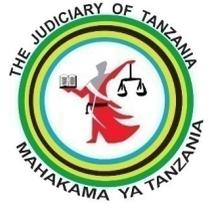




**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY OF TANZANIA**



# **STANDARD OPERATIONAL GUIDE FOR MAGISTRATES ON MANAGING CHILDREN CASES IN TANZANIA**



**February, 2023**





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## ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CAP	Chapter
CAT	Court of Appeal of Tanzania
CICL	Children in Conflict with the Law
CJ	Chief Justice
CRC	Convention on the Rights of the Child
CRP	Community Rehabilitation Programme
CSO	Civil Society Organization
CURT	Constitution of the United Republic of Tanzania
DPP	Director for Public Prosecutions
DR	Deputy Registrar
DSW	Department of Social Welfare
GAL	Guardian Ad litem
GN	Government Notice
Hon	Honourable
IJA	Institute of Judicial Administration
JCR	Juvenile Court Rules
JoT	Judiciary of Tanzania
PH	Preliminary Hearing
LAA	Legal Aid Act
LAR	Legal Aid Regulation
LCA	Law of the Child Act
LMA	Law of Marriage Act
MACR	Minimum Age of Criminal Responsibility
MCA	Magistrates' Court Act

MoCDGWSG	Ministry of Community Development, Gender, Women . and Special Groups
R.E	Revised Edition
Reg	Regulation
RM's	Resident Magistrates
SIR	Social Inquiry Report
SOG	Standardized Operational Guide
SOPs	Standard Operating Procedures
SRM	Senior Resident Magistrate
SSA	Senior State Attorney
SSWO	Senior Social Welfare Officer
SWO	Social Welfare Officer
UNICEF	United Nations Children's Fund
UN	United Nations
URT	United Republic of Tanzania

## **FOREWORD**

In Tanzania Children form approximately 53.85% of the entire population according to the Nation Census Report of 2022. They encounter challenges that warrant guided course of actions to safeguard their rights and welfare. Some of these challenges include but not limited to unnecessary court formalities and lack of proper support before, during and after proceedings.

These diverse inferential challenges need standardized and harmonized approach to ensure the wellbeing of all Children in Tanzania.

It is therefore forecasted that this guide will be of assistance to Magistrates and Stakeholders and greatly improve service delivery to Children.

The Judiciary of Tanzania is committed to the full implementation of this guide and will continue providing necessary support and guidance throughout the processes.



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**Wilbert Martin Chuma**

**Chief Registrar**

## **ACKNOWLEDGEMENT**

This is a fruit of industrial work and an enormously contribution given by the distinguished individuals from various institutions which led to this guide. Due to their tremendous knowledge and expertise in the dispensation of child justice, the guide will certainly have a meaningfully usage by illuminating a sufficient light to the Judicial Officers when handling children cases. Special appreciation goes to UNICEF for their technical and financial support.

The guide will greatly pave way to a uniform way of performing and discharging their judicial duties by magistrates when dealing with cases of children. It will in turn catch a rhythm in promoting, inculcating and safeguarding various international instruments which our country has ratified to guarantee implementation of Children's rights in Tanzania at the grass root level.

This goes without mentioning the efforts exemplified by members of the team led by our facilitator Ms. Matilda T. Philip and chaired by Hon. Judge Nyigulila R. Mwaseba with the support of Hon. Bernazitha T. Maziku DR, Hon. Yohana A. Ngonyani SRM, Hon. Mtengeti M. Sangiwa RM, Beatrice E. Mpembo SSA, Agness I. Mkawe SSA, Zubery A. Suddy Assistant Lecturer IJA, Stanslaus A. Makendi HRO and Asnath N. Remtulla SSWO. Their active participation is remarkably appreciated.



**Sharmillah S.Sarwatt**  
**Registrar**  
**High Court of Tanzania**

## DEFINITION OF TERMS

**Approved school** means a school established under the LCA where a child sentenced to a custodial sentence is accommodated for the duration ordered by the Court and includes any place or institution declared as such under the provisions of the LCA.

**Child** means a person below the age of eighteen years.

**Child care and protection application** means an application for custody, access, parentage, care orders, supervision orders, reliefs against infringement of child rights and applications made under section 98 of the Law of the Child Act.

**Child friendly** means any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child.

**Child protection** means any measures and structures to prevent and respond to abuse, neglect, exploitation and violence affecting children; and safeguarding them from harm.

**Child Protection System** means formal and informal structures, functions and capacities which prevent and respond to violence, exploitation, neglect and abuse against children.

**Fit person** means a person of full age who is of high moral character and integrity and of sound mind who is not a relative of the child and capable of looking after a child, and has been approved by a social welfare officer as being able to provide a caring home for a child.

**Guardian ad litem** means a person who takes on the responsibility or is appointed to represent and protect the interests of a child in a Juvenile Court proceeding and who has received training in working with and representing children in that court.

**Legal Aid Provider** means the person who provides legal aid to a child, for example, an advocate, lawyer or paralegal.

