

# Disrupting Harm

**Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.**

Legal Analysis of OCSEA related Provisions in Tanzania

Last updated 12/4/21

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

# International, Regional and National Commitments and Legislations on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accesion
Convention on the Rights of the Child – 1989		10 June 1991
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – 2000		24 April 2003
Optional Protocol on a Communication Procedure – 2011		-
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		12 September 2001
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)		24 May 2006
Regional Instruments		Date of ratification/accesion
African Charter on the Rights and Welfare of the Child (1990)		16 April 2003
East Africa Internet Governance Forum (Founding Member)		-
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	18 July 2007	

## General Issues Related to Children’s Rights

The Anti-Trafficking in Persons Act and the Cybercrimes Act, which apply to both Tanzania and Zanzibar, define a **child** as any person below the age of 18 years.<sup>1</sup> The Law of the Child Act of mainland Tanzania and the Children’s Act of Zanzibar also define a child as a person under 18 years of age.<sup>2</sup>

However, the definition of a child is not **consistent across all national legislation**. In mainland Tanzania, the Employment and Labour Relations Act defines a ‘child’ as persons under the age of 14 years.<sup>3</sup> Furthermore, the Penal Code accords different protections to children based on age groups and genders, for instance, the offence of “procuring defilement” covers only girls<sup>4</sup> or the offence of “kidnapping” covers boys under the age of fourteen years and girls under the age of sixteen years.<sup>5</sup>

In addition, the national legislation uses **alternative terminologies** for persons under the age of 18. For instance, the Penal Code of Mainland Tanzania uses the terms ‘children’, ‘boys’ and ‘girls’ to refer to children.<sup>6</sup> Similarly, the Penal Code of Zanzibar uses the terms ‘girl’ for a female person and ‘boy’ for a male person below 18 years, respectively.<sup>7</sup>

Despite the inconsistencies in the definition of a child in the national legislation, the overall legal protection accorded to children against online sexual exploitation and abuse (OCSEA) does not seem to be hampered.

The **age of sexual consent** for girls in Mainland Tanzania is 18 years.<sup>8</sup> However, sexual intercourse between spouses does not amount to statutory rape if the girl is above 15 years.<sup>9</sup> The age of sexual consent has not been clearly identified for boys. Nevertheless, certain sexual acts with boys, such as sexual

<sup>1</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 3; Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.

<sup>2</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 4(1); Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 2.

<sup>3</sup> Government of the United Republic of Tanzania. (2004). [The Employment and Labour Relations Act No. 6 of 2004](#), Section 4.

<sup>4</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 140.

<sup>5</sup> Government of the United Republic of Tanzania. (1945). [The Penal Code of 1945 \(Cap. 16\)](#), Section 244.

<sup>6</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 3.

<sup>7</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 3(2).

<sup>8</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 130(2)(e).

<sup>9</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 130(2)(e); Section 138.

assault<sup>10</sup> and grave sexual abuse which does not amount to rape as defined by section 130 of the Penal Code,<sup>11</sup> have been criminalised.

Furthermore, the sexual exploitation of children, both boys and girls, has been criminalised in mainland Tanzania.<sup>12</sup> There is no **close-in-age exemption** or any criteria to determine whether consent for sexual activities between peers under the age of 18 is **voluntary, well-informed and mutual**. A boy below 12 years is presumed to be incapable of having sexual intercourse.<sup>13</sup> Consequently, for consensual sexual intercourse with girls, boys aged 12-18 might be criminally charged for statutory rape.<sup>14</sup> Moreover, the Penal Code criminalises sexual intercourse between male persons.<sup>15</sup> This may hamper the reporting of online child sexual exploitation and abuse (OCSEA) offences involving boys sexually exploited by male offenders, due to the stigma associated with homosexuality as well as fear of prosecution.<sup>16</sup>

The age of sexual consent for both boys and girls in Zanzibar is 18 years.<sup>17</sup> A male person is said to have committed the offence of rape of a girl if he has sexual intercourse with her when she is below 18 years of age unless the girl is his wife who has not lawfully separated from him.<sup>18</sup> Similarly to the provisions of mainland Tanzania’s legislation, there are serious anomalies with this provision. Firstly, this provision creates an exemption from criminal liability for men raping minor wives. Secondly, the offence of rape can only be committed by male persons against female children. Notwithstanding, the Penal Code also creates the offence of ‘defilement’ of a boy.<sup>19</sup> Accordingly, “a person who carnally knows a boy” is liable to be punished for the offence of defilement.<sup>20</sup> The Penal Code defines ‘carnal knowledge’ as follows: “Wherever upon trial for an offence punishable under this Part it may be necessary to prove carnal knowledge, it shall not be necessary to prove actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon the proof of penetration only”.<sup>21</sup>

<sup>10</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 135.

<sup>11</sup> Government of the United Republic of Tanzania. [The Penal Code \(as amended by the Written Laws Miscellaneous Amendments Act No. 1 of 2020\)](#), Section 138C.

<sup>12</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 138B.

<sup>13</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 15(3).

<sup>14</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 131(2).

<sup>15</sup> Government of the United Republic of Tanzania. (1945). [The Penal Code of 1945 \(Cap. 16\)](#), Section 157; Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Sections 154-155.

<sup>16</sup> Josenhans, V., Kavenagh, M., Smith, S., & Wekerle, C. (2019). [Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys](#). *Child Abuse & Neglect*, P. 6.

<sup>17</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Sections 108(2)(e) and 115.

<sup>18</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 108(2)(e).

<sup>19</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 115.

<sup>20</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 115(1).

<sup>21</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 107.

The language used in this provision is vague, making it unclear whether women can be prosecuted for the offence of defilement of a boy.

