

**REASONS FOR CHRONIC EXISTENCE OF PRISON
CONGESTION IN TANZANIA: CRITICAL ANALYSIS OF THE
LAW AND PRACTICE AT MUSOMA PRISON**

**REASONS FOR CHRONIC EXISTENCE OF PRISON
CONGESTION IN TANZANIA: CRITICAL ANALYSIS OF THE
LAW AND PRACTICE AT MUSOMA PRISON**

By

Peter Richard Matagi

**A Dissertation Submitted in Partial fulfilment of the Requirements for the award
of Degree of Master of Law in Constitutional and Administrative Law of Mzumbe
University**

2016

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommended for acceptance by the Mzumbe University, a dissertation entitled *Reasons for Chronic Existence of Prison Congestion in Tanzania: Critical Analysis of the Law and Practice at Musoma Prison*, in partial fulfillment of the requirements for award of Master of Law-Constitutional and Administrative Law of Mzumbe University.

Major Supervisor

Internal Examiner

Accepted for the Board of Faculty of Law

DEAN, FACULTY

DECLARATION

I, Peter Richard Matagi, do hereby declare that this work is original and is a result of my own efforts and initiatives. It had never been submitted in any academic institution for awarding degree.

I further declare that all secondary sources of information used in this work have been duly acknowledged.

Signature _____

Date _____

DEDICATION

To my beloved the late father and mother.

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In the first and foremost place, I wish to express my deep gratitude to the Mighty God for giving me courage, ability and guidance throughout the process of writing this Dissertation. Also, the last lap of the deadline time, the intensive care unit –ICU of this work has been possible due to the efforts of a number of persons. It is on this fact that I take this opportunity to register my heartiest appreciation for those who accorded moral and material support in terms of help I got when undertaking this research; the help without which completion of my work would have been quite impossible. The list is too long, but the following care worth mentioning: The former Permanent Secretary of the Ministry of Home Affairs, Abdul Wakil; former IGP of Tanzania, Said Mwema; CP. Paul Chagonja; CP. E Mapunda; DCP B. Leky for granting me permission to undertake the studies.

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LIST OF ABBREVIATIONS AND ACRONYMS

AC	-	Appeal Cases
ACHRP	-	African Charter of Human and Human Rights of People of 198
AG	-	Attorney General
AIDS	-	Acquired Immuno Deficiency Syndrome
ART	-	Articles
CAP	-	Chapter of Tanzania Laws
CAT	-	Court of Appeal Tanzania.
CC	-	Criminal Case
CCM	-	Chama cha Mapinduzi
CHRGG	-	Commission of human rights and Good Governance.
CHRI	-	Commonwealth Human Rights Initiative
CJ	-	Chief Justice
CJST	-	Criminal Justice System Tanzania
CP	-	Commissioner of Police
CPA	-	Criminal Procedure Act
Cr.APP	-	Criminal Appeal
CRC	-	Convention on the Rights of the Child
CURT	-	Constitution United Republic of Tanzania 1977
DCI	-	Director of Criminal Investigation
DPP	-	Director of Public Prosecutor
ED	-	Edition
Eds	-	Editors
EOCCA	-	Economic Organized Crime control Act.
HC	-	High Court
HG	-	Hearing
HIV	-	Human Immunodeficiency Virus

HR	-	Human Rights
IBID	-	Ibidem (In the same place)
ICCPR	-	International Covenant on Civil and political Rights 1966
IGP	-	Inspector General of Police
JA	-	Justice of Appeal
LCA	-	Law of Child Act.
LHRC	-	Legal and Human Rights Centre
MCA	-	Magistrate Court Act
MISC	-	Miscellaneous
MPHRC	-	The Law Reform Commission of Tanzania
NGO's	-	Non Governmental organization
Op.Cit	-	Opera Citato/in the Work Already
P	-	Prison
PC	-	Primary Court
PCCB	-	Prevention Combating of Corruption bureau
PCT	-	Prison Congestion Tree
PGO	-	Police General Orders
PhG	-	Preliminary Hearing
PI	-	Preliminary Inquiry
PP	-	Pages
R	-	Republic
RCO	-	Regional Crime officer
RE	-	Revised
S	-	Section
SS	-	Subsection
TEA	-	Tanzania Evidence act.
TLR	-	Tanzania Law Report
TPF	-	Tanzania Police Force
TPS	-	Tanzania Prison Services

UDHR	-	Universal Declaration of Human Rights
UN	-	United Nation.
UNPRT	-	United Nation Rule for the Protection of Juveniles
Vs	-	Versus

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The Constitution of the United Republic of Tanzania 1977 – amended from time to time

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The Law of Contract Act (Cap 345 of the Revised Edition 2002)

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- Kadoma Declaration on community service 1997
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- Minimum standard Rule for treatment of prisoners (UN – MSR) – 1957
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- Safeguards guaranteeing protection of the rights of those facing the death penalty – Tokyo Rules on Non-Custodial Measures.
- The convention against torture and other cruel, in human or degrading treatment or punishment the body of principles for protection – 1988
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The body of Principles for protection 1988
- The Ouagadougou declaration on accelerating penal reform – 2002
- The Ouagadougou Declaration on accelerating penal reform – 2002.
- UN. Recommendations on life imprisonment.
- Universal declaration of Human rights 1948
- Universal Declaration of Human Rights 1948

ABSTRACT

The purpose of the study was to establish the actual situation of the prisons congestion in Tanzania mainland and its effects to the inmates. The problem which became the outcry not only for inmates both prisoners and remandees themselves, but also is the outcry of the members of their families as well as the nation itself and all the Tanzanian citizens though the impact is indirect. The study has shown the effects to the inmates example gross violation of human rights, homosexual spread of HIV, though the prison of Tanzania mainland are governed and managed by the good written domestic laws, international and Regional legal instruments related to the good treatment of inmates and management of prison. The objective of the study was to examine the lacuna and deficiencies of the components of criminal justice system in Tanzania in the implementation of justice, investigation arrest, prosecution and to sentence one to imprisonment and its effects. The research was deeply based on the reality from inmates themselves at Musoma prisons who successfully showed reasons which lead to prisons' congestion in Tanzania Mainland. The researcher used qualitative method to analyse data to enable the researcher to interpret data and at the end make conclusion and recommendations. Findings from the research show that some of the provisions and procedures are badly applied by the components of criminal justice. Though the number of provisions on the legislations relating to criminal justice system in Tanzania are good, they had two way traffic on the advantage of the Republic, for example sections 98(a), 91(1) and 225 (1) & (5), where it is not barred to withdraw and rearrest again, and institute the charge with the same facts. Thus, it is recommended that there should be criteria for application of rules and procedure as well as changing some provisions in some legislation, especially the use of Community Service Act, probation offenders and the presidential pardon.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Many prison around the World are near state of crisis, In fact, the issue of prisons, and in particular, of prison overcrowding as well as resulting financial and inherent human rights problems, remains of great concern to all regions and most countries in the World.¹ Judgment highlights effects of prison overcrowding/ congestion. On 11 December 2012 the constitutional Court handed down judgment in the matter of *Dudley Lee V. Minister of Correctional Service and Others*², up holding an appeal against a decision of the supreme Court of appeal, finding that the applicant was in deed entitled to monetary damages from the Department of Correctional Services for its negligent failure to adequately guard against the contraction of tuberculosis in Pollsmoor Prison. The Minister reported that the judgment highlights the facts that overcrowding was not only a priority for the department “but for other related sector in government”.

Few jurisdictions are immune from the phenomena growing prison population, which according to the world population list and world population brief,³ has recently seen the number of individual imprison surpassing 8 ½ million worldwide.⁴ With a world population of 6.1 billion; this represents an average incarceration rate of 140 prisoners per 100,000 population. This increase, which throughout the past decade saw growth in some countries to be as high as 40%, cannot alone attributed to higher

¹ Editorial Board (30 3.2013) Call for prisons reform. retrieved from <http://allafrica.com/stories.htm/>.

² (CCT.20/12)/2012/ZACC 30

³ The world population list was first published in 1999, second edition appearing in 2000, Roy Walmsley, Research finding No. 88 and 116. Home office Research, Development and Statistics, Directorate, London U.K. The world Prison Brief is development of the above and appear online (www.prisonstudies.org):It is produced at the International center for prison studies king’s college, London.

⁴ Ibid

rates in crime. Simply, around the world there is belief that prison is preferable to any alternative, thus punitive element that characterises this sanction remains the cornerstone of modern day correctional and penal system. In spite of proven efficiency and effectiveness of non-custodial alternatives, harsher penalties in the form of longer prison sentences continue to be imposed.⁵

The International Centre for prison studies, estimated that there are more than 10 million prisoners in World and that each year perhaps 30million people enter into prison. Despite a number of International treaties and Instruments which should protect the Human Rights of Prisoners which are routinely violated; the UN Special Rapporteur on Torture told the General Assembly that in many countries of the World, places of detention are constantly overcrowded, filthy and lack the minimum facilities necessary to allow for a dignified existence. Moreover, tuberculosis and other highly contagious diseases are rife.

Inter – prison hierarchies and violence are common features of many prisons, and the guards often delegate their authority and responsibility to protect inmates against discrimination, exploitation and violence to privileged inmates who in turn, use this power to their own benefit.⁶ If one wants more of the above you must give money or become a “wife” to your fellow inmates or the staff.⁷ (So nothing goes free). 60% of countries (114 out of 191) have prisons holding more prisoners than it is intended to hold. The official capacity is exceeded in 72%(28/39) of African countries, America 70% (32/46), 56%(9/16) Oceania countries, 68%(17/25) of Asian countries and

⁵ International prison policy Development Instrument 1st Edition July 2001, the International centre for Criminal Law Reform and Criminal Justice Policy. Vancouver, British Columbia Canada.

⁶ Report on current situation of prison Overcrowding by university of London – International centre for prison studies. Issued, February 2010.

⁷ The challenges overcrowding and correctional programming. By Maicibi Alhas, (PHD), Being a plenary paper. On occasion of ACSA Biennial Conference, Accra Ghana, 13 – 17th September 2010.

44%(25/57) Europe countries. The extent of overcrowding is greatest in African prison systems. The occupancy rate is over 150% in 41 countries (16/39) --- .⁸

According to data collected by University of London (2010), by department of International Centre for Prison Studies; the problem of Prison congestions in the World is a global outcry, despite the truth of the number of United Nations Instruments and regional Instruments (In the context of Africa) relevant to prison. Reforms are made and many countries have adopted and some countries ratified the constitutional rights, but still the condition is worse. Some other United Nations Instruments and Regional Instruments relevant include:⁹

- i. Minimum Standard Rule for Treatment of prisoners (UN – MSR) 1957 – Especially rules 9-22
- ii. Universal Declaration of Human Rights 1948
- iii. International Covenant on civil and Political Rights – 1966
- iv. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The body of Principles for protection 1988
- v. Basic Principles for treatment of prisoners – 1990
- vi. Safeguards guaranteeing protection of the rights of those facing the death penalty – Tokyo Rules on Non-Custodial Measures.
- vii. UN. Recommendations on life imprisonment.
- viii. Kampala Declaration on Prison Conditions in Africa – 1996
- ix. Arusha Declaration on Good Prison Practice – 1999
- x. Kadoma Declaration on Community Service and recommendations of seminar entitled “Criminal Justice” the challenge of Prison overcrowding - - - 1997.
- xi. The Ouagadougou Declaration on accelerating penal reform – 2002.