**Social Inquiry Report** means a report prepared by the social welfare department on request of the juvenile court.

**Social Investigation Report** means the written report prepared at the end of a social investigation.

**Social Welfare Officer** means a Social Welfare Officer in the service of the government.

**Retention Homes** means a place established under the LCA and The Law of the Child (Retention Homes) Rule, GN No. 151/2012 where a child is safely accommodated (by a remand order) while his case is being considered.

**Vulnerable Groups** means particular groups of people who, due to diverse social, economic, cultural and practices present in the society are weak and marginalized or have traditionally been victims of violations and these include widows, children, elderly people and persons with disabilities.

# CHAPTER

# 1

## 1.0 INTRODUCTION

The Law of the Child Act [CAP. 13 R.E. 2019] (LCA) provides for the establishment of Juvenile Courts. In order to promote effective handling of children cases more than ten pieces of subsidiary legislation made under the LCA have been enacted and various amendment have been made. Despite all these robust efforts, handling of children cases continues to be susceptible to various challenges in terms of enforcement and interpretation. Furthermore, since the enactment of the LCA Tanzania has not witnessed a significant development of Child Justice Jurisprudence as anticipated and hence the imperative need to develop Standardized Operating Guide (SOG) in order to guide magistrate and other stakeholders on how to handle children's cases in court.

However, this guide is not intended to substitute the procedural laws, rather to provide for a guide on the manner in which cases involving children should be handled, before, during and after hearing. Thus, the guide should be read together with the relevant laws, rules, regulations and circulars in administration of Justice.

## 1.1 HISTORY OF JUVENILE COURT

The Government of the United Republic of Tanzania ratified the UN Convention on the Rights of the Child (CRC) on 10<sup>th</sup> June 1991, and the African Charter on the Rights and Welfare of the Child (ACWRC) on 23<sup>rd</sup> October 1998. The Government is obliged to take all the necessary steps, including legislation, administrative and other measures to implement the rights enshrined in both Conventions. Juvenile Courts were set up as part of Tanzania's commitment to implement International Standards relating to access to justice for children. The CRC strongly encourages the use of Juvenile Courts to adjudicate juvenile cases.

In 1997 Kisumu Juvenile Court as the first and only separate court building was established through the Chief Justice Circular No. 4 of 1997 and all District Courts were to form themselves as Juvenile Courts when need arises. Such development was achieved through The Children and Young Persons Act [CAP. 13 R.E. 2002]. However, in 2009, The Law of the Child Act, No. 21 was enacted. It repealed the Children and Young Persons Act and defined the Juvenile Court under Section 97 as follows:

*S. 97-(1). There shall be established a court to be known as the Juvenile Court, for purposes of hearing and determining child matters relating to children.*

*(2) The Chief Justice may, by notice in the **Gazette**, designate any premises used by a primary court to be a Juvenile Court.*

In implementing the new Act, the Court of Appeal in 2015 clearly defined the Juvenile Court in order to guarantee full protection of the child in the court of the law as amplified in **Furaha Johnson Vs. R, Criminal Appeal No. 452 of 2015 (CA)** (Unreported). Based on the said decision, the magistrates found themselves lacking jurisdiction to determine juvenile cases in the District Courts. To harmonize the situation, the Chief Justice in 2016 through **GN No. 314 of 2016** designated 130 Primary Court premises

to be used as Juvenile Courts including Kisumu Juvenile Court. The presiding Magistrate were the Resident Magistrate from the respective District Court and the Resident Magistrate stationed at the Primary court whose premises had been designated.

In 2017, amendment was effected as to a magistrate responsible for determining children cases. The amendment was effected via **GN No. 367 of 2017 The Law of the Child (designation of Juvenile Courts) (Amendment) Notice, 2017**. With this amendment, it was only the resident magistrate from the respective district who was vested with power to determine children's cases despite of designated Juvenile Court. Through **GN No. 158 of 2019**, the CJ revoked **GN No. 314 of 2016** and designated 141 Primary Courts premises to be used as Juvenile courts including Mbeya Juvenile Court. Thereafter, challenges regarding primary court infrastructure, accessibility and operationalization arose in some designated courts. Therefore, in 2020, through The Written Laws (Miscellaneous Amendments), Act No. 1 of 2020, repealed Section 97 (2) of LCA which empowered CJ to designate Primary Court premises to be Juvenile Courts. In this regard, the District Courts and Resident Magistrate court's premises were recognized, and were to be used, as a Juvenile Court. Thus, the District Court and Resident Magistrate Court were conferred with powers to hear and determine any matter triable by a Juvenile Court subject to the procedure prescribed under Section 99 of the LCA.

## **1.2 OBJECTIVES**

The objectives for development of the SOPs are to:

- i. To provide guidance to ensure a common understanding practice and procedures for hearing and determination in hearing Children cases.
- ii. To ensure the rights of the child are respected, protected and fulfilled.
- iii. To enhance collaboration between Judicial Officers and key stakeholders to protect and support children, to treat all children including those in

conflict with the law with dignity and worth and to promote the child's reintegration and the child's assuming a constructive role in society.

- iv. Capacity building and create awareness between Judiciary Officer and other stakeholders.