Again, like in mainland Tanzania, the Zanzibar Penal Code does not provide for any close-in-age exemption. As boys below 14 years are deemed to be incapable of having carnal knowledge,<sup>22</sup> boys aged 14-18 can be charged with the offence of rape for having consensual sexual intercourse with girls under 18 years.<sup>23</sup>

The **legal working age** is 14 in mainland Tanzania.<sup>24</sup> The Employment and Relations Act prohibits employment of children below 14 years.<sup>25</sup> Children aged 14 years of age or above can only be employed in 'light work', that is, work which does not affect their attendance in school or participation in any vocational orientation or training programme and harm their health or development.<sup>26</sup> For employment in **hazardous** sectors such as a mine, factory or a ship, the minimum age is 18 years.<sup>27</sup> Furthermore, the Law of the Child Act prohibits the employment of children in sexually exploitative works or trades such as, "pornographic performance or materials".<sup>28</sup>

In Zanzibar, the legal working age is 15.<sup>29</sup> However, children aged 15 years or above are permitted to do only 'light work'.<sup>30</sup> Furthermore, children in Zanzibar cannot be employed in hazardous forms of work which poses a threat to health, safety and morals of children.<sup>31</sup> Pursuant to the provisions of the Employment Act of Zanzibar, children are prohibited from working in worst forms of labour including, *inter alia*, all forms of slavery; use in production or "pornography" or "pornographic performances"; illicit activities like drug trafficking".<sup>32</sup>

The **minimum age of criminal responsibility** is 10 years in mainland Tanzania<sup>33</sup> and 12 years in Zanzibar.<sup>34</sup> In mainland Tanzania, children below 12 years are presumed to lack criminal responsibility unless it can

<sup>22</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 13(3).

<sup>23</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Sections 109(2).

<sup>24</sup> Government of the United Republic of Tanzania. (2004). [The Employment and Labour Relations Act No. 6 of 2004](#), Section 5(1); Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 77(2).

<sup>25</sup> Government of the United Republic of Tanzania. (2004). [The Employment and Labour Relations Act No. 6 of 2004](#), Section 5(1).

<sup>26</sup> Government of the United Republic of Tanzania. (2004). [The Employment and Labour Relations Act No. 6 of 2004](#), Section 5(2); Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 77(1) read with Section 77(3).

<sup>27</sup> Government of the United Republic of Tanzania. (2004). [The Employment and Labour Relations Act No. 6 of 2004](#), Section 5(3).

<sup>28</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#) Section 83.

<sup>29</sup> Government of Zanzibar. (2011). [Children's Act No. 6 of 2011](#), Section 98(2).

<sup>30</sup> Government of Zanzibar. (2011). [Children's Act No. 6 of 2011](#), Section 98(3) read with Section 98(4).

<sup>31</sup> Government of Zanzibar. (2011). [Children's Act No. 6 of 2011](#), Section 100(1).

<sup>32</sup> Government of Zanzibar. (2005). [The Employment Act No. 11 of 2005](#), Section 7.

<sup>33</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 15(1).

<sup>34</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 13(1).

be shown that at the time of committing the offence, they had the capacity to know that they should not be doing it.<sup>35</sup> The same rule applies to children below 14 years in Zanzibar.<sup>36</sup>

Pursuant to the landmark judgment of the High Court of Tanzania at Dar Es Salaam, pronounced in 2016, the **legal age of marriage** in mainland Tanzania for **boys and girls** is 18 years.<sup>37</sup> Before this ruling, the Law of Marriage Act prescribed the minimum age of marriage for boys and girls as 18 and 15, respectively.<sup>38</sup> However, the legal age was not absolute and young children aged 14-18 could get married after obtaining permission from the court.<sup>39</sup> These provisions were struck down by the High Court of Tanzania at Dar es Salaam for being unconstitutional.<sup>40</sup> The High Court gave the Government a period of one year to amend the Law of the Marriage Act and in the meantime, 18 was made the minimum age required to get married.<sup>41</sup> In 2019, the highest court of Tanzania upheld the decision of the High Court.<sup>42</sup> At the time of writing, a law giving effect to this judgment is yet to be adopted. It is important to note that this judgment does not apply to Zanzibar.<sup>43</sup>

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<sup>35</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 15(2).

<sup>36</sup> Government of Zanzibar. (2018). [The New Penal Code \(as introduced by Act No. 6 of 2018\)](#), Section 13(2).

<sup>37</sup> The High Court of Tanzania at Dar Es Salaam. (2016). [Rebeca Z. Gyumi v. Attorney General](#), Miscellaneous Civil Cause No. 5 of 2016.

<sup>38</sup> Government of the United Republic of Tanzania. (1971). [The Law of the Marriage Act No. 5 of 1971](#), Section 13(1).

<sup>39</sup> Government of the United Republic of Tanzania. (1971). [The Law of the Marriage Act No. 5 of 1971](#), Section 13(2).

<sup>40</sup> The High Court of Tanzania at Dar Es Salaam. (2016). [Rebeca Z. Gyumi v. Attorney General](#), Miscellaneous Civil Cause No. 5 of 2016.

<sup>41</sup> The High Court of Tanzania at Dar Es Salaam. (2016). [Rebeca Z. Gyumi v. Attorney General](#), Miscellaneous Civil Cause No. 5 of 2016.

<sup>42</sup> The Court of Appeal of Tanzania. (2019). [Attorney General v. Rebeca Z. Gyumi](#), Civil Appeal No. 204 of 2017.

<sup>43</sup> Information received via personal communication with the ECPAT member in the country.