⁸ Ibid

⁹ UNDOC (United National Office on Drag and Claim (20 January,2014)Criminal Justice, PRISON Reform and Crime prevention at [http://. www.unodc.org/unodc/en/justice-and-prison-reform/tools.html](http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html)

Overcrowding or congestion as it is called in some parts of the world is the most important reason for failure of state to meet minimum standards decency and humanity. It is related to recognising where there is not enough room for prisoners to sleep, no facilities to provide sufficient food, health care, insufficient staff to ensure that prisoners are safe and the lack of accommodation to hold separately types of prisoners who should be kept apart; juveniles from adults and untried from convicted.¹⁰ *Stephan J. Odgers and Stanley M .(Eds)* when discussing the remand congestion, observed that prison is perhaps the most unnatural environment in which a human being can be placed.¹¹ It is characterised with the stress which results from depersonalisation, lack of liberty, boredom, lack of privacy, homosexuality unwillingly, brutal violence, gross violation on Human Rights. Prison condition in Africa, in most of the countries in the continent is reported to be characterised by overcrowding, inhumane living conditions, prison violence, corruption and racketeering to make life in prison a “double sentence.”¹²”

In *Chavis v Rowe*, courts have been reluctant to give a definitive decision on overcrowding but had rather linked it to variety of other rights such as to whether overcrowding had adversely affected person’s safety, mental and physical health, clothing and nutrition, held that conditions of housing five man in a single hall of 10.6 square metre shocked the general conscience and constitutes crude and degrading treatment.¹³” A former Nigerian, Inmate Arthur Judah Angel Had experienced prisoners’ rights systematically flouted “our little cell rooms measured about seven feet by eight feet. We would bathe, sleep, eat, defecate, piss, play and

¹⁰ Rob Allen.(2010). Current situation of Prison Overcrowding: King College London, University of London. International Centre for Prison Studies.

¹¹ Loc. Cit: 9

¹² Justice and Congestions Prisons, the Criminal law Journal. Vol. 24, No. 6/2000

¹³ 643 F. 2d 1281 (7th Cr 1981) see also *Battle V Anderson*,564, F.2nd 388,395 (10th Cr 1977) where the court had found that housing two men in a small 35-40 square metre, cubby hole is contrary to the contemporary standard of decency.

pray there. For us, it was our entire world.¹⁴ We are of the view that civilised standards of Human decency simply do not permit a man, for a substantial period of time, to be denuded and exposed to the bitter cold, and to be deprived of the basic elements of hygiene such as soap and toilet paper.¹⁵ “Despite the hellish conditions at the prisons, was most shocked, surprised, saddened and angered, when he saw a dozen men being cramped inside a cell made to house three, buckets used to defecate with no water, inhuman conditions is too mild a way to describe disheartened face of young men - - - it was a horrible picture for democracy and it was very tough what I have seen”.¹⁶

There is rampant homosexual behaviour in Zambian congested prisons. Inmates are forced to have sex against their will by strong men who took advantage of congestion in cells as those meant for 30 people; there are 70 or even 100 people. Some, apart from strong men would agree to engage in homosexual act. “Ex-prisoner Sishekano Lubinda.”¹⁷

Human rights report released. “NO ESCAPE MALE RAPE IN US PRISON”. Report shows that sexual abuse of male prisoners by other male prisoners is pervasive and prison officials are turning a blind eye to it. Based on over 200 inmates interviews, prison rape is part of mythology of prison life, and most of the victims are young men, accompanied by extreme physical violence and sometimes to death, AIDS - - -

¹⁴ Amnesty International,” Nigeria Prisoners’ Rights systematically flouted. February 2008. AL. Index AFR 44/001/2008

¹⁵ *Wright v. Mc Cann*. 387F.2d.519(Cr 1967) at p 526, court held, the complainants inter alia left nude, subject to sleep on bare floor with no space, without toilet tissues

¹⁶ Pro Ramesh Deosarah, Jail condition shocked Deorasarama head special committee to investigate and address issues emanating from prison officers and prisoners. At Trinidad newspaper, <http://www.trinidadexpress.com/internal?St=print&1d=232934091>

¹⁷ Lubinda, S (July 20, 2013) Rampant homosexuality in Zambia prison retrieved from <http://www.Zambia.watchdog.Com> on 11/4/2016.

threat of HIV transmission particularly acute given the high prevalence of virus among prisoners.¹⁸

Daily News, Monday, December 22, 2014. On 6th page bolded words “Prison congestion should be solved”. It mentioned that Tanzania prisons are hell on earth, a survey carried out last year showed that some of prisons are double housed number of prisoners that exceeded the authorized legal capacity far.

For Instance Isanga prison Dodoma official capacity is 784 inmates had 1,338 which is 70.7% above the capacity, Maweni prison in Tanga had 1,028 instead of 920, Segerea prison had 1, 878 prisoners instead 920 and Keko prison had 1,140 inmates while the official capacity is 420. Prison in country invariably;

- i. Tortured with hard labour
- ii. Fed badly cooked food
- iii. Inmates mixture adult, the child, mad people and with infection diseases like inmates with AIDS, TB & Skin diseases
- iv. Mostly sleep on top of each other on hard cold floors
- v. Poor treatment to the sick inmates, panadol is the highest dose given¹⁹

¹⁸ Smith P (30,4,2001).Human rights watch report on male rape in prisons retrieved from www.alternate.Org/story/10822

¹⁹ Daily News Reporter, (December 22, 2014)” Prison congestion should be solved” The daily News, No 4359, pg. 6

Table 1.1 Overcrowding in some prisons by Tanzania prison ten years 2002-2012

Year	Prison Population Total	Prison Population Rate
1996	38,135	119
2000	45,611	136
2002	44,063	120
2004	43,244	116
2006	43,911	113
2008	41,613	97
2011	38,353	92

Source : Tanzania Prisons headquarters 2014

Table 1.2. The Prison Population Trend Tanzania ten years 2002- 2012

Prison	Total Inmates	Legal capacity	Excess
Isanga – Dodoma	1,634	784	108
Morogoro- Remand	552	144	263
Kahama	460	171	169
Karanga/Kilimanjaro	1,310	841	50
Keko- Remand	1,116	340	228
Segerea	2,175	900	192
Arusha	1,073	530	102
Masasi	227	95	203

Source: Tanzania Prisons headquarters 2014

Table 1.1 and 1.2 despite the serious problem [emphasised]. The number of prisoners and Remandees exceed the Prison's capacity by 23% according to the current statistics 2002- 2012

Prisons in Tanzania are still far away from reaching the standard required by international conventions, agreements despite the truth working under the guidance of the values and the laws, legal jurisprudence at international level that formulated strict rules in forms of treaties, charters, declarations, and minimum standards agreements

about the treatment of prisoners and detainees applied to all states, including Tanzania. However, it has been observed that Tanzania prisons do not live up with these minimum standards.²⁰

1.2 Background to the Problem

One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that it is not applicable to prisoners is well documented. And there are innumerable judgments that have highlighted the highly unsatisfactory conditions prevailing inside the prisons all over the world due to failure to provide an environment which is conducive to the maintenance of prisoners.²¹ Rights partly rooted in the belief that prisoners do not deserve all the rights and the protections that the constitution provides to all citizens.

The judicial interventions had some example, on their decision and highlights there are violation of Human Rights of Inmates in the world. And the courts as the custodians of justice play a great role in protection of inmate rights who have been treated unfairly and/or whose rights have been unlawfully infringed, is entitled not only to approach the courts but also for an appropriate remedy where the alleged infringement is proved;

In *Van Biljon V. Minister of Correctional Services*²² four prisoners diagnosed as HIV/AIDS positive, asked the High Court to intervene in their demands for the right to access to medical care, including special medication, treatment, and that cost for

²⁰ TLS/LSRP. (2009). A draft report on special inquiry on Prisons situation in Tanzania Mainland, Pg 10

²¹ Prison & Human Rights workshop: Organised at Bhopal by the Commonwealth Human Rights Initiative(CHRI) in collaboration with the Madhya Pradesh Human Rights Commission (MPHRC) conducted on 25th & 26th of April 1998 – India Intended by representative law commissioner of India, Nation Human Rights Commission of India, Ex – prisoners and their family members, academicians, journalist and lawyers.

²² 1997 SACR 50 (C).

the state. The department argued prisoners should have access to health care equal to available to any other patient attending a provincial hospital relied on defense of budgetary constraint. The court considered article 35(2) of the constitution, which provides that.

“Everyone who is detained, including a sentence prisoners, has a right - - - the provision, at state expense of adequate accommodation, nutrition, reading material and medical treatment.

The Judges decided in favour of inmates. In course of the judgment, commented that conditions were more likely to give rise to infections therefore, placing a heavier responsibility on prison authorities. They were so excessive as to amount to inhuman treatment and infringement of his constitutional right to dignity, humanity decency.²³ Prisoners have remedies and being subject to intolerable degrading conditions by overcrowding is unwanted and amount to physical and physiological torture.²⁴ Housing two inmates in a cell designed for one man fail short of a measure of decency and civilised standard.²⁵ Overcrowding had led to deprivation of human basic needs, negatively impact on safety and health of inmates.²⁶

Judge Sach, Prisoners are entitled to all their personal dignity not temporarily taken away by law or necessarily in consisted with the circumstances in which they have been placed, in roads which incarceration necessarily makes upon prisoners personal rights and their liberties are very considerable - - - Nevertheless, there is substantial residue of basic rights which they may not be denied, and if they are denied them they are entitled to legal redress.²⁷ A prisoner retains all those rights that are not taken

²³ *Gonjwayo v. Minister of Justice and Parliamentary Affairs & Others.* (1997) (1) SALP 39 para complains against prison conditions and prolonged detention

²⁴ *R v Deputy Governor of Parkers Prison, Ex parte (Hague)* F.2d, 388, 385(10th Cir.1977) The house of Lord decision.

²⁵ *Rhodes v Chapman* 452 U.S.337, 1015 Cf. 1981 US. Supreme Court.

²⁶ *Toussaint v Yockey* 722 F2d 1490 (19th Cir 1984)

²⁷ *August and another V. Electoral Commission and Others:* 1994 BCLR363 (CC) at p 372 – 372

away, either express or by necessary Implication.²⁸ As deprivations such The Russian Prosecutor General has called for a reform of prison system, noting that numbers of complaints lodged by prisoners with the European court of Human Rights is increasing year upon years. Additionally official statistics shows that more than 43,000 violations in detention conditions were discovered in 2012, and nearly 4,000 people died while in custody.²⁹ Deprivation such as loss of free movements, loss of personal names to prison numbers, personal clothes to prison uniform loss of privacy to the environment congested with people of varied wild experiences, suffer communication restriction as well as loss of respect from even the most junior staff.³⁰

1.3 Statement of the Problem

The problem of prison congestion as discussed, on the part of introduction, and the evidence by courts decisions on prison congestion the agonising thorny issue that has been continued to confront the all nations in the world, but much worse to the poor countries. The fun evidence of the prison congestion all over the world, has similar characteristic at large of the inmates as well as the staff personel,

“Similar characters example, Wilingly and unwillingly homosexual, Gross violence, assault, suicide and murder, Gross violation of human right from staff personel and imates themselves, Poor of health services and Badly cooked mealfed...”

One prisoner after release had dictum statement.” No one truly knows a nation until one has been inside Jail. And a nation should not be judged by how it treats highest citizens, but its lowest citizens.³¹ The wound which are unseen, are more painful than the wound which are seen and treated by doctors³² prison has become the leading

²⁸ *Raymon v Honey* [1983] I.A.C.I 10 Lord will be forces’ dictum.

²⁹ Supra not – ICPS

³⁰ Iskil Yusufu. Improving Prison Operations paper presented at the 6th International Conference on Human Rights Prison Reform Organised by citizens United for Rehabilitation of Errants (cure) Held in Bankok, Thailand, On 4th – 8th March, 2014.

