NPAs. However, for the case of Zanzibar, these bodies are often poorly resourced and lack the capacity to effectively discharge their responsibilities.

There has been a strengthening of the multi-stakeholder child protection system in Zanzibar. The initiative aims on saving the children by supporting the implementation of an integrated, functioning and well-coordinated child protection

²⁵²UN Special Session on Children. May 2002. Follow-up: National plans of action. (http://www.unicef.org/specialsession/followup_npa/index.html) site visited on 18 Feb 2018.

²⁵³Funded by SIDA, the Multi-Stakeholder Child Protection System strengthening in Zanzibar focuses on ensuring that communities are aware of all forms of child abuse, that protection services are available, and that effective coordination and referral mechanisms to ensure conviction of perpetrators.

system as per Act No. 6, National Guidelines on Child Protection, and coordination with various Government departments and Non-state actors through capacity building to ensure sustainability of resources as well as improved quality of services to children.

The Child Protection Unit under the Department of Social Welfare with the Ministry of Empowerment, Social Welfare, Youth, Women and Children (MESWYWC) is the coordinating agency at national level and responsible for the implementation of the national strategy and to involve and coordinate across governmental sectors, and involve civil society, international agencies, families and children in a safe way. The study also found out that there is an initiative known as “*Programu ndogo ya Mapambano dhidi ya Udhalilishaji wa Wanawak ena Watoto*”. Among the legal implications of the program is complimenting Act No 6 of 2011 by putting in place the Guidelines on Protection and Maintenance of Children, Guidelines on Care for Children born out of Wedlock; and Guidelines for Establishment and Coordinating of Children Centres.

According to respondents, all these guidelines are in the finalization stage at the Attorney General’s office. This programme aims at raising awareness and response on prevention of actions related to violence against women and children. The government through the Department of Women and Children collaborate with stakeholders including media outlets.²⁵⁴ As of currently, more than 100 instances of

²⁵⁴Such as Zanzibar Broadcasting Corporation (ZBC), Coconut FM, Zenji FM, Bomba FM, Hits FM and Chuchu FM for reaching the community. A number of 180 radio programs have been aired so far as well as more than

violence were reported through media.

Furthermore, the program has established a Call Centre and the communities are encouraged to call number 116 for free and report any incidences of violence. The program also aims at raising awareness to the general community on the importance of reporting incidents of child sexual exploitation. There has been various stakeholders' meetings and trainings to magistrates, DPP office personnel, police officers from CID and Ministry officials from the Children Desk. Children have also been benefited from the program through trainings. Lastly the program has also empowered journalists with required skills to report about child exploitation. Currently the program is embarking on a five-year strategic plan initiative.

Save the Children is supporting the implementation of an integrated, functioning and well-coordinated child protection system by using the Children's Act, National Guidelines on Child Protection, and working with various Government bodies and civil society through capacity building to ensure sustainability of resources as well as improved quality of services to children. The Child Protection Unit under the Department of Social Welfare with the Ministry of Empowerment, Social Welfare, Youth, Women and Children (MESWYWC) is the coordinating agency at national level and responsible for the implementation of the national strategy and to involve and coordinate across governmental sectors (social welfare, health, education, justice, etc.), and involve civil society, international agencies, families and children in a safe way.

100 episode of the play MshikeMshike, themed to combat incidents of exploitation and gender violence, early pregnancy as well as early marriages.

4.9 Creating One Stop Center as Part of Broader Child Protection System

In 2011 Save the Children, in collaboration with the Child Protection Unit of the Department of Social Welfare, established the first One Stop Centre (OSC) at Mnazi Mmoja Hospital in Stone Town, Zanzibar. The Centre consists of a 3-room unit of police officers (without uniform); medical personnel and counselors who provide health, legal and psychosocial services to survivors of violence 24 hours, 7 days a week. Encouraged by the results and the government support, Save the Children has supported the establishment of 5 other Centers at the ChakeChake, Michweni and Wete hospitals in Pemba and Makunduchi and Kivunge hospitals in Unguja. Each OSC aims to offer the following services to survivors of all forms of abuse: Medical services by health professionals who include a medical doctor; reporting of cases to police officers; and psychosocial counseling provided by a social worker. Save the Children intends, with other actors, to expand this child protection initiative across the country.