## Online Child Sexual Exploitation and Abuse

In mainland Tanzania and Zanzibar, the offences relating to online child sexual exploitation and abuse (OCSEA) have been addressed mainly through the Cybercrime Act of 2005.<sup>44</sup> Additionally, the Anti-Trafficking in Persons Act criminalises certain OCSEA offences, albeit implicitly.

Pursuant to the Cybercrime Act, the **definition** of child sexual abuse material includes “pornographic material that depicts, presents or represents: (a) a child engaged in a sexually explicit conduct; (b) a person appearing to be a child engaged in a sexually explicit conduct; or (c) an image representing a child engaged in a sexually explicit conduct”.<sup>45</sup> This definition does not explicitly cover **audio** and **written forms** of child sexual abuse material. Nevertheless, the inclusion of the generic term “material” widens the scope of the definition. The definition does not explicitly cover **virtual child sexual abuse material**, that is, computer/digitally generated child sexual abuse material including realistic images of non-existent children, although point (c) of the definition could potentially cover the same. Notwithstanding, the definition covers child sexual abuse material that depicts **persons appearing to be a minor** engaged in sexually explicit conduct. Hence, it can be concluded that definition of child sexual abuse material contained in the Cybercrime Act is at least partially **in line with the OPSC**.

The Cybercrime Act punishes the following conduct carried out in relation to child sexual abuse material: publishing child sexual abuse material through a computer system; or making available or facilitating the access of child sexual abuse material through a computer system.<sup>46</sup> Here, the term “publish” means to **distribute**, transmit, **disseminate**, circulate, deliver, exhibit, exchange, barter, print, copy, **sell** or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way.<sup>47</sup> Therefore, the Cybercrime Act comprehensively criminalises the acts of distribution associated with child sexual abuse material. Moreover, the Act expressly criminalises conduct associated with child sexual abuse material committed in the **online environment** or using information and communication technologies (ICT). Notwithstanding, the Cybercrime Act does not criminalise acts related to the production of child sexual abuse material, and does not criminalise acts like **possessing child sexual abuse material** for any purpose or **knowingly obtaining access** to child sexual abuse material.

The Anti-Trafficking in Persons Act defines ‘pornography’ as “any representation, through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes”. This definition does not specifically refer to child sexual abuse material. However, the definition covers ‘pornography’ carried out using information technology. Hence, it could be relevant to prosecute offenders of OCSEA.

<sup>44</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 2.

<sup>45</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.

<sup>46</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 13(1).

<sup>47</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.



Under the Anti-Trafficking in Persons Act, a person is liable to be punished if they commit, *inter alia*, the following acts: (a) **recruits**, harbours, transport, transfers, receives or provides a person for the purposes of pornography; (b) offers or contracts marriage for the purpose of engaging a person in pornography; (c) maintains or hires a person to engage in pornography; (d) adopts or facilitates adoption of persons for the purpose of pornography.<sup>48</sup>

Besides the abovementioned provisions, offences related to child sexual abuse material also find mention in the Law of the Child Act and the Penal Code in Mainland Tanzania and the Children’s Act in Zanzibar.

In mainland Tanzania, the Law of the Child Act criminalises publishing, producing or showing a photograph or picture of a child or dead child containing brutal violence or in a “pornographic posture”.<sup>49</sup> The Act also protects a child from being engaged in any work or trade that is of a sexual nature, including pornographic performances or materials.<sup>50</sup> In addition, the Penal Code of mainland Tanzania criminalises sexual exploitation of children, making liable all persons who procure children for participating in any form of sexual abuse or indecent exhibition or show.<sup>51</sup>

In Zanzibar, the Children’s Act also defines child sexual abuse material as including “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of sexual parts of a child for primarily sexual purposes”.<sup>52</sup> The inclusion of “by whatever means” appears to imply that the definition covers all forms of child sexual abuse material including written and audio. Further, the notion “representation of a child” may not be necessarily limited to a real child and could cover digitally/computer generated child sexual abuse material including realistic images of non-existent children (virtual child sexual abuse material).

In respect of acts associated with child sexual abuse material, the Children’s Act prohibits persons “to **possess child sexual abuse material**, for any purpose, to **access** through the Internet or other communications technology, child pornography”.<sup>53</sup> It is noteworthy that this is the only law in Tanzania that criminalises possession of and access to child sexual abuse material. Besides, the Act also criminalises other acts relating to child sexual abuse material such as production, dissemination, including through the Internet, import, export, and sale of child sexual abuse material.<sup>54</sup> Persons are also prohibited from using children in the creation or production of child sexual abuse material.<sup>55</sup>

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<sup>48</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 4.

<sup>49</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 158(1).

<sup>50</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 83(1)(c).

<sup>51</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 138B.

<sup>52</sup> Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011](#), Section 2.

<sup>53</sup> Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011](#), Section 110(3)(a).

<sup>54</sup> Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011](#), Section 110(3)(b).

<sup>55</sup> Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011](#), Section 110(2)(b)-(c).

Surprisingly, none of the abovementioned laws criminalise people who **knowingly attend** performances involving child sexual abuse.

There is no legal provision for the time being that **excludes a child's criminal liability** for producing and sharing child sexual abuse material (for instance through sexting) especially when compelled to do so because they are in an abusive/exploitative situation.

Furthermore, none of the laws criminalise other types of OCSEA offences like **live streaming of child sexual abuse, online grooming** and **sexual extortion**. These offences must be expressly criminalised by the national legislation in order to provide a robust legal framework for OCSEA.

