

WORKSHOP REPORT

Challenging persistent violations of children's rights: Encouraging effective legal advocacy in East Africa

21 - 23 January 2015

Dar Es Salaam, Tanzania

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1. Workshop overview

The workshop was the third legal advocacy workshop organised by CRIN after a national workshop in Turkey in 2011 and a regional workshop on South Asia in Nepal in 2013. The aim of these workshops is to explore how CRIN can most usefully support national campaigns and encourage the use of stronger forms of legal advocacy - including strategic litigation - to challenge violations of children's rights. In particular, we want to encourage those involved in children's rights advocacy, and others working in the wider human rights field, to review persisting serious violations of children's rights and consider all possible forms of advocacy to challenge these.

The specific aims of this workshop were to:

- Review an agreed selection of persistent violations of children's rights affecting different groups of children and different settings of children's lives (such as right to health, right to education, juvenile justice, corporal punishment, child marriage, harmful traditional practices, etc.) and "match" them with possible forms of legal or quasi-legal advocacy;
- Identify what is needed to use these forms of advocacy (for example, do individual child victims have to be identified to bring a claim, are appropriately trained and experienced lawyers available and are sufficient resources available to support legal action?);
- Identify what obstacles there are to using these and any other stronger forms of advocacy;
- Discuss what CRIN can do to encourage and support these forms of advocacy in each country;
- Produce concrete and realistic work plans on challenging children's rights violations in each country through use of the law.

The two-and-a-half-day programme consisted of a mix of plenary sessions, inter-country working groups to exchange experiences and country group work on legal advocacy plans.

On day one, we started off with a discussion of the meaning and necessity of legal advocacy for children's rights. For an explanation of CRIN's increasing focus on encouraging effective legal advocacy of children's rights globally, see the speech by Peter Newell, CRIN Council Member and Coordinator of the Global Initiative to End All Corporal Punishment of Children in Annex III to this report. We then explored different children's rights violations, based on the persistent violations research CRIN had undertaken ahead of the workshop. The first inter-country working group session consisted of three groups, and was spent discussing examples of legal advocacy from participants' own experience of working in their respective countries. The second inter-country working group session took place in five groups focussing on the following thematic areas:

- Corporal punishment and other forms of violence against children;
- Right to life and health;
- Children in conflict with the law;
- Right to education;
- Discrimination of certain groups of children.

On day two, we built on the work undertaken on the previous day to develop detailed country specific plans for incorporating legal advocacy into children's rights campaigning. Participants worked on developing legal advocacy plans in country groups following a legal advocacy plan checklist template. The groups worked on plans concerning the following issues:

- Tanzania: legal challenge of the Tanzanian government in the form of a collective constitutional complaint by the group of NGOs over the government's failure to protect the right to life and health of children with albinism; the right of education of children living in the street and in other vulnerable situations;
- Uganda: right to education - specifically, privatisation and the rights of children with disabilities, potentially involving a constitutional challenge; intersex children; and children in street situations;

- Kenya: right to education, focusing on three areas of possible litigation: privatisation, sexual violence in schools and minimum standards for schools.

On day three, rapporteurs for each of the three country groups presented their plans to the whole group for feedback. Subsequently, we discussed what CRIN can offer to support and assist participants in moving forward with their plans.

2. Day 1: Working group sessions

a. Experience with legal advocacy on children's rights in East Africa

The first working group session served as a forum to explore what has happened on legal advocacy on children's rights in each of the three countries represented in the workshop. Participants discussed experiences in three inter-country groups.

The session was based on CRIN's definition of legal advocacy: *"Legal advocacy" or "legal action" means threatening or going to court or using other complaints mechanisms to challenge rights violations – which occur due to absent or weak laws, or because of the laws themselves.*

Group 1

In Uganda, public interest litigation has grown in the past 10 years due to the use of various mechanisms (e.g. the enforcement mechanism for an actual or threatened violation of a right (Constitution art. 50) and the provision for interpretation of the Constitution (Constitution art. 37)). There are several examples of legal advocacy, including children's rights legal advocacy:

- A constitutional petition challenging FGM (Law & Advocacy for Women in Uganda v. Attorney General), resulting in Parliament amending the law;
- Corporal punishment challenges in the Supreme Court (Simon Kyamanywa) and with the Human Rights Commission (Emmanuel Mpondi), which led to the Constitution being amended to abolish corporal punishment in all settings;
- A judicial corporal punishment challenge concerning defendants who were convicted of witchcraft and sentenced to lashing, which led to corporal punishment being found to be unconstitutional by the Supreme Court (Salvatori Abuki);
- A Law Society challenge on children and the death penalty;
- A current Law Society High Court challenge concerning children who are mentally deranged in the juvenile justice system;
- CEHURD's constitutional petition regarding maternal deaths (constitutional petition no. 16/2010), which resulted in the state implementing all requests; and
- In the case challenging the Anti-homosexuality Act, the Human Rights Commission was sent for training in South Africa and subsequently issued a strong statement against the Act.

Despite the above, culturally there has been a lack of maturity to bring cases, and magistrates do not take a legalistic approach.

In Kenya, there have been some public interest litigation challenges, including on child rights, and courts are receptive, especially to international law. The laws in Kenya are well-developed (e.g. the Constitution 2010 provides strong standing to bring actions for violations of the Bill of Rights; other laws include the Children's Act 2001, Sexual Offences Act, Counter-trafficking in Persons Act, and Prohibition of FGM Act). Examples of legal advocacy, including child rights legal advocacy, include:

- A case challenging discrimination against children born outside of wedlock (CRADLE v. Attorney General);
- A 2012 constitutional case concerning a failure to prosecute for sexual offences (Ripples);
- A 2014 case concerning discrimination against intersex children (Baby A);
- Cases on the right to education, such as on school fees and same-sex schools;
- MDAC's case on people with mental disabilities;
- There is a case in progress on refugee children; and
- A case concerning children neglected as a result of parents being arrested.

However, there is low awareness and low reporting of child rights violations. Lawyers are not aware of regional mechanisms and there is a problem with implementation (e.g. Nubian children case). Regarding legislative developments, the Legal Aid Bill, which would allow for legal aid for everyone without a means test, has not yet been passed. The Child Justice Bill proposes to increase the minimum age of criminal responsibility from 8 years to 12 years. There is a Children Amendment Bill on diversion.

In Tanzania, there are some public interest litigation cases, but legal advocacy is not as well-developed as in Uganda or Kenya. Examples of children's rights cases include the current challenge to the policy of the Ministry of Education regarding pregnant girls in school, and the challenge to the Marriage Act concerning girls. An individual rather than rights-based approach is taken, with lots of cases brought against perpetrators who have received prison sentences, and most interventions being charity-based. There is no national legal aid system. NGOs are active and bring cases but this is not done collectively, and there are few campaigns. The Law Reform Commission and the Human Rights Commission (which has a children's rights department) are positive institutions but they do not have the power to enforce, only to recommend change, and the government has been slow to respond. There are also cultural and religious obstacles to enforcing children's rights through legal advocacy.

Group 2

Participants from Uganda had substantial experience in legal advocacy and strategic litigation and shared various examples with the group.

- In 2014, ISER lodged a complaint on the right to education and health to secure education free of charge for all children as government funding for education has been decreasing in Uganda. The case received support by a sympathetic member of parliament. An injunction was denied by the court because of budgetary issues. This was a test case and it attracted a lot of curiosity from different stakeholders. Different parliamentarians came forward as a result of the litigation and said they will try to raise education grants;
- Participants from Uganda encouraged other advocates not to fear the courts and to engage in legal activism; and
- A case was filed in front of the Ugandan Human Rights Commission in the 1990s and as a result, corporal punishment was prohibited. But it is still carried out widely to date as implementation of laws is a big problem.

There has so far only been little impact litigation in Tanzania and several participants shared the difficulties they have had with holding the government to account.

- The National Organisation for Legal Assistance has in the past brought a case in the High Court to challenge the different marriage ages for girls and boys. The petition was dismissed on a technical issue. The case was first tried with claimants in the regions and then in the High Court in Dar Es Salaam, but the court has not simply not assigned the case to any judge since 2008 and the case is completely stagnant;
- The fact that the laws are different in mainland Tanzania and on Zanzibar is an issue;
- Corporal punishment is still legal in Tanzania and it is hard to find committed lawyers to litigate on this issue. Participants only knew of criminal cases on corporal punishment, but there have not been wider challenges;
- There is a need in Tanzania to include the religious leaders in the children's rights debate, otherwise change cannot be achieved across the board. Participants suggested a workshop with church leaders on these issues; and
- In the Tanzanian regions, there are few lawyers and a lot of work is done by paralegal centres which use a lot of local remedies and less litigation in court. People in the regions usually see filing a case in court a very last resort as they shy away from courts because

these are too expensive. There are gender and children's desks at the police stations which can be very effective in mediation and awarding local remedies. One participant had recently worked on a case of child marriage where an agreement was reached through mediation at the police station. Also court mediation proceedings are used.

There have been several recent successes in the Kenyan courts on children's rights cases.

- FIDA has filed litigation in Nairobi to secure rights for children born out of wedlock. If a couple is not married, a child's father is not recorded on the birth certificate. If a child does not have a father, he or she then cannot be registered for a national identity card or for the school system. There are currently two cases in the courts on this issue at the same time and a positive decision could have a widespread effect for children all across the country. The judges in one of the cases have recently asked the government to file their papers on this case and FIDA are anticipating a hearing;
- Another participant from Kenya shared her experiences with litigation to secure rights for intersex children. A recent case brought by Kituo challenged the legal requirement that each child requires gender clarity (m/f) to be admitted to the school system. The challenge was successful in court and the case attracted a lot of public interest. Now Kituo are pushing for recognition of a third gender and the case can be used as a precedent for others advocating on behalf of intersex children; and
- Participants from Kenya have had good experiences with mobilising a critical mass of supporters consisting of many different stakeholders, such as elected leaders or law enforcement agents.

Group 3

In Tanzania, a new constitution is being discussed, and there is hope that it will include more child rights provisions. For instance, the right to education is not considered as a basic fundamental right so far and can therefore not be challenged in the High Court. There is a Child Act, but not many precedents for challenges under it. Many barriers prevent successful public interest litigation. For applicants, they include: length of proceedings, poverty, distance to the High Court, and lack of knowledge. For legal practitioners, they include: lack of legal expertise so not lose on a technicality, corruption, and the fact that most violations occur in villages where no civil society organisation or lawyer can take on cases. Lawyers generally tend not to take children's rights cases and a lot depends on the work of NGOs. Generally, children's rights are a so far undeveloped area, and people are used to seeing parents as duty bearers/rights holders rather than the children themselves.

In Kenya, CRADLE, has so far brought six cases under the Children Act (2001), inter alia regarding children born out of wedlock, discriminatory provisions in the Act, and length of proceedings and bail for child offenders. For children affected by HIV, there are good examples of litigation in front of the HIV Tribunal, which is considered a friendly court. Kenya is the only country where such a tribunal exists. The new Constitution is very human rights heavy, and introduces a monist legal system. It has strong provisions on children rights as well as on economic, social and cultural rights, and there is now a lot of potential to use the constitution for strategic litigation regarding these rights. For instance, the right to education has become enforceable under the new Constitution. A Child Justice Bill is currently being discussed and is supposed to give protection to child offenders. Participants from Kenya that there is a certain fear of going to court to file public interest litigation because it is difficult to foresee costs for NGOs involved.

Uganda has a detailed Constitution, guaranteeing specific children's rights. The legal framework is good, but legal proceedings are not independent. Court petitions are not perceived as very successful. The Children Act has domesticated the CRC. However, when lawyers try to cite regional mechanisms in support of national litigation, this is usually rejected by judges. Examples

of litigation include a challenge to “clean the streets” of street children for head of states visits. and a challenge of the exclusion of refugee children from nationality law. There is a gap in the way children’s rights are interpreted. Participants identified a need to educate judicial professionals and involve children in proceedings so that they are seen as rights holders. This is particularly difficult when dealing with armed conflict as child soldiers often do not think of themselves as children and procedures are not adapted to their specific cases and requirements.

b. Legal action to challenge persistent violations of children’s rights

During the second working group session, participants focussed on specific areas of persistent violations of children’s rights based on the persistent violations briefings prepared by CRIN on Kenya, Tanzania and Uganda. Participants discussed opportunities for legal challenges of these violations in five inter-country groups.