4.10 The Gap, Legislations and Policy Implementation Challenges

The study has found out that there is a challenge relating to dealing with child exploitation in Zanzibar. Despite the fact that extensive policy, legal and practical efforts have been put in place yet there is a steady occurrence of incidents relating to the same. For instance, it was found out that a total of 659 serious child exploitation incidents have been reported from Mkono kwa Mkono, Makunduchi and Kivunge centres. Among them, 497 cases involved rape, 35 cases were about sodomy and 127 cases were about early pregnancy. At the same time only 10 cases were filed at Vuga Juvenile Court; with verdict given on 3 cases only. 2 cases been dismissed for plea

of no case to answer, 1 case has been abandoned for failure of the accused to be brought into court while 7 cases are still pending.

Despite the existence of policies, legislative reforms, plans and programmes, gender disparities still exist in legal, social, economic and political levels of participation in decision making, as well as access to and control of resources, opportunities and benefits. Overall, the implementation of policies and laws has been slow; a situation attributed to gaps in the laws, delayed enactment of gender related legislation and lack of comprehensiveness in content of the same laws, for example, the Sexual Offences Act and the Children Act. These gaps have already been referred to in the various laws discussed above. However, there still exist other challenges which include.

4.10.1 Weak Coordination and Harmonization among Actors

In order to effectively deal with the myriad of issues related to child sexual exploitation, it is important that all the relevant players participate fully in the process.²⁵⁵ This means that both government and private entities consistently engage each other in an attempt at eradicating the problem. This has not been the case, however, as there have been disjointed efforts at dealing with issues relating to child sexual exploitation. The government has failed to effectively engage the civil society and other private actors in dealing with child sexual exploitation in Zanzibar, more so at the grassroots level.

²⁵⁵Importance of strong coordination, harmonization and networking among all actors has been recognized by the Kenya government. It is pivotal in mainstreaming women's rights to protect them from SGBV.

Moreover, lack of and/or inadequate resources, both human and financial have watered down efforts for dealing with child sexual exploitation. This is because there is a need to disseminate information through organisation of workshops, training programmes and sponsoring gender related courses in schools, families and all stakeholders in order to create awareness on the highlights and consequences of exploiting the child sexually to the entire community. This cannot be done where the resources are either limited or are not there completely.

4.10.2 Limited Technical Capacity

Technical capacity means the ability of the relevant players to adequately meet policy requirements, including technical knowledge and personnel capability. The process of creating awareness about the scourge of all matters pertaining to the welfare of the child requires highly trained and skilled personnel, something which Zanzibar still lack. Sometimes it is not easy to get persons who can easily be part of policy and programme implementation programmes. The effect of this is to have policies, programmes and institution which can stand firmly in the fight against child sexual exploitation. Even in situations where the required personnel are obtained, the constant deployment and re-deployment of officers means that the implementation process can be frustrated at times.

4.10.3 Lack of Monitoring and Enforcement of Laws

There is lack a proper mechanism in place to follow up on the implementation of laws and rules available. The projects and programmes on the ground need to be constantly monitored and evaluated in order to ensure that policy implementation agencies do not veer off the right course. The consequence of absence of or

ineffective monitoring and evaluation frameworks is that the projects and/or programmes risk not achieving the intended goal or waning along the way. That why sexual exploitation of children still persists despite of having those laws in place.

4.10.4 Socio-Cultural Issues

Socio-cultural biases which favour men over women and girl child have consistently continued to frustrate the implementation of the legal framework. Traditionally, women have been viewed as lesser beings than men. This means that a man can do whatever he wishes to a woman given that he bought the woman through payment of bride price.²⁵⁶ Violence has thus been condoned and accepted as a socio-cultural norm within the society. This has greatly frustrated the implementation of legislation and policies.

