

Tanzania

## Children and Young Persons Act Chapter 13

Legislation as at 31 July 2002

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## Tanzania

# Children and Young Persons Act Chapter 13

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[Repealed by [Law of the Child Act \(Act 21 of 2009\)](#) on 1 April 2010]

[R.L. [Cap. 13](#); Ords. Nos. 3 of 1937; 36 of 1940; 13 of 1944; 5 of 1946; 25 of 1947; 38 of 1948; 37 of 1956; R.L. [Cap. 13](#); G.Ns. Nos. 478 of 1962; 73 of 1965; Acts Nos. 55 of 1963; 5 of 1964; 15 of 1980; 9 of 1996]

An Act to provide for the treatment of delinquent children and young persons and for related matters.

### Part I – Preliminary provisions (ss. 1-2)

#### 1. Short title

This Act may be cited as the Children and Young Persons Act.

#### 2. Interpretation

In this Act, unless the context requires otherwise—

"**approved school**" means a school established by the Minister under the provisions of [section 26](#) or any place or institution declared to be an approved school under the provisions of that section;

"**Board**" means a Board of Visitors appointed by the Minister under the provisions of [section 27](#);

"**child**" means a person under the age of twelve years;

"**guardian**" means in relation to a child or young person includes any person who, in the opinion of the court having cognisance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person;

"**juvenile court**" means a district court sitting as prescribed in subsections (1) and (2) of [section 3](#) for the hearing and determination of cases relating to children or young persons;

"**manager**" means the person or body of persons appointed as such under the provisions of [section 26](#);

"**Minister**" means the Minister responsible for social welfare;

"**young person**" means a person who is twelve years of age or more but under the age of sixteen years.

## Part II – Special provisions as to procedure (ss. 3-17)

### 3. Juvenile courts

- (1) A district court when hearing a charge against a child or young person shall, if practicable, unless the child or young person is charged jointly with any other person not being a child or young person, sit in a different building or room from that in which the ordinary sittings of the court are held.
- (2) Notwithstanding subsection (1), if in the course of any proceedings in a district court it appears to the court that the person charged or to whom the proceedings relate is under the age of sixteen years the court shall continue with the hearing and determination of the case in accordance with the provisions of this Act and that court shall be deemed to be a juvenile court.
- (3) If in the course of any proceedings in a juvenile court it appears to the court that the person charged or to whom the proceedings relate is of the age of sixteen years or more the court shall proceed with the hearing and determination of the case in accordance with the provisions of the Criminal Procedure Act <sup>1</sup> but it shall not be necessary for the court to adjourn the case into the public court room unless the court considers it desirable to do so.
- (4) Provision shall be made for preventing persons apparently under the age of sixteen years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from association with adults charged with or convicted of any offence other than an offence with which the person apparently under the age of sixteen years is jointly charged or convicted.
- (5) Where a child of less than eighteen years of age is a witness, a victim, an accused or a co-accused in a case involving a sexual offence, the child shall be tried in camera and separately from the adult co-accused, or the evidence of the child shall be adduced in proceedings conducted in camera.
- (6) In this section "sexual offence" means any of the offences created in Chapter XV of the Penal Code<sup>2</sup>.

### 4. Bail for children and young persons

Where a person apparently under the age of sixteen years is apprehended with or without a warrant and cannot be brought forthwith before a court, the officer in charge of the police station to which he is brought shall—

- (a) unless the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years; or
- (b) unless it is necessary in the interest of that person to remove him from the association with any undesirable person; or
- (c) unless the officer has reason to believe that the release of that person would defeat the ends of justice,

release such person on a recognisance being entered into by him or by his parent or guardian, or other responsible person, with or without sureties for such amount as will in the opinion of the officer secure the attendance of the person upon the hearing of the charge.

1

[Cap. 20](#)

2

[Cap. 16](#)

## **5. Association with adults whilst in custody**

The Inspector-General of Police shall make arrangements for preventing, so far as practicable, a child or young person while in custody, from associating with an adult charged with an offence unless he is a relative.

## **6. Juvenile court may dispose of all cases other than homicide**

When a child or young person is brought before a juvenile court for any offence other than homicide the case shall be finally disposed of in that court.

## **7. Children and young persons may be remanded to the care of a fit person or institution**

- (1) Where a juvenile court remands a child or young person or commits a child or young person for trial before the High Court and the child or young person is not released on bail or is not permitted to go at large, the juvenile court may, instead of committing the child or young person to prison, order him to be handed over to the care of a fit person or institution named in the order, if that person or institution is willing to be responsible for the custody of the child or young person.
- (2) The child or young person shall remain in the custody of that person or institution during the period mentioned in the order or until he is further dealt with according to law and shall be deemed to be in legal custody during that period.

