Legal Protection and Health Rights of Child Offenders within the Juvenile Justice System in Tanzania

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Abstract

This article examines the legal protection and health rights of child offenders within the juvenile justice system, focusing on the adequacy of the legal and institutional frameworks governing their treatment, rehabilitation, and reintegration. It adopts a doctrinal legal research methodology based on the analysis of international, regional, and domestic legal instruments, judicial decisions, policy documents, official reports, and relevant scholarly literature. The study draws principally on the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Law of the Child Act, Cap. 13 R.E. 2023, and related juvenile justice legislation. The findings indicate that Tanzania has established a relatively comprehensive legal framework that promotes child-centred justice and rehabilitation. However, effective implementation remains constrained by inadequate juvenile justice facilities, limited healthcare and mental health services, weak institutional capacity, shortages of trained personnel, and ineffective diversion and rehabilitation programmes. The article concludes that strengthening institutional capacity, expanding health and mental health services, and promoting community-based rehabilitation and reintegration are essential to ensuring effective protection of child offenders' rights.

Keywords: *Child Offenders; Juvenile Justice; Health Rights; Rehabilitation; Tanzania.*

1.0 Introduction

Children in conflict with the law occupy a unique position within the justice system because they are both rights holders and vulnerable members of society. Unlike adults, children are still developing physically, mentally, and socially, and their involvement in crime is often influenced by factors such as poverty, family breakdown, neglect, abuse, lack of education, peer pressure, and unsafe environments. For this reason, juvenile justice goes beyond determining criminal responsibility. It seeks to protect children's rights while promoting their rehabilitation, reintegration, and healthy development. Modern juvenile justice systems,

therefore, emphasise guidance, support, and restoration rather than punishment alone.[1]

At the international and regional levels, the protection of child offenders is recognised as both a human rights and child welfare issue. International instruments such as the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) require States to establish child-friendly justice systems that respect children's dignity and support their physical, mental, and social well-being. These standards also recognise access to healthcare, mental health services, rehabilitation programmes, and appropriate detention conditions as essential components of juvenile justice. Consequently, juvenile justice is intended not only to address offending behaviour but also to protect children's welfare and future development.[2]

Tanzania has made important efforts to implement these international standards through the Law of the Child Act, the Penal Code, the Criminal Procedure Act, and the Law of the Child (Juvenile Court Procedure) Rules, 2016. Together, these laws provide legal safeguards that emphasise rehabilitation, correction, and reintegration. However, legal protection alone does not guarantee effective implementation. Challenges such as inadequate rehabilitation facilities, limited healthcare and mental health services, weak institutional capacity, and insufficient professional expertise continue to affect the protection and welfare of child offenders.[3]

This article argues that although Tanzania has established a progressive legal framework for protecting child offenders, the effective realisation of their legal and health rights remains limited by weaknesses in implementation. In particular, inadequate rehabilitation services, limited access to specialised healthcare, and poor coordination between justice and child welfare institutions undermine the rehabilitation and reintegration of children in conflict with the law. Against this background, the article examines the international, regional, and domestic legal framework governing the protection and health rights of child offenders in Tanzania, evaluates the challenges affecting its

[1] CRC, arts 3, 37 and 40; ACRWC, art 17; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) UNGA Res 40/33 (29 November 1985) rules 5.1 and 17.1.
[2] CRC, arts 24, 37, 39 and 40; ACRWC, arts 14 and 17.
[3] Law of the Child Act, Cap 13 R.E. 2023; Penal Code, Cap 16 R.E. 2023; Criminal Procedure Act, Cap 20 R.E. 2023; Law of the Child (Juvenile Court Procedure) Rules, GN No 182 of 2016.

implementation, and proposes legal, policy, and institutional reforms to strengthen a more effective and child-centred juvenile justice system.[4]

2.0 Literature Review and Research Gap

The protection of children in conflict with the law has received significant scholarly attention in Tanzania, particularly in relation to juvenile justice administration, child rights protection, compliance with international standards, and the treatment of child offenders within criminal justice institutions. Existing studies demonstrate that Tanzania's juvenile justice system has gradually shifted from a punitive approach towards a rights-based framework that emphasises rehabilitation and reintegration. They also identify continuing challenges, including poor detention conditions, weak institutional capacity, limited resources, and inadequate implementation of legal safeguards designed to protect child offenders. Despite these important contributions, the literature has largely focused on legal and institutional protection rather than the protection of health rights within the juvenile justice system.[5]

Another body of scholarship has examined access to justice and rehabilitation through legal aid, diversion programmes, and alternative measures aimed at reducing children's involvement in formal criminal proceedings. These studies emphasise that children require special procedural safeguards because of their age, vulnerability, and developmental needs, and they recognise rehabilitation as the central objective of juvenile justice. However, most of this literature concentrates on procedural fairness, legal representation, and diversion, with limited consideration of whether rehabilitation adequately incorporates healthcare, mental health services, psychosocial support, and other interventions necessary for children's overall well-being.[6]

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[4] Kirsten Anderson, Analysis of the Situation of Children in Conflict with the Law in Tanzania (Coram Children's Legal Centre 2012); SM Bakta, A Critical Analysis of the Child Justice System in (Mainland) Tanzania (PhD Thesis, University of Cape Town 2016); M Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal' (2017) 2 Supremo Amicus 175.

[5] C Maganga, *Administration of Juvenile Justice in Tanzania: A Study of its Compatibility with International Norms and Standards* (LLM Dissertation, University of the Western Cape 2006); Kirsten Anderson, *Analysis of the Situation of Children in Conflict with the Law in Tanzania* (Coram Children's Legal Centre 2012); SM Bakta, *A Critical Analysis of the Child Justice System in (Mainland) Tanzania* (PhD Thesis, University of Cape Town 2016); M Kadilu, *Protecting the Rights of Detained Juvenile Delinquents: Tanzania's Compliance with International Standards* (PhD Thesis, Acharya Nagarjuna University 2018); M Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal' (2017) 2 *Supremo Amicus* 175.

[6] CK Kabunga, *An Assessment of Child Juvenile Detainees' Access to Legal Aid in Tanzania* (LLM Dissertation, University of Zimbabwe 2016); DS Chanila, F Mohamed and S Pittman, 'Implementation of the

More recent scholarship has broadened the discussion by emphasising the physical and mental health needs of children in conflict with the law. Studies show that many children offenders experience trauma, mental health disorders, substance abuse, and other psychosocial challenges requiring specialised interventions. Comparative research further demonstrates that effective juvenile justice depends on integrating legal protection with healthcare, welfare services, and community-based rehabilitation. Nevertheless, these discussions have largely been developed within broader African or comparative contexts and have not been comprehensively examined within Tanzania's legal framework governing child offenders.[7]

Although the existing literature has substantially advanced understanding of juvenile justice, detention, legal aid, diversion, and rehabilitation, limited attention has been given to the legal protection of health rights within Tanzania's juvenile justice system. In particular, there remains little legal analysis of how physical healthcare, mental healthcare, psychosocial support, and rehabilitation rights are protected under international, regional, and domestic legal frameworks. Consequently, the relationship between legal protection and health rights remains insufficiently explored. This article addresses that gap by providing a comprehensive legal analysis of the protection and health rights of child offenders in Tanzania. It argues that although the legal framework broadly reflects international and regional child rights standards, the effective realisation of these rights continues to be constrained by weak implementation, inadequate rehabilitation infrastructure, and insufficient coordination between the juvenile justice, health, and child welfare systems, particularly in relation to mental health and psychosocial support services.[8]

3.0 Methodology

This article adopts a doctrinal legal research methodology to examine the legal protection and health rights of child offenders within Tanzania's juvenile justice system. The approach is appropriate as it enables a critical

Diversion Programme in Juvenile Justice Administration in Dar es Salaam, Tanzania: Benefits and Challenges' (2023) 3(1) *Institute of Social Work Journal*.