4.10.5 Judicial Decisions

Despite legislation and programmes addressing child sexual exploitation, there are still some inconsistencies in terms of judicial actions. Parents also are not aware of their rights, and that enforcing such rights is thus a huge challenge.²⁵⁷ Attempts to come up with children sensitive legislation have received inadequate support due to traditional and practises. Children marital rape remains a source of controversy within sexual violence legislation and courts' interpretation of the same. Grounded in traditional notions of women as property, customary laws have long defined sex within marriage as necessarily consensual,²⁵⁸ leading to the conceptual

²⁵⁶Zanzibar Female Lawyers Association (ZAFELA). "Gender-Based Domestic Violence in Zanzibar" (undated)

²⁵⁷The 7th CEDAW Periodic Report (n 5 above) Para 78. See also Zanzibar Female Lawyers Association (ZAFELA).

²⁵⁸Helene Combrink. "Rape law reform in Africa: More of the same of new opportunities," In *Rethinking Rape Law*:

impossibility of a man raping his wife. This conception underlies the marital rape exception that still exists in many jurisdictions.²⁵⁹

However, many local courts continue to grapple with the task of defining the act of rape, determining whether marital rape can and/or should be criminalized, and clarifying where consent ends and force begins. National sentencing practices child sexual exploitation cases vary greatly, and thus have been subject to criticism on several grounds. Despite these challenges, the jurisprudence of sexual violence continues to evolve to better acknowledge and redress the horrific experiences of victims. There can be no doubt that the guarantee of equality lies at the very heart of the constitution which permeates and defines the very ethos upon which it is premised.

4.10.6 Legal Illiteracy

In recent years, the focus of literacy has changed from an emphasis on levels of schooling to a focus on functional skills. Most lay people in Zanzibar, are not alive to the realities of the legal environment. Knowledge of the law is power and helps in self-realization. Laird Hunter suggests that people who use the legal system must be able to guide themselves through a process that they understand and, at appropriate places along the way, they are able to recognize that they have a legal right or responsibility, so as to enable them to exercise or assume it.²⁶⁰ Legal literacy also involves the ability to recognize when a problem or conflict is a legal one and when

International Perspectives, 2010.pp. 123.

²⁵⁹ See Helene Combrink. 2010.

²⁶⁰ <http://www.johnhoward.ca/document/litcou/english/page05.htm#Definition> ,site visited on 13 February 2018.

a legal solution is available; know how to take the necessary action to avoid problems, and where this is not possible, how to help themselves appropriately; know how and where to find information on the law, and be able to find information that is accessible to them, know when and how to obtain suitable legal assistance; have confidence that the legal system will provide a remedy, and understand the process clearly enough to perceive that justice has been done.²⁶¹

Where people are not aware of their rights, this becomes a good breeding ground for all forms of injustices. Children become the biggest victims as they are more vulnerable to abuse by adults. It is through awareness of the laws and the objectives served by them that citizens, particularly marginalized or underprivileged groups, can obtain the benefits that law seeks to offer them.

4.10.7 Non Reporting

There are several reasons for children victims not to report acts of exploitation and abuse committed against them. Firstly, children are reluctant to report when more often than not, acts of exploitation are committed by people who have somehow endeared themselves to the victims. This includes parents or other relatives who have a natural relationship with the children. Secondly, finances may also influence the decision whether or not to report abuse. The abuser may have a great financial impact on the child and his family. In a situation where the victim and their family are dependent on the accused financially and in many other ways it may also be difficult for the victim to report.

²⁶¹ As above.

Thirdly, fear of the perpetrator is another possible reason for the victim not to report the abuse. For example, in all cases where children were forced into prostitution, the pimp physically and emotionally abused them at the beginning and sometimes throughout their captivity. As a rule, children fear physical or emotional reprisals by the people who abuse them. Fourthly, lack of trust in police and judicial system cause child victim or their parents not report incidences of abuse and exploitation.

4.11 Summary from the Chapter

The causes of child sexual exploitation are many, complex and varied depending on the circumstances of each child. Traditional attitudes among some families, socio-cultural causes, economic causes, legal causes and political causes. Under these circumstances children becomes the victims of sexual exploitation at home, at school and on the street. The effects of sexual exploitation to children can be devastating and long lasting. They pose danger to children's reproductive health and can scar a survivor psychologically, cognitively and interpersonally. A girl who experiences this may be forced to become pregnant or have an abortion against her will, or may be to a sexually transmitted infection such as HIV/AIDS.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of the Main Findings

Generally, it has been observed that, sexual exploitation to children does not only occurs when the law is silent, it is rampant even where legal systems and institutions are in place though there have been slight problems in implementations like Zanzibar. Many different cases of sexual exploitation have occurred, but society through the victims or stakeholders have managed to report and learnt not to uphold and normalise practises and various forms of sexual exploitation against children. In regard to the controversy of sexual exploitation, the most glaring factor is gender.