## **8. Court's duty to explain charge**

A juvenile court shall on hearing a charge against a child or young person, explain to him in simple language the substance of the alleged offence.

## **9. Accused to be asked to show cause**

After explaining the substance of the alleged offence the court shall ask the child or young person what he has to say in explanation thereof and whether he has any cause to show why he should not be convicted.

## **10. Accused may be convicted on plea of guilty**

If the statement made by the child or young person amounts to a plea of guilty the court may convict him.

## **11. Attendance, appearance and hearing in juvenile court**

- (1) No person shall, except with the leave of the court, attend in a juvenile court unless he is a member or officer of the court, a parent, guardian or relative of the accused, or one of the parties to the proceedings or an advocate of any of them or a person directly involved in the proceedings in any other way.
- (2) If the child or young person does not admit the offence he is charged with, or if the court does not accept the statement of the accused as a plea of guilty to that charge, the court shall proceed to hear the evidence of the witnesses for the prosecution.
- (3) In all proceedings against a child or young person, where the parents, guardian or relatives attend in the juvenile court, any one of them may, with the prior consent of the court, assist the accused child or young person in the conduct of his case and, in particular, in the examination and cross-examination of witnesses.

**12. Cross-examination of witness**

At the close of the evidence of each witness the court shall put to the witnesses such questions as appear to be necessary or desirable, either for the purpose of establishing the truth or the facts alleged or to test the credibility of the witness.

**13. Defence**

If after the prosecution witnesses have given their evidence the court is satisfied that the facts properly before it establish a *prima facie* case against the accused which, if unanswered, would leave no reasonable doubt as to his guilt the court shall hear the witnesses for the defence and any further statement which the accused may wish to make in his defence.

**14. Procedure upon conviction**

If the child or young person admits the offence and the court accepts his plea or if after hearing the witnesses the court is satisfied that the offence is proved, the court shall convict him and shall then, except in cases where the circumstances are so trivial as not to justify such a procedure, obtain such information as to his character, antecedents, home life, occupation and health as may enable it to deal with the case in the best interests of the child or young person, and may put to him any question arising out of that information. For the purpose of obtaining the information or for special medical examination or observation, the court may from time to time remand the child or young person or may release him on bail.

**15. Attendance at court of parent of child or young person charged with an offence**

Where a child or young person is charged with any offence, the court may in its discretion require the attendance of his parent or guardian and may make such orders as are necessary for the purpose.

**16. Determination of age**

- (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person and make a finding thereon, and for that purpose shall take such evidence at the hearing of the case (which may include medical evidence) as is pertinent and may receive such proof of birth (whether of a documentary nature or otherwise) as appears to the court to be worthy of belief, according to its value, but an order or judgement of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age found by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.
- (2) A certificate purporting to be signed by a medical practitioner registered or licensed under the provisions of the Medical Practitioners and Dentists Act <sup>3</sup> as to the age of a child or young person shall be evidence thereof and shall be receivable by a court without proof of signature unless the court otherwise orders.

**17. Persons appearing to be of the age of sixteen years or more**

Where it appears to the court that any person brought before it is of the age of sixteen years or more, that person shall for the purposes of this Act be deemed not to be a child or young person.

### **Part III – Punishment of juvenile offenders (ss. 18-25)**

#### **18. Probation orders**

- (1) Where a child or young person is convicted of any offence other than homicide, the court may make an order discharging the offender conditionally on his entering into recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called upon at any time during such period, not exceeding three years, as may be specified in the order. A recognisance entered into under this section shall, if the court so orders, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order, if that person is willing to undertake the supervision, and such other conditions for securing the supervision as may be specified in the order.
- (2) The person named in an order may at any time be relieved of his duties and, in that case or in the case of the death of the person so named, another person may be substituted by the court before which the offender is bound by his recognisance to appear for conviction or sentence.

#### **19. Power to vary conditions of release**

The court before which any person is bound by his recognisance under this Act to appear for sentence may, after notice to the offender, vary the conditions of the recognisance and may, on being satisfied that the conduct of that person has been such as to make it unnecessary that he should remain longer under supervision, discharge the recognisance.