Apart from child sexual abuse material, the only other manifestation of OCSEA that has been potentially criminalised in Tanzania is **cyberbullying**. Pursuant to the provisions of the Cybercrimes Act, any person who initiates or sends any electronic communication using a computer system to another person to coerce, intimidate, harass or cause emotional distress, is guilty of an offence.<sup>56</sup> While this provision does not specifically mention children, it can potentially be applied to cases involving the bullying of a child through online sexual harassment.

The Cybercrimes Act punishes the **attempt** of offences committed under it. The Act defines attempt as, “[w]here a person, intends to commit an offence, puts his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such extent as to commit the offence, he is deemed to have attempted to commit the offence”.<sup>57</sup> Attempts at child sexual abuse material related offences have also been criminalised under the Children’s Act of Zanzibar.<sup>58</sup>

The abovementioned legal provisions apply to **all Tanzanian children below 18 years** and to **boys and girls** equally. These provisions also apply to non-national victims of OCSEA, if the offence is committed against them in Tanzania.<sup>59</sup>

In the absence of any explicit provisions in the laws mentioned previously, it appears that the **ignorance of the age of the victim** cannot be pleaded by the offender in excuse of his/her conduct.

The Cybercrimes Act imposes legal duties on service providers, stating that: “Where a service provider has knowledge of illegal information, or activity he shall (a) remove the information in the computer system within the service providers control; (b) suspend or terminate services in respect of that information or activity; and (c) notify appropriate law enforcement authority of the illegal activity or information, relevant facts and the identity of the person for whom the service provider is supplying services in respect

<sup>56</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 23.

<sup>57</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 26(1).

<sup>58</sup> Government of Zanzibar. (2011). [Children’s Act No. 6 of 2011](#), Section 110(4).

<sup>59</sup> Information received via personal communication with the ECPAT member in the country.

of the information.”<sup>60</sup> Here, the term service provider includes persons or parties who provide information system services to third parties.<sup>61</sup> Therefore, service providers under this Act include **Internet Service Providers (ISPs)**.

Similar duties are imposed on hosting providers,<sup>62</sup> caching providers<sup>63</sup> and hyperlink providers.<sup>64</sup> A hosting provider is “a person who provides an electronic data transmission service by storing information provided by a user of the service”.<sup>65</sup> A caching provider is “a person who provides an electronic data transmission service by automatic, intermediate or temporary storing information, for the purpose of making more efficient the information's onward transmission to other users of the service upon their request”.<sup>66</sup> The Cybercrime Act does not define who a hyperlink provider is. However, it defines the term ‘hyperlink’ as “a symbol, word, phrase, sentence or image that contains path to another source that points to and causes to display another document when executed”. This implies that any person who provides hyperlink services to the user would be a hyperlink provider. These providers, together with service providers, have the duty to inform relevant authorities of illegal activities and to remove any illegal information that comes under their control or supervision.<sup>67</sup>

Furthermore, a service provider under the Cybercrime Act is under an obligation to act on a **take-down** notification submitted by any person.<sup>68</sup> Failure to do so would make the service provider guilty of the offence that forms the basis of such notification.<sup>69</sup>

In 2018, the government passed the Electronic and Postal Communications (Online Content) Regulations 2018 pursuant to the Electronic and Postal Communications Act of 2010<sup>70</sup> which apply to mainland Tanzania as well as to Zanzibar.<sup>71</sup> These regulations impose obligations on online content providers<sup>72</sup> in relation to prohibited online content, including pornography.<sup>73</sup>

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<sup>60</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 39(4).

<sup>61</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.

<sup>62</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 41.

<sup>63</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 42.

<sup>64</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 43.

<sup>65</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.

<sup>66</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 3.

<sup>67</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Sections 39-43.

<sup>68</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 45.

<sup>69</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 45.

<sup>70</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications Act No. 3 of 2010](#), Section 103.

<sup>71</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications Act No. 3 of 2010](#), Section 2(1).

<sup>72</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications \(Online Content\) Regulations, 2018](#), Regulation 5(1).

<sup>73</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications \(Online Content\) Regulations, 2018](#), Regulation 12(d).

Specifically, the regulations impose the following duties on **cyber cafes owners**: “(a) to ensure that all computers used for public internet access at the cafe are assigned public static IP addresses; (b) establish and publish a safe internet use policy for safe use of the internet with regards to online content and post it on conspicuous place; computer home screen or display the same on a visible areas for users to read before using the service; (c) to put in place mechanism to filter access to prohibited content; (d) to install surveillance camera to record and archive activities inside the cafe; (e) to keep a proper service user register and ensure every person using internet service is registered upon showing a recognized identity card. (2) The images recorded by surveillance camera and the register of users recorded pursuant to sub regulation 1 shall be kept for a period of twelve months”.<sup>74</sup> In addition, the Regulations require that the persons who operate cyber cafes take all possible measures to ensure that: “(a) children do not register, access or contribute to prohibited content; and (b) users are provided with content filtering mechanism and parental control”.<sup>75</sup> However, there are no duties for the cyber cafe owners or operators to report OCSEA cases.

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<sup>74</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications \(Online Content\) Regulations, 2018](#), Regulation 9.

<sup>75</sup> Government of the United Republic of Tanzania. (2010). [The Electronic and Postal Communications \(Online Content\) Regulations, 2018](#), Regulation 13.

## Extraterritoriality and Extradition

In Tanzania (both mainland Tanzania and Zanzibar), extraterritorial jurisdiction in relation to OCSEA offences has been established by the Cybercrimes Act. The Cybercrimes Act extends the jurisdiction of the courts to offences punishable under the Act committed by nationals of Tanzania outside the territory of Tanzania.<sup>76</sup> Therefore, the Act establishes **active territorial jurisdiction** over OCSEA offences. However, this extraterritorial jurisdiction is applicable only if the relevant act constitutes an offence both in Tanzania and in the country where it was committed.<sup>77</sup> Hence, the extraterritorial jurisdiction as established by the Cybercrimes Act is limited by the principle of **double criminality**.