The discussion was guided by the following questionnaire:

1. Overview of violation to be discussed - which children it affects, what rights it violates and why it needs to be addressed.
2. Why does the violation persist? If the violation is lawful, why has government/parliament not prohibited the violation? If the violation is not lawful, why isn’t the law being fully enforced?
3. Have there been previous legal challenges, did they succeed or fail? If they failed, why?
4. What are different options for legal challenges now?
5. How can child victims be identified where necessary to pursue legal action and to collect evidence of violations?
6. Who are the possible partners for challenges, if needed?
7. What are the various steps for the challenge from now?
8. Are there any identified obstacles? How will these be overcome?

Group 1: Corporal punishment and other forms of violence

This working group consisted of Francis Omondi (Mkombozi, Tanzania), Kizito Ssekitooleko (East African Centre for Social Research and Empowerment, Uganda), Prudence Mutiso (The Cradle, Kenya) and Jones John (Tanzania Child Rights Forum), and focussed on corporal punishment as well as other forms of violence against children.

The group started off by discussing a range of different forms of violence against children which are prevalent in the region, including sexual abuse of children, female genital mutilation, violence against children with disabilities, child marriage, sex tourism, inter-country adoptions, commercial sexual exploitation of children, and child trafficking. Discussions then went to focus on corporal punishment and it was found by participants that corporal punishment affects most children across Tanzania, Kenya and Uganda and that cultural norms and social practices on this issue are also cross-cutting in all three countries. Even in those countries where corporal punishment is banned by law, these laws are not being enforced. Participants had come across several extreme cases on corporal punishment in their countries, which are in the courts at the moment, as the practice still goes unabated in the local communities and schools.

A comparison of the relevant legal provisions in the three countries covered by the workshop found that Kenya and Uganda have banned corporal punishment while Tanzanian laws still allow the practice. In Kenya, the Constitution and the Childrens Act Amendment Bill ban corporal punishment. In Uganda, corporal punishment is also banned by the Constitution and Children Act. Participants from Uganda mentioned several cases which were particularly important in this

context. In the criminal case of *Chamnwa v. Uganda*, the Constitutional Court declared the practice unconstitutional. Also, in *Emanuel Mpondi v. B.O.G*, a case brought by a child who had been severely beaten, a challenge was brought before the Human Rights Commission. In *Salvatore Abuki v. A.G*, traditional notions of witchcraft and related violence were challenged. Usually, cases which make it to the courts are criminal challenges of individuals over violations, and private prosecution is a possibility in case the prosecution service fails to bring a case. But there is scope for public interest litigation aside from criminal trials of individuals.

In Tanzania, corporal punishment is still widely practiced and there is no control or regulation. The Education Act and Law of the Child Act both allow corporal punishment and it is seen as part of education culture across the country, hence there is strong government push back against initiatives trying to challenge corporal punishment. Corporal punishment is also still being used as a form of punishment in the judicial setting for children in conflict with the law. Nonetheless, there are NGO initiatives currently trying to push the government to enact child protection guidelines which could oust the practice if the government was to implement a set of recommendations made by NGOs and a related code of conduct for teachers. Violence against children with albinism was raised as a particularly ripe issue in Tanzania.

The group discussed how they might be able to bring collective actions by victims, e.g. in the form of class action lawsuits, to increase pressure on governments. Many different ways of finding clients and victims were identified, such as media reports, child protection committees, referral systems, child help lines, happy and sad boxes, letter link boxes, gender and help desks at police stations, paralegal networks, vulnerable committees and support groups.

In terms of strategy and aims of litigation, a best practice example from Sweden was discussed where legal reform banning corporal punishment was accompanied by a public education programme. The same approach could be used in East Africa to educate society about existing or new laws banning corporal punishment. Participants suggested that a critical mass of supporters should be assembled to push for amendments to laws on corporal punishment in Tanzania and that a consideration of international and regional standards and instruments banning corporal punishment should be incorporated in strategic litigation. Challenges and obstacles to litigation and other advocacy were seen in the cultural and societal norms in the three countries, inadequate resources, capacity of lawyers to undertake cases especially with regard to the time it might take to get a decision from the courts, legal fees and court costs. But participants found several ways of how some of these obstacles could be dealt with, such as cooperation with the Tanganyika Law Society in Tanzania and application for exemption from filing fees in Kenya.

Group 2: Right to life and health

The working group on the right to life and health - consisting of Brenda Dora (Kituo cha sheria, Kenya), Patrick Kangethe (Kelin, Kenya), Bemih Kanyonge (Mburugu & Kanyonge Associates, Kenya) and Philomena Modu (Wellspring Advisors, Tanzania) - discussed the right to life and health in the, primarily with regard to children with albinism and children with HIV. The discussion on the right to health revolved around issues of privacy and confidentiality.

In Kenya, children with HIV and AIDS face violations of their right to education, the right to food, the right to property in case of death of the parents, the right to non-discrimination and the right to parental care. Many cases have been filed in Kenya on behalf of adults and children with HIV and there is a specific tribunal for HIV-related cases. There are ongoing cases about forced sterilisation of women and cases relating to misdiagnoses. The issue of the right to privacy was discussed, as well as its relation to human dignity. In schools, parents do not necessarily disclose their children's HIV-positive status to teachers as this causes stigmatisation. In order to get tested for HIV, children need consent of an adult. Only some children are exempted, such as children at

risk, married children, and pregnant girls. Non-disclosure of the status as HIV-positive is considered an offense. HIV patients are given a “reasonable time to disclose” their condition to their sexual partner.

The issue of HIV and children’s right to privacy was identified as a concrete example of possible public interest litigation as the law here contains itself the violation of the right by requiring the authorisation of an adult for a child to be tested for HIV.

Violations of the rights of children living with albinism in Tanzania was further discussed, including harmful traditional practices of witchcraft, and violations of their right to life. The violation persists because it is a political issues, sometimes politicians themselves are “beneficiaries” of witchdoctors. The excuse of “culture traditions” is used widely, and the root cause is not addressed. As violations mostly occur behind closed doors, they are difficult to address. Children with albinism suffer even more violations of their rights with the elections approaching in Tanzania, but the issue also receives wider coverage globally. A ban on witchcraft was recently adopted in an attempt to stop these violations. This may be helpful to bring perpetrators to justice, but not for challenging the state’s responsibility to protect children. With regards to the right to health, children with albinism face similar violations than the ones faced by children living with HIV in Kenya. Their special needs are rarely taken into account. In Kenya, children with albinism are cared for together with blind children, while their needs can be entirely different.

Identifying the right case, and filing one rather than ten cases was considered crucial by participants, but NGO strategies sometimes go against this notion. It was suggested to find like-minded partners, and invite other partners as *amicus curiae* to overcome this challenge. Ideally, a case would require a proper “face to the case”, i.e. the right petitioners. The Kenyan Constitution allows public interest litigation without the need to identify a specific victim. In such a case, you would find yourself with no face to the case, and would need to find a way around this in order to be able to publicise the case. Getting the right organisation to take on the case could be a way to overcome this challenge.

The group discussed how collecting evidence could prove difficult in a health-related case: hospitals are often suspicious about requests for information, even when they are in a patient’s name. Filing for access to personal data would therefore potentially be a prerequisite. Another issue relating to evidence is that medical experts can sometimes refuse to testify against a fellow doctor. A way around this issue would be to find an expert from abroad, who will be more likely to testify. With regards to violations perpetrated against children with albinism, the fact that the issue is mainly kept secret could compromise evidence gathering. When violations are reported, they are often dismissed. Partnering with local organisations, medical practitioners and community paralegals would be crucial to identify victims and conduct any fact-finding.

With regards to legal avenues, the possibility to seek court-supported alternative dispute resolution was discussed, with the limitation that it does not necessarily create the necessary jurisprudence. Any legal strategy would benefit from researching relevant rules of ethics for medical and education professionals.

Group 3: Children in conflict with the law

This working group focussed on the flawed juvenile justice systems, including issues such as detention of children in prisons with adults, lack of children’s courts/judges, low age of criminal responsibility, life imprisonment and other forms of inhuman sentencing of children. The session was attended by Hussein Sengu (Legal and Human Rights Centre, Tanzania), Stephen Oola (Refugee Law Project, School of Law, Makerere University, Uganda), Patricia P’Odong (Public Interest Law Clinic, School of Law, Makerere University, Uganda), Kokuteta Mutembei (Ekama

Development Foundation, Tanzania), Mary Richard (Tanzania Women Lawyers Association) and Charles Nkonya (National Organisation for Legal Assistance, Tanzania). As all participants in this session were from either Uganda or Tanzania, we focussed on these two countries. In both countries, flawed juvenile justice provisions affect especially the most vulnerable groups of children, such as children living in the street, children from poor family backgrounds, orphans and former child soldiers, especially in Uganda.

In Tanzania the minimum age of criminal responsibility is 10 years and 12 years in cases of sexual violence and children can be sentenced to life imprisonment. If found guilty and sentenced to imprisonment, children are imprisoned in the same facilities as adults. Children are mostly tried in ordinary courts and judges generally lack specialised training as there is only one Juvenile Court, based in Dar Es Salaam. Any Magistrates Court can determine matters concerning children. Four further Juvenile Courts are said to be under construction, but it is hard to say when they will be up and running. Detention of children is common in Tanzania, and not just seen as a last resort; it is part of general police mentality and police officers tend to have limited knowledge of the law itself. There is a general lack of awareness of legal procedures. Special procedures for children in conflict with the law were published recently, but are not widely enforced. There is no possibility of diversion or other alternative measures to deal with children breaching laws. Only very few remand homes exist in Tanzania; they are insufficient and lack many basic services, such as sufficient food or bedding. Many children are detained at remand homes for very petty offences. The law provides for various relevant institutions to deal with children in conflict with the law, but a lot of institutions are simply not in place. There was a recent case of a child sentenced to life imprisonment for rape in Dar, and the situation is even worse in the regions.

In Uganda, the Children's Acts provides for a child-friendly criminal justice system and the age of criminal responsibility is 12 years. Magistrates Courts generally sit as Family and Children Courts in criminal matters concerning children, but many magistrates are not trained in working with children. Many children are not represented at all in court proceedings. A lot of advocacy is happening to push for diversion of children so they do not end up in the criminal justice system and there is no life imprisonment of children. Remand homes are not well equipped and lack rehabilitation and reintegration programmes, but at least children are detained only with other children. At police stations, children have to share cells with adults. Remand homes are not available in every district of Uganda and tend to be very overcrowded. There have also been serious allegations of torture and mistreatment in detention at remand homes, and of hard labour. There is a big problem of education and schooling of children in detention, and they tend to not have learned any skills by the time they leave the remand home. The lack of bail for children is also critical as sometimes children are held for long before a decision on their conditions is made. The right to privacy of child victims as well as child offenders is violated regularly as alleged child offenders are often paraded in the media. There is much need to build capacity of law enforcement officers and probation officers in Uganda, and a general lack of such officers persists across the country.

Violations in Tanzania persist mainly due to a lack of implementation and enforcement based on a lack of capacity. There is a 70% gap in staffing of the judicial sector and a general lack of political attention to the situation of children in conflict with the law. Even though there are many local Children's Councils, these are largely ineffective and dysfunctional. In Uganda, the predominant factor behind violations of children's rights in the criminal justice system is the general lack of knowledge and limited capacity of judicial officials, police and probation officers, triggered by corruption and a lack of supervision. There is insufficient political will to address issues such as mistreatment of children in remand homes and a lack of facilities overall.