The UN Convention on the Rights of the Child and other international standards emphasizes on the importance of efficiency and availability of information in order to promote effective, expeditious and appropriate decision making by the Court. These three objectives are especially important in children's cases because delay, inefficiency and inappropriate bail or sentencing decisions in criminal cases or failure to reach decisions in child protection cases or custody and access cases can have lasting effects on child development that can continue to have consequences even in adulthood. It has to be born in mind by the court that even short-term delays or difficulties can take up a proportionally significant part of a child's life.

### **1.3 OVERRIDING PRINCIPLES IN DEALING WITH CHILDREN CASES**

These principles are reflected in domestic, regional and international instruments. As to the overriding principles for child justice, it is imperative to apply and implement them in matters affecting children by Magistrates and stakeholders.

#### **1.3.1 Best interest of the child**

The best interest of the child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies as specified under s. 4(2) of the LCA. The concept of best interests operates both in relations to children as a group and to each individual child who finds himself or herself in juvenile justice proceedings.

Section 26(2) of the LCA provides that there shall be a rebuttable presumption that it is in the best interest of a child below the age of seven years to be with his mother. This presumption has been supported by several decisions of the High Court and Court of Appeal. In addition, court decisions have emphasized on this presumption by stating that the father's superior financial position is irrelevant on custody application. However, in cases where one parent is granted custody, the other parent is usually granted access. This is because it is in the best interest of child to maintain close and loving relationship with both parents.

Persons who are permitted to attend court hearing in children cases under the LCA include parents. However, there are occasions whereby the parent's presence is not in the best interest of the child if the parent is in one way or the other responsible for child being in court, or the child is uncomfortable or afraid of giving evidence in the presence of the parent.

### **1.3.2 Non discrimination**

Every child shall be treated with respect and without discrimination of any kind, including on the grounds of sex, race, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio economic status, being a refugee or of other status as per section 5 of the LCA.

Children who are likely to face discrimination are vulnerable groups of children. They include children living and working on the streets, children belonging to ethnic, religious or linguistic minorities, girl children, children with disabilities, and children who are repeatedly in conflict with the law (recidivists). Children who are homeless, facing social problems, who are poor or whose parents are offenders themselves or drug and alcohol misusers and children with learning disabilities or mental health issues may also face discrimination and be treated more harshly by the child justice system. Such children are more likely to be prosecuted, more likely to be held in retention homes and more likely to receive a custodial sentence (Committal to an Approved School).

### **1.3.3 The right to be heard and participation**

The right to be heard means that children are able to participate and be involved in decisions and matters that affect them, in accordance with their age and maturity.

Every child appearing before the Court as a party to proceedings shall have the right to participate in the proceedings and to be heard either directly or through an advocate, guardian ad litem or other representative pursuant to Sections 11 and 99(1)(f)(h) of the LCA and Rule 7(1)(c) of the JCR.

In order for children to exercise this right, additional rights must also be realized, such as the right to freely express oneself without the fear of retaliation or punishment. Children also need access to support that enables the development and articulation of their views, including information in formats and language that is appropriate to their age, stage of development, and abilities. For example, the language used should be child friendly. It is also important to ensure the child understands court proceedings and participate effectively including through ensuring availability of translation services as and when required.

### **1.3.4 The right to life, survival and development**

This right shall be protected by law and no death sentence, or life imprisonment shall be imposed on a child and the word “inherent right to life” connotes that it is not a right bestowed upon the child by society; but rather an existing right that society is under an obligation to protect. The use of the phrase “survival and development” denote placing a positive obligation on States to ensure that appropriate measures are taken (child protection systems, policies and laws). The UNCRC General Comment No. 10 states that the use of deprivation of liberty has very negative consequences to the child’s harmonious development and seriously hampers his/her reintegration in society. In this regard, Article 37 (b) of the CRC explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should

be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured.

Section 119 (1) of the LCA prohibits imprisonment to children. As a matter of last resort, the only available custodial sentence is committal to an Approved School, with a maximum of three years and in circumstances set out in Rule 54(1) (a-b) of the JCR, this Rule sets out the limited circumstances in which a custodial sentence can be passed by the court.

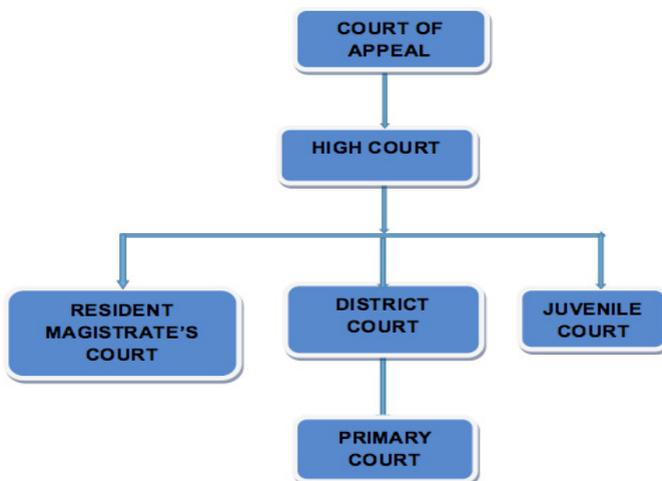
# CHAPTER

# 2

## 2.0 COURT STRUCTURE AND JURISDICTION

The Judiciary of Tanzania is one of the three pillars of the state whose main function is to interpret the law and adjudicate over the disputes in accordance with Article 107A of the Constitution of URT. In order to properly determine disputes and dispense justice, the Judiciary has its own court structure established by both the Constitution and other laws.