The prevalence of sexual exploitation against children is alarming, especially in a society that grapples with major issues of poverty and illiteracy. Although the trend recently has improved towards child protection, but still children are at high risk. This has been caused primarily due to cultural norms and economic factor. Although international law standards require that states enact legislations that protect the interest of children, little progress has been realized on this front. Even where such legislation is in place, it is marred with implementation challenges as discussed earlier. It would be sad to note that despite of both national and international laws Zanzibar still have menace of children sexual abuse.

5.2 Conclusion

Generally, the study found out that the problem of child sexual exploitation is still ripe in Urban West District. Child sexual exploitation and their protection are issues for every child not only Zanzibar but in every country of the world. In Zanzibar

alone, almost total of 340 child rape cases were reported between the year 2013 and 2016 which is an average of almost 10 child rape cases each month. The figures may now be higher. The availed figures obtained from the High Court of Vuga in the Urban District where 159 cases had been heard in the said three years, Mwera District Court in Western Urban District where 111 cases were brought and heard and 70 cases were heard at Mfenesini District court.

The respondents pointed out that despite extensive efforts to curb the same, the problem has been persistent. In most cases, it was pointed out that the perpetrators are either close relatives or tourists (especially in the entertainment/hotel industry). Failure to protect children undermines national development and has costs and negative effects that continue beyond childhood into the individual's adult life. While children continue to suffer sexual violence, abuse and exploitation, the government and community fails in their obligations to children, it will also fail to meet its development aspirations as laid out in various policies as the Millennium Agenda with its Millennium Development Goals. Many children and some adults in Zanzibar are living abnormal situation (physical and psychological) as a result of being sexual exploited, and for adult were abused when they were young. The impact leaves physical and psychological scars to children and the whole society as well. The number of children in the commercial sex trade is high (mainly girls but also a significant number of boys).

The persistence of child sexual exploitation in Zanzibar has been due to among other thing lack of a common understanding as to who is a child. For instance, according to the constitution of Zanzibar a child refers to a human being below eighteen years

of age. Conversely, Zanzibar as part of Tanzania is also a signatory of the ILO Convention, no 38, of 1998 which sets 15 years as the minimum age for a person to be employed, thus many girls are employed in some tourist hostel for commercial sexual workers. In addition, the marriage under Islamic laws a girl can be married at the age of 15.

Zanzibar (part of Tanzania) was the first country in Africa to undertake a comprehensive survey on prevalence levels of sexual, physical and emotional violence against girls and boys. The Tanzania Violence against Children Study, released by the Government and UNICEF in 2011, reveals that one in three girls and one in seven boys in Tanzania experiences sexual violence before the age of eighteen. But the challenge is majority of children do not report their experience, few seek services, and even fewer actually receive any care, treatment or support.

5.3 Recommendations

In the light of the findings and conclusions of the study the following recommendations are made. There must be a proper and strict management and enforcement of laws relating to child protection in Zanzibar. The current law which has been largely adopted from the international standards and to large extent have provisions provides for prohibition of sexual exploitation of children. Thus if in this state they are duly enforced without fear or favor could help to reduce if not eliminating this problem.

Furthermore, a stricter approach to deal with people or relatives that are shielding offenders ought to be undertaken. Local leaders (*shehas*) should not encourage

domestic settlement of offences relating to child sexual exploitation. Even if the perpetrator is a blood or close relative of a victim justice must be left to take its course. There should be child friendly reporting environment to motivate them to report any incidence of sexual violence against them. The prosecution should also ensure that they are fully equipped with evidence before filing cases relating to child exploitation to negate the chances of cases being thrown out of court.