Participants were not aware of any previous legal challenges of these violations or impact litigation on juvenile justice issues in either Uganda or Tanzania. In Tanzania specifically, public interest

litigation is hindered by the fact that there is no publicly funded legal aid system. The group discussed a case from Tanzania where an entire family was tried and convicted of rape charges and the whole family was sentenced to life imprisonment. Only on appeal was the sentence of the child revised. Therefore, participants from Tanzania suggested that a legal challenge of the lack of implementation of provisions concerning children as well as the minimum age of criminal responsibility and life imprisonment of children could be considered. As the Children's Act in Uganda is generally in conformity with the CRC and the state has taken steps to establish a functional system, the possibilities for impact litigation to challenge the law are limited. Yet, participants thought that it would be useful to build a case to challenge conditions in detention. The main issue in terms of fact-finding in order to prepare such a case would be that prisons and remand homes generally deny access for evidence gathering.

Access to victims for legal challenges in both countries could be established through monitoring media and other reports as well as police stations, prisons and remand homes. In Tanzania, victims could also be located through the various independent legal aid organisations and the Human Rights Commission.

Possible partners for mounting a challenge in both countries were found to be child-friendly judges and other duty bearers who can be instrumental in challenging implementation issues and raising awareness. In Tanzania, the Tanganyika Law Society could also be a good partner. In Uganda, the Law Society was not seen as a good partner as it is very much politicised and dominated by political powers.

The necessary steps before a challenge could be filed in court would be to monitor and document violations of children's rights in the criminal justice system, investigate and collect evidence, explore available options for redress, and potentially forum shopping within the national courts (e.g. Dodoma High Court over Dar Es Salaam High Court in Tanzania).

The main obstacles for any challenge in both countries was seen to be corruption across the whole judicial system, lack of access to detention facilities, stigmatisation of children in conflict with the law across society, lack of political will, backlogs in the courts and finding credible witnesses. In both countries, the cost of impact litigation would be difficult to overcome, especially in Tanzania where legal aid is not available.

Group 4: Right to education

The working group on the right to education - consisting of Mwemezi Makumba (Hakielu, Tanzania), Sylvia Mbataru (Hakijami, Kenya), Saphina Nakulima (Initiative for Social and Economic Rights (ISER), Uganda), and Gilbert Onyango (East Africa Center for Human Rights, Kenya) - discussed the right to education, primarily with regard to girls, children with disabilities, and privatisation of education.

Across all three countries, equal access to education as well as the low quality of public education were identified as problems. Children in rural areas do not have equal access to education, and public schools in these areas generally lack adequate classrooms and teachers. In Tanzania and Uganda, public schools lack appropriate facilities for children with disabilities, and private schools which do cater for such children are too expensive. In Uganda, sanitation and appropriate toilet facilities for girls in schools are lacking. Pregnant girls in Uganda as well as children with disabilities in Tanzania also suffer stigmatisation. In Kenya, accessibility of education for children in slums is a problem.

Privatisation of education was identified as a problem, particularly in Uganda and Kenya. Private schools mostly have better quality education but are largely not accessible due to cost. In Uganda,

poor households cannot afford to send their children to private schools, and public schools are absent or far away. In Kenya, there is a lack of public schools - according to research in Nairobi, there is only one school per 400,000 people. As a result, children are forced to attend private schools, which are not free, and there is no monitoring of fees in such schools.

Education is a right which enables other rights to be attained; if it is not addressed, there is a higher risk of these affected children being denied the ability to work and to attain an adequate standard of living.

In all three countries, the right to education is protected by law: Uganda Constitution; Kenya Constitution and Children's Act; and Tanzania Children's Act (imposes obligation on parents to take children to school) and "national objectives". However, there is a lack of political will to monitor and address the disparity between public and private schools, as well as problems of mismanagement and/or lack of funding for public education. In Kenya, certain areas and groups are marginalised, and it is believed that a lack of access to education is used to subjugate the poor.

Litigating economic, social and cultural rights is a challenge because such rights are seen as part of the developmental agenda, as well as an issue of resources ("progressive realisation" of ESC rights). However, the minimum available resources need to be distributed equally, and discrimination must be avoided.

In Tanzania, there are a few relevant cases - a 15-year-old girl took her parents to a district court and won, but this case may be appealed; and a pregnant girl has brought a case under the Children's Act to continue her education after delivery. However, these cases are usually resolved through mediation at the community level when a parent refuses to take a child to school. There are several obstacles to bringing legal challenges: the Advocates Act prohibits lawyers from issuing services for free, with the exception of court-appointed lawyers and NGOs; and there is a lengthy procedure under the Finance Act for money to be provided from treasury to schools.

There are or have been several cases in Kenya - in 2014, a judge cited international law and recognised the right to education of a child; a case on the right to education and privatisation is currently under consideration; there are other general cases on adjudicating ESC rights; and there is a flurry of cases brought under the new Constitution (though judges have said that the non-legal way of presenting cases has made it difficult for them to adjudicate). There is a low level of knowledge and expertise on litigating ESC rights - a 2010 study found that the government, lawyers, judges and public do not know how to litigate or adjudicate on such issues. There is also now a massive reduction in litigation due to potential costs orders against NGOs if unsuccessful.

In Uganda, ISER has an ongoing case regarding funding of public schools. It sought an injunction to stop the government from reducing funding for public schools, but was unsuccessful as this would have stopped the budget process, though it raised much support and is now awaiting a hearing of the main lawsuit. There are some obstacles to bringing these cases - courts have said that ESC rights are a matter for the executive; and there is a lack of interest in pro bono legal work, although NGOs take the initiative.

In Tanzania, it may be possible to suggest that a provision on the right to education be put in the draft Constitution, though there is no political consensus on this - this would make the right to education legally enforceable. There may also be scope to review the Budget Act Bill - the Bill addresses the proper channelling of funds and transparency generally and gives more power to parliamentary committees to review the budget, but does not mention education specifically. It is difficult to use the current Children's Act provision to protect the right to education.

In Kenya, there are upcoming reviews of the State under the CRC, ICESCR and UPR. Collaboration, including potentially a network, between those working on ESC rights and those on development will be important. An equivalent to the HIV Tribunal in Kenya should be explored regarding education, as well as ways in which jurisprudence on children's civil and political rights can be used to push for ESC rights, including education.

In Uganda, organisations should make use of the public interest law clinic to consider strategic litigation, regional and international mechanisms (e.g. upcoming review under CESCR), and coalitions and networks (e.g. Network for Public Interest Lawyers, hosted by PILAC).

Children come to NGOs directly, or can be identified through the media. Simplified advocacy materials should be developed to inform children of their rights. School committees and school boards can be trained to link communities with schools so children who are not attending school can be easily identified.

Possible partners identified for challenges include: the community; government ministries; other NGOs and networks (including those working on development); activists; the judiciary; law societies and bar associations; teachers and the education sector; international and regional bodies; and the media.

In Kenya, sustained capacity-building of lawyers and judiciary on a rights-based approach to education is required, as well as continued use of the Constitution and legal provisions to promote the right to education. NGOs on ESC rights should coordinate and collaborate on this issue. The question of whether there should be a cap on how much schools, including private schools, can charge should also be considered.

In Uganda, NGOs would benefit from assistance in writing legal opinions encompassing international legal standards on the right to education.

In Tanzania, a regulatory approach is needed, which may be achieved through a campaign calling on the government to harmonise school fees at an affordable level and to introduce community-level schools.

The main obstacle to building a coalition or network is competitiveness and fighting for space amongst civil society. This can be overcome through a memorandum setting out the role of each organisation in supporting the cause, applying for funding as a consortium rather than individual organisations, and perhaps restricting numbers in the coalition. Government sabotage, including restrictions on NGOs' licences, is also an obstacle, though this may be overcome through the use of NGO coalitions. A lack of financial resources to bring court challenges is an ongoing issue, though coalitions will assist, as well as identifying pro bono lawyers. Privatisation of education is also an ongoing issue - this can be addressed by pushing the government to offer more quality free education in public schools, discussing minimum standards with policy makers, and referring to international bodies and the international community for guidance and pressure on the government (e.g. IMF and World Bank issued a statement in 2014 on regulating fees). The portrayal of cases in the media may pose an obstacle - this can be overcome through media training.

Group 5: Discrimination of certain groups of children

The working group on discrimination of certain groups of children consisted of Flora Masoy (Morogoro Paralegal Centre, Tanzania), Adrian Jjuuko (Human Rights Awareness and Promotion Forum, Uganda), Dolorence Naswa Were (Uganda Society for Disabled Children) and Christine

Ochieng (Federation of Women Lawyers Kenya). The discussion focused on issue related to children with disabilities.

First off, the group brainstormed violations of the rights of children with disabilities in the three countries. The group came to the conclusion that children who are severely disabled are denied most of their rights, they are hidden, not given names, have no right to inheritance, do not go to school, there is no accessibility, even when they are abused their parents cannot complain, they are considered less than human, they wait longer in hospitals, and parents are less likely to want to invest in a child with disabilities because it is considered a waste.

In Uganda, special schools for children with disabilities have recently been introduced, but workshop participants are currently pushing for inclusive education. The government ratified the UNCRC in 2007, but has still not domesticated it. There is also a draft policy on inclusive education, but so far no budget has been allocated to it. Participants shared their experiences that even UNICEF-funded projects for children with disabilities in Uganda tend to have a bad record, children are forgotten in special boarding schools with no infrastructure for their needs, e.g. toilets or ramps. Large funders and INGOs were seen to prefer investing in able-bodied children.

In Kenya, there has been a lot of activism against violations of the rights of children with disabilities, the Children's Department has been fined multiple times and there has been a budget allocated to identifying children with disabilities. Kenya has also ratified the UNCRC. Mental health provision for these children is complicated in Kenya, there are problems with sexual abuse of children with mental health issues, and pregnancy. Mental health hospitals exist, but are perceived as stigmatising.

Tanzania has ratified the UNCRC and incorporated it into its legal system and civil society organisations are doing advocacy on the issue. There is a constitutional reform under way which will hopefully see a section on children's rights being inserted into the new Constitution.

The specific children's rights affected are the right to health, education, food, dignity, movement, participation, sexual integrity, etc. Violations of these rights persist mainly because of traditional attitudes towards disabilities and mental health and a lack of general political will. The issue is often seen as a taboo and therefore governments get away with not prioritising it and not making commitments. Another problem lies in the inability of civil society to monitor the technical and financial resources allocated by governments to furthering the rights of children with disabilities,

The specific problem with legal challenges on this rights violation is that few people are talking about it in terms of human or children's rights. In Kenya, participants have looked at how to work with disability groups to bring challenges, but the local disability movement is not in favour of inclusion of children with disabilities and declined to cooperate. At the same time, the UNCRC is clearly about inclusion. There's a general lack of legal challenges on this issue in the region which is potentially down to a lack of vibrant NGOs working on this. In Kenya, there is now a judge who has a disability him/herself as he/she has albinism. There might be potential for progress here and an opportunity to work with a judge who is him/herself affected by the violation. In Tanzania, ritual killings of persons with albinism, including children, for their body parts are a huge problem, but there have been no successful legal challenges of this so far. Participants thought that the East African Court of Justice might be an interesting venue for a challenge on this issue as it affects the whole region. A potential legal challenge was seen in access to justice for children with disabilities, as often judges will not listen to them at all. In none of the three countries participating in the workshop, specific clients or child victims are required for bringing a legal challenge, so there would be potential for a challenge brought by an NGO or group of NGOs.

Participants mentioned as possible partners: civil society, persons with disabilities, parents, pro bono lawyers, parliamentarians, and the media. Next steps for preparing a legal challenge are:

- Factual and data collection;
- National/regional/international legal research;
- Research of the situation in neighbouring countries;
- Collection of signed witness statements;
- Identification of exact topic and target of litigation, depending on possible and desired impact;
- Drafting of pleadings, and sharing of drafts between the group for national and regional peer review them;
- Get the media on board before the filing at court in order to market the claim;
- Consider bringing victims to court with as this affect people and will show the violation to the public and the court;
- Get amicus curiae, 'friends of the court', to submit petitions; and
- Publish court orders to make the process transparent.