Additionally, the jurisdiction of Tanzanian courts also applies in case an offence is committed by any person, irrespective of their citizenship, nationality or location, provided that the offence is “(i) committed using a computer system, device or data located within [the] United Republic of Tanzania; or (ii) directed against [a] computer system, device or data or person located in [the] United Republic of Tanzania”.<sup>78</sup> Hence, point (ii) establishes only a limited form of extraterritorial jurisdiction.

The Cybercrimes Act does not establish any **passive extraterritorial jurisdiction** since offences committed outside Tanzania against Tanzanian nationals are beyond the scope of this Act.

The national legislation does not establish **universal extraterritorial jurisdiction** over OCSEA offences.

The Cybercrimes Act amended the Schedule to the Extradition Act to make cybercrimes extraditable.<sup>79</sup> By virtue of this amendment, OCSEA offences such as child sexual abuse material-related offences and cyber harassment are **extraditable** in Tanzania. The Extradition Act applies to mainland Tanzania as well as to Zanzibar.<sup>80</sup> Only those offences which are mentioned in the Extradition Act are extraditable in Tanzania. This is clear from the definition of an “extradition crime” provided under the Act. An extradition crime is “a crime which, if committed within the jurisdiction of Tanzania, would be one of the crimes described in the Schedule to this Act”.<sup>81</sup> Consequently, if a country makes an extradition request in respect of an OCSEA offence which does not feature in the Schedule, the request would be denied.

In the absence of any explicit provisions, the principle of **double criminality** does not apply to the extradition provisions in Tanzania.

<sup>76</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 30(1)(d).

<sup>77</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 30(1)(d).

<sup>78</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 30(1)(e).

<sup>79</sup> Government of the United Republic of Tanzania. (2015). [The Extradition Act No. 15 of 1965](#) (as amended by [the Cybercrimes Act No. 14 of 2015](#)), Schedule: Extradition Crimes.

<sup>80</sup> Government of the United Republic of Tanzania. (1965). [The Extradition Act No. 15 of 1965](#), Section 1.

<sup>81</sup> Government of the United Republic of Tanzania. (1965). [The Extradition Act No. 15 of 1965](#), Section 2(1).

There are certain **restrictions** on the granting of extradition requests.<sup>82</sup> A request for extradition can be turned down by Tanzania if, among other things, the offence is of political nature; or the person to be extradited is already undergoing a trial in a Tanzanian Court; or the request is unjust or not in good faith.<sup>83</sup>

In its 2008 concluding recommendations on the report submitted by Tanzania as a party to the OPSC, the Committee on the Rights of the Child had expressed concern that the extradition law does not cover cases in which the victim is Tanzanian and the offence is committed outside Tanzania.<sup>84</sup> In 2015, the Committee reiterated the recommendations made in its 2008 concluding observations,<sup>85</sup> although not specifically referring to the extradition law.

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<sup>82</sup> Government of the United Republic of Tanzania. (1965). [The Extradition Act No. 15 of 1965](#), Section 16.

<sup>83</sup> Government of the United Republic of Tanzania. (1965). [The Extradition Act No. 15 of 1965](#), Section 16.

<sup>84</sup> Committee on the Rights of the Child. (2008). [Concluding Observations on the initial report of the United Republic of Tanzania under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#), CRC/C/OPSC/TZA/CO/1, P. 4.

<sup>85</sup> Committee on the Rights of the Child. (2015). [Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania](#), CRC/C/TZA/CO/3-5, P.19, Paragraph 74.

## Other OCSEA-Related Provisions

In terms of penalties for OCSEA offences in Tanzania, both the Cybercrime Act and the Law of the Child Act contain appropriate **penalties** reflecting the grave nature of the offences.

The Cybercrime Act punishes a person who publishes, makes available or facilitates access to child sexual abuse material using a computer system with a fine of at least 50,000,000 shillings (approx. US\$21,567 as of March 2021) or three times the value of any benefit received from the commission of the aforementioned acts, whichever is higher, or an imprisonment term of at least 7 years or both.<sup>86</sup> A person who commits cyber harassment is liable to be punished with a fine of at least 50,000,000 shillings (approx. US\$21,567 as of March 2021) or to imprisonment for a term of not less than 3 years or to both.<sup>87</sup> In addition, a person who attempts to commit an offence under the Cybercrime Act is liable to be punished with a fine of at least 1,000,000 shillings (approx. US\$431 as of March 2021) or to imprisonment for a term of at least 6 months, or both.<sup>88</sup>

For committing trafficking for the purpose of ‘pornography’ under the Anti-Trafficking in Persons Act, a person is liable to be punished with a fine of 5,000,000-100,000,000 shillings (approx. US\$2,156 to US\$43,134 as of March 2021) or an imprisonment term ranging 2-10 years, or both.<sup>89</sup>

The Law of the Child Act penalises any person who publishes, produces or shows a child in a “pornographic posture” with a fine of at least 500,000 shillings (approx. US\$215 as of March 2021) or to an imprisonment term of 6 months or both.<sup>90</sup> Further, any person who engages a child in any pornographic performances or materials, is liable to be punished with a fine of between 1,000,000-500,000,000 shillings (approx. US\$431 to US\$215,671 as of March 2021) or an imprisonment term between 1-20 years or both.<sup>91</sup>

For committing child sexual abuse material-related offences under the Children’s Act of Zanzibar, a person is liable to be punished with a fine of 5,000,000-15,000,000 shillings (US\$2,156 to US\$6,470 as of March 2021) or an imprisonment term of 5-10 years, or both.<sup>92</sup>

<sup>86</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 13(2).