³¹ Mwananchi Newspaper reporter.(Friday, December 13, 2013) the dictum statement amplified by former prisoner and former late president of the Republic of south Africa Nelson Mandela. At page 4

³² Ibid

violators of human rights in the world and realised that going to prison amounted to going for punishment rather than as punishment living life of inmates, is no absolute guarantees of tomorrow walking alive is pigeon hole of death.

Tanzania as well being a part of the world also facing the serious agony of prisons congestion and its consequences. The magnitude of the problem of congestion in prisons became apparent to the commission of law reform of Tanzania mid-1986, where a random survey was made upon 5 prisons, namely Keko, Musoma, Tarime, Manyoni and Singisa, which had a total capacity of 893 prisoners only but at that time was found to be holding more than double i.e 1934 prisoners.³³

Since then the problem has become a chronic existence. And from that time up-to-date there efforts made to decongest the prisons, by the numbers of statements made by authority people in the all three organs of the state including of the head of state, apart his presidential pardon to the prisoners, ministers and other executive departments, judiciary through their decisions and circulars as caseload management, parliament through member of parliament and its nation security committee and non governmental organs on human right activists, academician through researchers, journals reports and books.

Still many prisons have a big number of inmates (prisoners and remandees), double the capacity of the buildings. There were 26,078 inmates in different prisons in respect of 12, 540 capacity of building 13,538 excess was about 108% capacity,³⁴ and causes the multiple effects to the inmates. The doctrine of good life in prisons congestion is dynamite strong and weakens its double humiliation.³⁵ Prisons in Tanzania more of hell than reforming centers and go in as undergraduates and

³³ Report of the law reform commission Tanzania, (1986). On the prison congestion in prisons, presented.<http://www.irenews.org/report588923>

³⁴ Special report on inspection of Tanzania Mainland Prisons (2002/2003) By Commission of Human Rights and Good Governance.

³⁵ *Goldbey & other V. Minister of Prison and others* (1979) (i) SALP

come out with PhD'S in crime ³⁶ (or more psychological, /damaged to the inmates – emphasised). The situation is terrible and there is a lot to be done and to see that inmates are treated like human beings.³⁷

Despite of the all efforts done including the enactment of the Community Service Act, 2002 and Parode Act of 1994[R.E 2002] and the existance of relevant legislations regardig mechanism to decongest in prisons, building new prisosns, status is still complex due to the number of various reason as cases delaying, strictness of the laws, cumbersome rules and procedures on appeal, bail costrains, adjournment of criminal cases on stages of mentioning, while the cases are incomplete investigation, hearing stages, the long sentences imprisonment, failure to use the alternative sentences as punishment, the use of parole, extra mural and probative offender Act. The studies will depely find out the lacuna and to have recommendations on the mechanism to decongest priosns in Tanzania and the centres to become more reformativ.

1.4 Objective of the research

1.4.1 General objective

The main objective of the study intended to examine the lacuna and deficiencys in the all components of criminal justice system in Tanzania in the implementation of justice as the causes of the statement of the problem.

1.4.2 Specific Objectives

The research aimed to deeply and intensively examine and evaluate the current situation in prisons and law relating to criminal justices and seek a comprehensive

³⁶ Priest Kusupa, K.(2011). My life Imprisonment stories of 1888, Pain full Days, Dar Es Salaam; Karljames print technology

³⁷IRIN (May 5, 2006) Kikwete pledges to improve prisons condition. Daily News Monday Dec 24 2010. Retrieved from inmates.org/report/5823/Tanzania on 23, July, 2016.

understanding of the factors and forces leading to the problem. Specifically, it intended to investigate:-

- i. The existence of causes of congestions of prisons.
- ii. The impact of congestion in Prisons.
- iii. The way forward or solution to reduce and solve the problem of congestion in prisons, especially on the use of alternative sentences, Parole, Presidential Pardon as well.

1.5 Significance of the Study

The significance of the study is to raise additional concerns and to promote awareness on the problem and the critical challenges that need to be addressed and to find out the solution to root causes and consequences. To inform the society and the Government Tanzania that prisoners are human beings with equal dignity and they have inherent rights in the concept of the worth and value of a man as human beings. And they need good treatments as outside citizens for all basic needs which are supposed to be given by the government while serving their sentences or waiting for trials apart from their rights which are expressly or impliedly lost by law or loss of free movement, loss of personal names etc.

Again the findings of the research will be valuable to the institution and to educate the warders on the need to adhere to the principle/the standards required by all conventions, treaties, Instruments and International conventions of the United Nation as Standard Minimum Rules of Prison Protection prisoners relating to prisoners.

Also, the findings will help in facilitating amendments of the old fashion laws such as the Minimum Sentence Act, the stern and strict law, the establishment discussion of the extension Inmates of long sentence to enter in the Parole and presidential pardon to be extended whereby as of now it is limited to the inmates whose sentence is not above five years. Provide encouragement to the courts to utilise non – custodial

sentences and community service. Seek the increase of budget to the whole system of criminal justice organs as well as increase the number of personnel in order to speed up the trials, which seem to be the major factor for delay of cases in courts.

To encourage improvement of infrastructures of the old prisons which were built during colonial time, as well the building of the new prisons especially to the new Regions and Districts which are shared by the old Regions and Districts.

Lastly, the general problem of managing the statement of the problem has intrinsic importance as it affects the socio-economic growth and stability to the Country. The outcome of this study will not only advance knowledge in academia, all the organs involving criminal justice system, as well as the Parliament, the law makers; but also will be of value to the inmates and the broader community. Likewise, the study findings will be put on the hotline as well as hard copies to be distributed to the Prison Institutions for assisting the inmates; in such a manner they can learn from other inmates in the world on how they seek the remedies to the court once there are violations of human rights. It will also bring an understanding that being sentenced into the prison still the inmate retains his/her rights.

1.6 Hypothesis

The research focused its attention on the preposition or assumption that: Whether some statutory provisions, and its procedures in implementation of justice and the failure to use the alternative sentencing, among other things, does attract and encourage the problem rather than discouraging it.

1.7 Literature Review

There is a number of literature about the prison congestion all over the world that attest the truth that it is a global concern. Historically, the first activities on behalf of prisoners were carried out as early as 1870 and the organisation well known for its

work of visiting people detained in relation to armed conflicts, for which it has a specific monitoring mandate under International humanitarian Law. Since then the number of Professors, Doctors, University students on their dissertation, a number of Non-Governmental Organisations (NGO's) etc, all over the world, maintain that it doesn't matter whether the country is rich or poor all are facing the great concern of this problem of prison congestion. This awareness led the listed above to write articles, journals, books, publication, dissertations and papers on the agony of the issue. A lot of literature argued that prisons became among the leading violator Institution in the world for the Human Rights. And it was realised that going to prison amounted to going in the prison for punishment rather than as punishment. Prison has become a dead ground. Prisons conditions in inconsistent to human dignity...³⁸ It remain that inmates are part of the society, although "temporary segregated" need to be treated with human dignity as citizens and any act fallen below the minimum will put society on a slippery slope creating second class citizens³⁹

Therefore, the study intended to go deeper on all legal causes to answer the research hypothesis, how they play a big role to send the remandees (waiting trials) and convict one in prison and course congestion, with the slim or pinhole open door to get out. Hence, the study intended to give solution to the root causes in respect of the fundamental principles of justice, as *Lord Hermat C.J. In R v Sussex - exparte Mc Carthy*⁴⁰ Indicates "that it is of fundamental importance. Justice should not only be done, but should manifestly and undoubtedly be seen to be done "Justice must be rooted in confidence⁴¹ and the ultimate objectives of decisions made by the member of judiciary should not only be to apply the law, but to do this is such a way that

³⁸ Dyde Emanuel Ayde, (2010), in partial fulfillment of the requirements for the degree of LL.M Human Rights, on problem of overcrowding in Nigeria. Submitted to central European University. Legal studies department.

³⁹ Ibid

⁴⁰ *William Malaba Butabutimi V. R., Criminal Application 5 of 2005*, Court of Appeal of Tanzania at Mwanza 2007 (unreported).

⁴¹ [1942] 1 KB 259

justice is achieved to the public perception of fairness.⁴² True peace is not merely the absence of tension. It is the presence of justice.⁴³

The study moved forward to deal deeply especially with delay of cases as main outcry not only to remandees but also to the convicted ones seeking appeals, murder cases waiting for court monetary budget to be issued for their cases. Cases delay does not affect the remandees or convicted ones but it affects the government at large due to the fact that, it must supply all basic needs to the victims.

Delay of cases was and is one of the major problems which led to the undertaking of this study and every corner of the world has been discussing it as a burning issue. This has been regarded as a very big problem and has from time immemorial been implied in the statement which says “Justice Delayed is Justice Denied.” Delay to Justice historically started during Magna Carta 1215 AD and became symbol Liberty and rule of Law that stated;

“No free man shall be taken or imprisoned or dispossessed or outlawed or exiled, or in any way destroyed nor will we go upon him, nor will we send against him except by the law of the land. And again no man will we sell or deny or delay right or justice.

The Magna Cart brought a numbers of treaties, convections and declarations, as well as the constitutions of many countries. The right to fair trial is Human Rights - - - to protect individual from unlawful and arbitrary curtailment or deprivation of life liberty.

⁴² *In Metropolitan Properties Co. (FGC) Ltd V Lannon* [1969] M QB 577

⁴³ Penduken livula – Ithana, Minister of Justice and Attorney General, Namibia. This statement was part of the address to judges and legal practitioners in Namibia to mark the opening of the Court Legal year in Windhoek, Namibia in January, 2007.

Evidence is steadily and increasingly surfacing that in many countries, across many continents, the people are losing confidence in their judiciaries, they dissatisfied with case delays...⁴⁴

Lord Denning (As he then was) had this to say “All through the years man has protested the Law’s delay and counted it is a grievous wrong, hard to bear. Shake spear ranks it among the whips and scorns of time. Dickens tells how it exhausts finance, patience, courage and hope.⁴⁵ Failing to address concrete relevant facts and relying solely on the gravity of the charges, the authorities prolonged the applicant’s detention on grounds which cannot be regarded as sufficient.⁴⁶ Court consequently found is a violation of Art.5 (3) of the European Convention.⁴⁷

Chipeta S. (Supra) precisely puts it “ if justice delayed is justice denied all judges must show visible concern at the agony of litigants and particular inhuman treatment meted out to persons who are compelled to stay in prison for months...⁴⁸

*In Martin Nguna v. EACA*⁴⁹, Court gave the advice. In our view, if a court refused adjournment and the prosecution is unable to proceed for certain reason a Court does not have to eat its words” or rescind its order at the whim of prosecutor that would be intolerable we believe that a court can in circumstance of emergency, clothed as it is with inherent power to control its own proceedings, dismiss the charge and discharge the accused “ In all prisons, about third of jail inmates are under-trial prisoners are

⁴⁴ Maina C. PeteraKijo. B. H. (2007), Law and Justice in Tanzania, Quarter of a century of the court of appeal, Dar es salaam, TANZANIA, Mkuki na Nyota Publisher.

⁴⁵ Chris Maina Peter & Helen Kijo-Bisimba (2007) *Law and Justice in Tanzania* Quarter a Century of Court of Appeal, Mkuki na Nyota Publisher, Dar es Salaam, Tanzania.

⁴⁶ Article of Universal Declaration of Human Rights (UDHR).

⁴⁷ *Allen v. Sir Alfred Me Alpine* [1968], ALLER 543 at pages 546 – 547.