The main obstacles to a legal challenge were seen in financial and human resources, commitment of witnesses/clients who can dump lawyers along the way, length of court cases which makes witnesses/clients become tired, bribing of witnesses, and security of witnesses.

3. Day 2: Legal advocacy country plans

The second workshop day was entirely devoted to country group work on concrete legal advocacy plans detailing how a specific selection of children's rights violations could be challenged legally in each country. Discussions followed a checklist similar to the one used the previous day which detailed how to build a legal advocacy strategy:

- 1. Identify violations of children's rights.**
 - National/regional/international context;
 - Which specific rights under the Convention on the Rights of the Child (CRC) are violated?
- 2. Identify why the violation is persisting and why previous and existing forms of advocacy have failed to achieve effective remedies.**
 - Different political or societal pressures;
 - Previous advocacy efforts and why and to what extent they have failed.
- 3. Identify what forms of legal or quasi-legal advocacy could be used to challenge the violation, what conditions need to be met before these can be used and what other obstacles there are to using these forms of advocacy, looking especially at the national constitution and legal system and regional as well as international human rights mechanisms.**
 - Relevant courts and other complaints mechanisms;
 - National/regional/international level;
 - Court standards and procedures, including preconditions;
 - Legal or practical obstacles to using these forms of advocacy (lack of legal standing for NGOs in court, lack of judicial independence, negative legal precedent, etc)?
 - Examples of successful litigation brought against other rights violations in your country, e.g. campaigns relating to the rights of women and ethnic or religious minorities;
 - Other avenues to challenge child rights violations (publicising efforts in the media, seeking political support, social and political campaigns, etc).
- 4. Identify the evidence that exists of the violation you have identified, how it can be gathered and how it can be used.**
 - How can this evidence can be gathered?
 - Who will need to be involved in the collection process?
 - What problems might emerge?
 - Are the violations taking place in closed and private settings? Is there some public method for investigation and evidence gathering?
 - Are individual child victims required to bring a claim, and are they willing to come forward and give evidence?
 - What are the requirements for witnesses and what are the potential risks in giving evidence?
 - Are there any potential limitations on children's ability to give evidence or appear in court?
- 5. Identify what resources are going to be needed to mount the challenge.**
 - How will you acquire or attract funding and other necessary resources for your project?
 - Do you have sufficient legal expertise within your organisation, or should you be looking to enlist others to advise?

- Will you need partners in other areas of the country?
- Can you spare the staff time, or should you be looking for volunteers to help keep the campaign going?
- If bringing a court case, are you or your client(s) entitled to legal aid or will you require pro bono legal assistance?

6. Identify possible partners to work with on this issue.

- Activists, rights defenders, groups of or individual legal professionals, pro bono law firms, other NGOs, international organisations, members of political and social movements, children, parents/guardians, teachers, etc;
- Anyone else you need in order to fill some of the gaps you identified in the previous section on necessary resources;
- Do you already have contact with these partners or will you need to approach them directly or prepare an outreach campaign?
- Are there reasons that important partners might hesitate to get involved, and what can you do to encourage them to join your efforts?

7. Develop a concrete plan to move forward with the advocacy.

- Identify the key steps you will need to take to get your legal advocacy campaign going;
- What order will they need to be addressed in?
- Agree on: the overall focus and the specific objectives of the campaign (such as overturning, revising or calling for the creation of a particular law), the time scale and what resources you can put into the campaign;
- Begin a preliminary division of work;
- Think about specific opportunities to be taken into account (upcoming political or legal developments, appointments to public offices, national events, national days of remembrance or international awareness days, elections, referendums, legal reforms, court cases likely to be resolved in the coming months with potential of setting precedents or bringing attention to related human rights violations, etc).

8. Identify how CRIN can help you move forward with advocacy on this issue.

- Guides, toolkits and reports;
- Information sharing;
- Subscription to online newsletter “Children in Court CRINmail”;
- Legal database;
- Hosting campaigns on CRIN website;
- Providing news coverage of national advocacy efforts.

a. Kenya

The Kenyan group focused on economic and social rights (ESC rights), an issue all participants are working on and that is particularly relevant in the current context in Kenya. The discussion focused on the right to education, which was broadly discussed at first and then split into three areas of potential litigation.

Economic and social rights

Focusing on economic and social rights seems particularly timely in Kenya. The new Constitution protects both economic and social rights (article 43) and children’s rights (article 53). The group felt that although a lot had been undertaken in terms of litigating civil and political rights, economic and social rights were relatively new to litigators and there was potential to challenge violations under the new constitution.

With regard to education, Kenyan schools face a great variety of issues which infringe on children's rights:

- Sexual violence by teachers is rampant, as is discrimination on the basis of gender, HIV status, and poverty.
- It is not sustainable for children with HIV to attend school due to poverty, inability to take drugs on time, lack of food etc.
- In rural areas, especially in the nomadic areas, children miss school due to distances, insecurity, poor infrastructures and the need to carry supplies and water.
- The public education system has collapsed and private schools have multiplied without control.

These issues persist because of the political context, corruption, limited capacity of legal professionals and a reduction of democratic space for civil society. The political agenda does not necessarily match the needs or the actual situation. In theory, the Jubilee Manifesto (Source: http://www.president.go.ke/wp-content/uploads/Jubilee_Manifesto.pdf?a1a278) had a good education plan, but in reality, the government is conducting an issue-based policy without addressing the wider picture. Furthermore, there is a failure to properly measure results. Kenya is above the GDP percentages recommended in the Millenium development goals, and at a face value, is doing great on education. However, the evaluation provided in the Second Medium Term Plan (Source: <http://www.usaid.gov/sites/default/files/documents/1860/1%29%20Second%20Medium%20Term%20Plan%202013%20-%202017.pdf>) is failing to address many issues. For instance, it focuses on the national girl/boy ratio, without addressing the differences between regions.

There is growing hostility towards civil society organisations (CSOs) who are generally not invited to the political table. The ones who are invited to participate are shy to criticise the government and technocrats are hostile to CSO involvement. They think CSOs will only expect unachievable goals ("come and do it yourself" attitude). Some cases are brought without CSO involvement at all (for instance a case on the responsibility of counties for early childhood development, brought by the teachers union). CSOs are not working together and handling too many cases at the same time. The legal profession (both lawyers and the judiciary) have low capacity for ESCR litigation.

Previous attempts to litigate ESC rights have been patchy and/or poorly framed. A petition on the right to housing in the High Court in 2010 touched on education, but this was not reflected in the judgment. There are 'pockets' of arguments on the right to education in other cases, but nothing consistent. After the constitution came into force, there was a rush to the courts to litigate new issues. While these cases were very relevant, they were poorly executed. Since 2013, the number of cases has been dropping.

With regards to other child rights and human rights cases, some relevant examples were mentioned as points of reference:

- 160 girls case (Ripples international) on sexual abuse and state responsibility when it was impossible to prosecute perpetrators; Equal Rights Trust (Source: <http://www.equalrights-trust.org/>) gave the funding; now the police is compelled to record violations and collect evidence in every case where there is an allegation of sexual violence;
- Limuru Golf Club case on discrimination against women;
- Rose Moraa Case on children born out of wedlock; decision was later included in the provisions of the Constitution;
- Case on Section 38 of the Sexual Offences Act (SOA), brought by FIDA; MPs had added a provision to the SEA allowing to prosecute people alleging violations without enough evidence to back it up; case failed but the provision was struck out quietly eventually;
- FIDA went to court to seek an implementation timeline on the gender balance rule in the constitution.

Currently, there is ongoing promising work with Hakijami's plan to file a case on privatisation and CRADLE's work on sexual violence in schools.

According to the Constitution, NGOs have standing before the courts, and article 23 gives courts the authority to uphold and enforce the Bill of Rights. However, NGOs are afraid of filing public interest cases, mainly because of fears of cost. A severe reduction in funding is currently ongoing, and there is no functioning coalition on ESC rights which could make fundraising easier.

As the area of ESC rights is fairly new to Kenyan litigators, there are very few people actually able to understand and litigate them. There is a need for both external help (education experts, special rapporteurs, foreign NGOs etc.) and internal capacity-building. Foreign organisations would not necessarily always be best placed to obtain local data. Capacity-building can be achieved, for instance, by bringing together economists, development specialists and lawyers, thus encouraging lawyers to get out of their comfort zone. The group felt confident that monitoring trends in the education system could be started promptly, and would help to build the team's own capacity.

Documenting violations of economic and social rights is a difficult task. Although data is mostly available (or could be obtained through a freedom of information request), a lot of work is necessary to factually link the data to the violations. Finding the right research partners and experts to give testimonies is therefore crucial. Research partners need to be organisations who do evidence-based research (e.g. a university, an NGO with a focus in that area, etc.). Getting the Teachers Service Commission (TSC) to record violations themselves would be a very efficient way to achieve sustainable evidence gathering. TSC was depicted as approachable, using their wish for a good public image. The Head Teachers Association could also be approached.

With regard to experts, members of a corporation can sometimes refuse to testify against one another. A way around this is to identify a good expert in another country (KELIN turned to a South African medical expert in one case) or at the international level (a former special rapporteur filed an affidavit in the above-mentioned housing case).

Some areas of litigation within the right to education would have obvious victims (for instance discrimination, sexual violence cases). This does not mean that victims would be easily identified, but there would be a 'face to the case'. The best interest of every child - victim or witness - needs to be kept in mind at all times, as well as their need to understand their rights as witnesses or victims. Other obstacles when dealing with child witnesses include the issue of consent from guardians or parents, and the child's memory of events, which can be affected when giving evidence. Lawyers should keep an eye on the language used by prosecutors, and facilitate testimonies as much as possible (for instance through the use of toys to describe offences). The issue could be taken to the Office of the Director of Public Prosecutions, to give possibility for children to give evidence at the stage of plea-taking, and there could be a push to develop clearer guidelines on child testimony (see below, issue number 2). Other areas of litigation (such as privatisation of education) would have no or less obvious victims.

The Constitution allows bringing cases without a named victim, but such cases are difficult to brand and publicise. More attention should be given to picking the right advocates to actually bring the case, supported by a coordinated collaborative effort.

In order to identify concrete steps to move the legal advocacy projects forward, the groups splitted the issue of right to education into on three areas of litigation, building on the participants' organisations' existing mandates and accessible resources:

- Privatisation of education;
- Sexual violence in schools;
- Minimum standards of education.

Other issues, such as exclusion from education of certain groups (children with HIV, children with disabilities, children in detention), could follow a similar plan embedded in a tailored strategy.

The discussion of the advocacy plan was then structured around the three sub-issues, although some steps were identified as common to the three issues:

Preliminary research:

- Create an ESC coalition to facilitate fundraising and make better use of strengths;
- Seek external advice on costs at a preliminary stage, so that consequences are predictable;
- Start monitoring trends in education sector (EACHRights, MK Associates).

Litigation:

- Do not neglect civil procedure requirements to avoid losing on a technicality;
- Look at Legal Resource Centre in South Africa (Source: <http://www.lrc.org.za/>) to assist with court case.

Other directions:

- Have a media strategy cutting across the three cases to 'help' cases which are less easy to publicise;
- International action:
 - Submit an alternative reports to the CRC specifically on education and health;
 - Alternative reports to the Committee on ESCR (Source: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR), CEDAW, UPR;
 - Long term: lobby for OP3 ratification and other relevant optional protocols.

Post-litigation steps:

- Go to court to get a timeline when implementation is lacking;
- Look at regional options:
 - ACERWC (Gilbert to share documents on how to get observer status);
 - African Commission;
 - East African Court of Justice.

Possible partners include:

- For capacity building on ESC rights: the Law Society of Kenya;
- For evidence collection: the Elimu Yetu Coalition, Parents' Association, Hilde Back Education Fund, Head Teachers Association;
- For research: Kenya Institute for Public Policy Research and Analysis, Institute of Economic Affairs, Legal Resource Centre South Africa, Brookings Institute, CRIN (litigation in other countries, UN standards and statements);
- For litigation: Katiba.