#### **20. Provision in case of offender failing to observe conditions of release**

- (1) If the court before which an offender is bound by his recognisance to appear for sentence, or any court, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension, or may if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties, if any, requiring him or them to attend at such court and at such time as may be specified in the summons.
- (2) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognisance to appear for sentence, be brought before any other subordinate court.
- (3) The court before which an offender on apprehension is brought, or before which he appears in pursuance of the summons may, if it is not the court before which he is bound by his recognisance to appear for sentence remand him to custody or on bail until he can be brought before the last-mentioned court.
- (4) A court, before which a person is bound by his recognisance to appear for sentence, on being satisfied that he has failed to observe any condition of his recognisance, may forthwith deal with him as for the original offence.

#### **21. Power to order parent to pay fine instead of child or young person**

- (1) Where a child or young person is convicted of any offence for the commission of which a fine, compensation or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, compensation or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.



- (2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (3) Any sum imposed or ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.
- (4) A parent or guardian may appeal against an order under this section.

## **22. Imprisonment**

- (1) No child shall be sentenced to imprisonment.
- (2) No young person shall be sentenced to imprisonment unless the court considers that none of the other methods in which the case may be legally dealt with by the provisions of this Act or any other law is suitable.
- (3) A young person sentenced to imprisonment shall not, so far as circumstances permit, be allowed to associate with adult prisoners.

## **23. Alternative punishment in certain cases**

Where a child or young person is convicted of any offence other than homicide or other than an offence punishable with imprisonment for a term exceeding seven years, the court may, in addition or alternatively to any other order which may be made, under this Act in its discretion—

- (a) discharge the child or young person without making any order;
- (b) order the child or young person to be repatriated at the expense of Government to his home or district of origin if it is within Mainland Tanzania; or
- (c) order the child or young person to be handed over to the care of a fit person or institution named in the order, if the person or institution is willing to undertake such care.

## **24. When approved school order may be made**

- (1) Where a child or young person is convicted of an offence punishable, in the case of an adult, with imprisonment the court may order that he be committed to custody to an approved school: Provided that no such order shall be made unless the manager of the approved school to which the offender is to be committed has informed the court that he has a vacancy which may be filled by the person in respect of whom it is proposed to make the order.
- (2) An order made under this section is in this Act referred to as an approved school order.

## **25. Young person may be brought before a court in certain circumstances**

- (1) Any administrative officer or police officer above the rank of sub-inspector may bring before a juvenile court any child or young person who—
  - (a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), or being in certain street, premises or for the purpose of so begging or receiving alms;
  - (b) is found wandering and not having home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or has a parent or guardian who does not exercise proper guardianship;
  - (c) is found destitute;

- (d) is under the care of a parent or guardian of criminal or drunken habits;
- (e) is the daughter of a father who has been convicted of an offence under section 158 of the Penal Code<sup>4</sup> in respect of any of his daughters; or
- (f) frequents the company of any reputed thief, or common or reputed prostitute;
- (g) is being persistently ill-treated or neglected by his parent or guardian; or
- (h) is lodging or residing in a house or the part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child or young person,

and the court before which a person is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, may order the child or young person to be taken out of the custody, charge, or care of any person and to be committed to the care of a relative or some other fit person or institution named by the court (if the relative, other person or institution is willing to undertake such care), until the child or young person attains the age of eighteen years or for any shorter period; and the court may of its own motion or on the application of any person, from time to time, by order renew, vary or revoke any such order.

- (2) A court may at any time on the application of the person or institution to whose care a female child or young person is committed under this section, and with her consent, extend the period for which she was so committed until she attains the age of twenty-one years.
- (3) Every order made under this section shall be in writing and any such order may be made by the court in the absence of the child or young person.
- (4) Any person or institution to whose care a child or young person is committed under this section shall, whilst the order is in force, have the like control over him as the parent and shall be responsible for his maintenance, and he shall continue in the care of that person or institution, notwithstanding that he is claimed by his parent or any other person, and if any person—
  - (a) knowingly assists or induces, directly or indirectly, a person in respect of whom an order has been made under this section to escape from the person or institution to whose care he is so committed; or
  - (b) knowingly harbours, conceals or prevents from returning to such person or institution, a person in respect of whom an order has been made under this section who has so escaped, or knowingly assists in so doing,

he shall be liable to a fine not exceeding five hundred shillings, or to imprisonment for three months.

- (5) The Minister may at any time in his discretion discharge a child or young person from the care of any person or institution to whose care he is committed in pursuance of this section, either absolutely or on such conditions as the Minister approves, and may, if he thinks fit, make rules in relation to children or young persons so committed to the care of any person or institution, and to the duties of and remuneration of such persons or institutions providing care to children or young persons under this section.
- (6) A court before which a child or young person is brought under the provisions of this section shall, in addition, have power to make an approved school order in respect of such child or young person in the manner provided by Part IV.