The diagram below shows the court structure:



## 2.1 COURT OF APPEAL

The Court of Appeal enjoys its appellate jurisdiction on matters pertaining to Children Cases emanated from the subordinate court within the judicial ladder.

## 2.2 THE HIGH COURT

The High Court has unlimited criminal and civil original jurisdiction. It has the original jurisdiction on homicide, trafficking in narcotic drugs, unlawful possession of government trophies and unlawful possession of firearms. It also has Jurisdiction on matrimonial proceeding, Probate and administration of estate and adoption proceedings. Further, the High Court has powers of revision over Primary Courts, Juvenile Courts, District Courts and the Resident Magistrates' Court in accordance with Section 30(2) (b) of the MCA, Section 130 of the LCA and Rule 123 of the JCR.

In hearing and determining cases involving children, the High Court shall apply the JCR in accordance with the Judicature and Application of Laws (Adoption of Juvenile Court Rules in the High Court of Tanzania) G.N No.154 of 2019. **The Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules, GN No. 110 of 2019**, is also applicable to all proceedings and in all courts including the High Court.

Moreover, in accordance with the Judicature and Application of Laws (Adoption of Juvenile Court Rules in the High Court of Tanzania) Rules, GN No. 154 of 2019, the JCR is also applicable on hearing and determination of children cases before the High Court.

## **2.3 DISTRICT COURT AND RESIDENT MAGISTRATE COURTS**

After the enactment of the LCA, the District Court had no jurisdiction to hear and determine children matters. Such powers were reserved to the Juvenile Court only established under Section 97 of the LCA. However, in 2020, via Written Laws (Miscellaneous Amendments) Act No. 1 of 2020, Section 97 of the LCA was amended to allow the District Courts and Courts of Resident Magistrates to hear and determine any matter triable by the Juvenile Court. In the course of hearing and determining children cases, the District Court and the Resident Magistrates' Court shall both follow the procedure in Section 99 of the LCA. The premises of District Courts and Resident Magistrates' Court may be used as a Juvenile Court. These courts have jurisdiction to hear and determine application for open adoption as provided for in Section 54(1) (b) of the LCA and Reg. 21 of the Adoption of a Child Regulations GN No. 197/2012.

## **2.4 THE JUVENILE COURTS**

A Juvenile Court is a specialized court that handles cases involving children. They were set up as a part of Tanzania commitment to implementing international standards relating to access to justice for children. The Establishment of a Juvenile Court is provided for in Section 97 (1) of the LCA. The provision states that there shall be a court to be known as the Juvenile Court for purposes of hearing and determining matters relating to children.

### **2.4.1 The Jurisdiction of Juvenile Courts**

Section 98 of the LCA provides for the jurisdiction of the Juvenile Court. It stipulates that the juvenile court shall have the power to hear and determine criminal charges against a child, and applications relating to child care, maintenance and protection.

In hearing an application for care order and the care plan recommends for an adoption order the Juvenile Court may free a child for adoption in accordance with Rule 99 (1) of the JCR read together with the Child Protection Regulations and the Adoption of a Child Regulations.-

## **2.4.2 The procedure before the Juvenile Court**

The procedure for conducting proceedings by the Juvenile Court is set out under section 99 of the Law of the Child Act. The law requires the proceedings in the Juvenile Court to be in accordance with rules made by the Chief Justice and as set out in Section 99(1) of the LCA. The following are basic conditions applicable to Juvenile Courts:

- (a) The Juvenile Court sits as often as necessary;
- (b) Proceedings shall be held in camera;
- (c) Proceedings shall be as informal as possible, and shall be made by enquiry without exposing the child to adversarial procedures;
- (d) A Social Welfare Officer shall be present;
- (e) A parent, guardians or a next of kin has a right to be present;
- (f) The child shall have a right to next of kin (next friend) and representation by an advocate;
- (g) The right to appeal shall be explained to the child; and
- (h) The child shall have a right to give an account and express an opinion.

The Chief Justice in compliance with Section 99(1) developed the Law of the Child (Juvenile Court Procedure) Rules, G.N. 182/2016(JCR). These Rules provide for the standard procedures of conducting children cases in Juvenile Courts.

## **2.5 THE PRIMARY COURT**

The Primary Court has no jurisdiction to hear and determine Juvenile cases. However the Primary Court dealing with any matter related to matrimonial proceeding, inheritance, separation, divorce, maintenance, custody for children and access, under Section 125 (2) (b) of the Law of Marriage Act [CAP 29 R.E. 2019] is also required to observe welfare of the child /the principle of best interests of the child and confidentiality. When such a child is being examined, the proceedings shall be in camera as per Section 84(b) of the LMA.