<sup>87</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 23(2).

<sup>88</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 26(3).

<sup>89</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 4.

<sup>90</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 158(2).

<sup>91</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 83(3).

<sup>92</sup> Government of Zanzibar. [The Children’s Act No. 6 of 2011](#), Section 110(5).

In addition to these penalties, the Cybercrime Act also provides for **forfeiture** of property or any device associated with an offence.<sup>93</sup> Therefore, the court can order confiscation or seizure of any good relating to or proceeds derived from OCSEA offences. A similar provision is contained in the Anti-Trafficking in Persons Act in relation to proceeds from trafficking, including for the purpose of child sexual abuse material (implicitly covered).<sup>94</sup>

The Children’s Act of Zanzibar criminalises the **advertisement** of child sexual abuse material through Internet or other communication technology.<sup>95</sup> Additionally, the Anti-Trafficking in Persons Act prohibits advertisement by any means to facilitate trafficking in persons.<sup>96</sup> For contravening this provision, a person is liable to be punished with a fine of 2,000,000-50,000,000 shillings (approx. US\$862 to US\$21,567 as of March 2021) or an imprisonment term ranging 2-7 years, or both.<sup>97</sup>

Likewise, the Penal Code of mainland Tanzania criminalises any person who induces another person to become a client of a child for, *inter alia*, “indecent exhibition or show, by means of print or other media, oral advertisements or other similar means”.<sup>98</sup> This could potentially cover OCSEA-related promotion and advertisement.

Pursuant to the provisions of the Cybercrime Act, **legal entities** are liable for OCSEA offences under the Act.<sup>99</sup> The Act stipulates that: “If a corporate body is convicted of an offence under this Act, every person who, at the time of commission of the offence was (a) a director, officer or is otherwise concerned with the management of, the corporate body; or (b) knowingly authorised or permitted the act or omission constituting the offence, is deemed to have committed the same offence unless every such person proves that the commission of the offence took place without his consent or that he exercised due diligence to prevent the commission of offence and may be proceeded against and punished accordingly”.<sup>100</sup>

Currently, the Tanzanian legislation does not provide for the establishment of a **national sex offender registry**.

The Tanzanian legislation does not impose more severe sentences for **recidivists** who commit OCSEA-related offences. Notwithstanding, the Anti-Trafficking in Persons Act permits courts to impose severe

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<sup>93</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 48(1).

<sup>94</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 14.

<sup>95</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 110(3)(b).

<sup>96</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 5(2)(c).

<sup>97</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 4.

<sup>98</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 138B(1)(c).

<sup>99</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 49.

<sup>100</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 49.



penalties on persons who commit a second or subsequent offence under the Act.<sup>101</sup> Moreover, the Penal Code in mainland Tanzania provides for harsher penalties for the offence of rape.<sup>102</sup> Nothing prevents courts from following this approach in those cases concerning OCSEA offences.

Pursuant to the provisions of the Law of the Child Act of Tanzania, convicted sex offenders are prohibited from **holding positions involving or facilitating contact with children**. Convicted sex offenders or persons guilty of committing offences against children cannot be employed in day care centres or a crèche.<sup>103</sup> A similar provision is contained in Zanzibar’s Children’s Act, according to which convicted sex offenders cannot be employed in residential institutions or day care centres for children or be allowed to become foster parents.<sup>104</sup>

The Cybercrimes Act provides a detailed procedure to be followed for **retention and preservation** of digital evidence.<sup>105</sup> These provisions apply to all offences committed under the Act alike, failing to take into consideration the sensitive nature of data or evidence in OCSEA offences. Mishandling of such data or evidence can have far-reaching consequences for child victims. In order to ensure the adequate protection of child victims throughout the investigation and judicial processes, data preservation and retention laws must be applied in strict conformity with the principle of the **best interests of the child**.

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<sup>101</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 13.

<sup>102</sup> Government of the United Republic of Tanzania. (1998). [The Penal Code \(as amended by the Sexual Offences Special Provisions Act No. 4 of 1998\)](#), Section 138(2)(c).

<sup>103</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 148(1).

<sup>104</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 132.

<sup>105</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Sections 31-35.

## Access to Justice and Remedies

### National complaint mechanisms and reporting

There are no explicit duties concerning reporting by **professionals working with children and institutions** that, due to the nature of their activities, may come across suspected cases of OCSEA. However, pursuant to the Tanzanian Education Act as amended by the Law of the Child Act, all teachers, craftsmen and trainers in Mainland Tanzania are under the general obligation to report concerns or evidence of child abuse committed by any person to the appropriate social welfare officer.<sup>106</sup>

Similarly, there are no specific duties for **private citizens** to report OCSEA offences. Nevertheless, the Law of the Child Act stipulates that all members of the community have a duty to report infringement of a child's rights to the local government authority of that area.<sup>107</sup> A person who fails to report is liable to be punished with a fine of at least 50,000 shillings (approx. US\$22 as of March 2021) or to an imprisonment term of 3 months, or both.<sup>108</sup>

The Law of the Child Act establishes a **mechanism for receiving and addressing reports**, although it is not specific to OCSEA offences. On receiving a report, a social welfare officer can proceed to summon the persons named in the report and make an order in the best interest of the child.<sup>109</sup> If required, the officer can refer the case to a Children's Court.<sup>110</sup> If there is a case of child abuse or maltreatment, the officer, with the aid of the police, can enter the premises where the child is kept for investigation and remove the child from those premises if the situation requires so.<sup>111</sup> The Law of the Child does not provide any **protection mechanisms** for persons who report the offences.