## Part IV – Approved schools (ss. 26-37)

### 26. Approved schools

- (1) The Minister may establish schools or may declare any school or institution to be an approved school for the purposes of this Act.
- (2) Every approved school shall, subject to the provisions of [section 28](#), be managed by a person or body of persons appointed by the Minister by notice published in the *Gazette* to be the manager of the school.

### 27. Appointment of board of visitors

- (1) The Minister may by order establish a Board of Visitors in respect of any approved school, which Board shall consist of a Chairman and other members, appointed by the Minister.
- (2) The members of the Board shall hold office for such term as shall be specified in the order and shall be eligible for reappointment.

### 28. Power of board

- (1) A Board, or any member of a Board with the permission of the Chairman, may—
  - (a) visit the school from time to time;
  - (b) call for all books, papers and records relating to the management and discipline of the school;
  - (c) interview members of the staff and pupils whether resident or on licence;
  - (d) inspect and test the quality and quantity of the pupils' food;
  - (e) inquire into the maintenance of discipline;
  - (f) ascertain whether reasonable facilities are provided for the education, training, welfare and recreation of the pupils;
  - (g) investigate any complaint made by any pupil or member of the staff; or
  - (h) exercise such other powers as may be prescribed.
- (2) A Board may, where it considers it necessary or desirable, make any recommendation in relation to the management of the approved school to the Minister.

### 29. Approved school orders

- (1) An approved school order shall specify—
  - (a) the school to which the child or young person is to be sent; and
  - (b) the person who is to be responsible for conveying him to the school.
- (2) Every order shall contain such information as is, in the opinion of the court, material to be known by the manager of the school.
- (3) A certified copy of every order shall be delivered to the person responsible for conveying the child or young person to the school and shall be delivered by him to the manager.
- (4) An order shall be sufficient authority for the detention of the child or young person in the school for a period not exceeding three years or until he attains the age of eighteen years, whichever is the earlier.

**30. Approved school orders may be suspended**

The operation of an approved school order may be suspended pending completion of arrangements for the reception of the child or young person into an approved school, or on account of his ill-health or for other good and sufficient reason and in the case the court may remand him in custody or may order him to be committed to the care of a fit and proper person willing to undertake the custody, or may release him on bail.

**31. Authority for detention**

A child or young person while detained in an approved school in accordance with the provisions of this Act and while being conveyed to or from such school shall be deemed to be in legal custody and if he escapes may be apprehended without warrant and brought back to the school.

**32. Extension of period of detention**

If the manager of an approved school is satisfied that a person whose period of detention is about to expire needs further care or training he may, with the approval of the Minister, detain him for a further period not exceeding one year, so however, that he is not detained beyond the date upon which he attains the age of eighteen years.

**33. Power of manager to bring persons detained before a court**

If the manager of an approved school is satisfied that any person committed to the school is of so unruly or depraved a character that it is undesirable that he should remain at the school, he may, with the approval of the Board, cause that person to be brought before a subordinate court having jurisdiction in the place where the school is situated or before the court which made the approved school order and that court may make any order which could have been legally made by the committing court under the provisions of this Act.

**34. Transfer of incorrigibles, etc., to prison**

Where a young person detained in an approved school is reported to the Minister by the manager of the approved school to be of so unruly or depraved a character that it is, in the opinion of the Board, undesirable that he should remain at such school or to be incorrigible or to be exercising a bad influence on the inmates of the school, the Minister may commute the whole or part of the unexpired residue of the period of detention to a term of imprisonment but in no case exceeding the unexpired residue.

**35. Discharge and transfer from approved school**

The manager of an approved school may—

- (a) with the approval of the Board, order any child or young person whose period of detention has exceeded six months but has not exceeded twelve months to be discharged;
- (b) order any child or young person whose period of detention has exceeded twelve months to be discharged;
- (c) with the approval of the Board, order any child or young person to be removed from one approved school to another.

**36. Release on licence**

- (1) The manager of an approved school may, with the approval of the Board, permit a child or young person under detention in the school, by licence in writing, to live under the charge of any trustworthy and respectable person willing to receive and take charge of him, subject to the

conditions that that person take proper care of such child or young person and keep him employed at some trade, occupation or calling.