[7] O Atilola and G Abiri, 'Mental Health of Children and Adolescents within the Juvenile Justice System in Africa' in SO Olashore and TA Ayuk (eds), *The Handbook of Forensic Mental Health in Africa* (Springer 2021) 223–244; SP Sungi (ed), *Juvenile Justice in African and Western Criminal Justice Systems* (IGI Global 2025).

[8] See the literature cited above in relation to juvenile justice, legal aid, diversion and mental health rights.

examination of legal rules, principles, and institutional frameworks governing children in conflict with the law. The study is qualitative and analytical, focusing not only on what the law provides but also on how far it effectively secures rights to healthcare, mental health support, rehabilitation, and reintegration. In doing so, it moves beyond descriptive exposition to assess the coherence, adequacy, and practical limitations of the existing legal framework.

The study relies on documentary and library-based sources. Primary sources include international and regional human rights instruments, the Constitution of the United Republic of Tanzania, statutes, subsidiary legislation, judicial decisions, policies, parliamentary materials, and official reports, with particular emphasis on the CRC, ACRWC, the Law of the Child Act, Cap. 13 R.E. 2023, the Penal Code, the Criminal Procedure Act, and the Law of the Child (Juvenile Court Procedure) Rules, 2016. These are complemented by secondary sources such as books, journal articles, dissertations, and institutional reports. The analysis systematically compares international and domestic standards to identify gaps in compliance, implementation weaknesses, and institutional constraints affecting child offenders' rights, particularly in relation to health and rehabilitation. This comparative doctrinal evaluation forms the basis for identifying necessary legal and institutional reforms.

4.0 Legal Protection and Health Rights of Child Offenders under International Standards and Tanzanian Law

The legal protection of child offenders in Tanzania is founded upon a combination of international, regional, and domestic legal frameworks that collectively promote a child-centred approach to justice. The United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) establish the normative basis for the treatment of children in conflict with the law by recognising that children require special safeguards because of their physical and mental immaturity.[9] These instruments reject purely punitive approaches and instead require juvenile justice systems to prioritise dignity, rehabilitation, reintegration, and the best interests of the child.[10]

[9] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Preamble; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (ACRWC) Preamble.
[10] CRC, arts 37 and 40; ACRWC art 17.

Consequently, child offenders are viewed not merely as subjects of criminal accountability but as rights holders entitled to protection, care, and opportunities for positive development.

The international framework extends beyond procedural safeguards and embraces the broader welfare and health needs of children. Article 37 of the CRC prohibits torture, cruel, inhuman, or degrading treatment and requires deprivation of liberty to be used only as a measure of last resort and for the shortest appropriate period.[11] Article 40 further requires States to promote measures that foster the child's sense of dignity and worthwhile facilitating reintegration into society.[12] Similar protections are provided under Article 17 of the ACRWC, which requires child justice systems to promote rehabilitation and social reintegration rather than punishment.[13] These obligations are reinforced by the Beijing Rules and the Riyadh Guidelines, which encourage diversion, restorative justice, counselling, education, family support, and community-based rehabilitation as more appropriate responses to juvenile offending.[14] The underlying principle is that effective juvenile justice cannot be achieved through punishment alone but must address the social, developmental, and psychological factors that contribute to offending behaviour.

Tanzania has incorporated many of these principles into its domestic legal framework. Through ratification of the CRC and ACRWC pursuant to article 63(3)(e) of the Constitution of the United Republic of Tanzania, the country has accepted international obligations relating to the protection of child offenders.[15] Articles 11, 12, and 13 of the Constitution of the United Republic of Tanzania provide an important constitutional foundation for protecting children, including those in conflict with the law. Article 11 requires the State to promote access to education and social welfare, while Articles 12 and 13 guarantee equality before the law and protection from discrimination. Read together, these provisions require that children in conflict with the law be treated fairly, without discrimination, and in a manner that respects their dignity, recognises

[11] ibid art 37.
[12] ibid art 40(1).
[13] ACRWC, art 17.
[14] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) UNGA Res 40/33 (29 November 1985) rules 1.1 and 5.1; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) UNGA Res 45/112 (14 December 1990).
[15] Constitution of the United Republic of Tanzania, 1977, art 63(3)(e).

their vulnerability, and supports their rehabilitation and reintegration into society.[16] Specifically, the Law of the Child Act (LCA) adopts the best interests of the child as a primary consideration and establishes safeguards intended to ensure that children receive treatment appropriate to their age, development, and welfare needs.[17] The establishment of juvenile courts, the separation of child offenders from adults, and the emphasis on rehabilitation and reintegration demonstrate a clear legislative commitment to child-centred justice.[18] In normative terms, therefore, Tanzania's legal framework is broadly aligned with international and regional standards governing children in conflict with the law.

Nevertheless, compliance with international standards should not be assessed solely by the existence of legal provisions. A critical examination of the legal framework reveals that while procedural safeguards are relatively well developed, the protection of health rights remains less clearly articulated and less effectively implemented. The LCA recognises the importance of children's welfare, healthcare, protection from abuse, and development.[19] Yet it provides limited guidance on access to specialised healthcare, mental health services, trauma-informed interventions, and psychosocial support for child offenders. This omission is significant because many children who come into conflict with the law are affected by poverty, neglect, violence, substance abuse, family instability, and other circumstances that may require professional health and social support.[20] As scholars increasingly observe, rehabilitation cannot be separated from the physical and mental well-being of the child.[21] Consequently, a juvenile justice system that focuses primarily on legal procedures without adequately addressing health needs risks undermining its own rehabilitative objectives.

The institutional framework established under the LCA similarly reflects both strengths and limitations. Juvenile courts, Social Welfare Officers, probation services, local government authorities, and other child

[16] ibid arts 11, 12 and 13.
[17] Law of the Child Act (LCA), Cap 13 R.E. 2013, ss 4, 5, and 7.
[18] ibid ss 95-98.
[19] ibid ss 8-14.
[20] Anderson, Analysis of the Situation of Children in Conflict with the Law in Tanzania, 18-24.
[21] Atilola and Abiri, 'Mental Health of Children and Adolescents within the Juvenile Justice System in Africa', 223-244.

protection institutions are mandated to safeguard children's rights and promote rehabilitation.[22] Social Welfare Officers play a particularly important role through the preparation of social inquiry reports, supervision of probation orders, facilitation of diversion programmes, and representation of the child's best interests during proceedings.[23] However, the effectiveness of these institutions depends largely on the availability of trained personnel, financial resources, specialised services, and inter-agency coordination. The legal framework presupposes the existence of functional rehabilitation, counselling, and welfare mechanisms, yet available literature suggests that institutional capacity remains uneven.[24] As a result, the implementation of child-centred justice often falls short of the commitments and aspirations embodied in both international standards and domestic law.

The foregoing analysis suggests that the principal challenge facing Tanzania's juvenile justice system is not the absence of legal standards but the gap between normative protection and practical implementation. While international instruments and domestic legislation provide a strong legal foundation for the protection of child offenders, the realisation of health rights, particularly mental health care and psychosocial support, remains insufficiently developed. Effective protection, therefore, requires a more integrated approach that combines legal safeguards with healthcare, rehabilitation, social support, and community reintegration. Such an approach would better fulfil the objectives of the CRC, the ACRWC, and the LCA, while enhancing the capacity of the juvenile justice system to promote rehabilitation and reduce recidivism among child offenders.