Issue 1: Privatisation of education (Lead: Hakijami)

Overall goal: Put pressure on the government to improve the quality of public education so that private education is only a supplement.

Means: Challenge privatisation of education. Push for minimum standards (see issue 3)

Background: The public system has collapsed. Public education is free but not accessible, and the quality is not good enough. Teachers are poorly trained. Research by IEA (Source:

<http://www.ieakenya.or.ke/>) shows a huge variance between the number of poor children starting school and the number transitioning to university. Meanwhile, the privatisation of education has turned education into a market commodity instead of a service. Yet it is a right. Major companies (“edu-preneurs”) are making money out of the poorest of the poor (e.g. Bridge Academies), and there is no fee barrier. Some private schools receive funding from international partners. The failing of the public system means that there is no real choice: private schools are not in reality “complementary” to the public system. In practice there is a segregation on the basis of income, and a clear lack of norms and standards.

Legal approach: It was agreed to break up the issue in sub-issues:

- Affordability;
- Availability;
- Quality control;
- Budget control;
- Teacher student ratio.

The group then also divided the issue in different rights violations:

- Discrimination;
- Segregation on the basis of income and lack of freedom of choice;
- Dignity, Equality, Security of the person;
- Right to life.

Economic and social rights have only been recently been made enforceable, and it could be interesting to frame violations of civil and political rights in order to be court-friendly.

TSC does not have as much authority over private schools than it has over public schools. Collecting data from private schools could therefore prove difficult. However, the government sanctions schools to operate, so they could be held accountable if they are not getting data from private schools (FOI case). Furthermore, this lack of monitoring and data on private schools could be argued in court on its own merit.

The group also discussed whether to focus on one type of private schools (“informal schools”), but it was stressed that it is important to keep phrasing the issue as an opposition between the lack of clarity on certain issues such as school fees and the concept of Free Primary Education.

Steps:

- Research to be submitted in March (CRC);
- Approach partners for further research:
- Global:
 - Expertise of an economist (budget tracking);
 - Advice on how to get data from international funders such as the World Bank and DFID.
- Local:
 - Data collection in schools;
 - Monitor what information/reporting is going from the private schools to the government in order to identify possible gaps;
- Draft research plans for every partner;
- Look for a journalist keen on working on ESC rights (KELIN is connected to journalists who write on HIV).

Issue 2: Sexual violence in schools (Lead: CRADLE)

Overall goal: Enhance access to justice for children in order to hold perpetrators accountable within the education system. Suppress failure to address discrimination behind sexual violence.

Background: Sexual violence is rampant in Kenyan schools, both public and private. Sexual violence goes with early pregnancies and corporal punishment. There are example where perpetrators were not prosecuted as the TSC's disciplinary process was deemed enough. TSC claim they have a "code of conduct" relating to sexual violence, and CRADLE filed a case against TSC to hold them accountable.

Legal approach: Certain groups of children are disproportionately affected by violence (girls, children with disabilities). The case could make use of the upcoming Children with Disabilities Amendment Act. Finally, as with privatisation, requesting clearer minimum standards for schools (see issue 3) could help argue the case.

Steps:

- Research is mainly available;
- Organise a children's caucus;
- Identify the subjects of the petition;
- Request the Office of the Director of Public Prosecutions to take children's testimonies at the stage of plea-taking;
- Lobby the Chief Justice for rules/directions on child testimony. FIDA's experience with the Marriage Act suggests that it is much better to develop your own rules and then lobby for them to be adopted.

Issue 3: Minimum standards of education

Overall goal: Push for enforceable core standards and norms.

Means: Seek an advisory opinion on what the minimum for schools is.

Background: While discussing the research that needed to be undertaken in order to litigate issues 1 and 2, it quickly emerged that for both issues we were lacking a reference point as to what a school, or a classroom, should be. This lack of norms and standards harms the possibilities of litigating a wide range of issues, also including discrimination, access to education in rural areas etc. Seeking an advisory opinion on the minimum standards for schools would help in holding the government accountable for violations to the right to education in Kenya.

Steps:

- Set up a network, brainstorm and task individuals/group to come up with a concept note, research paper and plan of action;
- Think rights by rights: right to food, health, right to play; but also civil and political rights: dignity, degrading treatment, discrimination (but high threshold), by extension right to life, security of the person, lack of equal opportunities;
- Partner with one consultant per county, draft a situational analysis of education standards in every county in Kenya:
 - Sylvia to share the list of items to look at during school inspections;
 - Look at different issues such as: textbooks, classrooms, teacher trainings, student teacher ratio;
- Consult with advocates who have litigated norms and standards in South Africa¹;
- Research international guidelines (general comment of ESC Committee? CRC?);

¹ see Press statement, 11 July 2007, available at: <http://www.lrc.org.za/press-releases/2789-2013-07-11-press-statement-lrc-and-equal-education-se-curesecures-court-order-compelling-minister-to-prescribe-regulations-for-norms-a-standards-for-school-infrastructure->.

- Establish whether there are standards nationally, consolidate them into one document and also reflect international standards;
- Set up a litigation team, possibly partnering with Katiba.

b. Tanzania

There was agreement amongst participants that there has so far not been a huge amount of strategic litigation in Tanzania, but several workshop participants have been involved in relevant initiatives. We started off by discussing a wide range of persistent violations we could potentially focus on, such as juvenile justice, corporal punishment, children living in the streets, access to education, discrimination based on gender, and violence against children with albinism. We then honed in on two persistent violations for the legal advocacy plan: the right to education of street children and child labourers, and the right of children with albinism to life, health and protection from abuse and neglect.

Issue 1: Children with albinism

The legal advocacy plan for Tanzania focussed on a potential legal challenge of the Tanzanian government in the form of a collective constitutional complaint by the group of attending NGOs over the government's failure to uphold the right of children with albinism to protection from abuse and neglect, life, and health.

The issue falls under a wide range of Articles of the Convention of the Rights of the Child, especially Articles 6, 19 and 24. Article 6 CRC provides that every child has the inherent right to life, and the State has an obligation to ensure every child's survival and development. According to Article 19 CRC, the State shall protect children from all forms of maltreatment by parents or others responsible for the care of children and establish appropriate social programmes for the prevention of abuse and the treatment of victims. Article 24 CRC establishes the right of every child to the highest standard of health and medical care attainable and provides that States shall place special emphasis on the provision of primary and preventive health care, public health education and the reduction of infant mortality, and strive to see that no child is deprived of access to effective health services.

The group identified that the key dangers for children with albinism in Tanzania are:

- Ritual killings and mutilation due to traditional beliefs in witchcraft;
- Lack of a safe and secure environments;
- Disregard for their dignity and general societal discrimination.

We then identified reasons for why the violation of the rights of children with albinism persists and why previous and existing forms of advocacy have failed to achieve effective remedies. The key reason for this lies in the continuing traditional beliefs in witchcraft in large parts of Tanzanian society, including among high-ranking officials and politicians who solicit support by traditional healers through witchcraft, coupled with a severe lack of government action and unwillingness to effectively protect children with albinism. Participants also thought that there is a lack of willingness within local communities to protect children and stand up against perpetrators. Organisations such as Under The Same Sun (UTSS) and the Tanzania Albinism Society (TAS) have been very involved and might know more, and different participants have contacts with them. A criminal case in court was brought against individual perpetrators in the past and the Legal and Human Rights Centre (represented at the workshop by Programme Officer Hussein Sengu) intervened, but the case failed.

Tanzanian law already has the right provisions in place to guarantee the right to life as it is protected by the current constitution. In addition, the Penal Code criminalises all relevant actions

such as manslaughter, murder and bodily harm. The main obstacle therefore is to get the government to enforce the existing laws. Another obstacle was identified as lying in the upcoming constitutional referendum and general elections in 2015 which will heavily influence the current climate and laws. Nonetheless, there is no doubt that the new Constitution will also include the right to life so a case could already be brought before the new Constitution is adopted.

We briefly discussed the option of a criminal complaint, either against individual perpetrators or officials for aiding and abetting crimes against children with albinism. While private prosecutions are allowed in Tanzania, a major obstacle to this is that private investigations are prohibited by law and evidence will not be acknowledged by the courts. Hence, a criminal case would have a very low chance of success, as seen in the failure of previous cases.

It was therefore decided by a large majority of the group that a constitutional challenge would be the most realistic and effective option as the most constructive aim would be to force the government to protect the rights of children with albinism. There has never been a constitutional challenge of this issue in the Tanzanian courts. While there is no provision in the Law of the Child Act that litigation can be brought by anyone on behalf of children whose rights have been violated, NGOs can bring public interest litigation in form of a constitutional challenge. This is a fairly straightforward option which some of the participants already have experience with. While it is useful that NGOs can sue without needing to name individual victims, we decided that it would still be essential to bring victims on board for the litigation as this will raise further awareness of the litigation and garner support by affected communities. Ideally, we would bring UTSS and TAS on board as sponsors of the litigation as they are the main organisations representing persons with albinism in Tanzania. Both organisations lack legal expertise and the group could provide this.

A challenge could be brought in the High Court which is the competent court for constitutional challenges. Forum-shopping - i.e. the careful selection of the specific court in which to file the challenge - might be an important aspect to consider as participants agreed that the Dodoma High Court would likely be more sympathetic to a claim than the High Court in Dar Es Salaam. As there is no government-funded legal aid scheme in Tanzania, the litigation would need to be funded through different means.

We agreed that the key evidence for litigation will be child witnesses. Many persons with albinism live in specific government-run centres across Tanzania. It should therefore be relatively straightforward to find potential witnesses. Doubts were raised regarding witness safety as individuals might be threatened if they appear as witnesses of a high-profile case in court. It will be paramount to ensure that witnesses will not be even more marginalised because of their involvement in litigation. A range of other issues concerning available evidence and possibilities for gathering evidence was identified by the group:

- Media reports in national and international media;
- Reports on ritual killings of persons with albinism published by the Tanzanian Human Rights Commission;
- Any evidence is admissible in civil proceedings, including documentary evidence, for example post mortem reports of children with albinism who have died in suspicious circumstances;
- Access to victims can be established through contacts at UTSS and TAS;
- A fact-finding mission could be arranged to gather evidence locally;
- Children can testify as witnesses in front of the courts;
- Affidavits could be signed by witnesses if they do not wish to appear in court;
- Expert witnesses are also a possibility, e.g. representatives from organisations working with persons with albinism in Tanzania;
- Representatives from the Tanzanian Human Rights Commission cannot be expert witnesses as they are supposed to be independent but tend to support government policy.

One of the main obstacles for mounting the challenge will be the general lack of human resources, such as experts, advocates, witnesses and researchers, and financial resources. While there is sufficient legal expertise within the group of NGOs and extensive experience with legal research, the challenge will require significant input by organisations such as UTSS and TAS in order of establish the facts of the case. We brainstormed how the group might best be able to acquire or attract funding and it was agreed that follow-up with Wellspring Advisors is a possibility. The first step would be to write a briefing on the work planned and then to send this to donors - without asking for financial support straight away. The briefing could later be formalised, after further work has been done by the NGO group on the details of the planned litigation. Alternatively, TCRF offered that they know a range of other donors which could potentially be approached for funding.

The roles of participants in moving the litigation forward was discussed. Kokuteta Mutembei from EKAMA offered to provide research support for the drafting of the submission and Mary Richard from TAWLA and Charles Nkonya from NOLA offered to do the bulk of the legal drafting. Others, such as Francis Omondi from Mkombozi and Flora Masoy from Morogoro Paralegal Centre, said that they are interested in signing the final petition, but did not feel like they could support the drafting process as such. In addition to the group of NGOs present at the workshop, we identified the following necessary partners and opportunities for connecting the group with these:

- Under The Same Sun: several participants have contacts;
- Tanzania Albinism Society: Charles Nkonya knows them;
- Two members of parliament (Al-Shymaa Kway-Geer and Salum Khalfani Bar'wani) have albinism and advocate on behalf of people with disabilities and albinism, they could be strong supporters: need to link up with them and tell them in confidence about upcoming challenge;
- Tanzania Media Women Association (TAMWA) are strong supporters of human rights advocacy: need to establish connection;
- Community radios exist all across the country and are partners in a lot of human rights work, they are happy to pick up human rights issues: Eric Guga knows them and has media experience;
- Potentially pro bono law firm for research and drafting.