# CHAPTER

# 3

## **3.0 ROLES OF MAGISTRATES AND STAKEHOLDERS WITH RESPECT TO CHILDREN**

### **3.1 Introduction**

Essentially, the Magistrate plays a very fundamental role in the entire process of administering Children's cases in determining their rights. The process involves stakeholders who also play a key role to make sure that children's cases are handled in compliance with the requirement of the law.

### **3.2 Categories of Children**

Children are divided into two main categories, children in contact with the law and children in conflict with the law.

#### **3.2.1 Children in Conflict with the Law**

Children in conflict with the law (CICL) refer to children who come into contact with the criminal justice system as a result of being suspected or accused of committing an offence. Children in conflict with law have the right to the treatment that promotes their sense of dignity and worth, taking into account their age and aims at their rehabilitation and reintegration. The LCA, the CRC and the ACRWC emphasize on standards and guidelines with regards to treatment and handling of children in conflict with the law. The Commissioner for Social Welfare Circular of 26 November 2012, declared CICL as vulnerable group that needs care and protection.

### **3.2.2 Children in Contact with the Law**

These are children who come to court as victims or witnesses in both criminal, civil/child protection proceedings. Due to their age and immaturity, children are also considered as vulnerable group, as provided by Rule 3 of the GN No. 110 of 2019. Child victims and witnesses need to be treated throughout the justice system with respect and understanding. Special consideration should be given to children with disability. They include children who cannot communicate in a language that is understood by the court by providing them with the appropriate assistance such as braille or interpreters.

### **3.3 Roles of Magistrates**

- i. When there is a claim on the age of the person who appears in court, a Magistrate shall cause an inquiry to be made into the child's age as per Rule 12 of the JCR. The Magistrate shall consider the following factors on age determination: -
  - a. a birth certificate,
  - b. information from a primary school attended by the child,
  - c. a primary school leaving or equivalent certificates, or
  - d. a primary school enrolment register or and other proof provided under Rule 12(2) of the JCR.
  - e. Medical certificates
- ii. The Magistrate shall avoid unnecessary adjournment mindful of the time frame of six months, provided that in exceptional circumstances, the court may extend the period of completion of a case for a period not exceeding three months pursuant to Rule 34(1) (2) of the JCR and Rule 4 of GN No.110 of 2019.
- iii. The Magistrate shall respect and ensure children's right to privacy and confidentiality in all cases. This right is provided for under Section 186(3) of the Criminal Procedure Act, and Section 33 of the LCA. The magistrate shall be heard in camera in accordance with Sections 76, 99(1)(b) of the LCA, Rule 11 (1)(2) of the JCR.

The CJ's Circular No. 2 of 2018 provides for the protection of identities of children in any matter before the court; and identities of a parent and guardian of the child in the adoption proceedings; and victims of sexual offences of whatever age. This Circular has not only emphasized the issue of confidentiality but has also widened its scope. It now ensures protection of identities of children in any matter before the Court.

- iv. The Magistrate shall ensure the presence of a court personnel, advocates, social welfare officers, guardians ad litem, a next friend, or other appropriate representative of the child, parents, guardians, a career, next friend or permit relative in the absence of parents in order to support the child as per Section 99 (1) of the LCA and Rule 11 (3) of the JCR.
- v. The Magistrate shall ensure the procedures are as informal as possible pursuant to Section 99(1) (c) of the LCA and Rule 8 of the JCR.
- vi. The Magistrates shall guarantee that the Court provides a child-sensitive setting as per Rule 7 of the JCR to promote an informal and child friendly environment.
- vii. The Magistrate shall encourage the parties to resort to alternative dispute resolution procedure if appropriate, and facilitate the use of such procedure as provided under Rules 16(1)(m), 65(1)(c) and 69(2)(a)(b) of the JCR.
- viii. The Magistrate may allow a child of tender age to give evidence without oath or affirmation, as long as the child promises to tell the truth to the court and not to tell lies. As good practice, the Magistrate shall make record of the same. This is provided for in Section 127(2) of the Evidence Act [CAP 6 R.E. 2019].
- ix. The Magistrate shall intervene in cases where there is non-disclosure of any relevant facts.
- x. The Magistrate shall control and guide the conduct of parties by limiting irrelevant questions or needless repetition of question in accordance with Rule 45(5) of the JCR.

- xi. The Magistrate shall ensure that parties use simple language that the child can understand in cross examination Rule 45(3) (4) (a) of the JCR.
- xii. The Magistrate to pronounce judgment within twenty-one days after the conclusion of the proceedings Rule 48(5) of the JCR.
- xiii. The Magistrate shall ensure the presence of the Social Welfare Officer at all times in Court.
- xiv. To keep and update court diary.
- xv. The Magistrate shall ensure that a child with disability such as visual and hearing impairment and dumb are provided with appropriate support including sign language interpretation in accordance with Rule 6(1) of GN No. 110 of 2019 to enable them to participate and understand court proceedings for fair trials.
- xvi. The Magistrate shall ensure a child in civil and criminal proceedings are provided with legal representation or other appropriate assistance as per Sections 27, 33, 35 of the Legal Aid Act, Section 99(1)(a) of LCA and Rule 27 of the JCR.
- xvii. The Magistrate shall supply a copy of the details of the prosecution case to the child or child's representative before the date of the first hearing as provided under Rule 36(2) of the JCR.
- xviii. The Magistrate shall ensure children court case files are properly opened, recorded and kept as provided under Rules 17, 18 and 19 of the JCR and in compliance with the First and Second Schedule to the JCR.