⁴⁸ *Bakhtmu tskiy v. Russia*, ECt#R Application no 36932/02, 25th June 2009.

⁴⁹ Article 5 (3) Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or release pending trial. Release maybe conditioned by guarantees to appear for trial.

languishing in jails due to delays in the disposal of their cases. Delays occur example by re- investigation by police and remand of cases by supervisor courts.⁵⁰

Ramadhan J.A was quoted by Hakim Official magazine of Kenya magistrates and Judges Association while addressing the issue of remand congestion. “He stated that human rights are primarily concerned with the protection of the integrity and dignity of the individual. The rights and freedom guaranteed by international rights and freedom guaranteed by international instruments (among other things) cover the following aspects:

- Physical integrity proving for life, security, freedom of movement and system. It prohibits arrest detention, torture and other forms of ill treatment
- Legal integrity – nationality, recognition before law, fair trial and retroactive penal law rights accused persons and miscarriage of justice...⁵¹”

At the same time we desire to make it quite clear that we do not in any way view lightly breaches of provision of section 225 of CPA which have been designated to protect and safeguard the liberty of the accused person in Criminal trial. Section 225 of the Act is important provision for the safeguard of the basic rights of an individual accused of criminal offence. It is for that reason that we review our call upon the magistracy to be more vigilant in the application of the section in order to ensure that the accused person really enjoys the protection which the provisions of that section seek to accord them.⁵² They are an important adjunct to the administration of justice. By which I mean of course, just not only to the man himself, but also to the community at large.⁵³

⁵⁰ Jail Reform Report no 23

⁵¹ The Criminal law Journal. Vol. 24, No. 6/2000

⁵² A Magistrate Manual; B D Chipeta Law Africa at pg 242

⁵³ Criminal Appeal Number 48 of 1976, the Court of Appeal for East Africa.

Legal Aid Committee argues that when justice is delayed then it is denied. The delay does not simply injure the moral sentiments of society, but much more seriously often leads to deprivation of life liberty and comfort of individual citizens who are victims of maladministration of justice and their families suffer from enormous pain, psychological trauma and social stigma.⁵⁴

Those imprisoned are unable to look after their families. In the absence of the main bread winner, the family is many a time forced into destitution with children going astray. This combined with the stigmatisation and ostracisation that they face, leads to circumstances propelling children towards delinquency and exploitation by others (Emphasised).

Chris Maina Peter and Ibrahim Juma, expounds that the problem of delay and its attendant consequences in criminal justice system has induced great concern in judiciary, the executive and the general public for a long time now, not only in Tanzania, but also through the commonwealth, if not the whole world. The timing of administration of justice is critical to a fair hearing and just outcome. The consequences of lengthy delays before trial are usually severe for an accused person who has to wait in custody; such custody whether it amounts to more deprivation of liberty or something; amounts in facts, to punishment before conviction of someone who may never have committed the offence. Excessive delay aggravates the already severe congestion in prison⁵⁵ A cartoon in one of Tanzania newspapers showed a slowly moving tortoise with remark that it cared only for the law. The traditional view of the wheels of justice grinding exceedingly slowly,⁵⁶ is thereby depicted in its

⁵⁴ *Director of Public Prosecution V Fonja Mathayo* [1995] TLR23. The Court discussing a period of 25 months adjournment.

⁵⁵ Fundamental Rights and duties pg. 75.

⁵⁶ Referred to by Chief Justice Nyalali in his “changing Role of the n. Bar,” op. cit at page3.

most effect form of delays that have been one of the main subjects of complaints by the public.⁵⁷

Apart of the rights stipulated by the constitution against delays in these terms:

In deciding civil and criminal matters according to law, the court shall abide by the following principles:

a - - - ;

(b) not to delay delivering of justice unduly;

c - - - ;

d - - - ;

(e) To do justice without being held up by technicalities which can falter the delivery of justice. Also, there are some cases where there had been interventions which show there are case delays which are not accepted in delivering justice. *In Almas Kaumbeta V.*⁵⁸ His Lordship said: No one can doubt that speed is an important element in the dispensation of justice.

Those involved in the administration of justice are thus at the centre of criticism, use the legislations, in technicalities and cause congestion in prison especially when it comes to the question of trial proceeding.

Example on the question of bail Section 148(4) of the CPA 10 it is complicated on granting bail, if the Director of Public Prosecutions made the certificate for bail objection, as well section 91(1) on the issue to enter *Nolle Proseque*, section 214 (1) to start afresh a case. As well on question of appeal, In Tanga, one Issack Vincent was alleged to have committed murder in 1993 and was convicted by the High Court

⁵⁷ The financial times, London 20 October 1989, at page 19

⁵⁸ (1982)TLR 329

but the Court of Appeal, in Criminal Appeal No.132 of 2005, was acquitted on 10th, July 2007, that is, after 14 long year.⁵⁹

1.8 Research Methodology and Design

The research employed case study design by visiting to prisons where I met remandees and prisoners themselves whose they gave the detail of the intended research as it facilitates the smooth sailing of research operation to yielding maximum information deeply and thoroughly in the material relevant to the statement of the problem.

1.8.1 Research Design

The researcher employed a case study design whereby investigation was conducted at Musoma prison with the intention of gathering detailed information about the research problem. The inmates were asked about the causes of congestion in the Musoma prison and made conclusion regarding the causes and profile of the problem.

1.8.2 Data collection methods

1.8.2.1 Primary Data

Primary data was collected by using interview. The study employed unstructured interview to individual members affected by delay by members of judiciary, state attorneys, advocates, remanded and prisoners (convicted ones) and the police officers especially criminal investigators.

1.8.2.2 Secondary Data

Secondary data was collected by using documentary review. This was the dominant source of data relying upon case files of police under investigation stages,

⁵⁹ Sub – Article (2) of 107 A, of the Constitution of United Republic of Tanzania, (1977), As amended from time to time.

proceedings on hearing, textbooks, journals, comments, law reports, articles, case law as well as the websites all relating to the research problem.

This method was fruitful since the researcher was able to collect information that has already been founded from a number of relevant and reputable sources.

1.8.3 Sampling Techniques

Sampling method that was applied was stratified random sampling; the method was and gave reality of the statement of the problem according used to select the already known population having sub – groups that are of interest.

1.8.4 Data Analysis

The data were processed and analysed using simple content analysis tools as well as simple statistical techniques where quantification was necessary to substantiate the extent of the problem prevalence in particular congestion, where by visiting the inmates they will give the detail position their cases.

1.8.5 The Scope of the Study/Delimitation

The research based at Musoma prison where all the inmates (convicted or remandees) are widely in prison, with different offences whether convicted or alleged to have committed, with how long was taken to the end of justice and why had not reached the final destinations.

1.9 Study limitations

This study was limited by various constraints as follows:

Firstly, the timeframe for the study was short hence this created pressure of the researcher as he had to undertake the study and attend other job responsibilities at the national level. This was addressed by selecting a study case and a manageable

sample very carefully to ensure that the required data could be obtained fast and reliably.

Secondly, there was a financial challenge as enough funds were supposed to be in place to facilitate movements, typing, editing the language and binding the dissertation.

Thirdly, it was difficult to easily get information that was treated as utmost confidential in the prison. This constraint was addressed by assuring the respondents that the information needed was earmarked for academic purposes only and not otherwise. Also, the introduction letter from Mzumbe University helped in creating confidence among respondents that the information needed was really for academic purposes and hence not precarious to their jobs and institutions in general.

Lastly, some respondents were feeling shy to talk about homosexuality taking place in prisons counting it that it was denigrating to them. The researcher strived to encourage them by telling them that it was for the purpose of improving the life in the prison since they deserved to enjoy all their basic rights as human beings.

CHAPTER TWO

CRIMINAL JUSTICE SYSTEM IN TANZANIA

2.1 Introduction

To every event, must have a cause or reasons to that event. The statement of the problem stated on the first chapter is the event to be discussed in this second chapter. Criminal Justice System in Tanzania cannot be carried out without the presence of law, whether it in evil or good.

Literal definition of criminal justice system in Tanzania it is implementation of justice from day one offence is committed and suspect is arrested, due allegation and brought to the court up to the final destination where the suspect will be convicted or acquitted. According to Wikipedia criminal justice is system practice and institution of governments directed at upholding social control deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.⁶⁰

2.2 Definitions

The term constitution is generally understood to be a body of fundamental rules of law that declares or takes cognisance of the existence of a state, establishes its organs, vests powers, allocates functions and puts limitations on the exercise of powers given to the state organs. In other words the constitution is the supreme will of a people on how they want to live.⁶¹ The court's power and duty to enforce the constitution flow from the constitution's own declaration as the supreme law of the land.⁶²

⁶⁰ https://cn.wikipedia.org/wiki/Criminal_Justice.-criminal justice – wiki pedia.

⁶¹ Karpen, U, The Rule of law in Karpen, U; (e.d.) Constitution of Federal Republic of German
“(Nomos Verlagsgesellschaft 76520 Baden – Baden 1988)

⁶² *Marshal, C.J. In Marbury V Madison* 5 US (cranch (137 (1803).

The term “law” is used in two distinct senses – one in the abstract and the other concrete. Law or the law indicates law in the abstract meaning thereby the entire *corpus juris* of a state, i. - - -, the entire body of rules and principles in a state and recognised by its court.⁶³ Sir Salmond in his book on Jurisprudence, The law may be defined as the body of principles recognised and applied by the state in the administration of justice.⁶⁴

The term “Justice”, according to converse Oxford English Dictionary is just behaviour or treatment, the quality of being just. To treat or represent someone or something with due fairness,⁶⁵ “Fair, just and reasonable procedure.”⁶⁶ Principles of natural justice would also come under reasonable law and fair, just and reasonable procedure. The procedure cannot be arbitrary, unfair or unreasonable.⁶⁷ Justice is not a cloistered virtue. It is tree under whose spreading branches all who seek shelter will find it. But it is a tree which flourishes only in the open, in the glare of Public scrutiny.⁶⁸

2.3 Status of Tanzania

Tanzania is one state and is a sovereign United Republic.⁶⁹ The Criminal Justice System in Tanzania, has the components whereby that emanated from the constitution. All state authorities in the United Republic shall be exercised and controlled by two organs vested with executive powers, with judiciary powers and two organs vested with legislative and supervisory powers over conduct Public affairs,⁷⁰ the organs vested with powers shall be the Government of the United

⁶³ Pro. P.S. Atchuthen Pillai (2012), Jurisprudence and Legal Theory, New Delhi, India Eastern Book Company.

⁶⁴ Ibid at pg 20.

⁶⁵ Catherine Soanes & Angus Stevenson (2008), Concise Oxford English Dictionary, Eleventh edition (Revised), Oxford University Press United State.

⁶⁶ *In Maneka Gandhi v. Union of India* (1978) ISCC 248.

⁶⁷ Supra note 75 at page 22.

⁶⁸ This statement was made by New bold, P. in *Omari Musa V. Republic* (1970) E.A 42.

⁶⁹ Article 1. C.U.R.T, 1977, as amended from time to time.

⁷⁰ Article 4 (1) Ibid.