We then discussed the key steps which will be needed to get the campaign going:

- Conduct legal and factual research, write briefing for potential donors;
- Submit briefing to potential donors, communicate with potential donors about plan;
- Mobilise partners, especially TAS and UTSS;
- Witness identification through partners, draft affidavits, have witnesses sign affidavits;
- Draft submission to court;
- Speak to parliamentarians with albinism a few weeks before filing the claim;
- File the submission.

In terms of the potential timeline for the campaign, we focussed on the upcoming political events in Tanzania in 2015 and how these could be factored into the plan:

- April: Constitutional referendum;
- June: Results of referendum will be published and new constitution launched;
- October: General elections (president and parliament);
- November: Announcement of new president, might spark political conflict;
- January/February 2016: New parliamentarians start, next opportunity to raise the issue.

We could push for the issue to be used by politicians in their campaigns in the run-up to the general elections. The main issue here is that once the case is in court, politicians cannot talk about it and voice their opinion.

It was decided that CRIN should support the necessary research in preparation of litigation by providing comparative legal analyses. Furthermore, CRIN will provide communications support by reporting on the case on social media once it is filed, as well as in CRINmails and on the website.

Issue 2: Right to education of street children and child labourers

The Tanzanian participants also discussed the right to education focussing on access to education for children living in the streets and in other vulnerable situations and for child labourers.

The issue falls under Article 28 of the CRC which states that every child has a right to education, and that States' duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity and that States shall engage in international cooperation to implement this right.

We brainstormed the overall issues concerning children's right to education in Tanzania and came to the conclusion that these are: discrimination, especially regarding children with disabilities and girls who become pregnant whilst in school, corporal punishment in schools and universal access to education, especially for children at risk, such as child labourers and street children. Regarding access to education for pregnant girls there is currently already a case in the Tanzanian courts which was brought by the National Organisation for Legal Assistance (represented at the workshop by Director Charles Nkonya) and in which the Tanzanian Association of Women Lawyers (represented at the workshop by Mary Richard, Head of Access to Justice Department) has applied to intervene. We then agreed that the focus should be on the persistent violation of the right to education of children living in the streets and in other vulnerable situations and of child labourers in Tanzania. Our discussions focussed on brainstorming different ideas on how this violation could be challenged, who might be useful partners for legal advocacy and what other obstacles there are to legal advocacy.

The issue of the upcoming constitutional referendum also plays a role here and points were raised that a constitutional challenge to try to enforce the right to education might not be timely at this stage. There is already an Education Act in place - so the laws are there and according to participants there is no imminent need to try to change them. Again, they just need to be enforced much more effectively and widely. It was discussed whether a challenge of the Tanzanian government, represented by the Ministry of Education, to enforce the Education Act would be viable, but doubts were raised whether strategic litigation would be the right approach here.

In terms of finding evidence and victims, the Tanzanian Association of Women Lawyers and Legal and Human Rights Centre could help with establishing contacts with victims through their legal aid clinics. It was pointed out that the Legal Resource Centre in Pretoria has recently released a new book on litigating the right to education which might be a useful resource. The Centre is also doing training sessions in Kenya and Uganda and there might be scope to undertake trainings in Tanzania as well.

Our discussions on this topic remained quite broad and will benefit from further strategy definition and a more detailed identification of key issues and violations, available evidence and potential partners. Further follow-up with the group will be required to establish a concrete legal advocacy plan on this issue. Extensive legal and factual research will be needed in order to support a potential legal challenge.

c. Uganda

The Ugandan country group identified 16 persistent violations of children's rights: right to education (privatisation, gender discrimination, children with disabilities, exclusion of pregnant girls, government funding for public schools); children in armed conflict; forceful eviction and displacement of Karamojong children; juvenile justice systems (remand homes and inhuman and degrading treatment); child labour and domestic workers; feeding of children in primary public schools; intersex children; intercountry adoption (lack of regulation and monitoring); child sacrifice; child trafficking and sexual exploitation; stealing of children from public hospitals; unlawful homes/orphanages for children, especially children with disabilities; children whose parents are in detention, or children detained with their parents; children living/working on the street who are placed in detention; child marriage; incest and child sexual abuse.) The group chose to focus on three particular issues: right to education; intersex children; and children living/working on the street.

Issue 1: Right to education

Two sub-issues were identified:

1. Privatisation of education is increasing due to the lack of available and accessible quality education in public schools - there are no public schools available in many areas and public schools are often in bad condition or of low quality. There are growing regional disparities, with schools in the war-torn areas of Northern Uganda schools in much worse condition than schools in central areas. In some cases, children cannot attend school because public schools are not available or accessible in their areas, and private school fees are too high.
2. Children with disabilities are often denied their right to education. Public schools lack appropriate facilities for children with disabilities, and private schools which do cater for such children are not affordable.

The above situations violate children's:

- Right to freedom from discrimination (CRC, Art. 2; Convention on the Rights of Persons with Disabilities (CRPD), Art. 7);
- Right to education (CRC, Art. 28; International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 13; African Charter on Human and Peoples' Rights (ACHPR), Art. 17; African Charter on the Rights and Welfare of the Child (ACRWC), Art. 11; Constitution, Arts 30 and 34; National Directives and State Principles, Art. 8A); and
- Right to inclusive education for children with disabilities (CRPD, Art. 24.).

They are also inconsistent with General Comment No. 13 of the Committee on Economic, Social and Cultural Rights, which provides that States should ensure that education is available, accessible, acceptable and adaptable.

The lack of available and accessible quality education persists primarily due to a lack or misuse of government funding for public schools, lack of political will or government planning to improve the education system, as well as corruption. Discrimination against children with disabilities in education persists as public schools lack appropriate infrastructure, facilities, teaching materials and curricula, and teachers with skills in special education. Advocacy exists in terms of lobbying and petitions to parliament, but have failed to hold the government accountable.

Several options for legal or quasi-legal advocacy exist at the national level:

- A complaint can be lodged with the Equal Opportunities Commission, a new body with a mandate to eliminate discrimination and inequalities against any individual or group of persons. Anyone can lodge a complaint and there is no admissibility criteria. It is not yet functional, though this could be its first case.
- A complaint can be lodged with the Uganda Human Rights Commission, a quasi-judicial body with a mandate to monitor and investigate human rights violations. It receives

complaints, can investigate on its own initiative, and can ask for enforcement, though enforcement is slow. It has dealt with a lot of cases, though few concern children's rights. Anyone, including an organisation, can lodge a complaint.

- A challenge under Art. 50 of the Constitution can be brought in the High Court for enforcement of human rights under Arts 30 and 34 of the Constitution and Art. 8A of the National Directives and State Principles. Anyone can bring a case, which can include arguments on regional and international conventions. The High Court can award redress, including compensation.
- A case under Art. 137 of the Constitution can be brought in the Constitutional Court concerning laws, acts or omissions that are inconsistent with the Constitution. Anyone can bring a case. Relevant omissions include government's failure to regulate private schools (especially fees), to provide adequate facilities and materials in public schools, to ensure accessibility of public schools, and to reasonably accommodate and include children with disabilities. Relevant laws and policies include the UPE policy and Education Act, which state that basic education should be provided and enjoyed by all, and provide for minimum standards for private schools. The Constitutional Court can declare the law, act or omission unconstitutional and provide redress (e.g. repeal laws, provide damages), or refer the case to the High Court for other forms of redress.

Options for legal advocacy at the regional level include the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights. Anyone can file a complaint to these bodies and local remedies must be exhausted. The African Commission can refer a case to the African Court on Human and Peoples' Rights, even though Uganda is not a signatory to the statute creating this Court. The East African Court of Justice may also be an option, though a complaint concerning the right to education would need to be linked with the rule of law to be admissible.

Obstacles to bringing legal advocacy include identifying victims to participate in the case, time constraints, exhausting local remedies (where this is required), and judges losing interest.

In terms of gathering evidence, there are many organisations working on these issues who would be able to assist with identifying child complainants or witnesses who could give evidence of the violations. Expectations, however, would need to be managed by explaining the process to the victims, and children must not be forced to attend court. Alternatively, empirical evidence and research could be used (e.g. Uwezo's annual reports on quality public education, Brookings Institute's research on privatisation).

Various resources will be needed to mount the challenge, particularly funding. A network of child rights organisations could bring the case, or one organisation (e.g. Chapter Four or HRAPF) with the support of others, including both NGOs and private lawyers. Fundraising could be undertaken for a senior lawyer and filing fees. Local pro bono assistance and legal aid are not options, although pro bono assistance from foreign lawyers (including research on international comparative law) can be useful and persuasive.

Possible partners include: all participants at the workshop, as well as other organisations such as Uganda Children's Rights NGO Network, FENU, National Union for Persons with Disabilities Uganda, LAPD, Association of Teachers, Save the Children, ActionAid, World Vision, Right to Education Project (UK), Hakijami (Kenyan NGO bringing privatisation case), Legal Resources Centre (South African NGO working on education), UNICEF; Members of Parliament (education committee, human rights committee, civil services committee, parliamentary forum for children); OHCHR; teachers' groups (Uganda National Teachers Union, Coalition for Private Teachers Association, Platform for Labour Action); parents/guardians; communities; the media; and court staff.

Legal advocacy plan

Objectives:

To compel the government to:

1. Reform and regulate the education system, including private schools;
2. Raise the quality, availability and accessibility of education in public schools; and
3. Ensure access and inclusion of children with disabilities in school.

Plan:

1. Assess appropriate forums for bringing a case, gather evidence and data, undertake legal research, consider who to engage as counsel and prepare a list of possible lawyers, and draft pleadings/petitions (January - June 2015).
2. Finalise pleadings/petitions and file in court/commission, build a coalition, prepare buy-in workshops or information meetings to get partners involved, and identify and brief journalists (June - July 2015).
3. First hearing date and pre-trial conferencing (October - December 2015). The High Court and Constitutional Court will close in around February 2016 to hear election cases for about six months, so if a case is filed in one of these courts hearings would resume in late 2016.

Non-legal activities to support the legal challenge include:

- Media training and discussions with owners, editors and senior journalists with an interest in social justice issues, and develop a network to share information between human rights activists and journalists;
- Issue a press release and hold a press conference together with filing the case to generate public pressure;
- Prepare a document to submit to the parliamentary speaker after filing the case with requested changes;
- Engage community and wider constituency through grassroots NGOs as part of broader campaign to raise awareness;
- Get involved in draft Children's Act Bill/amendment to address the right to education;
- Get international NGOs and the Uganda Children's Rights NGO Network to raise awareness of the case;

CRIN can assist by: providing an international perspective in terms of research and developing legal arguments; assisting with fundraising for the case; linking to other organisations, pro bono lawyers, donors and UN special rapporteurs (e.g. education); and sharing news on cases around the world.

Issue 2: Intersex children

Intersex children face discrimination due to certain practices as well as a lack of legal protection. Assignment surgery is done at birth without the child's consent, often quietly and free of charge, in circumstances where the parents are poor. Intersex children are often abandoned by their fathers and, in some cases, are killed by their parents due to perceived witchcraft. They tend to leave school when puberty hits. There is no special care or treatment offered by the government to intersex children.

Two particular sub-issues were identified:

1. Lack of recognition of a third gender: the Births and Deaths Registration Act does not provide for a third gender or intersex; only either male or female. There is also no provision for changing one's sex when over the age of 21; this can only be done as a child.