In Zanzibar, the Children's Act imposes duties to report the infringement of a child's rights or cases of child abuse on all persons who performs official or professional duties concerning children, including teachers, nurses, doctors, government officers responsible for children and women's affairs, security officers, religious leaders, etc.<sup>112</sup> These persons can report to the Director of Social Welfare, a Welfare Officer or a police station.<sup>113</sup> If any person fails to comply with the mandatory reporting duties under this Act, they shall be subjected to disciplinary action in accordance with their professional code of conducts.<sup>114</sup> Other persons, including a child, are also entitled to report to these persons, although it is not mandatory.<sup>115</sup>

<sup>106</sup> Government of the United Republic of Tanzania. (2009). [The Education Act \(as amended by the Law of the Child Act No. 21 of 2009\)](#), Section 59A.

<sup>107</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 95(1).

<sup>108</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 95(5).

<sup>109</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 95(2).

<sup>110</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 95(3).

<sup>111</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 96(1)-(2).

<sup>112</sup> Government of Zanzibar. (2011). [The Children's Act No. 6 of 2011](#), Section 20.

<sup>113</sup> Government of Zanzibar. (2011). [The Children's Act No. 6 of 2011](#), Section 20(1).

<sup>114</sup> Government of Zanzibar. (2011). [The Children's Act No. 6 of 2011](#), Section 20(5).

<sup>115</sup> Government of Zanzibar. (2011). [The Children's Act No. 6 of 2011](#), Section 20(3).

Furthermore, the Zanzibar Children’s Act establishes a mechanism for receiving and addressing reports, although it is not specific to OCSEA offences. According to the Act, a welfare officer who receives a report on an infringement of a child’s rights or child abuse, must act within 14 days.<sup>116</sup> They are authorised to conduct a risk assessment and summon the person(s) named in the report.<sup>117</sup> After a risk assessment, they can either refer the case to the Children’s Court or the police for further investigation if the case involves an offence relating to child abuse.<sup>118</sup> Additionally, the persons who report under this Act are entitled to have their identities kept confidential and are exempted from any civil liability, provided they make the report in good faith and that the information therein provided is not false or misleading.<sup>119</sup>

Neither the Cybercrimes Act nor the Anti-Trafficking in Persons Act prescribe any **statutory limitations** for the prosecution of OCSEA offences.

Tanzanian laws do not seem to impose any duties on **public prosecutors** to conduct *ex officio* investigations of OCSEA offences.

In mainland Tanzania, generally an **anonymous complaint** cannot form the basis of investigation as the Criminal Procedure Act clearly states that “a complaint may be made orally or in writing but, if made orally, shall be reduced to writing by the magistrate and, in either case, shall be signed by the complainant and the magistrate”.<sup>120</sup> A similar provision exists in Criminal Procedure Act of Zanzibar<sup>121</sup> Notwithstanding, an anonymous complaint might be sufficient to open a criminal investigation if there is a connection between an OCSEA offence and a trafficking-related offence.<sup>122</sup>

The above-mentioned provisions apply equally to **boys and girls**.

It appears that these provisions also apply to **non-national victims** of OCSEA, if the offence is committed against them in Tanzania.<sup>123</sup>

### Child-sensitive justice

In terms of **child-friendly interview methods**, the Anti-Trafficking in Persons Act provides for in-camera proceedings.<sup>124</sup> The Anti-Trafficking in Persons Act envisages the protection and safety of the private life

<sup>116</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 21(1).

<sup>117</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 21(1).

<sup>118</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 21(2) and 21(5).

<sup>119</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 20(4).

<sup>120</sup> Government of the United Republic of Tanzania. (1985). [The Criminal Procedure Act No. 9 of 1985](#), Section 128(4).

<sup>121</sup> Government of Zanzibar. (2018). [The Criminal Procedure Act No. 7 of 2018](#), Section 104(3).

<sup>122</sup> Information received via personal communication with the ECPAT member in the country.

<sup>123</sup> Information received via personal communication with the ECPAT member in the country.

<sup>124</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 9(2).

and **identity** of the victims of trafficking, including children trafficked for child sexual abuse material.<sup>125</sup> It prohibits the publication of names, personal particulars or any other information relating to a victim in the public domain.<sup>126</sup> Furthermore, the media is prohibited from causing publicity of any kind in the case of a trial under this Act being held in camera.<sup>127</sup>

A police officer who comes across a victim of trafficking must ensure that the victim received medical and **psychological** treatment<sup>128</sup> and, if the victim expresses any concerns about **safety**, assist them to a place of safety.<sup>129</sup> A victim is entitled to receive temporary safe housing and other **protection** measures.<sup>130</sup> No provision in the national legislation ensures that **non-governmental organisations** can assist/support victims, at their request, during the investigation and judicial proceedings.

In mainland Tanzania, the Law of the Child Act contains enabling provisions to ensure child-sensitive justice. The Act provides for the establishment of Juvenile Courts to deal with matters relating to children including, *inter alia*, child protection.<sup>131</sup> The Act provides that the proceedings in such courts shall be held in camera and in an informal manner in the presence of a social welfare officer and parent/guardian/next of kin.<sup>132</sup>

Pursuant to the Law of the Child (Juvenile Court Procedures) Rules 2016, applicable only to mainland Tanzania, juvenile court officials are not permitted to wear formal robes or uniforms.<sup>133</sup> A child is entitled to be provided with an interpreter if they do not speak the language in which the proceedings are being carried out<sup>134</sup> and to be provided with legal and other appropriate assistance.<sup>135</sup> If the child is unable to

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<sup>125</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#) Section 9(1).