4.1 Child Offenders and the Justice System under the LCA

The enactment of Part VIII of the Law of the Child Act (LCA) represents a foundational shift in the legal treatment of children in conflict with the law, moving away from a punitive criminal justice model towards a child-centred framework grounded in the best interests principle.[25] The Act recognises children as a distinct legal category whose age, vulnerability, and developmental capacity require differentiated responses focused on

[22] LCA, ss 94-98.
[23] ibid ss 94-96.
[24] Bakta, A Critical Analysis of the Child Justice System in (Mainland) Tanzania; Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal', 175.
[25] LCA, pt VIII.

rehabilitation and social reintegration rather than retribution. This orientation is consistent with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), which require juvenile justice systems to promote dignity, development, and reintegration.[26] Within this framework, the establishment of Juvenile Courts serves as a key institutional mechanism for operationalising child-sensitive justice by assigning specialised jurisdiction over child offenders and related welfare matters, thereby integrating adjudication with protection-oriented considerations.[27] However, the effectiveness of this institutional design ultimately depends on adequate resources, functional capacity, and consistent implementation in practice.

The procedural framework under sections 99 to 120 of the LCA further reinforces the rehabilitative philosophy underpinning juvenile justice by structuring proceedings around the welfare, reintegration, and developmental needs of the child rather than adversarial punishment.[28] This reflects a broader shift in legal reasoning that views child offending not only as individual culpability but also as a consequence of social and structural conditions requiring corrective intervention. Nonetheless, certain provisions, particularly those permitting joint proceedings with adults under section 100, expose tensions within the protective framework, as they may undermine the principle of separation and subject children to intimidating adult criminal environments.[29] While such exceptions may be justified in limited circumstances, they must be applied restrictively to preserve the integrity of child-centred justice. Overall, although the LCA establishes a comprehensive normative system aligned with the CRC and ACRWC, its transformative impact depends on effective implementation, institutional capacity, and sustained adherence to child rights standards in practice.[30]

4.2 Procedures, Rights, and Protections of Child Offenders under the LCA

The Law of the Child Act (LCA) establishes a specialised juvenile justice framework under Part IX, premised on the recognition that children in

[26] CRC; ACRWC.
[27] LCA, ss 97-98.
[28] ibid ss 99-120.
[29] ibid s 100.
[30] CRC; ACRWC.

conflict with the law require procedural safeguards distinct from adult criminal processes. Sections 97 - 100 create the institutional foundation of juvenile justice by establishing Juvenile Courts, defining their jurisdiction, and prescribing simplified procedures designed to reduce formality and intimidation. The general structure signals a deliberate shift from adversarial criminal litigation towards a welfare-oriented inquiry model, where the court assumes an active protective role rather than a purely adjudicatory one.[31] This design reflects the normative influence of child rights standards requiring justice processes to be child-sensitive, accessible, and non-threatening.

A defining procedural safeguard is the requirement that juvenile proceedings be conducted in camera and in a manner that prioritises informality, participation, and dignity.[32] The legal intention is to shield children from the psychological harm associated with public trials and rigid adversarial procedures. By restructuring hearings as inquiries rather than strict contests between prosecution and defence, the Act acknowledges that children often lack the cognitive maturity and legal literacy required to navigate formal litigation. However, the effectiveness of this safeguard depends not merely on statutory wording but on judicial practice, as excessive informality risks undermining due process if not carefully balanced with fairness.

The Act further embeds participatory justice through provisions requiring the presence and involvement of parents, guardians, social welfare officers, and legal representatives during proceedings.[33] This multi-actor framework is not symbolic; it is intended to ensure that judicial decisions are informed by the child's social and welfare context, not merely the offence.[34] Child participation must occur within supportive environments that enable children to express themselves freely rather than merely being heard formally.[35] The LCA attempts to operationalise this principle by

[31] E Manco, 'Protecting the Child's Right to Participate in Criminal Justice Proceedings' (2016) 8(1) Amsterdam Law Forum 48; T Liefaard, 'Child-Friendly Justice and Procedural Safeguards for Children in Criminal Proceedings' (2020) 8(1) Bergen Journal of Criminal Law and Criminal Justice 17.
[32] LCA, s 100.
[33] ibid ss 100 and 112.
[34] Manco, 'Protecting the Child's Right to Participate in Criminal Justice Proceedings'; Liefaard, 'Child-Friendly Justice and Procedural Safeguards for Children in Criminal Proceedings'.
[35] Hrefna and A G Haugen, 'Child Friendly Justice: International Obligations and the Challenges of Interagency Collaboration' in *Against Child Abuse* (2017) 187; N N Rosmalinda and E Suhaidi, 'Applying the

embedding supportive actors within the courtroom structure, though in practice, participation often remains uneven due to resource and capacity constraints.

Separation of children from adult offenders constitutes another core protection under section 102 of the LCA, prohibiting association in custody except in narrowly defined circumstances. This provision reflects both international standards under Article 37(c) of the CRC and a clear legislative concern with preventing intimidation, abuse, and "criminal contamination."[36] However, the Act's allowance for exceptions introduces a structural tension: while flexibility may be administratively necessary, it risks diluting a safeguard that is meant to be absolute in principle. The effectiveness of this protection, therefore, depends heavily on institutional discipline and infrastructure capacity.

The LCA also provides corrective mechanisms to ensure that children are not deprived of procedural safeguards due to administrative or investigative errors. Where an accused person is discovered to be a child, proceedings must be transferred to the Juvenile Court as per section 98 read with sections 100 - 103 of the LCA. This provision reinforces the principle that childhood status triggers automatic legal protection, rather than discretionary entitlement. It advances substantive equality by ensuring that procedural misclassification does not result in the loss of child-specific safeguards.

At the earliest stage of justice contact, the Act prioritises liberty and minimal intervention. Section 101 of the Act requires that bail be considered for children, while Section 104 allows remand to the care of a fit person or institution instead of detention. These provisions reflect a clear legislative preference for non-custodial responses, consistent with the principle that detention should be a measure of last resort.[37] Nevertheless, empirical evidence suggests that custodial practices often persist due to institutional caution and limited availability of suitable

Principle of the Best Interests of the Child' in *WoMELA-GG 2019* (European Alliance for Innovation 2019) 170.

[36] United Nations Committee on the Rights of the Child. (2011). General Comment No. 13 (2011): The right of the child to freedom from all forms of violence (CRC/C/GC/13).

[37] F N Eleanora and D S Wijanarko, 'Provision of Restitution and Protection Children of Victims Criminal Action' (2021) 17 *Technium Social Sciences Journal* 136; I Zalužinska, 'Detention Control in Pre-Trial Criminal Proceedings' in *Individual. Society. State. Proceedings of the International Student and Teacher Scientific and Practical Conference* (2024) 231.

alternatives, revealing a gap between legal design and enforcement reality.

Procedural fairness is further strengthened through duties imposed on courts to explain charges in a language the child understands, as envisaged under section 105, to ensure comprehension before plea as provided for under sections 106 - 107, and to regulate evidentiary participation according to sections 108 - 110 of the LCA.[38] These provisions move beyond formal legality by recognising that fairness is meaningless without understanding. The requirement of explanation in simple language is particularly significant, as it transforms procedural justice from a technical exercise into a communicative process However, the practical realisation of this safeguard depends on judicial competence in child communication, which remains inconsistent.

The Act also integrates social welfare expertise into judicial decision-making through section 100A, which requires courts to consider reports and recommendations from social welfare officers before determining outcomes.[39] This provision represents one of the most progressive features of the LCA, as it institutionalises interdisciplinary justice by requiring courts to incorporate psychological, social, and environmental assessments. It aligns sentencing with the "best interests of the child" principle, ensuring that decisions are not based solely on legal guilt but on holistic evaluation of the child's circumstances.