### **3.4 Roles of State Attorney**

- i. To file criminal charges in Court when investigation have been completed in accordance with Section 103 of the LCA (save for cases triable by the High Court).
- ii. To coordinate, supervise criminal investigation, and conduct criminal prosecution in cases involving children.
- iii. To exercise prosecution discretion in considering diversion for non-serious offences where appropriate and in the best interest of

the child to refer a CICL to community rehabilitation programme without resorting to judicial proceedings.

- iv. To prepare a charge that contains sufficient information to enable the child to understand the nature of the offence and to supply in time to the child or his representative a copy of the charge sheet.
- v. To disclose the prosecution case to the defence before the preliminary hearing. The prosecutor shall file the details of the prosecution case in duplicate to the court before the preliminary hearing, as per Rule 36(1) of the JCR. The details of the prosecution include the charge sheet, statement of facts, any documents or extract on which the case will be based, and any previous conviction of a child pursuant to Rule 36(3) of the JCR.
- vi. To examine witnesses in a child friendly manner in accordance with Rule 45(1) (2) (3) and (4) of the JCR.
- vii. To prevent abuse of legal process for the best interest of the child

### **3.5 Roles of Social Welfare Officer**

#### **3.5.1 In Criminal Proceedings**

- i. To be present at all hearings of children cases pursuant to Section 99(1) (d) of the LCA.
- ii. To assist a child in all proceedings particularly in the examination and cross examination of a witness with prior consent of the court as per Section 108(2) of the LCA.
- iii. To prepare and submit Social Inquiry Reports (SIR) as directed by the court, after conviction of the child and before passing of a sentence as per Section 46(4) of the LCA.

#### **3.5.2 In Civil/Child Protection Proceedings**

- i. To apply to a court for an order to confirm the parentage of the child as per Section 34 (d) of the LCA.
- ii. To apply to a court for maintenance order of the child as per Section 42(1) (d) of the LCA.

- iii. To prepare a SIR as requested by the court before consideration of an application to make order for maintenance, custody or access as per Section 45 (1) of the LCA and Rules 47, 72, 85 of the JCR.
- iv. To apply for infringement of child rights to the court as per Section 95 of the LCA.
- v. To make an application before the court for child protection orders such as care and supervision orders, search and production orders and exclusion orders.
- vi. To prepare Social Investigation Reports in child protection cases.

### **3.5.3 Adoption Proceedings**

- i. To act as guardian ad litem as appointed by the commissioner and inform the court of that appointment in writing as per Reg. 5 of Adoption of a Child Regulation.
- ii. To prepare and present Social Investigation Report to the court, in accordance with Section 75(2) (d) of the LCA and Reg. 11(1) of Adoption of a Child Regulation.

## **3.6 Roles of Record Management Assistant**

- i. To ensure all hard copies of applications and charges have proper citation of the Court, dated and duly signed.
- ii. Open case files in accordance with Rule 17 of the First Schedule and Rule 18 of the Second Schedule to the JCR.
- iii. To verify if documents filed are in compliance with legal requirement and advise one who has filed the application and charges to make the necessary amendment or changes or otherwise submit them to the Magistrate.
- iv. To register opened case files.
- v. To verify payment of necessary fees through exchequer and for exemption of fees from legal aid providers in accordance with Rule 9 of the GN No. 247 of 2018 of Court Fees Rules.
- vi. To manage court diary and ensure that all cases are scheduled at specific date and time.

- vii. To prepare summons to appear to parties and witnesses.
- viii. To ensure all admitted evidence is properly marked and kept in a secured place for their safety, security and easy identification.
- ix. To monitor and follow up the execution of court orders.
- x. To facilitate access and perusal of case files with supervision as per Rule 19 of the JCR which elaborates on the access to the files.
- xi. Arrange proper seating of the Court as provided in Section 99(1) (b-c), (2) of the LCA and Rule 7 of the JCR. All parties before the Court shall sit at the same level and a child shall not be placed in a dock.
- xii. Prevent the public from accessing the court proceedings of children cases at all stages to guarantee their right to privacy and confidentiality.
- xiii. Manage children court case files by ensuring case files with active status are properly kept/stored, maintained, readily and easily tracked when required.
- xiv. To record and mark cases that are closed or for disposition, stored in archives or for destruction where appropriate.

### **3.7 Roles of Guardian Ad Litem**

- i. To explain to the Child the facts that are being alleged against him what will happen during proceedings, the role of the various people present in court and what is expected of the child.
- ii. To help the child to give his story about the alleged offence in court.
- iii. To assist the child in calling any witness who can show that the child did not commit the offence.
- iv. To explain to the child what he is accused of.
- v. To assist an accused child in criminal proceedings in cross-examination of witnesses and in presenting his defense.
- vi. To assist a child in criminal and civil proceedings in cross examination of witnesses and in presenting his defence.
- vii. To assist a child in civil and child protection proceeding to express their view and wishes to the court.