2. Lack of consent of the child to assignment surgery at birth.

The above situation violates intersex children's rights to freedom from discrimination and torture, to health, privacy, identity, and education, and the best interests of the child.

Intersex cases are documented, and some work has already been done on this issue. For example, HRAPF submitted a paper to the Law Reform Commission on intersex children, calling for the law to be amended so that when a child becomes an adult he/she can change his/her sex. SIPD (Support Initiative for People with Atypical Sex Development) has contact with groups of intersex children, provides legal aid services, and compels fathers to pay school fees and look after their intersex children. The Special Rapporteur on Torture has reported on the need for the consent of intersex persons to be obtained before undertaking surgery. In the region, the Kenyan case of Baby A was recently successful in recognising intersex children.

However, more information on numbers and other research is needed. There were also some concerns amongst the participants about creating a negative legal precedent, and that society may not be ready for such a challenge. In light of this, a public awareness-raising campaign may be needed, as well as consultations with those concerned (including doctors). Litigation would be part of the long-term strategy, with the overall aim of compelling the government to pass a law recognising intersex as a third gender, and prohibiting discrimination against intersex children and assignment surgery without the child's consent.

Issue 3: Children living/working on the street

Children living/working on the street face ongoing discrimination by the government. They are often orphans or children escaping conflict, violence, neglect or poverty who come to make a living in Kampala. Some of them are trafficked for commercial purposes to beg on the street. In response, the Ministry of Gender orders that these children be round up. This involves them being forcefully evicted, arrested and thrown on trucks, and either repatriated or resettled in Karamoja, detained in remand homes where they are treated as child offenders, or taken to remote places without any accountability for their whereabouts or treatment. In some cases these children suffer beatings from the police. Drivers who assist these children are also arrested. This situation violates these children's freedom of movement, freedom from inhuman or degrading treatment, and rights to housing, standard of living, health and education.

There was some discussion of what the appropriate solution would be - on the one hand, these children should not be forcefully round up by the government, but on the other, they may be vulnerable to abuse and exploitation if they continue to live and work on the street. Examples in other countries were discussed. In 2008, the High Court in Tanzania rejected a constitutional challenge to the rounding up of children living/working on the street (Source: <http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1068&context=scjilb>). As an example of good practice, in Brazil, the government has set up homes/shelters where children can go voluntarily.

Various options for legal challenges exist:

- A case alleging breach of the Children's Act, which provides for care orders and requires the government to establish approved homes.
- A case under the Prevention and Prohibition of Torture Act, which provides for the right to complain to the police, Uganda Human Rights Commission or other authority about cruel, inhuman or degrading treatment.
- A case requesting revisions of the Penal Code regarding vagrancy and related terms.
- A challenge under Art. 50 of the Constitution in the High Court (see issue 1 above) seeking a declaration that the government has violated the rights of children under the

Constitution, including the right to be free from cruel, inhuman or degrading treatment (Art. 24).

- A case under Art. 137 of the Constitution in the Constitutional Court (see issue 1 above).

In terms of existing evidence, there has been some recent research and reporting on this issue already. For example, Human Rights Watch issued a report in 2014 (Source: http://www.hrw.org/sites/default/files/reports/uganda0714_forinsert_ForUpload.pdf), and a 2013 study by the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) estimates there are 10,000 children living on the street in Uganda. Amani Institute Uganda is conducting a baseline study on street children and juvenile justice in post-conflict northern Uganda. The Guardian recently reported on this issue (Source: <http://www.theguardian.com/global-development/2014/jul/21/uganda-street-children-homeless-police>). The Committee on the Rights of the Child is currently developing a General Comment on children in street situations.

In addition to the resources and partners identified in issue 1 above, other possible partners include organisations working with children living/working on the street, such as NEMACY (Uganda Network for Empowerment of the Marginalized Child and Youth), Retrak and Save Street Children Uganda. Additionally, the police, journalists reporting on this issue, and the UN Special Rapporteurs on trafficking and sale of children may be possible partners.

Legal advocacy plan

Objectives:

To compel the government to:

1. Stop and prohibit the forcible rounding up, resettlement, arrest and detention of children in remand homes alongside child offenders;
2. Ensure accountability of police for mistreatment of children;
3. Establish special homes and services in the best interests of children living/working on the street;
4. Strengthen existing structures (e.g. child protection units at police stations) and complaints mechanisms; and
5. Appoint a child-specific person in the Human Rights Commission.

Plan:

1. Conduct a study or consider whether there is enough research already to prove the alleged violations (i.e. that the government has failed to establish approved homes for children exposed to harm, and are forcibly rounding up, arresting and detaining children who have not committed offences), determine what is the magnitude of this problem, and identify the children and families affected.
2. Do case analysis in Uganda, and research other cases abroad.
3. Monitor and document ongoing violations, especially just before the Pope arrives in June.
4. Consider appropriate forum for a legal challenge, and conduct legal work and preparation of the case (see issue 1 above)

CRIN can assist by: putting NGOs in touch with UN special procedures, Consortium for Street Children, and other NGOs working on this issue; raising the situation in Uganda at the International Summit on the Legal Needs of Street Youth in June 2015; assisting with legal research and checking the legal database for relevant cases (e.g. on trafficking, begging, status offences, freedom of assembly); assisting with obtaining a grant for further research.

Next steps

The participants committed to the following next steps to implement their legal advocacy plans post-workshop:

- Participants to create a coalition of NGOs on child rights, to meet in mid-2015 (EACEREM to coordinate);
- PILAC students to assist with legal research, including case studies on strategic litigation on children's rights in Uganda;
- ISER to lead on the case concerning right to education; USDC would also be involved as an expert on children with disabilities;
- HRAPF to do a "mega-filing" of the case (i.e. with press release and media etc);
- Chapter Four to provide pro bono lawyers;
- Refugee Law Project to monitor the situation of children living/working on the street; and
- HRAPF to monitor the situation of intersex children.

4. Day 3: Final session

The final day of the workshop was spent on presentations of the above country plans and a discussion of possible follow-up action including what CRIN can do to support this work.

Several participants stressed the many similarities they had encountered over the previous days between the three participating countries and thought that it had been useful to share experience in legal advocacy across country borders. The need to keep in touch and continue learning from each others' experiences was also highlighted by many. A number of concrete suggestions were made with regard to cross-country follow-up to the workshop:

- Establish a regional coalition of all NGOs working on children's rights;
- Establish East African Journal on Children's Rights with the help of academics at Makerere University;
- Meet again in a year's time to share experience with national legal advocacy plans and to assess progress;
- Set up national coalitions with one clear coordinator/spokesperson;
- Set up Skype calls within country groups, but also with participants from other participating countries;
- Continue exchange of ideas and information with CRIN;
- Use CRIN's resources and research capacities;
- CRIN to share workshop mailing list with everyone;
- Set up listserv with all participants;

Judith from Wellspring Advisors stressed the idea of a follow-up meeting to assess progress, to share experiences and to further define strategies on concrete actions. In order to address gaps in resources, Judith proposed that there might be scope to invite donors to such a meeting so that they can hear directly about the different ongoing activities.

A range of propositions for national follow-up measures were also made, an overview of which is listed below.

Proposed follow-up measures for Uganda:

- Organise a follow up meeting in Kampala, in mid 2015;
- Cooperation with Public Interest Law Clinic (PILAC) at Makerere University, get research support from students, conduct case analysis of impact litigation as part of students' curriculum;
- Mobilise media;
- Work with experienced lawyers, such as Nicholas Opiyo, and learn from them;
- Work with The Cradle in Nairobi on the issue of intersex children as a case was recently won in Kenya on this.

Proposed follow-up measures for Tanzania:

- Call meeting with all Tanzanian participants, possibly invite a few others who have not been at the workshop;
- Define role of each participants going forward, which specific tasks they should carry out;
- Undertake further in-depth research on persistent violations of children's rights which have been identified as focus, get CRIN to help with this;
- Learn and research experiences in strategic litigation from other countries in order to broaden impact on the ground in Tanzania;
- Capacity building of duty bearers on children's rights;
- Work with pro bono lawyers, active legal aid organisations and law society;
- Form a team of lawyers who have experience and commit to the project;
- UNCRC session outcome in February 2015 will further inform and shape country plan;

- Need to be mindful of timing of litigation and other activities due to current process of constitutional transformation.

Proposed follow-up measures for Kenya:

- Hoping to set up a national network on children's rights as existing networks focus mostly on civil and political rights and we are thinking of economic and social rights and how to use these rights for children, starting with privatisation of education;
- Important not to lose momentum, we can start the process without a budget;
- Need to draft a concept note on minimum standards of education to formulate concrete ideas;
- Fill in gaps in plan on privatisation of education, get CRIN to help with research on privatisation of education in order to include international component in plan (e.g. what the UN has said on this issue), link up with researchers working internationally on privatisation;
- Bring together lawyers and those working directly with children;
- In the long term, attract other partners, such as the law society.

Annex I: List of workshop participants

Country	Organisation	Name	Position held in organisation	Email
Kenya	Hakijami	Ms Sylvia Wamuyu MBATARU	Program officer - Right to education and social security	sylvia@hakijamii.com
Kenya	The Cradle	Ms Benedeta Prudence MUTISO	Program Manager- Access to Justice Department	prudence@thecradle.or.ke
Kenya	Federation of Women Lawyers	Ms Christine Elizabeth Atieno OCHIENG	Executive Director	ochiengc@fidakenya.org
Kenya	Mburugu & Kanyonge Associates	Mr Bemih Kanyonge LUSEKA	Private practitioner	bemihkanyonge@gmail.com
Kenya	Kituo Cha Sheria Legal Advice Centre	Ms Brenda DORA	Legal Officer	brenda@kituochasheria.or.ke
Kenya	KELIN	Mr Gitogo Patrick KANGETHE	Lawyer & Programme Assistant	pkangethe@kelinkenya.org
Kenya	East Africa Center for Human Rights	Mr Gilbert Oduor ONYANGO	Regional Director/Founder	director@eachrights.or.ke
Uganda	Joy for Children	Mr Moses NTENGA	Executive Director	ntengam@joyforchildren.org
Uganda	Human Rights Awareness and Promotion Forum	Mr Adrian JJUUKO	Executive Director	ajjuuko@hrapf.org
Uganda	Refugee Law Project, School of Law, Makerere University	Mr Stephen OOLA	Programme Manager: Conflict, Transitional Justice and Governance	oolalawyer@gmail.com
Uganda	Uganda Society for Disabled Children	Ms Dolorence Naswa WERE	Executive Director	dolorence.were@usdc.or.ug
Uganda	Chapter Four Uganda	Mr Nicholas OPIYO	Executive Director	nopiyo@chapterfouruganda.com
Uganda	Initiative for Social and Economic Rights	Ms Saphina NAKULIMA	Senior Program Officer	sapserugo@gmail.com
Uganda	East African Centre for Social Research and Empowerment	Mr Kizito SSEKITOOLEKO	Director	kssekitoolek@gmail.com
Uganda	Public Interest Law Clinic, School of Law, Makerere University	Ms Patricia P'ODONG	Clinical Legal Education Coordinator / Assistant Lecturer	patricia.odong@gmail.com
Tanzania	Mkombozi	Mr Francis OMONDI OLECHE	Acting Executive Director	francisomondi@mkombozi.org

Tanzania	Ekama Development Foundation	Ms Kokuteta BAREGU MUTEMBEI	Director	kokuteta@yahoo.co.uk
Tanzania	Tanzania Women Lawyers Association	Ms Mary RICHARD	Head of Access to Justice Department	mary.richard@tawla.or.tz
Tanzania	Morogoro Paralegal Centre for Women and Children	Ms Flora MASOY	Coordinator	moroparalegal@gmail.com
Tanzania	Hakielmu	Mr Mwemezi MAKUMBA	Programme Officer, Research and Policy Analysis	mwemezi.makumba@hakielmu.org
Tanzania	Tanzania Child Rights Forum	Mr Jones JOHN	Chief Program Management Advisor	jjohn@childrightsforum.org
Tanzania	Tanzania Child Rights Forum	Mr Eric S. GUGA	Forum Coordinator	eric@childrightsforum.org
Tanzania	National Organisation for Legal Assistance	Mr Charles NKONYA	Director	nkonyac@yahoo.com
Tanzania	Legal and Human Rights Centre	Mr Hussein SENGU	Programme Officer, Government Watch	husseinengu@gmail.com