Timeliness of proceedings is another implicit but critical safeguard within the juvenile justice framework. The structure of ss 97 - 111, read together, reflects an expectation of expedited handling of child cases to prevent prolonged exposure to uncertainty and psychological harm.[40] Delays in juvenile proceedings are particularly harmful because they disrupt education, family stability, and rehabilitation prospects. However, in practice, systemic delays remain a persistent challenge, weakening the protective intent of the statutory framework.

Sentencing and post-conviction measures under ss 116 to 120 of the LCA reinforce the rehabilitative orientation of the Act.[41] Courts are empowered

[38] LCA, ss 105-110.
[39] ibid s 100A(1)-(2).
[40] ibid s 100A(1)-(2).
[41] ibid ss 116-120.

to impose probation, conditional discharge, supervision, or placement in approved institutions rather than custodial punishment.[42] Section 119 is especially significant as it prohibits custodial sentences for children except in strictly regulated circumstances, thereby affirming rehabilitation over retribution. However, the effectiveness of these alternatives depends on the quality of probation services and institutional care, which remain uneven across jurisdictions.

Age determination under s 113 plays a critical gatekeeping role in accessing juvenile protections. Accurate age assessment ensures that children are not wrongly subjected to adult criminal processes. While the Act allows for evidentiary determination of age, including medical assessment, such mechanisms must be applied cautiously to avoid exclusion errors. The legal significance of this provision lies in its function as a threshold safeguard for the entire juvenile justice system.

Finally, provisions relating to child witnesses, say section 115, recognise that children can contribute to justice processes even where they lack a full understanding of oath-taking.[43] This provision prevents the exclusion of child testimony purely on cognitive grounds and is particularly relevant in offences where children are primary victims or witnesses. It reflects a shift towards inclusive evidentiary standards that prioritise truth-seeking while adapting to developmental limitations.

Thus, the LCA establishes a comprehensive and normatively strong juvenile justice framework grounded in dignity, rehabilitation, and procedural fairness However, its effectiveness is undermined by implementation gaps, particularly in institutional capacity, social welfare resourcing, and judicial consistency. The gap between statutory design and practical enforcement remains the central challenge. Strengthening juvenile justice, therefore, requires not only legal adequacy but sustained investment in institutional infrastructure, professional training, and inter-agency coordination to ensure that the protective intent of ss 97-120 is fully realised in practice.

[42] D Setyowati, 'Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice' (2020) 4(1) Unram Law Review 64-73.
[43] LCA, s 115.

4.3 Legal Protections for Child Offenders and Juvenile Justice under Tanzanian Laws Beyond the Law of the Child Act

While the Law of the Child Act (LCA) provides the primary framework for juvenile justice in Tanzania, the protection of children in conflict with the law is equally shaped by the Penal Code and the Criminal Procedure Act (CPA), which govern criminal responsibility and regulate a child's earliest interactions with the criminal justice system. Their significance lies in the fact that the protection or violation of children's rights often occurs at the stages of arrest, detention, interrogation, and charging, long before a matter reaches a Juvenile Court. The Penal Code adopts an age-based approach to criminal responsibility by granting absolute immunity from criminal liability to children below ten years of age, reflecting the principle that children of such tender years lack the cognitive and moral capacity necessary to appreciate the nature and consequences of criminal conduct.[44] This provision performs an important protective function by diverting young children away from the criminal process and recognising that behavioural concerns at this stage are more appropriately addressed through parental guidance, education, and social welfare interventions. Nevertheless, its adequacy must be assessed against contemporary international child rights standards, which increasingly emphasise developmental maturity and the need for criminal responsibility frameworks that prioritise the best interests, welfare, and evolving capacities of the child.[45] Consequently, the effectiveness of juvenile justice depends not only on the existence of specialised child justice legislation but also on the extent to which the wider criminal law framework incorporates and consistently applies child-sensitive principles.

The Committee on the Rights of the Child, through General Comment No. 10, has consistently maintained that the minimum age of criminal responsibility should not be set below twelve years and has encouraged States to progressively raise it further.[46] Similarly, Article 17(4) of the African Charter on the Rights and Welfare of the Child requires States to establish a minimum age below which children are presumed incapable of infringing penal law, while the African Committee of Experts on the

[44] Penal Code, Cap 16 R.E. 2023, s 15.
[45] UN Committee on the Rights of the Child, *General Comment No 24 (2019) on Children's Rights in the Child Justice System* (18 September 2019) UN Doc CRC/C/GC/24 paras 21–23.
[46] Committee on the Rights of the Child, *General Comment No 10 (2007): Children's Rights in Juvenile Justice* UN Doc CRC/C/GC/10, para 32.

Rights and Welfare of the Child has encouraged adherence to international best practices that favour a minimum age of at least twelve years and preferably fourteen years.[47] In this regard, Tanzania's retention of ten years as the threshold for criminal responsibility appears increasingly difficult to justify in light of contemporary child rights standards and developmental research. By exposing younger children to the possibility of criminal proceedings at an earlier age than internationally recommended, the law risks undermining the protective philosophy that underpins modern juvenile justice systems.

The Penal Code further establishes a regime of conditional criminal responsibility for children aged between ten and twelve years through the doctrine of *doli incapax*.[48] Under this framework, criminal liability may only arise where it is proven that the child possessed sufficient capacity to understand that his or her conduct was wrong. The provision reflects an attempt to reconcile competing objectives of accountability and protection by recognising that children within this age bracket differ significantly in their levels of maturity and understanding. From a child rights perspective, the doctrine provides an important safeguard because it prevents automatic criminalisation and requires individualised assessment of the child's mental and moral development. However, the practical effectiveness of this protection remains questionable. The law does not prescribe clear standards or assessment mechanisms for determining whether a child possessed the requisite understanding of wrongdoing. In the absence of standardised psychological evaluation procedures, courts may rely heavily on subjective judicial impressions or inconsistent evidentiary standards, thereby creating the risk of arbitrary outcomes. This uncertainty becomes particularly problematic when viewed alongside section 97 of the LCA, which requires that all proceedings involving children be guided by the best interest's principle and prioritise diversion, rehabilitation, and restorative justice measures. The continued possibility of criminal prosecution for children between ten and twelve years may therefore create tension between the welfare-oriented philosophy of the LCA and the accountability-based framework of the Penal Code. Consequently, while the doctrine of *doli incapax* provides a degree of protection, its effectiveness depends upon careful judicial

[47] African Committee of Experts on the Rights and Welfare of the Child, *General Comment No 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child* (2018); African Charter on the Rights and Welfare of the Child, art 17(4).
[48] Penal Code, Cap 16 R.E. 2023, s 15(2).

interpretation and the availability of professional assessments capable of accurately evaluating a child's developmental capacity.

Another notable protection under the Penal Code is the presumption that a male child under the age of twelve years is incapable of sexual intercourse.[49] Historically, this provision was designed to protect young boys from criminal liability for certain sexual offences by recognising their presumed physical and psychological immaturity. The provision reflects a broader legal commitment to acknowledging developmental limitations when determining criminal responsibility. However, contemporary child rights discourse raises important questions regarding the adequacy of such a rigid presumption. While the provision protects children from premature criminalisation, it may fail to adequately address complex situations involving child-on-child sexual conduct, exploitation, or abuse. In some circumstances, a male child may simultaneously occupy the positions of victim and alleged perpetrator, requiring nuanced interventions that address underlying welfare concerns rather than simplistic assumptions regarding incapacity. Accordingly, the provision should be interpreted alongside the rehabilitative and protective objectives of the LCA, particularly section 119, which emphasises measures aimed at guidance, supervision, and reintegration rather than punishment. A purely formal application of the presumption risks overlooking the complex realities that often characterise children's involvement in sexual offences and may hinder the development of individualised responses that genuinely serve the child's best interests.