<sup>126</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#) Section 9(4).

<sup>127</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 9(5).

<sup>128</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 11(2)(a).

<sup>129</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 11(2)(b).

<sup>130</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 18.

<sup>131</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 97(1); Section 98(1)(b).

<sup>132</sup> Government of the United Republic of Tanzania. (2009). [The Law of the Child Act No. 21 of 2009](#), Section 97(1); Section 99(1)(b)-(e).

<sup>133</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 7(5).

<sup>134</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 9(1).

<sup>135</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 14(1)

afford **legal representation**, it would be provided to them free of charge.<sup>136</sup> Furthermore, the rules allow a child victim to be assisted by a *guardian ad litem*.<sup>137</sup> A *guardian ad litem* is a person appointed by the court who is responsible to represent and protect the interest of the child in a juvenile court proceeding.<sup>138</sup> Further, to protect the **privacy** of the child victim, the rules provide that all proceedings shall either be held in Magistrate’s chambers or a closed courtroom, where only permitted persons would be present.<sup>139</sup> In addition, the rules prohibit publication of information that may lead to the **identification** of the child, unless the magistrate allows.<sup>140</sup>

In Zanzibar, the Children’s Act establishes Children’s Courts<sup>141</sup> with jurisdiction over matters concerning children as conferred by the Children’s Act or any other law.<sup>142</sup> All proceedings in these courts shall follow the principle of the best interest of the child.<sup>143</sup> A Children’s Court can order a medical practitioner, psychologist, education or developmental practitioner to assist the child during the proceedings.<sup>144</sup> Such courts are authorised to make emergency care orders in respect of children facing imminent harm or in urgent need of protection.<sup>145</sup> With regard to the privacy of child victims, the Act prohibits the publication of names or other particulars or information of child victims which may lead to their identification.<sup>146</sup>

These provisions apply to both **boys and girls** with no distinction.

Under the Anti-Trafficking in Persons Act, **non-national victims** of trafficking are also eligible to receive assistance and protection from the government.<sup>147</sup>

### Access to recovery and reintegration

In mainland Tanzania and Zanzibar, the national legislation does not provide for **specific programmes for support and reintegration** for child victims of OCSEA. Nevertheless, the Anti-Trafficking in Persons Act contains provisions to ensure the rehabilitation and recovery of rescued victims of trafficking, including

<sup>136</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 14(2)

<sup>137</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 15(4)

<sup>138</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 3.

<sup>139</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 11(1)-(2).

<sup>140</sup> Government of the United Republic of Tanzania. (2016). [Law of the Child \(Juvenile Court Procedures\) Rules 2016](#), Rule 11(5).

<sup>141</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 18.

<sup>142</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 18(1)(b).

<sup>143</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 18(7).

<sup>144</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 18(9)(g).

<sup>145</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 22(2)(a).

<sup>146</sup> Government of Zanzibar. (2011). [The Children’s Act No. 6 of 2011](#), Section 33; Section 48.

<sup>147</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 23.

child victims of child sexual abuse material-related offences under the Act.<sup>148</sup> To ensure the social rehabilitation of these victims, the Act makes it the obligation of the social welfare officers to provide legal assistance, psychological assistance, medical and professional rehabilitation, employment and a dwelling place.<sup>149</sup> The Commissioner of Social Welfare must ensure the provision of counselling services to the victims.<sup>150</sup>

With specific reference to child victims, the Act provides that the best interest of the child would be of paramount consideration in any assistance given to rescue, rehabilitate, counsel or reintegrate the child.<sup>151</sup> In addition, the Government shall ensure that child victims are provided with protection, rehabilitation, and assistance from the moment when grounds exist to believe that a child is a victim until identification, integration and complete recovery of the child is achieved.<sup>152</sup>

These provisions apply equally to **boys and girls**.

It appears that these provisions apply also to **non-national victims** of OCSEA, if the offence is committed against them in Tanzania.<sup>153</sup>

### Access to compensation

Under the Cybercrimes Act, an offender may be asked by the court to **compensate** the child victim of OCSEA, in addition to any other punishment.<sup>154</sup> Therefore, child victims are eligible to receive compensation in the judgment of the **criminal proceeding** and do not need to institute an **independent civil suit**, although they are not be barred from doing so.

The Anti-Trafficking in Persons Act entitles victims to receive compensation from the offenders.<sup>155</sup> Additionally, child victims of child sexual abuse material-related offences under this Act are eligible to seek compensation from a **fund** called the 'Anti-Trafficking Fund'.<sup>156</sup> The sources of funds for this Fund

<sup>148</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 17.

<sup>149</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 17(2).

<sup>150</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 17(3).

<sup>151</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 17(4).

<sup>152</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 19(1).

<sup>153</sup> Information received via personal communication with the ECPAT member in the country.

<sup>154</sup> Government of the United Republic of Tanzania. (2015). [The Cybercrimes Act No. 14 of 2015](#), Section 13(3); Section 48(2).

<sup>155</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 15.

<sup>156</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 27.

include: money set aside by the Parliament specifically for this purpose; voluntary contributions; grants and donations; any money or property which may become vested in or payable to the fund in any manner, etc.<sup>157</sup> This fund is maintained by the National Anti-Trafficking Secretariat.<sup>158</sup>

It seems that **non-national victims** of OCSEA are also eligible to seek compensation through this fund.<sup>159</sup>

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<sup>157</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 26.

<sup>158</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 28.

<sup>159</sup> Government of the United Republic of Tanzania. (2008). [The Anti-Trafficking in Persons Act No. 6 of 2008](#), Section 27(d).