### **3.8 Roles of Legal Aid Provider**

- i. To provide legal aid services to a child as per the LAA.
- ii. To guide a child on the process and procedure for accessing justice.
- iii. To keep a child informed on the progress of his case.
- iv. To inform a child on the execution of judgment and on his right or remedy available.
- v. To inform a child on matters of recourse such as application or appeals, if any.
- vi. The legal aid provider should advise children as to their legal rights and obligations.
- vii. To assist children in every appropriate way and taking legal action to protect their interests.
- viii. To facilitate representation of children in detention facilities with advocates, lawyers or paralegals for the purpose of provision of legal aid services as per Reg. 27 (1) of the LAR.
- ix. To provide the child with free legal aid representation whenever practicable.
- x. To prepare court pleadings on behalf of the child when need arise.
- xi. To assist a child in the procedure to obtain necessary legal documents as per Section 20 (2) (b) of the LAA.
- xii. To refer a child to other Legal Aid Providers for any assistance when need arises.
- xiii. To advise the parties to seek amicable settlement or referring them to dispute settlement institutions as per Section 20 (2) (d) of the LAA.

### **3.9 Roles of Police Officer**

- i. To bring the child in court within 24 hours after arrest.
- ii. To notify the parent, guardian and SWO as soon as possible on the arrest of the child.
- iii. To release a child offender on bail unless it is not for his best interest or he is detained for non-bailable offences.

- iv. To ensure parent, guardian, GAL, Legal Representative are present during the child offender interview in accordance with Rule 41(3) of the JCR.

### **3.10 Roles of Parent**

- i. To attend court proceedings and provide moral support to the child.
- ii. To stand as surety for the child bail application in accordance with Section 101 of the LCA.
- iii. To adhere to the court orders including bringing a child to certain services such as community rehabilitation programmes, probation orders, supervision orders or to pay for fine and compensation.
- iv. To assist the accused child in conduct of the case in the examination and cross-examination of witnesses with the court permission in accordance with Section 108(2) of the LCA.
- v. To ensure accused child attends court session.

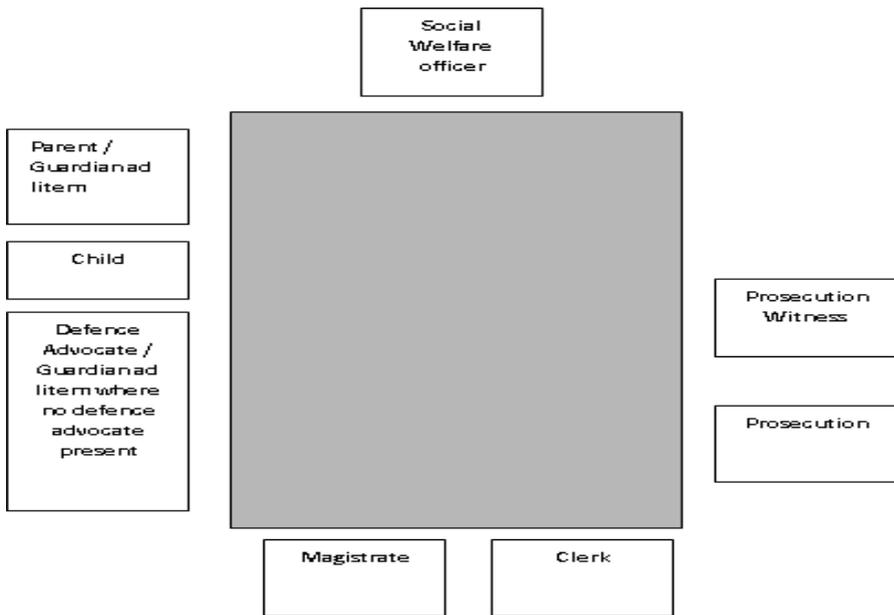
# CHAPTER

# 4

## 4.0 COURT ENVIRONMENT

The Court environment shall be child friendly and informal as possible to facilitate maximum participation of a child. **A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age.** Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, seating arrangement, clothing of judges and lawyers, separate modern court rooms with separate holding rooms, waiting rooms, link screens, and strictly prohibit the access by public, save for those allowed under Section 99 (1) of the LCA and Rule 11 (2) and (3) of the JCR.

Court Seating arrangement should be child friendly as per rule 7 of the JCR. **See diagram for seating arrangement.**



## 4.1 COURT HEARING

Since hearing of the case is one of the most crucial stages in court proceedings, the Magistrates when hearing children’s cases shall comply with the following:-

- i. The child will be asked to enter a plea, during plea taking, the court will explain the charge to the child in the language he/she understands. The child shall be asked to enter a plea after he has been given an opportunity to communicate with his representative. Where the child pleads guilty a court shall record his plea as nearly as possible in the word he uses and enter a plea of guilty pursuant to Rule 32 of the JCR.
- ii. If a plea of not guilty has been entered the Magistrate shall proceed with preliminary hearing as soon as possible taking into account the time frame of handling children cases. The PH shall be adjourned only for exceptional circumstances with special reasons pursuant to Section 103 (2) (3) of the LCA and Rule 37 (1) of the JCR.