- (2) The manager may for good and sufficient reason cancel any licence issued in accordance with the provisions of subsection (1) of this section and shall inform the Board of the cancellation.
- (3) Where any licence relating to any child or young person is cancelled or expires the manager or other person authorised by him shall, unless the period of detention of the child or young person under the provisions of this Act has expired or an order for his discharge has been made under the provisions of [section 32](#), endorse such licence accordingly and any licence so endorsed shall be a sufficient warrant for the apprehension of the child or young person to whom the licence relates and his removal as soon as is practicable to the school.
- (4) A licence shall be valid for a period of not more than three months but shall be renewable if the manager thinks fit.
- (5) Any time spent on licence shall count as time spent in the approved school.

### **37. Enforcement of approved school orders made in zanzibar**

- (1) Where in pursuance of the powers conferred by subsection (1) of the Approved Schools Decree, 1945, of Zanzibar, it is ordered that a child or young person in respect of whom an approved school order has been made in Tanzania Zanzibar shall be removed to and detained in an approved school in Mainland Tanzania it shall be lawful for that child or young person to be detained in an approved school in Mainland Tanzania in accordance with the terms of that order.
- (2) The following provisions shall apply to such child or young person in the same manner as if an approved school order had been made in Mainland Tanzania in respect of him, namely—
  - (a) [section 31](#), which relates to the apprehension of a child or young person who escapes;
  - (b) [section 32](#), which relates to extending the period of detention in certain cases;
  - (c) paragraph (a) of [section 35](#), which empowers the manager of an approved school with the approval of the Board to discharge a child or young person whose period of detention has exceeded six months but has not exceeded twelve months;
  - (d) paragraph (b) of [section 35](#), which empowers the manager of an approved school to discharge a child or young person whose period of detention has exceeded twelve months;
  - (e) paragraph (c) of [section 35](#), which empowers the manager of an approved school with the approval of the Board to transfer a child or young person to another approved school; and
  - (f) [section 36](#).
- (3) A child or young person to whom this section applies shall, at the expiration of his detention in, or upon his earlier discharge from, an approved school under the provisions of this Act be returned to Tanzania Zanzibar.
- (4) Where the manager of an approved school is satisfied that the child or young person is of so unruly or depraved a character that it is undesirable that he should remain at the school, he shall report the matter without delay to the Minister who shall thereupon arrange for a suitable officer to be sent to Mainland Tanzania with authority to receive such child or young person into custody and to convey him to Zanzibar, there to be dealt with according to the law of Tanzania Zanzibar.

## **Part V – Appeals and revision (ss. 38-40)**

### **38. Time for appeal**

Every appeal against an order or sentence made or passed by a district court under the provisions of this Act shall be entered within seven days of the date of the order or sentence appealed against:

Provided that the High Court may for good cause admit an appeal out of time.

### **39. Revision**

If no appeal is entered against an approved school order made by a district court under the provisions of this Act within the time allowed by [section 38](#), a copy of the Act together with the proceedings shall be sent forthwith to the High Court and the High Court may in the exercise of its revisional jurisdiction make such order as it may deem proper.

### **40. Repealed**

*[Repealed by Act [No. 9 of 1996 Sch.](#)]*

### **41. Approved school order to take effect pending consideration by High Court**

Notwithstanding anything contained in [section 30](#), an approved school order shall not be suspended for the reason only that no order by the High Court in the exercise of its appellate or revisional jurisdiction has been received unless the child or young person concerned is committed to the care of a fit and proper person or released on bail.

## **Part VI – General provisions (ss. 41-43)**

### **42. Power to make rules**

- (1) The Minister may make rules for the better carrying out of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, for any of the following purposes—
  - (a) providing for the management, control, discipline and interior economy of approved schools;
  - (b) providing for the licensing of children and young persons detained in approved schools;
  - (c) providing for the education and training of children and young persons detained in approved schools;
  - (d) prescribing additional powers to be exercised by the Board.
- (2) Rules made under this section may be expressed to apply to all approved schools or to any particular approved school.

### **43. Application to primary courts**

- (1) The Chief Justice may, by order published in the *Gazette*, extend any provisions of this Act which relate to district courts or to primary courts or to any primary court or category of primary courts.
- (2) Where the Chief Justice extends the provisions referred in subsection (1) to any primary court, he may, by the rules, modify any of the provisions of this Act relating to procedure, appeals or revision in order to bring the same into conformity with the provisions in that behalf contained in the Magistrates' Courts Act<sup>5</sup>.

### **44. Effect of this act on other laws**

Save in so far as other provision is expressly made in this Act, nothing in this Act shall be deemed to affect any other law relating to the trial and punishment of offenders.