Republic and the Revolutionary Government of Zanzibar, the organs vested with judicial power shall be the Judicial of United Republic and the Judiciary of the Revolutionary Government of Zanzibar, and the organs vested with legislative and supervisory powers over public affairs shall be the Parliament of United Republic and the House of Representatives.⁷¹ For the purpose of the efficient conduct of public affairs in United Republic and for the allocation of powers among the organs specified in this article, there shall be Union Matters as listed.⁷² Each organ specified in this article shall be established and shall discharge its functions in accordance with the other provisions of this constitution.⁷³

Therefore the discussion to this chapter two will be the components of C.J.S.T in Tanzania Mainland. It is important to understand that the purpose of Criminal Justice System is to control social order and clean the society off the crime. Furthermore, is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending the innocent. It is responsible for detecting crime and bringing it to justice; and carrying out the orders of court, such as collecting fines, and supervising community and custodial punishment.⁷⁴

2.4 The components of Criminal Justice System in Tanzania Mainland.

Definition of Criminal System: The system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing and punishing those who are suspected or convicted of criminal offences.⁷⁵

⁷¹ Article 4 (2) Ibid.

⁷² Article 4 (3) Ibid.

⁷³ Article 4 (4) Ibid.

⁷⁴ [Malcom Davies, \(2005\) Criminal Justice: and Introduction to criminal justice system in England and wales, London pearson Education Publisher.](#)

⁷⁵ Ibid

Tanzania Mainland has a number of component organs which are dealing with the administration of Criminal Justice System and are directly involved with the research problem of this dissertation, some of the components are of the Union Matters as scheduled in the first schedule of the C.U.R.T 1977 as amended from time to time.

If the judiciary is the guardian of the rights of the people, the organised Bar and its lawyers are the foot soldiers. The legal professional and private bar bear a large share of the burden. (Robert J. Grey Jr, In Access to Courts, Equal Justice to All, Us Dept of State Aug. 2004.

2.5 Components of the Administration of Justice Tanzania Mainland

- i) The Tanzania Police Force (Hereinafter TPS) is a law enforcement institution established under the Police Force and Auxiliary Act. Under this legislation the T.P.F) among others has the following duties.⁷⁶
 - i. The preservation of peace
 - ii. The maintenance of law and order
 - iii. The prevention and detection of crime.
 - iv. The apprehension and guarding of offenders
 - v. The protection of property.

It also deals with numerous other activities assigned to it by law such as road traffic regulation, protection of VIP and critical infrastructure. As well it is charged with the duty of investigation in relation to crime in accordance with section 10.⁷⁷

- ii) The Prevention and Combating of corruption Bureau Act, 2007. The objective of this Act is to provide for promotion and enhancement of good governance and eradication of corruption.⁷⁸

⁷⁶ Section 5 (1) of Police Force Auxiliary Act [Cap.322 RE 2002]

⁷⁷ Cap.20 [RE 2002]

⁷⁸ Section 4 (1) Prevention and Combating of Corruption Act, 2007.

- a) - - -;
- b) - - -;
- c) - - -;
- d) - - -;
- e) Investigate and prosecute offences relating to corruption.

iii) Prosecution in Tanzania is controlled by the Attorney General (AG), whereby and extends his office to Director of Public Prosecutor (DPP) who appears in court on behalf of AG.⁷⁹ AG is the Chief and Legal adviser to the Government.

The general duties of the office of AG in the administration of justice include:⁸⁰

- i. Conducting public prosecutions;
- ii. Controlling criminal proceedings
- iii. Representing the Government in Courts of law and tribunals in any suit to which Government is a party or has interest.

The DPP is a public official concerned with the prosecution process.⁸¹ Established as part of the office of the Attorney-General⁸² with functions and powers vested of the office of the Director of Public Prosecutions, the general functions include:

- i. Supervise officers in the office of the Directorate of Public Prosecutions in the discharge of prosecution duties, and other officers whose conduct investigations on his or her behalf by delegated authority or specific appointment;⁸³
- ii. Coordinate, investigation duties conducted by investigation organs;⁸⁴
- iii. Enforce the disciplining of officers conducting prosecutions under his or her Instructions;⁸⁵

⁷⁹ Constitution of United Republic of Tanzania 1977 as amended from time to time, Article 59 (1).

⁸⁰ Office of the Attorney General (Discharge of Duties) Act. 4 of 2005, Section 8.

⁸¹ Loc. Cit 90, Article 59 B (2).

⁸² National Prosecution Service Act, 27 of 2008, Section 5 (1).

⁸³ Loc. Cit 91, section 10 (1) (a)

⁸⁴ Section 10 (1) (b) Ibid.

- iv. Control Public Prosecutions;⁸⁶
- v. Do anything incidental to the conduct of prosecutions;⁸⁷
- vi. Represent the Government in Criminal appeals in the High Court and the Court of Appeal.⁸⁸

Machinery of Criminal Proceeding is vested to DPP⁸⁹ and are:

- i. Decide to prosecute or not to prosecute in relation to offence,
- ii. Institute, conduct, and control prosecution for any offence other than in a Court martial;
- iii. Take over and continue prosecution of any criminal case instituted by another person or authority;
- iv. Discontinue at any stage before judgment is delivered any criminal proceeding brought to the court of authority, and
- v. Direct the Police and other investigative organs to investigate any information of criminal nature; and report expeditiously.

Functions include to institute and conduct summary proceedings, committal proceedings or a preliminary hearing (ph) under the provision of the CPA, the Magistrate's Court Act (MCA) and other laws relating to Criminal Proceedings.⁹⁰ As well to institute, conduct, defend criminal proceedings in courts of law, take over an appeal, revision, or application arising from the prosecutions- -⁹¹ Once take over may continue or withdraw the appeal.⁹² DPP is an independent organ in the Criminal Justice System and exercises functions subject to the constitutional principles.⁹³

- i. The need to do justice

⁸⁵ Section 10 (1) (c) Ibid.

⁸⁶ Section 111 (2) Ibid.

⁸⁷ Section 10 (1) (d) Ibid.

⁸⁸ Section 10 (2) Ibid.

⁸⁹ National Prosecution Service Act, Section 9 (1).

⁹⁰ Section 9 (2) Ibid.

⁹¹ Section 10 (1) (a) and (b) Ibid.

⁹² Section 10 (2) Ibid.

⁹³ CURT, Article 59 B (4); National Prosecution Service Act, Section 8.

- ii. The need to prevent the abuse of legal process and
- iii. The Public interest.

vi. Courts

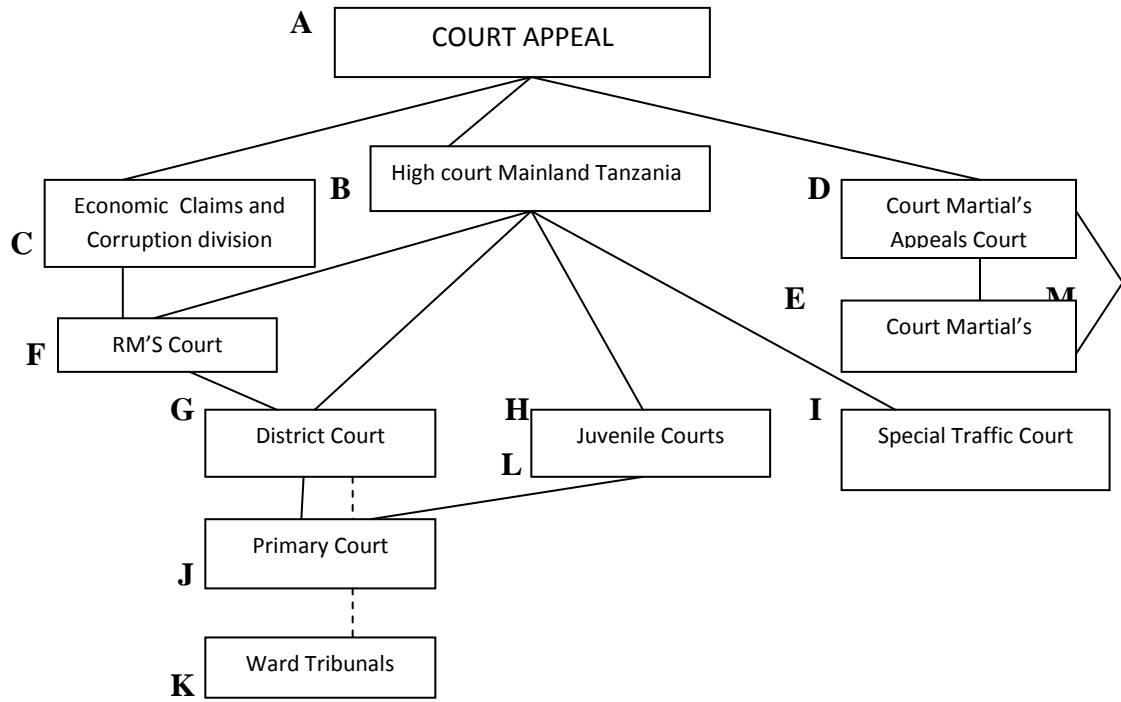
What is a Court? Blackstone defines a court as a place where justice is judicially administered.⁹⁴ The word ‘court’ is sometimes used as a synonym for the judges or magistrates.⁹⁵

The Court System in Tanzania is governed by two sets of law, the constitution of United Republic of Tanzania as amended from time to time, the Magistrate courts Act. There are other statutes which create other courts with specific offences such as stated in the Child Act 2009 and the Nation Defence Act, with among other courts established in Mainland. Currently, the court for people engaging in corruption is in the offing.

⁹⁴ W. Blackstone *et al.*, commentaries on law of England, Vol 3, facsimile of the 1st ed of 1769, Chicago University of Chicago Press, 1979 P 24.

⁹⁵ Section 3(1) of the Evidence Act [Cap.6 R.E 2002]

Figure 2.1 Courts and Tribunals – Chart



The figure does not include the high court of Zanzibar and other courts like land court, see the key for the figure in the next page.

KEY

- Appeals Generally
- Appeals from Ward Tribunals
- A= Art. 117(1) Union Constitution 1977
- B = Art.108(1) Ibid
- C = S.3 Economic & Org. Crimes Control Act. 1984 [R.E 2002] and Division Corruption Court Act.
- D= Cl.146(1) National Defence Act. 1966 [R.E. 2002]
- E = Cl. 92(1) Ibid
- F= S.5MCA 1984
- G= S.4Ibid
- H = SS.97-110 The Law of Child Act no. 9, (2009)
- I = S.17 MCA 1984
- J = S.3 Ibid
- K = S.3 Ward Tribunals Act. 1985
- L= Appeals for Juvenile Cases Heard by PRIMARY Courts Under S.43 Cap. 13
- M= Cases heard by Court Martials may be heard by Ordinary Courts per Cl. 74 National Defence Act Save for service offences.

N= Cases heard by Economic Crimes Court may be heard by a subordinate Court under the DPP's Certificate per S.1 Economic and Org. Crimes Control Act 1984

The main functions vested to Judiciary (Courts), vested with powers to interpret the law of the country⁹⁶ (To interpret and to signal execution whether acquittal or conviction to the one charged before the court of law - My emphasis).

V. Advocate/Defence Attorney

An advocate is an officer of the court who pleads the cause of a party in a judicial tribunal.⁹⁷ A person is entitled to practice as an advocate,⁹⁸ if: his or her name is on the Roll; he or she has in force a practicing certificate, and he or she has a valid business licence.

“An advocate must be fearless in carrying out the interest of his client. But- - - the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to accomplish the interest of his client *per fas*, but not *per nefas*; it is his duty to the utmost of his power to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent upon him to discharge with the eternal and immutable interest of truth and justice” Lord Cockburn, CJ.⁹⁹

“If the Judiciary is the guardian of the rights of the people, the organised Bar and its lawyers are the foot soldiers. The legal professional and the private bar bear a large share of the burden - - -“ (Robert J. Grey Jr, in Access to the Courts, Equal Justice to

⁹⁶ Article 107 (A) of the C.U.R.T, 1977 as amended from time to time. That “the authority with final decision in the dispensation of Justice in the United Republic shall be the Judiciary.