The child-centred philosophy of the juvenile justice system is reinforced by section 15(4) of the Penal Code, which requires the application of the Law of the Child Act in relation to children accused of violating the law.[50] This provision is significant because it establishes the primacy of the specialised juvenile justice framework over ordinary criminal procedures when dealing with child offenders. By directing attention to the LCA, the law recognises that children should not be subjected to the same procedures, sanctions, and institutional responses applicable to adults. Instead, child offenders are entitled to the procedural safeguards, diversionary measures, and rehabilitative interventions established under the juvenile justice system. The provision therefore reflects compliance

[49] ibid s 15(3).
[50] ibid s 15(4); LCA, pt IX.

with Article 37(b) of the Convention on the Rights of the Child and Article 17(2)(c) of the African Charter on the Rights and Welfare of the Child, both of which emphasise that detention should be used only as a measure of last resort and for the shortest appropriate period. Nevertheless, the practical effectiveness of section 15(4) depends substantially upon the capacity of institutions responsible for implementing juvenile justice. Limited numbers of specialised courts, inadequate child-friendly facilities, insufficient social welfare personnel, and varying levels of awareness among law enforcement officers continue to affect the extent to which the rehabilitative objectives of the LCA are fully realised in practice. Consequently, the legal recognition of child-sensitive procedures must be accompanied by corresponding institutional investments if meaningful protection is to be achieved.

The Criminal Procedure Act, Cap 20 R.E. 2023 complements the protective framework established under the Law of the Child Act by regulating how children are treated during criminal investigations and court proceedings. Although the Act was enacted as legislation of general application, several of its provisions recognise that children require additional procedural safeguards because of their age, vulnerability, and limited capacity to understand criminal processes. These safeguards seek to reduce the risk of arbitrary treatment, ensure fairness during criminal proceedings, and protect children's dignity throughout the administration of justice.

One important safeguard appears in section 56 of the Criminal Procedure Act, which imposes a mandatory obligation upon the police to notify a child's parent or guardian immediately after the child has been placed under restraint and to communicate the offence for which the child is being detained. The provision applies to children below the age of sixteen years.[51] This requirement performs a function that extends beyond mere notification. Prompt parental involvement provides an important procedural safeguard by ensuring that a child is not isolated during the early stages of criminal investigation, where the risk of intimidation, misunderstanding, or undue influence is often greatest. The presence or early involvement of a parent or guardian may assist the child in understanding the nature of the proceedings, facilitate access to legal representation, and provide emotional support during police

[51] Criminal Procedure Act, Cap 20 R.E. 2023, s 56.

investigations. The provision therefore strengthens procedural fairness by recognising that children frequently lack the maturity, confidence, and legal knowledge necessary to protect their own interests when dealing with law enforcement authorities.

This statutory safeguard reflects broader principles recognised under international children's rights law. Research consistently demonstrates that children are more susceptible than adults to suggestion, compliance with authority, and psychological pressure during police interviews, thereby increasing the risk of unreliable statements and involuntary admissions. Forde and Kilkelly argue that a child-centred approach to criminal investigations requires procedural safeguards that acknowledge children's developmental capacities and enable them to participate effectively while protecting them against coercion and unfair treatment.[52] Their analysis illustrates that procedural rights cannot be regarded as effective merely because they exist in legislation; they must also be implemented in a manner that children are capable of understanding and exercising. Within the Tanzanian context, this observation underscores the continuing need for specialised police training on child-sensitive interviewing techniques, effective communication with children, and the practical implementation of procedural guarantees during criminal investigations.

The Act further protects children's welfare and privacy during judicial proceedings. Under section 186(1)(b)(ii), a court may exclude the public where publicity would prejudice the welfare of persons under eighteen years or interfere with the protection of their private lives. In addition, section 186(3) requires evidence in all sexual offence trials to be received *in camera* and prohibits the publication of evidence or the identities of witnesses involved, subject to limited statutory exceptions. These provisions recognise that unnecessary publicity may expose children to stigma, emotional distress, and secondary victimisation. Child justice scholarship increasingly identifies privacy as an indispensable procedural guarantee that promotes children's dignity, encourages meaningful

[52] Louise Forde and Ursula Kilkelly, *The Child-Friendly Justice Project: The Participation of Children in Civil and Criminal Judicial Proceedings in 10 EU Member States* (University College Cork 2015); see also Ursula Kilkelly, *Youth Courts and Children's Rights: The Irish Experience* (Clarus Press 2008).

participation, and protects them from further harm arising from criminal proceedings.[53]

Further protection is provided under section 187, which prohibits children from being present during the trial of another person unless their attendance is required as a witness or for justice. The provision reflects the welfare-oriented approach underpinning juvenile justice by limiting children's exposure to proceedings that may cause psychological distress or expose them to inappropriate evidence. It also reinforces the principle that children's involvement in criminal proceedings should occur only where necessary and, in a manner, consistent with their age, maturity, and best interests.[54]

These provisions establish important procedural safeguards for children during criminal investigations and judicial proceedings, but significant gaps remain. Section 56 limits mandatory parental notification to children below sixteen years, contrary to the Law of the Child Act and international child rights standards, which define a child as every person below eighteen years, while the Act provides limited safeguards for child-sensitive police interviewing and does not expressly guarantee legal representation during police questioning. Harmonising the Criminal Procedure Act with the Law of the Child Act and international standards would strengthen procedural protection for all children in conflict with the law and promote more effective implementation of child-friendly justice.

4.4 Realising the Right to Health of Children in Conflict with the Law in Tanzania

The right to health occupies a central place in the protection of children in conflict with the law. It extends beyond access to medical treatment to encompass physical, mental, psychological, and social well-being. International human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of

[53] Márton Benyusz and Kinga Zombory, *Introducing Child-Friendly Justice: Concepts, Rights, and Participation* (2025); Maria Leiria and Catarina Nunes, 'Children's Perceptions of Their Involvement in Judicial Child Protection, Family and Criminal Proceedings: A Systematic Review' (2023) 31(3) *The International Journal of Children's Rights* 624.

[54] Anna Kaldal, 'Children's Participation in Legal Proceedings—Conditioned by Adult Views of Children's Capacity and Credibility?' in *The Rights of the Child* (Brill Nijhoff 2023) 61

the Child (CRC), and the African Charter on the Rights and Welfare of the Child (ACRWC), recognise health as a fundamental human right and affirm every child's entitlement to the highest attainable standard of health and conditions necessary for healthy development.[55] For children in conflict with the law, the right to health assumes particular importance because arrest, detention, institutionalisation, and social stigma can adversely affect their physical and mental well-being. Consequently, health protection must be regarded as a core component of rehabilitation, reintegration, and human dignity rather than a mere welfare concern.

The normative content of the right to health extends beyond access to medical treatment. International human rights law recognises it as a right to a functioning health system and to the underlying conditions necessary for physical, mental, and social well-being. Accordingly, the right encompasses the availability, accessibility, acceptability, and quality of health services, as well as broader determinants such as safe environments, adequate nutrition, sanitation, and conditions conducive to human development.[56] In the context of juvenile justice, compliance cannot therefore be measured solely by the existence of healthcare facilities. It also requires child-friendly institutions, access to mental health and psychosocial services, protection from violence and abuse, and detention conditions that preserve dignity and support recovery. Health thus operates both as a substantive right and as a benchmark for assessing the legitimacy of juvenile justice interventions.

The centrality of health rights is further reinforced by the understanding that health constitutes a foundational condition for the enjoyment of other rights and opportunities. Children whose physical or psychological well-being is undermined by neglect, abuse, trauma, or inadequate institutional support are less able to benefit from education, family life, rehabilitation

[55] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) art 25; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 12; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 arts 24 and 39; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 arts 14 and 17.