It is the responsibility of the industry, governments and the community to ensure that tourism development is conducted properly in order to minimise negative consequences. To successfully measure the real impact of tourism, governments and the industry must look at how tourism is integrated into the community and benefits it brings to the public. Likewise, in order to successfully combat commercial sexual exploitation of children in tourism, the issue must be looked at in a similar manner and the goal of child protection and other social and environmental concerns should remain a key focus in promoting sustainable tourism.

A comprehensive programme against child sexual exploitation should include components on prevention, detection, reporting and intervention; reduction of demand and the prosecution of offenders; and the proper treatment of victims and compensation. It should also include international cooperation, in particular in the prevention and repression of trafficking for purposes of prostitution, pornography and sex tourism. Programmes on child sexual exploitation should recognize that victims of other rights violations are more liable to become victims of abuse and exploitation.

The approach should encourage all social services that come in contact with children, such as health services, schools or day-care centers, to be part of the identification and referral of abuse at home. Government are encouraged to use their leadership to secure financial commitments for programmes to combat child sexual exploitation. This includes budgeting for prevention measures aimed at root causes of such exploitation, such as poverty alleviation, promotion of gender equality, education and protection of children without caregivers. Efforts should be made to reach out to children who have left home and dropped out of school in order to provide them with shelter and reinsertion into an appropriate form of education, and an alternative to life on the streets.

Revolutionary Council of Zanzibar should enact laws that can promote and improve access to quality education, which specifically includes addressing obstacles to full participation of girls. Primary education should be compulsory and freely available to all (including school fees, textbooks and uniforms). In addition, providing children with skills to change and improve their lives, schools must educate children to recognize and avoid high-risk situations, while addressing the specific needs of those children who have suffered from various abuses. At the same time, schools must provide a safe and protective environment for children, free from the threat of sexual exploitation.

Research should be a priority to assess the situation, this may lead to learning of new trends within child sex exploitation and identifying the challenges, gaps, initiatives and possible solutions. There must be a unit which will compile quantitative information on children who are sexually exploited and abused as well as on

perpetrators. Such information has to be accessible to researchers, policymakers, child rights advocates, programme managers and others.

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APPENDICES

APPENDIX I: INTERVIEW GUIDE FOR PARENTS & CHILDREN

My name is Christopher Magori. I am a student at the Open University of Tanzania pursuing Master's Degree in Laws. I am doing a research to assess the legal framework vis a viz prevalence of child sexual exploitation in Zanzibar, with Urban West District being my area of study. You are kindly requested to participate in providing the relevant information relevant to this study. This study is for academic purpose only, the rules of confidentiality are strictly observed.

1. As far as the problem of child sexual exploitation is concerned, has your family/community ever experienced the problem?
Yes. í í .. Noí í í ..
2. If the answer in question one above is yes, how do you rate the magnitude of the problem of child sexual exploitation in your community? Highí í .
Mediumí í í . Lowí í í
3. If the magnitude of the child sexual exploitation is high or medium, what are the effects of the problem in your community environment?
4. What do you think are the causes of the problem of child sexual exploitation in your Shehia?
5. What measures should be taken to overcome the problem of child sexual exploitation in your Shehia?

Thank you for your participation

APPENDIX II: QUESTIONNAIRE GUIDE FOR STATE ACTORS

My name is Christopher Magori. I am a student at the Open University of Tanzania pursuing Master's Degree in Laws. I am doing a research to assess the legal framework vis a viz prevalence of child sexual exploitation in Zanzibar, with Urban West District being my area of study. You are kindly requested to participate in providing the relevant information relevant to this study. This study is for academic purpose only, the rules of confidentiality are strictly observed.

1. Is child sexual exploitation a problem in Zanzibar? To what extent?

í í

As far as the challenge of children sexual exploitation is concerned, does the current policy and legal framework offer a clear strategy to combat the same?

Yes.í í Noí í

2. Depending on the answer from 2 above; how does your office respond to children sexual exploitation?

í
í í

Does such response yield the expected impact?

í
í í

What do you think are the loopholes in the current framework?

3. What other/proposed measures should be taken to overcome the problem of children sexual exploitation in Zanzibar?

Thank you for your participation