Annex II: Other useful resources and contacts

1. Potential partner organisations

Witchcraft and Human Rights Information Network (WHRIN)

- Human rights organisation based in London that works on human rights abuses due to beliefs in witchcraft and spirit possession
- Contact: <http://www.whrin.org/>

Under The Same Sun (UTSS)

- Canadian Christian charity investing within Tanzania to improve the lives of Persons With Albinism
- Contact: <http://www.underthesamesun.com/>

Right to Education Project (RTE)

- Human rights organisation based in London that promotes mobilisation and accountability on the right to education; is examining privatisation of education
- Contact: <http://www.right-to-education.org/contact>

Legal Resources Centre (LRC)

- South Africa's largest public interest, human rights law clinic; uses the law to challenge barriers to education
- Contact: <http://www.lrc.org.za/about-us/contact-details>

Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)

- Human rights organisation based in Geneva that seeks to advance ESC rights; has collected evidence and advocated on the impact of privatisation of education in Chile and Morocco
- Contact: <http://globalinitiative-escr.org/about-us/contact/>

ESCR-Net

- Based in New York, collaborative initiative of groups and individuals from around the world that seeks to strengthen ESC rights; has a working group on strategic litigation on ESC rights
- Contact: <http://www.escr-net.org/cat/i/1374>

Consortium For Street Children (CSC)

- Global network based in London that promotes the rights of children living/working on the street through research, advocacy and network development
- Contact: <http://streetchildren.org/contact/>

American Bar Association (ABA) - Commission on Homelessness & Poverty; Section of Litigation Children's Right Litigation Committee; and the Rule of Law Initiative

- Holding an international summit on the legal needs of street youth in London in June 2015
- Contact: http://www.americanbar.org/groups/public_services/homelessness_poverty/events_cle/street_youth.html

Brookings centre for universal education

- The center offers a forum for research, high-level dialogue, and public debate on a range of issues relevant to education in developing countries. Researchers' areas of expertise include health and education economics, inequality and aid effectiveness.
- Contact: <http://www.brookings.edu/about/centers/universal-education/experts>

2. Useful resources

INTERIGHTS, *Litigating the Right to Education in Africa*, 18 February 2013, available at: <http://www.interights.org/document/259/index.html>;

Legal Resources Centre South Africa, *Ready to Learn? A Legal Resource for Realising the Right to Education*, 23 October 2013, available at: <http://www.lrc.org.za/publications/booklets/item/ready-to-learn-a-legal-resource-for-realising-the-right-to-education>.

Human Rights Watch, *Where do you want us to go?: Abuses against street children in Uganda*, 2014, available at: http://www.hrw.org/sites/default/files/reports/uganda0714_forinsert_ForUpload.pdf.

Annex III: Speech by Peter Newell on legal advocacy for children's rights

Workshop on challenging persisting violations of children's rights: Dar Es Salaam, January 21 2015

Peter Newell, CRIN Council and Coordinator, Global Initiative to End All Corporal Punishment of Children

Why we need strong legal advocacy to challenge violations of children's rights – and what do we mean by legal advocacy?

It is over 25 years since the Convention on the Rights of the Child was adopted; it has been fully accepted by the states represented here. It is a formal legal instrument, part of international law. We tell children that it safeguards their rights.

But in reality in almost all states in all regions there are many continuing serious, systematic violations of their rights. The Committee on the Rights of the Child began examining states' reports 20 years ago and has by now examined three or four successive reports from most states. This is a vital process for children's rights; the first process to make states externally accountable for how they treat children and their rights. The reporting procedure – and the involvement in it of national NGOs and human rights institutions - has made visible, in some cases for the first time, grave, systematic violations of children's rights – economic and social as well as civil and political. But, as the Committee in Geneva examines states for the second, third and fourth time, its concluding observations increasingly repeat the same concerns and recommendations, with added emphasis.

Progress towards ending even the most grotesque violations is hesitant, patchy, far too slow for children.

We tell children that they are rights holders alongside us. But to be real, for rights to have meaning, there must be effective remedies for violations of them. I suspect we will all agree that for most children in many states, the idea that they have genuinely enforceable rights remains a fairy story, a fantasy.

We have to admit in general that children's rights advocacy, and particularly legal advocacy, is still in its infancy, eclipsed by, for example, advocacy on women's issues, environmental issues, LGBT rights. And that is particularly serious because children are the least empowered group in any society.

The community of active child rights advocates remains a very small one globally. The rights-based approach is only hesitantly and inconsistently being adopted to replace the welfare/charity approach to children as objects of concern: hence CRIN's workshop bags – rights not charity!

UNICEF, for example, has a strong, rights-based mission, but does not consistently challenge governments to fulfil their human rights obligations to children. Similarly with the big child development INGOs, which drop the language of rights if they find it unpopular with governments or with donors, and often add, in their marketing, to the portrayal of children as objects of concern, rather than people and rights-holders.

To CRIN, a vital and to us most important way forward for children's rights in the third decade of the CRC must be to emphasise loudly that we are talking about legally enforceable rights under international law, which must be legally enforceable under national law; that states are not free to

pick and choose which rights to respect, which recommendations of the Committee on the Rights of the Child and other treaty bodies or in the Universal Periodic Review to ignore. And I repeat this means emphasising and showing that for children's rights to have meaning, there must be readily available, effective legal remedies to challenge violations.

That's why CRIN is increasingly focussing – and this workshop is focussed - on encouraging effective legal advocacy. And that is why CRIN, with the support of pro bono lawyers, has researched children's access to justice – whether and if so how children and their representatives can take legal action to challenge violations – in most states globally (you have the resulting reports on Tanzania, Uganda and Kenya).

The Convention has certainly led to a positive emphasis on children's rights to have their views heard and given due weight. The article 12 right is promoted as a right to participate – and that is of course positive too. But there is a serious danger now that some governments – and some children's organisations, see an focus on children's participation as a relatively simple alternative to seeking respect for the full range of children's rights. They also forget that "children" include all those from birth to 18. Many of the worst violations affect the development of babies and young children; in fact "affect" is in many cases an understatement - kill or devastatingly impair their development. Young children are not going to pursue remedies for violations of their rights for themselves. In fact it is quite obvious that most older children, in particular those suffering the worst violations, isolated, starving, detained, disabled etc, cannot be self-advocates.

All the violations we are discussing are adult violations of children's rights and it is adults' active responsibility to fight to end them. Of course it is good if we can find children who want to work on self-advocacy; there should be every encouragement for it. But we cannot wait for it; advocacy is not dependent on child participation. Also, at the moment adults are quite often wrongly hesitant about going out looking for and "using" child victims for the purpose of advocacy, raising child protection excuses. Of course, we need the informed consent of children who have the capacity to give it and they should be fully informed and as involved in any advocacy on their behalf as they wish to be. And of course we must not expose children to unnecessary serious risks of significant harm. But we do have to weigh that against the benefits for individual children of being taken seriously as rights-holders, of seeing adults actively pursuing their rights.

This workshop is focussed on looking in depth at how systematic, serious violations can be challenged by legal advocacy.

What do we mean by legal advocacy? We want to encourage more serious consideration of domestic legal action, applications to courts, including constitutional challenges etc. CRIN is also encouraging use of available international and regional complaints/communications procedures. These almost invariably require the exhaustion of domestic legal remedies. They are also weaker forms of action, because in most cases they produce decisions and recommendations that are not legally enforceable – although they can add embarrassment and the decisions can be quoted in later legal action.

But we recognise that actually going to court or submitting a communication is going to remain quite rare and only to be embarked on after careful evaluation of its likely impact, and any risks of losing.

Just briefly to use the example of corporal punishment. In Europe, successive use of applications by children and their representatives to the European Court of Human Rights has forced my Government, the UK, to prohibit corporal punishment in every setting outside the home, and those judgments have been usefully quoted in many high level courts in other states.

For example:

- Zimbabwe Supreme Court 1988, 1990 (challenged judicial corporal punishment): Parliament changed Constitution to justify corporal punishment (new 2013 Constitution does not include these provisions, but does not explicitly prohibit).
- Namibia Supreme Court 1991 (judicial and school): school corporal punishment was prohibited in 2001 Education Act and it is not authorised in penal system for children.
- South Africa Constitutional Court 1995 (judicial): prohibited in judicial system in 1997; in schools in 1996
- Again in 2000: South Africa Constitutional Court 2000 (rejection of challenge to schools ban)
- Zambia High Court 1999 (judicial; set aside sentence of caning): in 2003 various laws amended to prohibit corporal punishment as sentence and as punishment in penal institutions for children; 2013 new draft Constitution prohibits all corporal punishment
- Supreme Courts in Italy (1996) Israel (2000), Nepal 2005 and Costa Rica (2005) have declared corporal punishment in all settings unlawful, quoting CRC, etc.

High level court decisions can force very significant change. Our wider aim is to encourage a systematically more legalistic, rights-based approach to advocacy. Generally, this involves systematically using legalistic, rights-based language: referring to failures to meet children's needs as violations of their rights; insisting that there must be legal remedies for violations. In addition, it may be valuable to draft or commission formal legal opinions, setting out how particular treatment of children or gaps in services violates the Constitution and/or the CRC or other international instruments and how a legal challenge could be pursued.

These can be used, formally or informally, to make clear the threat of legal action. A formal legal opinion, used in advocacy with government, or with parliamentary committees or others, can be enough to force change and again it is emphasising the concept of legal rights.

Another element in this approach is trying to make more "legalistic" use of the recommendations of the Treaty Bodies to our states and also of their General Comments and General Recommendations – and also the recommendations that arise in the UPR process.

In the UK, while our Government has a very dismissive attitude to children's rights and has ignored most of the "difficult" issues, our courts, including our Supreme Court, have begun to quote the CRC and the Committee's concluding observations and General Comments. They would not have done that unless children's rights organisations and human rights lawyers had not begun to use them systematically in their advocacy.

So - this is all about trying to increase the cumulative pressure on states to fulfil their legal obligations, and legalistic or legal action can be a strong form of pressure.

And this stronger approach to children's rights advocacy is not just for lawyers. We do need more lawyers who are really committed to children's rights, and to using the law creatively for children's rights. But children equally need people who are working or living closely with them – teachers or carers or health workers for example - to have an understanding of their rights, people who can recognise violations and understand the point of documenting and using them in a legalistic way; people without legal training but not intimidated by the law and increasingly seeing it as a tool for securing rights.

And while in this workshop we want to focus on legal/legalistic action, we must ensure there is understanding that legal action is not an alternative to other more common forms of advocacy but needs to be seen as complementary to more common forms – research and preparing and presenting reports, using the media, briefing Treaty Bodies and UPR and using their

recommendations, lobbying government and parliament, forming alliances, petitions, using new information technology and social networking, direct activism and so on. Any legal action certainly needs to have a comprehensive advocacy plan to accompany it. We hope this will be reflected in the detailed Legal Action Plans which you will be preparing tomorrow.

And some final points: the violations we are discussing imply the need for legal action to force change in laws which actually authorise the violation, as for example with the legality of corporal punishment in Tanzania and Uganda. Or, where the violation is already unlawful, but the legislation is not effectively enforced, or there are no clear remedies for children and their representatives when it is violated, as I suspect is the case with corporal punishment in Kenya.

We are unlikely to be successful in lobbying government and parliament to change laws or procedures for enforcing them unless we have worked out exactly what we want: so this legalistic approach to violations includes ensuring that the deficiency in the law has been fully analysed and the necessary changes actually drafted. Every state needs one or two at least children's rights advocates who are not intimidated by the task of drafting new or amended legislation and repeals and equally important who understand fully the governmental/parliamentary path to enactment.