[56] Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)* UN Doc E/C.12/2000/4 (11 August 2000) paras 11–12; E Javid and S Niavarani, 'The Scope of the Right to Health in International Human Rights Law' (2014) 15(41) *Public Law Research* 47; John Tobin, *The Right to Health in International Law* (OUP 2012); Paul Hunt, 'Interpreting the International Right to Health in a Human Rights-Based Approach to Health' (2016) 18(2) *Health and Human Rights* 109.

programmes, and social reintegration. A juvenile justice system that fails to safeguard health, therefore not only falls short of its human rights obligations but also weakens its own rehabilitative objectives. Protecting health is consequently not a peripheral welfare concern but an essential prerequisite for rehabilitation, reintegration, and the full development of children in conflict with the law.[57]

Although the Constitution of the United Republic of Tanzania does not expressly guarantee the right to health, judicial interpretation has increasingly recognised health as an essential element of the right to life and human dignity. In *Joseph D Kessy and Others v The City Council of Dar es Salaam*, the High Court adopted a broad interpretation of constitutional protections by recognising that health threats may amount to threats to life itself.[58] Ackson observes that such judicial developments have contributed significantly to the gradual recognition of socio-economic rights within the Tanzanian constitutional framework despite the absence of explicit constitutional provisions.[59] For children in conflict with the law, this approach is particularly important because it provides a constitutional foundation for demanding humane treatment, access to healthcare, and protection from harmful detention conditions. It also affirms that the deprivation of liberty does not extinguish the fundamental rights of children but instead imposes heightened responsibilities upon state authorities.

The Law of the Child Act (LCA) incorporates several safeguards aimed at protecting the health and welfare of children who come into contact with the justice system. The Act guarantees access to medical care and establishes mechanisms intended to protect children from harmful environments and treatment.[60] It further requires the involvement of parents, guardians, and social welfare officers and promotes the placement of children in facilities specifically designed for their age and circumstances.[61] These provisions reflect an appreciation that health is influenced by social support, family relationships, living conditions, and

[57] Amartya Sen, *Development as Freedom* (OUP 1999).
[58] *Joseph D Kessy and Others v The City Council of Dar es Salaam* Civil Case No 299 of 1988 (High Court, Dar es Salaam Registry) (unreported).
[59] T Ackson, 'Justiciability of Socio-Economic Rights in Tanzania' (2015) 23(3) *African Journal of International and Comparative Law* 373.
[60] LCA, s 26.
[61] ibid ss 99(1), 101 and 125.

protection from harmful influences. From a human rights perspective, the significance of these safeguards lies in their recognition that once the State assumes control over a child's liberty, it acquires corresponding obligations to respect, protect, and fulfil the child's health rights through effective legal, administrative, and institutional measures.[62]

4.4.1 Mental Health, Psychological Recovery, and Rehabilitation

Mental health represents one of the most important yet frequently neglected dimensions of the right to health within juvenile justice systems. International law increasingly recognises that psychological well-being forms an inseparable component of human dignity and healthy development. Article 39 of the CRC requires States to promote the physical and psychological recovery and social reintegration of children affected by neglect, abuse, exploitation, or other forms of harm.[63] This obligation is particularly relevant because many children who enter juvenile justice systems have experienced poverty, family instability, violence, trauma, substance abuse, or social exclusion before their contact with the law. As a result, offending behaviour often reflects broader social and psychological vulnerabilities rather than mere criminal intent. Effective rehabilitation, therefore, requires more than legal sanctions; it necessitates interventions that address underlying mental health and psychosocial needs.

The LCA adopts a rehabilitative philosophy by prioritising correction, guidance, and reintegration over punishment.[64] Nevertheless, significant challenges remain regarding the practical realisation of mental health rights within juvenile institutions. Pūras observes that mental health should be treated as an integral component of the right to health rather than a secondary policy concern.[65] Similarly, Hovey, Zolkoski, and Bullock demonstrate that children involved in juvenile justice systems frequently experience disproportionately high levels of psychological disorders, emotional trauma, and behavioural difficulties requiring

[62] Dinah Moeckli, Sandesh Sivakumaran, Sarah Shah and David Harris (eds), *International Human Rights Law* (4th edn, OUP 2022).
[63] CRC art 39.
[64] LCA, s 119(1).
[65] Dainius Pūras, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (2022) 95 *Philippine Law Journal* 274.

specialised intervention.[66] Yet available evidence suggests that many juvenile institutions continue to operate with limited psychological services, insufficient specialist personnel, and inadequate systems for identifying and addressing mental health needs.[67] Consequently, children may remain within institutional settings without receiving meaningful therapeutic support, thereby weakening both rehabilitation efforts and the realisation of their health rights.

The implications of this deficiency are significant. Shields argues that justice institutions often become places where vulnerable children are merely "warehoused" rather than rehabilitated, resulting in the criminalisation of unmet mental health needs.[68] Jacobs similarly identifies systemic barriers that prevent children from receiving appropriate psychological care within welfare and justice systems.[69] Such realities reveal a persistent gap between the rehabilitative objectives embedded in law and actual institutional practice. Where mental health services are unavailable or ineffective, detention may aggravate existing trauma, increase social isolation, and diminish prospects for successful reintegration. These outcomes are inconsistent with the rehabilitative obligations established under international and regional child rights instruments and undermine the fundamental purpose of juvenile justice itself.

4.4.2 Health Rights in Detention and Institutional Care

Children deprived of liberty face heightened risks to their physical and mental well-being, making the protection of health rights a central component of juvenile justice. International standards require detention to be used only as a measure of last resort and under conditions consistent with human dignity, while the Law of the Child Act reinforces these obligations through the separation of children from adults and placement in institutions appropriate to their age and developmental needs.[70] These safeguards are not merely procedural. Detention conditions directly affect

[66] K A Hovey, S M Zolkoski and L M Bullock, 'Mental Health and the Juvenile Justice System: Issues Related to Treatment and Rehabilitation' (2017) 7(3) *World Journal of Education* 1.
[67] LCA, ss 100(1), 101(1) and 125.
[68] D M Shields, 'Warehoused: The Plight of "Mad" Youths in the Juvenile Justice System' (2011) 8 *Justice Policy Journal* 48.
[69] S A Jacobs, 'Navigating a Broken System: The State of Mental Health in Child Welfare' (2024) 75 *Psychiatric Services* 90.
[70] CRC, art 37(c); ACRWC art 17(2)(a); LCA, ss 100(1), 101(1) and 125.

children's health, and environments characterised by overcrowding, poor sanitation, inadequate nutrition, violence, or limited access to healthcare can undermine rehabilitation and impede successful reintegration.

The right to health extends beyond medical treatment to encompass the broader conditions necessary for physical, psychological, and social well-being. International human rights law recognises access to healthcare, sanitation, nutrition, and safe living conditions as integral components of health protection, requiring detention authorities to maintain environments that support children's development and recovery.[71] Consequently, the adequacy of juvenile detention facilities should be assessed not only by the availability of medical services but also by the extent to which institutional conditions preserve dignity, promote well-being, and facilitate rehabilitation.

Despite these standards, implementation remains a significant challenge. Available evidence from sub-Saharan Africa indicates persistent deficiencies in healthcare services, sanitation, nutrition, and psychological support within detention facilities, while the implementation of international juvenile justice standards continues to be constrained by inadequate resources, weak institutional capacity, and shortages of specialised personnel.[72] These challenges demonstrate that legal guarantees alone cannot secure health rights. Effective protection requires sustained investment in infrastructure, healthcare, and psychosocial services, rehabilitation programmes, and monitoring mechanisms capable of translating legal standards into meaningful outcomes for children deprived of liberty.