- iii. After PH subsequent hearing will be set out to allow testimony of witnesses and evidence on disputed facts recorded by the Magistrate.
- iv. The Magistrate shall make an inquiry to ensure that appropriate information is available when bail is considered.
- v. During hearing of the case, the court shall take into consideration any other specific needs of the child including sickness, hunger, and attendance to school etc.
- vi. Adjournment of cases should be discouraged unless there is a legal ground to be recorded in a court file. Where adjournment is necessary, 14 days is a maximum period for adjournment taking into account the time frame for completion of children's cases.
- vii. A child shall be examined in a child friendly manner.
- viii. The Magistrate shall ensure that cross-examination is conducted in a non-adversarial manner, informally and in child friendly manner as provided under Rule 45 of the JCR.
- ix. At the conclusion of the final hearing the Magistrate shall deliver its judgement within 21 days as stipulated under Rule 48 (4) of the JCR.
- x. In case of a conviction and before sentence a court shall request for a SIR from the SWO which shall be filed within 14 days. It should be noted that 14 days is a maximum period.
- xi. After conviction or acquittal, a right of appeal shall be explained and entered within 14 days from the date of the order or sentence appealed against pursuant to Section 130 (1) of the LCA and Rule 123 (1) of the JCR.

## **4.2. SENTENCING AND POST SENTENCING**

In Child Justice System, sentence is a process which primarily aims at rehabilitating and reintegrating a child offender. Multiple principle should be taken into account when sentencing child offenders as per Rule 49 of the JCR. These principles include:

- i. Proportionality: The **principle of proportionality is extremely important and is a central tenet in making sentencing decisions.**

- ii. Should ensure that appropriate information is available to the court when a sentence is considered.
- iii. Should have regard to the SIR.
- iv. Seriousness of the offence.
- v. Homelessness.
- vi. Financial status of a child parents.
- vii. Mental health problems.
- viii. Low education achievement.
- ix. Lack of parental care.
- x. Adult inducement.
- xi. Persistent offender.
- xii. Time spent in custody.
- xiii. Plea of guilty.
- xiv. Mitigating factors.
- xv. Remorsefulness of a child.
- xvi. Prevalence of the offence.

### **4.3 TYPES OF SENTENCE**

Sentence to be imposed by the Magistrate include the following: -

- i. Non-custodial sentence should be ordered wherever possible;
  - a. Conditional discharge.
  - b. Probation order.
  - c. Fine, compensation and cost.
  - d. Repatriation order.
  - e. Handing over to the care of fit person or institution named in the order (Rehabilitation Program).
- ii. Custodial sentence  
Committal to an approved School for serious offence. This sentence should only be used as a matter last resort and for the period not exceeding three years.

# APPENDICES

## A. Statutes referred to in this Standard Operating Guide

1. The Constitution of the URT of 1977 as amended;
2. The Law of the Child Act Cap. 13. R.E. 2019;
3. The Legal Aid Act [Cap. 21 R.E. 2019];
4. The Children and Young Persons Act [CAP. 13 R.E. 2002] repealed;
5. The Magistrates Courts Act [CAP. 11 R.E. 2019];
6. The Law of Marriage Act [CAP 29 R.E. 2019];
7. The Evidence Act [CAP 6 R.E. 2019]; and
8. The Written Laws (Miscellaneous Amendments) Act. No. 1 2020.

## B. Rules and Regulations referred to in this SOG

1. The Legal Aid Regulations, GN. No. 44 of 2018;
2. Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules, GN. No. 110 of 2019;
3. The Law of the Child (Juvenile Court Procedure) Rules GN. No. 182 of 2016;
4. The Child Protection Regulations GN. No.11 of 2015;
5. The designation of Primary Court premises to be used as Juvenile Courts GN. No. 314 of 2016;
6. The Law of the Child (designation of Juvenile Courts) (Amendment) GN. No. 367 of 2017;
7. GN No. 158 of 2019 revoking GN. No. 314 of 2016;
8. Judicature and Application of Laws (Adoption of Juvenile Court Rules in the High Court of Tanzania) Rules, GN. No 154 of 2019 (JALA);

9. The Adoption of a Child Regulations GN. No. 197/2012; and
10. The Court Fees Rules GN. No. 247 of 2018.

**C. International/Regional and Human Rights Instruments referred to in this SOG**

1. UN Convention on the Rights of the Child (UNCRC) adopted in 1989 and entered into force 1990 and ratified by URT 1 in 1991;
2. African Charter on the Rights and Welfare of the Child adopted in 1990 and entered into force 1999 (ACRWC) ratified by the URT in 2003; and
3. UNCRC General Comment No. 10 of 2007 (on children's rights in juvenile justice).

**D. Circulars/Direction referred to in this SOG**

1. The Chief Justice Circular No. 2 of 2018 (on protection of identities of children in any matter before the court);
2. The Commissioner for Social Welfare Circular of 26 November 2012, (declaring CICL as a group that needs care and protection).
3. The Chief Justice Circular No. 4 of 1997 (on establishment of the Kisumu Juvenile Court)
4. Legal Aid (remuneration of Advocates) Rules, 2016