⁹⁷ L. Rutherford & Section Bone (eds), *Osborn's Concise law Dictionary*, ed, London: London: Sweet & Maxwell, 1993.

⁹⁸ Section 39 (1), Advocate Act, [Cap.341 R.E 2002]

⁹⁹ Dr. Fauz Twaib (2013) Reprint, *The Legal Profession in Tanzania. The Law and Practice*, Law Africa Publishing (T) Ltd. Dar es Salaam – Tanzania.

All, Us Dept of State, Aug 2004).¹⁰⁰ Quotations show the importance of advocate – mine emphasise).

{ Punishment is the last and least effective instrument in the hands of }
{ legislator and law enforcement for the prevention of crime, }
}

VI. The Tanzania Prison Service (TPS) is an institution regulated under the Prison Act, 1967¹⁰¹ regulations and penal Policies and directives. As of 2007, there were 122 prisons, 21 Regional Offices.¹⁰² The TPS is an Important Institution in safe guarding human rights in the Country, has the Mandate of custodianship over the offenders, both in remand and those who have been found guilty and sentenced to prison terms.

Every officer in charge shall supervise and control all matters in connection with prison to which he or she is appointed and responsible to the Commissioner, and treatment of the prisoners’ officers, prisoners under his control and for the due observance by prison officers and prisoners of the requirements of the Act.¹⁰³

2.6 Conclusion

Apart of the components discussed above, there are other components in C.J.S.T, as Immigration Institution which has vested powers to the offences stipulated to the Immigration Act,¹⁰⁴ it can arrest, conduct investigation and bring one investigated before court and can be convicted to serve punishment in Prison.

¹⁰⁰ Mohamed Chande Othman, C.J., 17 February, 2012, Address Occasion of the Annual Conference of Tanganyika Law Society, Arusha, Tanzania.

¹⁰¹ Cap.58 [RE 2002]

¹⁰² See Tanzania Prison Service (www.moha.go.tz)

¹⁰³ Section 7 (2) Ibid.

¹⁰⁴ Chapter 54 [R.E 2002]

In conclusion, if all the components discussed above have to perform its functions effectively within demarcation of the constitution with control of Criminal Procedure Act,¹⁰⁵ Tanzania Evidence Act,¹⁰⁶ with other principle legislations not listed and observation of human rights law, Instruments both regionally and globally in clear demarcation to each component when performing its functions; the Government will avoid the clashes, prisons' congestion all over the country and its effects to the inmates as well as the members of the society who are affected. However, the components had failed to meet the demarcation and became a catalyst facilitation of prison congestion all over Tanzania Mainland.

¹⁰⁵ Chapter 20 [R.E 2002]

¹⁰⁶ Chapter 6 [R.E 2002]

CHAPTER THREE

POSITION OF STATE LAWS AND INTERNATIONAL CONVENTIONS/INSTRUMENTS, PROCEDURES IN CRIMINAL JUSTICE IN RELATION TO PRISON CONGESTION TREE AND COURT INTERVENTION

3.1 Introduction

Administration of Justice is governed by law and Procedure. Law is classified into two categories; substantive law to determine the rights and liabilities of the parties and Procedural law which lays down the practice and procedure for enforcement of those rights and liabilities.¹⁰⁷

Criminal Justice System was well elaborated by the words of Justice, Katiti in *Joseph Masunzu VR*¹⁰⁸ when stated that “we cannot peacefully make our journey through life successfully, without law telling us the right direction to follow, and sometimes even the time to follow and when to start our journey and through which route”. The quality of a Nation’s civilisation can be measured by the methods it used in the enforcement of law.¹⁰⁹ Prison Congestion is confronted by the criminal justice system components, on failure when exercising its duties accordingly. However, in some areas their hands are tightened with the law and other constraints though the courts had made intervention when they met applications.

Hence, this forced the Criminal Justice System to become a tree, which is kept in the darkness of secrecy, where it is withering and branches became deformed contributing greatly to prison congestion increasing day to day, with no permanent

¹⁰⁷ “Takwani” CK Thaker MC, Thaker 2011. Criminal Procedure, Lexis Nexis Butterworths Wadhwa, Haryana, India.

¹⁰⁸ Criminal app. No.3 of 1991 CHC) Tabora unreported.

¹⁰⁹ *Joginder Kumar v. State of UP AIR 1994 SC 1354(1351)©1994) 4 SCC 260.*

solution as well as the increasing gross violation of human rights in the prisons. The tree will intensively be discussed below and how components (as roots) had failed to comply with the legislation and its effects to prisons.

Apart from rights provided in substantive law;¹¹⁰ all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law;¹¹¹ no law enacted by any authority the United Republic shall make any provision that is discriminatory either of itself or in its effect.¹¹² To ensure equality before the law, the state shall make procedures which are appropriate or which take into account the following principles, namely:¹¹³

- i. When the rights and duties of any person are determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned,
- ii. No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence,
- iii. No person shall be punished for any act which at the time of its commission was not an offence under the law and - - -;
- iv. For the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentences; and
- v. No person shall be subject to the torture or inhuman or degrading punishment or treatment.

¹¹⁰ Loc. Cit. C.U.R.T.

¹¹¹ Ibid: Article 13 (1)

¹¹² Ibid, Article 13 (2).

¹¹³ Ibid. Article 12, (6) sub article (a) (b) (c) (d) & (e).

Civil rights and liberties at the International level are promoted and protected in Tanzania from several international instruments such as the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981; the Optional Protocol to the ICCPR;¹¹⁴ and the second Optional Protocol to the ICCPR¹¹⁵ Constrained in Tanzania law substantive and procedural laws as The Basic Rights, Duties and Enforcement Act of 1994 and the Penal Code Cap. 16th of the R.E 2002, my emphasis).

Here is in a nutshell to be noted that administration of justice begins to operate when a suspect is arrested soon after the offence is committed and reported to police or any organs, detected or undetected and brought before the court of law to face the allegation charged with any relevant legislations of offence committed. The law governing the proceeding will be CPA¹¹⁶ and TEA¹¹⁷ in determining the truth of the offence to the end of the matter. The Prison Congestion Tree (PCT) is illustrated as follows:

- The components as root of C.J.S.T
- The selected branches as among reasons of the causes of prison congestion where it will be discussed later.

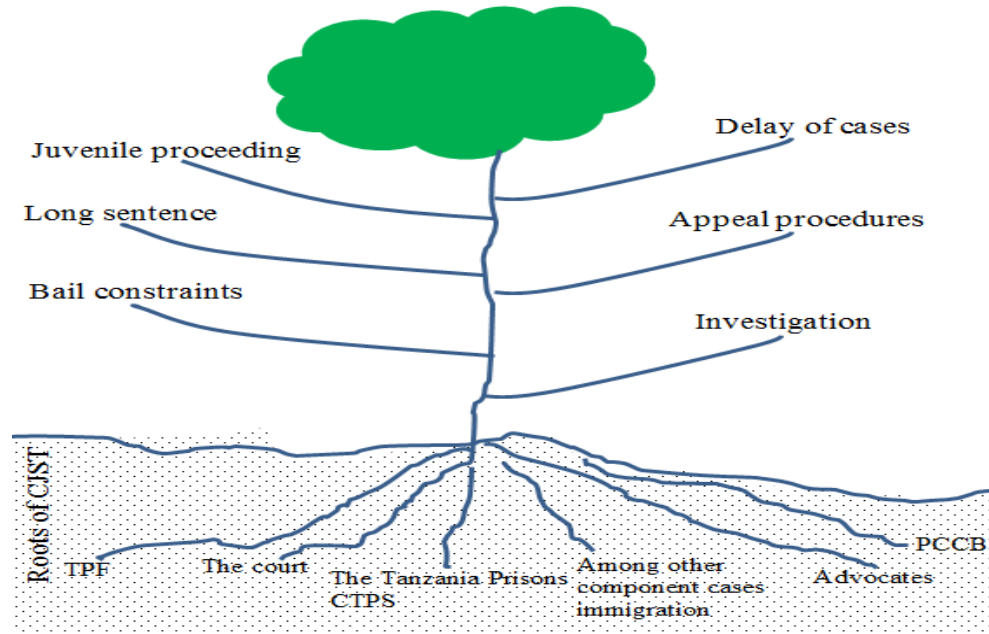
¹¹⁴ It was adopted by UN General Assembly on 16th December, 1966 and entered into force on 23rd March, 1976.

¹¹⁵ Adopted and Proclaimed by United Nations General Assembly resolution 44/128 of 15th December, 1989.

¹¹⁶ Loc. Cit. [Chapter 20 R.E 2002]

¹¹⁷ Loc. Cit. [Chapter 6 R.E 2002]

Figure 3.1 The Prison Congestion Tree



Source: The researcher design idea

3.2 Investigation

Definition: “Investigation consists generally of the following steps;¹¹⁸

- i. Proceeding to the truth,
- ii. Ascertainment of the facts and circumstances of the case,
- iii. Discovery.

Institution charged with responsibility to Investigate Criminal offences in Tanzania are varied, but primarily the TPF is the leading organ as stipulated in section 10¹¹⁹ 07 Cap.20.¹²⁰ Other organs duly authorised to carry out investigation in accordance with specific laws of the land.

¹¹⁸ *State of Madhya Pradesh V. Mubarak Ali* AIR 1959 SC 707

¹¹⁹ Loc. Cit. 87

¹²⁰ Criminal Procedure Act, [R.E 2002]

The TPF as leading agent on criminal offences has the mandate to carry out investigation to all about 390 offences stipulated at Cap.16.¹²¹ The head of Investigation in Tanzania is The Director of Criminal Investigation (DCI) to all offences reported to various stations of Police, and all which are subjected to be investigated. However, its powers of Investigation are delegated to Regional Crime Officers (RCO's) in each Region in due process of Investigation and arresting the Investigator; timelines prescribed by CPA.¹²²

Table 3.1 Timelines prescribed by CPA

Law	Time	Issue	Consequences for non-compliance
Section 29 CPA	Within 24 hours	Accused to be brought to court upon arrest and failure to meet Police bail or bond conditions	Unlawful detention
Section 33 CPA	Within 24 hours	Accused to be brought to court upon arrest whether or not released on Police bail or bond	Unlawful detention
Section 64 (1) (c) CPA	Within 24 hours.	Accused to be released if no formal charge has been laid	Unlawful detention
Section 157 CPA	Within 24 hours	Accused on bail to be brought to the court with jurisdiction up on arrest - -	Unlawful detention
Section 225 (2) CPA	Within 15 days	Case must proceed after charge has been laid for accused who are remanded in custody	Accused likely to be discharged, for failure to proceed with case.
Section 225 (2) CPA	Within 31 days	Case must proceed after the charge has been laid for accused who are admitted on bail	Accused likely to be discharged, for failure to proceed with case.
Section 225 (4)	Within 60 days	Case has to go on trial without adjournment unless the provisions of subsection 225 (4) (a) –c have been complied.	Charge likely to be dismissed for prosecution failure to proceed with case.

Despite the truth of timelines, there are specified cases in the 1st schedule to CPA as per S.225 (4) of the Act, namely “The 60 days rule”. It will be unlawful to adjourn the hearing for more than 60 days after the first date of the charge.

¹²¹ The Penal Code Act, [R.E 2002]

¹²² Ibid Chapter 20 [R.E 2002]

However, RCO has been vested powers to apply by certificate for further adjournment investigation after 60 days of adjournment lapse. In aggregate, thereafter, the DPP, by such certificate can have adjournment 60 days through his State Attorney Office. DPP can extend the adjournment for period not exceeding two years from the extension of adjournment made by RCO.