4.4.3 Protection from Abuse, Exploitation, and Health-Related Harm

The right to health extends beyond access to medical treatment and includes protection from violence, abuse, exploitation, and other forms of

[71] Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)* UN Doc E/C.12/2000/4 (11 August 2000) para 12; Brigit Toebes, 'International Health Law: An Emerging Field of Public International Law' (2015) 55(3) *Indian Journal of International Law* 299; Justice Health Group, *Ensuring the Highest Attainable Standard of Health for Children Deprived of Their Liberty* (Murdoch Children's Research Institute 2023).

[72] Marie-C Van Hout and Rosemary Mhlanga-Gunda, 'Prison Health Situation and Health Rights of Young People Incarcerated in Sub-Saharan African Prisons and Detention Centres: A Scoping Review of Extant Literature' (2019) 19 *BMC International Health and Human Rights* 1; N Jacobs-Du Preez, 'The United Nations Standard Minimum Rules for the Administration of Juvenile Justice Applied in an African Context' (2002) 15 *Acta Criminologica: African Journal of Criminology and Victimology* 35.

treatment that threaten a child's physical or psychological well-being. International and regional human rights instruments require States to protect children from all forms of violence, neglect, abuse, and sexual exploitation, while the Law of the Child Act reinforces these obligations by prohibiting inhuman treatment and safeguarding the welfare of children throughout the justice process.[73] These legal protections recognise that a child's health cannot be separated from a safe and protective environment, particularly within the juvenile justice system.

Children deprived of their liberty are especially vulnerable to violence and exploitation. Studies on juvenile detention in Africa show that girls are at greater risk of sexual abuse, coercion, institutional neglect, and traumatisation, while many detained children already suffer from untreated psychological trauma and other mental health challenges before entering custody.[74] These findings demonstrate that the right to health is not limited to medical care. It also requires protection from violence, degrading treatment, and exploitation because such experiences directly affect children's mental health, emotional development, and prospects for successful rehabilitation.

Health-related harm may also arise from the conditions in which children are detained. Research has shown that overcrowding, poor sanitation, inadequate healthcare services, and exposure to communicable diseases remain common challenges in many detention facilities across Sub-Saharan Africa.[75] These conditions undermine both physical and mental health and often reflect broader structural problems such as inadequate resources, weak oversight, and poor implementation of child protection standards. They are inconsistent with the State's obligation to respect, protect, and fulfil the rights of children deprived of liberty and ultimately weaken the rehabilitative purpose of juvenile justice by exposing children to environments that deepen rather than address their vulnerabilities.

4.5 Challenges in Realising Legal Protection and Health Rights of Children in Conflict with the Law in Tanzania

[73] CRC, arts 19(1) and 34; ACRWC, arts 16 and 29; LCA, s 13.
[74] Marie-C Van Hout and Rosemary Mhlanga-Gunda, 'Prison Health Situation and Health Rights of Young People Incarcerated in Sub-Saharan African Prisons and Detention Centres: A Scoping Review of Extant Literature' (2019) 19 *BMC International Health and Human Rights* 17.
[75] ibid.

Although the Law of the Child Act and the Law of the Child (Juvenile Court Procedure) Rules establish a child-centred and rehabilitative juvenile justice framework, the protection of children in conflict with the law remains largely affected by weaknesses in implementation. The principal challenge is not the absence of legal safeguards but the inability of institutions to effectively operationalise them. Diversion, rehabilitation, and social reintegration remain unevenly implemented due to inadequate funding, weak inter-agency coordination, and limited institutional capacity. Consequently, children continue to experience prolonged detention, inadequate access to education, poor living conditions, and limited health and psychosocial services despite the existence of legal protections designed to prevent such outcomes.[76] This disconnect reveals a persistent gap between the normative commitments contained in legislation and the realities experienced by children within the justice system.

A particularly significant weakness lies in the realisation of health and mental health rights. Contemporary juvenile justice standards recognise that rehabilitation cannot be achieved without addressing the physical and psychological needs of children. However, many juvenile institutions lack trained psychologists, social workers, and specialised health personnel capable of identifying and responding to trauma, behavioural disorders, substance abuse, and other mental health challenges commonly experienced by children in conflict with the law.[77] The absence of adequate mental health interventions undermines the rehabilitative purpose of juvenile justice and raises concerns regarding compliance with Article 40 of the Convention on the Rights of the Child, which requires treatment that promotes dignity, self-worth, and reintegration.[78] In practice, children often leave detention with the same vulnerabilities that contributed to offending behaviour, demonstrating that legal protection cannot be assessed solely through procedural safeguards but must also be

[76] F Mwaijande and J Mwakalikamo, 'Potential of Social Protection Policy Interventions for Breaking Poverty Cycle in Tanzania' (2024) *Journal of Social and Policy Issues* 34-39; HK Bisimba, *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (PhD thesis, University of Warwick 2011) 215; K Mandopi, 'Protection of the Child from Degrading Treatment in Tanzania: A Critical Assessment of the Law and Practice' (2016) 2(4) *Journal of Asian and African Social Science and Humanities* 74-80.
[77] Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania'; Jacobs, 'Navigating a Broken System', 90-91.
[78] CRC, art 40.

measured by the extent to which justice institutions facilitate recovery and long-term well-being.

The implementation of international juvenile justice standards presents a further challenge. While Tanzania has ratified the CRC and the African Charter on the Rights and Welfare of the Child and has incorporated many international principles into domestic legislation, compliance with standards embodied in the Beijing Rules remains inconsistent.[79] Persistent concerns relating to limited legal representation, inadequate use of diversion, delays in case disposal, and continued reliance on custodial measures indicate that punitive practices continue to influence a system that is legally intended to be rehabilitative.[80] These shortcomings suggest that legislative reform alone cannot guarantee rights protection where institutions lack the resources, expertise, and operational mechanisms necessary to implement child-centred justice effectively.

Institutional and professional capacity deficits further weaken the protection of children. Effective juvenile justice requires specialised knowledge of child development, child psychology, restorative justice, and children's rights. Yet many police officers, judicial personnel, and detention officers receive limited specialised training in handling children's cases, resulting in approaches that frequently prioritise control and punishment over rehabilitation.[81] At the community level, low awareness of children's rights continues to undermine prevention, diversion, and reintegration efforts.[82] At the same time, emerging threats such as cyberbullying, online exploitation, and exposure to harmful digital content create new forms of vulnerability that existing child protection mechanisms are often ill-equipped to address.[83] These developments demonstrate that juvenile justice reforms must evolve beyond traditional criminal justice responses and incorporate broader child protection strategies capable of addressing contemporary risks.

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[79] Beijing Rules (n 15); Kanwel, Khorana and Adepoju, 'The Impact of International Law on Juvenile Justice Systems' (2024) DSSR.
[80] Child Rights International Network (CRIN), 'Study of Juvenile Justice System in Tanzania' (2012); Save the Children, *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa* (GSDRC 2015).
[81] Kadilu (n 6).
[82] M Couzens and K Mtengeti, *Creating Space for Child Participation in Local Governance in Tanzania* (REPOA 2011).
[83] Kanwel, Khorana and Adepoju, 'The Impact of International Law on Juvenile Justice Systems' (2024) DSSR.

Another structural challenge is the marginalisation of mental health within both justice and welfare systems. Social stigma and cultural misconceptions surrounding mental illness often discourage early intervention and access to treatment, leaving psychological vulnerabilities unaddressed throughout a child's engagement with the justice process.[84] This reflects a deeper weakness in policy implementation: legal protection is frequently understood in procedural terms, while insufficient attention is paid to psychosocial recovery and emotional well-being. Yet international child rights standards envisage juvenile justice as a multidisciplinary process integrating legal protection, mental health support, education, family involvement, and social welfare interventions.[85] Without such integration, rehabilitation risks becoming an aspirational objective rather than a practical outcome.