Certificates for that adjournment must carry sufficient grounds to justify the adjournment. However, the 60 days rule does not apply to the offences like murder, treasons, offences falling under terrorism Act, economic cases simply cases friable by the High Court.

3.3 Courts and the Question of Adjournment

The court had made decision on due adjournment of the 60 days rule, except to the offence that fall under section 39, 40, 43, 45, 48 (a) 59 of the Penal Code as well offences involving fraud, murder, treason.

In the application of section 225 (4), CPA Court has a discretion to refuse to adjourn the case, where certificate by RCO has not able to show an existence for adjournment or grounds are unreasonable.¹²³ Since there was no certificate in court - stating the need and grounds for further adjournment, after expiration of 60 days the court ought to have discharge the accused person.¹²⁴ Appellant submitted, was improper trial as it had started after 60 days passed what is unlawful is not “to hear” a case after an aggregate of 60 days has expired, but what shall not be lawful is “to adjourn” a case after the expiry of 60 days, if the exceptional circumstances have not been complied with,¹²⁵ at the expiration of an aggregate 60 days and no certificate is filed by RCO,

¹²³ *R v Mguma Manyunya* [1992] TLR 45

¹²⁴ *Ibrahim Hassan and Another v .R* [1991] TLR 100

¹²⁵ *Robison Mwanjisi and 3 others v.R* [2003] TLR 218

the court must either proceed to hear the case or discharge the accused if the prosecution is unable to proceed with the hearing.¹²⁶

The two sub-sections, (4) and (5) of section 225-CPA, mean that adjournment should not be granted to the prosecution after elapse of an aggregate of sixty days in the absence of the requisite certificate, but the court should press on hearing. If the prosecution is unable to proceed with the hearing e.g for Investigation being incomplete or witness being unavailable, the court should discharge the accused.¹²⁷

3.4 Delay of Cases in Relation to P.C.T

Delay of cases in delivering justice has come a sharp thorn to the administration of justice not only to the criminal proceedings but also to the civil litigations all over the world. “Dissatisfaction with the administration of justice in general and legal profession in particular is not new. It is as old as the law itself.¹²⁸ Many people would regard such a delay in cases of this gravity as appalling¹²⁹, we must admit that our court’s process is at a snail’s pace and we do not deliver justice with the speed.¹³⁰ They are an important adjunct to the administration of justice. By which I mean of course justice not only to the man himself, but also to the community at large.¹³¹ “All stakeholders of the courts must share, to make sure they speed up cases to remove the complaints about cases delay in order to do justice.”¹³² On February 29, 2016, one accused person Aly s/o Nuru, stripped off the clothes and poured all over the body the stool and run to the national flag pole complaining over long staying in remand due to incomplete investigation for about a year. It is irrefutable that the judiciary continues

¹²⁶ *R v. Nelson Rupia* [1993] TLR 44.

¹²⁷ Loc – cit 124

¹²⁸ Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 ABA (American Bar Association) REP.395, 395 (1906)

¹²⁹ Maeve Mc Clenagh “Justice delay: Administrative Problem, Delay serious trial. “Bureau Investigation Journalism, July 31, 2013.

¹³⁰ Hon. C.J. Augustino Ramadhan, Law Day Speech, 04th January, 2008.

¹³¹ *Lord Denning In Dallison V Caffey* [1965] IQB 348, 367.

¹³² 4th President of Tanzania J K, ahimiza kasi usikilizwaji kesi Mahakamani Gazeti la Nipashe Februari 4, 2014 PP1-4. Toleo Na. 058016.

to be confronted with an inordinate delay in dispensation of justice. It is clothed with an accumulating and recurrent case load and a huge backlog.¹³³

All above on 3.3 written is vividly evidence among branch tree of P.C.T, contributor to the congestion in prison especially to the accused facing unbailable offences. The question of delay has very long History, from the Magna Carta 1215 AD. Clause 39 of Magna Carta Charter, To no man will we sell, or deny or delay, right or justice¹³⁴. Not to delay dispensation of justice without reasonable ground.¹³⁵ stated that the procedure must be just, fair and reasonable, in the United State speedy trial is the constitutionally guaranteed rights.¹³⁶ And that speedy trial was an integral and essential part of the fundamental right pointed that expeditious review of withdrawal of cases, investigation of cases within a time bound frame and delay in trial would all fall within the concept of speedy trial.¹³⁷

The Magna Carter, Charter 1215 AD, and the cases delayed

All the cases discussed show how the milestone of cases on delay of Magna Carter, Charter of 1215 AD, over 800 hundred years passed, there was a problem and still today had become a thorn of the delay of cases; although at that time there was no problem of the prisons congestion. Also, dispensation of justice is more often than not uncertain and delayed and for that matter as the old adage says “Justice delayed is justice denied”.

3.5 Bail Constraints

The issue of bail to accused person in Criminal justice is another major contributor to the prison congestion in Tanzania.

The term “Bail” is derived from old French “verb bailer” which meant “to give” or “to deliver”. According to the concise Oxford English Dictionary,¹³⁸ bail” means

¹³³ C.J. Mohamed Chande Othman, Keynote Address on the Occasion of the Annual Conference of the Tanganyika Law Society, (2012) Arusha Tanzania.

¹³⁴ Justice, Hosbert Suresh [2010]. All Human Rights are Fundamental Rights, Universal Law Publishing Co. New Delhi, India.

¹³⁵ Ibid. CURT, Article 107 4(1) (2) (b).

¹³⁶ *In Maneka Gandhi v. Union of India*, (AIR) 1978 SC 597.

¹³⁷ *Husseinara Khatoon v. Home Secretary* (1980) 1 S CC 81.

¹³⁸ Concise Oxford English Dictionary, (2002), P.100.

“temporary release of an accused person waiting for trial, sometimes on condition that a sum of money is lodged to guarantee his appearance in court.

The issue of bail in Tanzania bail to the accused person it “Right” and not a “Privilege”, and it is the constitutionally right. In law right means an entitlement which an individual has, capable of enforcement at law against the whole world. A right attached to one person automatically imposes a duty on another person. Duty is the correlative of a right and it obliges its bearer to respect the enjoyment a right by the person entitled to it.¹³⁹ Court bail; once the court is unable to proceed with the case for the reasonable grounds, the accused may be released on bail or bond, court bails are of two kinds, that is, bail before trial and bail pending appeal. All are governed according to section 148 to 162.¹⁴⁰

There two kinds of offences, which areailable offences and non-ailable offences. However, even the offence isailable the court may not grant bail to the accused as stipulated in section 148¹⁴¹ whereby by non-ailable offences under provision section 148.¹⁴²

- i. Murder
- ii. Treason
- iii. Armed Robbery
- iv. Defilement
- v. Any person charged with traffic is drugs
- vi. Any person charged with an offence involving heroin, cocaine, prepared opium
- vii. Trafficking in persons, terrorism, money laundering etc.

¹³⁹ Criminal Procedure Act, 1985 [RE 2002]

¹⁴⁰ Holfed, W.N. Fundamental Legal conceptions as Applied in Judicial Reasoning: cook (ed); Yale University Press (1923) Chapter 1.

¹⁴¹ Ibid SS. (b) (c) (d) and (e).

¹⁴² bid .S.S (5) (a) (i) (ii) (iii).

Also, offences related to the organised and economic crime control Act,¹⁴³ offences related to the acts of terrorisms Act,¹⁴⁴ offences fall under the Anti-Money Laundering Act¹⁴⁵ as well as offences under the Drugs Control and Enforcement Act, 2015¹⁴⁶ and the condition of bail specified in section 148, CPA, shall *mutatis mutandis* apply to allailable offences under this Act.¹⁴⁷

However, the courts of Tanzania had contravened the administration of bail, its concerns are constitutional construct and bail as an important issue in administration of criminal justice in Tanzania.

3.5.1 Judicial Discretion on Bail

Regarding the Bail and Constitution Balance by Judicial discretion, the Constitution provides the presumption of innocence by stating that no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence,¹⁴⁸ and gives every person the right to freedom and right to live as free person,¹⁴⁹ as well it entitles every person to respect and protection of his person, privacy of his person, his family and matrimonial life.¹⁵⁰

The grant of bails to accused person is determined by weighing scale on the balance of presumption of innocence with other stone namely the possibility of evading justice by flight or interfering with witnesses, committing further offence, own safety of the accused person etc.

¹⁴³ Chapter 200 [RE.2002].

¹⁴⁴ No.21 of 2002

¹⁴⁵ Chapter 423 of 2007

¹⁴⁶ Section 29 (1) (a) (b) (c) & (e)

¹⁴⁷ Ibid SS 29 (3)

¹⁴⁸ Articles 13 (60) (b)

¹⁴⁹ Article 15

¹⁵⁰ Article 16

Walsh. J, held that “refusal of bail without good reason is a form of preventive justice which has no place in our legal system and is alien to true purpose of bail”,¹⁵¹ to the effect that remanding an accused person in prison does no amount to treating that person as a convict.¹⁵² However, denial of bail must be reasonable, procedural, necessarily justified and necessary to safeguard public interest¹⁵³. Bail is a right rather than a privilege unless the court is convinced that to grant it will defeat the end of justice¹⁵⁴. The test should be whether granting of application for bail will be detrimental to the interest of justice and good order such detriment must be satisfactorily substantiated by solid reasons and not based on vague fear or apprehension or suspicion¹⁵⁵

Situation when bail is completely prohibited was laid down by the Court of Appeal in *DPP Vs Daudi Pete*¹⁵⁶ that laid principles to the effect that legislation prohibits the grant of bail to the person charged with specified offences. The denial of bail is saved by article 15(2) (a) and 30(2) (a) and (b) of the constitution.

3.5.2 Denial of Bail and Prison Congestion

Hon. *Mohamed Chande Othman, C.J.*, in his law Day Speech on 3rd February, 2012, disclosed that as on 1st December, 2011 Tanzania had 38,080 convicted and remanded prisoners in her prisons whereby 18,978 were total convicted and 19,102 were remanded prisoners awaiting trials, while 29,552 was the total capacity of Tanzania Prisons.

¹⁵¹ *People (Attorney General V O’Callaghan* (1966) IR 501.

¹⁵² *In R.V Peregrina Mrope, Criminal Cause No.43* of 1989 (unreported).

¹⁵³ *Mweisumo J. In the case of Tito Douglas Lyimo Vs R* (1979)

¹⁵⁴ *ibid*

¹⁵⁵ *Wilson J. In the case of Abdallah Nassoro V.R* (1921-1955) 1 TLR 293.

¹⁵⁶ [1993] TLR 22.

The number of remand prisoners overwhelming the prison population has not changed up to date. Table below was extracted Table 3.2 of the report of 23rd May, 2012.¹⁵⁷

Table 3.2 Prison population

	Male	Female	total
Convicted Prisoners	17,289	319	17,605
Un-Convicted Prisoners	18,428	1,006	19,434
Total	35,717	1,325	37,042

Source: Tanzania Prisons headquarters Dar Es Salaam

Prison Population Total (Including Pre-trial detainees 34,404 at October, 2015, whereby is of 50% .¹⁵⁸ Hence, that means that pre-trial inmates are a major problem in prison congestions.

3.6 Juvenile Proceeding in relations to Prison Congestion Tree.

Today Children are in conflict with law.¹⁵⁹ In the reality that many children are imprisoned worldwide often together with adults, despite provision in local legislation and international standards norms, and is a contributing factor to prison's congestion. Total 441 children detained in adult prisons 407 were boys and 34 were girls 374 (355 boys and 19 girls) were pre-trial and 64 (52 boys and 12 girls) had been convicted.¹⁶⁰

¹⁵⁷ [http://www.moha.go.tz/index.php?option=com_content & view = article bid = 81 & item id = 141.](http://www.moha.go.tz/index.php?option=com_content&view=article&id=81&Itemid=141)

¹⁵⁸ Ibid.