The underdevelopment of restorative and community-based justice mechanisms also limits the effectiveness of the juvenile justice system. International standards, including the Beijing Rules and related child justice instruments, emphasise restorative approaches that promote accountability, reconciliation, and reintegration while minimising the harmful effects of institutionalisation.[86] Despite legislative recognition of diversion and rehabilitation, community-based programmes remain underfunded, fragmented, and insufficiently integrated into formal justice structures. As a result, opportunities to resolve cases through family and community support systems are often lost. Evidence nevertheless suggests that locally grounded restorative initiatives can reduce recidivism, strengthen social cohesion, and improve rehabilitation outcomes when adequately supported.[87] The challenge, therefore, lies less in the legal recognition of restorative justice than in the lack of sustained institutional investment required for its effective implementation.

Experiences from other African jurisdictions further illustrate that successful juvenile justice reform depends on institutional capacity rather than legal provisions alone. The experiences of South Africa, Kenya, and

[84] Malvaso, Daffern and Day, 'Child Mental Health in Juvenile Justice in Norway' (2024) DSSR; Jacobs, 'Navigating a Broken System', 90-91.
[85] J Sloth-Nielsen and BD Mezmur, 'A Dutiful Child: The Implications of Article 31 of the African Children's Charter' (2008) 52(2) Journal of African Law 168-170.
[86] Beijing Rules (n 15); CRIN, 'Guidelines on Action for Children in the Justice System in Africa' (2012).
[87] M Verdier, 'Restorative Justice and Juvenile Offenders' (2024) DSSR; ACERWC, 'Study on Implementation of Decisions' (2025).

Zambia demonstrate the value of specialised courts, multidisciplinary interventions, community supervision, and stronger coordination among child protection agencies.[88] These models highlight the importance of strengthening collaboration between justice, health, education, and social welfare institutions while investing in specialised training and rehabilitation services. Without such reforms, the rehabilitative aspirations embedded in Tanzania's legal framework will remain difficult to realise in practice.

Ultimately, Tanzania possesses a relatively comprehensive legal framework for the protection of children in conflict with the law, yet its effectiveness continues to be constrained by weak institutional capacity, inadequate resources, insufficient specialised personnel, and poor integration of health and psychosocial services. The central challenge is therefore one of implementation rather than legislative deficiency. Realising the legal protection and health rights of child offenders requires a genuinely restorative, multidisciplinary, and child-centred system that places rehabilitation, mental well-being, and social reintegration at the centre of juvenile justice administration. Only through such an approach can the legal guarantees contained in national and international instruments be transformed into meaningful protection for children.

4.6 Prospects and Reform Directions for Realising Legal Protection and Health Rights of Children in Conflict with the Law in Tanzania

The prospects for strengthening legal protection and health rights of children in conflict with the law lie primarily in closing persistent implementation gaps rather than reforming normative frameworks. Although the Law of the Child Act and related instruments broadly align with international standards, their effectiveness is constrained by weak institutional capacity, limited coordination, and inadequate accountability across justice, health, education, and social welfare systems. Future reforms must therefore prioritise enforcement capacity and inter-agency integration to translate legal guarantees into practical protection.

[88] Mensah-Bonsu K, 'Juvenile Justice in Africa: Evaluation of UNCRC Implementation' (2023) MSpace Manitoba; *Child Justice in Africa: A Guide to Good Practice* (Dullah Omar Institute 2025).

A central reform prospect is the reduction of custodial responses through effective operationalisation of diversion mechanisms. Despite statutory endorsement of diversion and rehabilitation, detention remains dominant due to weak institutional structures and limited use of restorative options. Strengthening mediation, family conferencing, counselling, and community service would reduce unnecessary incarceration and its associated psychological harm, while aligning practice with child-centred justice principles.

Closely linked to this is the need to institutionalise restorative justice as a core component of juvenile justice practice. Evidence of exposure to overcrowding, trauma, and inadequate care in custodial settings underscores the urgency of shifting from punitive to rehabilitative approaches. Embedding restorative processes within police, prosecutorial, and judicial decision-making would improve outcomes for both children and affected communities.

Mental health and psychosocial support constitute another critical area of reform. Current services within the juvenile justice system remain limited and fragmented, despite high levels of trauma, poverty-related stressors, and family instability among child offenders. Strengthening integrated child-friendly rehabilitation centres with accessible psychological and medical services would ensure that offending behaviour is addressed as a multidimensional social and health issue rather than a purely legal problem.

Existing policy frameworks, including the National Plan of Action to End Violence Against Women and Children and the Child Justice Reform Strategy, provide a foundation for reform. However, their impact is constrained by weak implementation, insufficient funding, and limited monitoring. The key prospect, therefore, lies in strengthening execution mechanisms, improving budgetary allocation, and reinforcing accountability rather than introducing additional policy instruments.

Capacity development among justice and welfare actors remains essential. Inadequate training in child rights, trauma-informed practice, and mental health significantly undermines decision-making at all stages of the juvenile justice process Systematic training of police officers, prosecutors, magistrates, probation officers, and social welfare

professionals, supported by interdisciplinary collaboration with health practitioners, is necessary to improve rehabilitative outcomes.

At the community level, weak reintegration structures continue to drive recidivism and limit long-term rehabilitation. Strengthening community-based interventions such as vocational training, education support, mentorship, and family strengthening programmes would address underlying socio-economic drivers of offending, including poverty, exclusion, and family breakdown. These measures are essential for sustainable reintegration and crime prevention.

Finally, improved oversight, data systems, and accountability mechanisms are crucial for evidence-based juvenile justice reform. Establishing reliable national data on detention, diversion, health outcomes, and reintegration would enhance monitoring, strengthen compliance with standards, and guide policy decisions. Generally, meaningful progress depends less on expanding legal provisions and more on strengthening institutions, coordination, mental health services, and restorative justice implementation.

5.0 Conclusion

This article has examined the legal protection and health rights of children in conflict with the law within Tanzania's juvenile justice framework, drawing on international, regional, and domestic legal standards. It finds that, at the normative level, Tanzania has developed a comparatively robust framework grounded in the Constitution, the Law of the Child Act, Cap 13 R.E. 2023, the Criminal Procedure Act, and child rights instruments, including the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Collectively, these instruments affirm that children in conflict with the law are entitled to procedural safeguards as well as rehabilitation, reintegration, and the highest attainable standard of physical and mental health.

Notwithstanding this normative strength, the study establishes a persistent and structural disjuncture between law and practice. The juvenile justice system remains constrained by limited institutional capacity, insufficient specialised personnel, weak inter-agency coordination, and inadequate access to health and mental health services. These constraints result in a justice experience that frequently departs from the rehabilitative and child-centred model envisaged in law and reflected in international

standards. The central challenge is therefore not normative deficiency but the ineffective operationalisation of existing legal guarantees.

A further finding is that the right to health, though formally embedded within the juvenile justice framework, remains insufficiently realised in practice. Its scope extends beyond medical treatment to include mental health care, psychosocial support, safe detention conditions, and broader protective environments conducive to recovery and reintegration. However, the study shows that these dimensions remain weakly integrated into juvenile justice administration, thereby limiting the system's capacity to respond to the complex vulnerabilities of child offenders.

In light of these findings, the study concludes that the effectiveness of juvenile justice in Tanzania depends not on further expansion of legal norms but on the extent to which existing guarantees are meaningfully implemented. The gap between normative commitment and institutional practice remains the decisive constraint on the realisation of both legal protection and health rights of children in conflict with the law.