¹⁵⁹ A child (any person under the age of 18) is in conflict with the law where he/she committed and accused having committed an offence depending upon the local context, children may also be in conflict with the law where they are dealt with by the juvenile justice is used and defined depending on the age of criminal responsibility.

¹⁶⁰ Commission for Human Rights and Good Governance. Inspection Report for Children in Detention Facilities in Tanzania, June 2011.

Despite the truth that from time immemorial, the position of children in any society has been depending upon the aid and assistance from adults and the authorities, National and International level.

A child may be defined in due respect to context, various Legislatives define childhood depending on the context referred to. The minimum age is not consistent. According to the Age of Majority Act,¹⁶¹ the age of majority is attained at 18 years. The Prison Act,¹⁶² means a person between the apparent ages of sixteen and twenty-one years. The Law of Marriage Act 1971,¹⁶³ the minimum age is 15 for girls and 18 years for boys. The Employment Act,¹⁶⁴ child age is 15 years and apparent age is 18 years. Under the Constitution of United Republic of Tanzania only those persons 18 years and above who can vote and to elected,¹⁶⁵ For the purposes entering into Contracts must have legal capacity 18 years, Contract Act,¹⁶⁶ The Criminal Procedure Act,¹⁶⁷ stipulates that trials should be conducted in camera where an accused person is under 18 years of age.

The Adoption Ordinance,¹⁶⁸ defines a child is that person under the age of 21 years of age, but does not include a person who is or has been married. Defence Force Regulation restrict children under 15 years to be employed in the army. The Minimum Sentence Act,¹⁶⁹ states that a juvenile as a person under 18 years. The Child Act 2009 Section 97- 100,¹⁷⁰ stipulates that as a person under the age of 12 years, and young person over 12 years, but under the apparent age of 16 years.

¹⁶¹ Section 2 CAP 43 [RE.2002].

¹⁶² Section 2 of Chapter 58 [RE 2002]

¹⁶³ Section 2 of Act No. 5 of 1971

¹⁶⁴ Section 2 of CAP 336.

¹⁶⁵ Article 5 of CURT 1977.

¹⁶⁶ Section 2 of CAP 43 [RE 2002].

¹⁶⁷ Section 186 (II) (b) (II).

¹⁶⁸ Section 2 of CAP 335

¹⁶⁹ Section 3 of Act No. 1 of 1972.

¹⁷⁰ Section 2 (1) of CAP 13.

Corporal Punishment Ordinance,¹⁷¹ defines a juvenile as person under the age of 16 years. The law of the Child Act 2009,¹⁷² a person below the age of eighteen years shall be known as a child.

Therefore, it is clear that regarding “a Child” and “Young Person” in Tanzania different legislations stipulate different ages to serve the purpose or interests. That means it is true may lead to the deprivation of certain categories of children of their rights and protection under the Domestic Law, as person may be looked at to be young for some activities, yet old enough for other activities.

What is a child abuse, under Domestic Law which needs protections means contravention of the rights of the child which causes physical, moral or emotional harm including beatings, insults, discrimination, neglect, sexual abuse and exploitative labour.¹⁷³

Worldwide there are two instruments under adoption of UN-Convention which are guiding child, namely;

- Convention on the Right of the Child (CRC) 1989;
- The African Charter on the Rights and welfare of the Child (ACRWC) 1990.

3.7 Child/Juvenile and Administration of Criminal Justice System

International level was geared toward the mandatory protection of the child which led the attention to a number of convictions in the interest of child, to the administration of criminal justice to the child/juvenile worldwide; the instruments which were domesticated into municipal Laws and Policies.

¹⁷¹ Section 2 of CAP 17.

¹⁷² Section 4 (1).

¹⁷³ Section 3 of the Law of the Child ACT, 2009.

- i. The United Nations Standard Minimum Rules of the Administration of Juvenile Justice (The Beijing Rules),¹⁷⁴
- ii. The United Nations Guidelines for Prevention of Juvenile Delinquency (Riyadh Guideline)¹⁷⁵
- iii. The United Nations Rule for the Protection of Juveniles Deprived of their Liberty (UNPRJ).
- iv. The United Nations Guidelines for Action on Children in Criminal Justice System¹⁷⁶
- v. The United Nations Declaration of Basic Principles of Justice for Victims of Crime Abuse of Power¹⁷⁷

At National level a comprehensive stipulation provision is made under part IX, when a child is in conflict with law¹⁷⁸ shoulder to shoulder with other pieces of legislation such as Children and Young Person Ordinance;¹⁷⁹ the probation of offenders,¹⁸⁰ The Corporal Punishment,¹⁸¹ The Penal Code,¹⁸² The Criminal Procedure Act¹⁸³ and The Magistrates' Court Act.¹⁸⁴ All pieces of legislation used to govern and regulate the administration of juvenile justice.

3.7.1 Court Decision on Protection of Child/Juvenile

In the case of *Arif Kassim and others V. Republic*¹⁸⁵ Applicant charged with offence of murder, aged between 8 and 11 years. Chipeta J. (as he then was) admitting bail, held that;

¹⁷⁴ General Assembly resolution 40/33.

¹⁷⁵ General Assembly resolutions.

¹⁷⁶ Economic and social Council Resolution. 1997

¹⁷⁷ General Assembly resolution 40/30.

¹⁷⁸ Section 97 to 120, of The Law of the Child Act, 2009.

¹⁷⁹ CAP 13, inherited from British colonial today is [RE 2002].

¹⁸⁰ CAP 247 [RE 2002].

¹⁸¹ CAP 17 [RE 2002].

¹⁸² CAP 16 [RE 2002].

¹⁸³ CAP 20 [RE 2002].

¹⁸⁴ CAP 11 [RE 2002].

¹⁸⁵ Tabora High Court, District Registry Criminal cause No. 27 of 1984

In the present case, the applicants are children or young persons. So in the event of their being convicted of any offence, they are unlikely to receive custodial sentence, it must be very tough on the part of such young children to be kept in prison. It can hardly be kept in the interest of justice to keep these children in remand custody. Before a trial magistrate sentences a young person to any term of imprisonment, he should, by application of judicial mind and for sound recorded reasons, have eliminated other methods of legally dealing with such young persons as unsuitable S.22 (2) of Cap.13.¹⁸⁶ LCA gives power in the Juvenile Court to make an order of conditional discharge, instead of committing the offending child to custodial sentence, other than once convicted with homicide, “J.C.” “Juvenile Court” may make an order discharging the offender conditionally on his entering into recognisance, with or without sureties, to be of good behaviour during such period not exceeding three years, as specified in the order; but if a child has demonstrated good behaviour then that child shall be presumed to have severed the sentence’.¹⁸⁷ As a rule, youthful offenders should not be sentenced to terms of imprisonment, where there is an opportunity to mix with and learn bad habits from more seasoned criminals.¹⁸⁸

Again in *R. v Uswege Bukuku*¹⁸⁹ *Mackanja, J* (as he then was) it was held that in sentencing juveniles, the objective should be rehabilitation, not punishment; and that the court should take into account that those of tender age can be channeled away from long term criminal behaviour by not sending them to jail where they meet hard core criminals.

¹⁸⁶ *In the case of the R.V John s/o Gilied* (1984) TLP 273 Section 22(2) of CAP 13, do not favour the imprisonment is in the circumstances of the case, the inevitable last resort see also Article 40 (2) (ii) of the CRC.

¹⁸⁷ Section 116 (1) of the LCA, 2009.

¹⁸⁸ *Decision by High Court in R V Asia Salum and another* [1986] TLR 12

¹⁸⁹ 193 [2001] TLR 337 (HC).

**Table 3.3 Persons under 18 alleged to have conflict with the Law (2008 – 2010)
Tanzania Mainland.**

Reported Cases	Sent to Court	Convicted	Acquitted	Under Investigation	Close “U”	NOD	NFA	Total Arrested
3258	669	428	241	664	774	66	246	3258

Source: Ministry of Home Affairs, Tanzania Police Force December, 2011.

Key

NFA – No Offence Disclosed

NOD- No Further Action

U- Undetected

The table above indicates that there were children who conflicted with the law and the data picked up are part of some Regions of Tanzania Mainland. That means the item measure must be taken to solve the problem and make sure that children are protected.

3.8 Appeal Procedures/Process

Appeal procedures entail a number of procedural rules in different appellate courts. What decisions are appealable? How should appeals be brought before the courts and where is it found to be part of the causes of the problem?. And sometimes it takes long time to be determined, and when it comes to an end the convicted person may be released or the punishment revised, tried *denovo*, sentence quashed, sentence reduced or increased. One might stayed in prison for more than expected years. Due to the fact that every human being is fallible and a judge or magistrate is also a human being, it is possible that he may “err” or “commit mistake” and his decision may be wrong or faulty. Appeal is the constitutional Right. When the rights and duties of any person are being determined by court or any agency, that person shall be entitled to a

fair hearing and to the right of appeal or other legal remedy against decision of the court or other agency concerned.¹⁹⁰

The term “appeal” according to the dictionary refers to a complaint or grievance to superior court for reconsideration or review of a decision, verdict or sentence of lower court.¹⁹¹ According to Privy Council, it means the removal of a cause from inferior to a superior court for the purpose of testing the soundness of the decision of the inferior court.¹⁹² Save as hereinafter, provided any person aggrieved by any finding, sentence, or order made or passed by a court other than a subordinate court exercising its extend powers¹⁹³ An appeal to the High Court may be on a matter of facts as well on the matter of law.¹⁹⁴ If the appellant is in prison he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court.¹⁹⁵ The endorsement of the officer-in-charge of the prison is necessary before the appellant can be taken to have complied with requirements of the rules of the court for lodging an appeal.¹⁹⁶ The endorsements as to the date and time should appear on the face of the notice.¹⁹⁷ The C.A.T pointed to the need to have an express provision in the rules covering appellants who are in prison; so that time starts to run on the date the appellant is informed of dismissal of his or her appeal.¹⁹⁸

¹⁹⁰ Article 13 (6) (a) CURT. 1977.

¹⁹¹ ‘Concise Oxford Dictionary’, 2002, P 63.Black’s Law Dictionary (4th edn.), p 134.

¹⁹² *Negendra Nath v Suresh Chandra*, AIR 1932 Pc 165.

¹⁹³ Section 359 (1) CPA [CAP.20 R.E. 2002].

¹⁹⁴ Section 359 (2)Ibid.

¹⁹⁵ Section 363Ibid.

¹⁹⁶ *David Mwita Marwa and 2 others V R* Criminal Appeal 221 of 2005, Court of Appeal of Tanzania at Mwanza (2009) (unreported).

¹⁹⁷ *Mathias s/o Tina and 4 others V R*, Criminal Appeal 194 of 2005, Court of Appeal of Tanzania at Mwanza (2009) (unreported).

¹⁹⁸ *In Jackson Ibrahim V R*, Criminal Appeal 277 of 2006, Court of Appeal of Tanzania at Mwanza (2009) (unreported).

Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall, unless the High Court otherwise directs, be accompanied by a copy of the proceedings, judgment or order appealed against.¹⁹⁹ The petition shall contain particulars of the matter of law or of facts in regard to which the subordinate court appealed from allegation to have erred.²⁰⁰ Also, the appeals are controlled/regulated by other legislatives, The Tanzania Court of Appeal Rules, 2009, MCA,²⁰¹ and The appellate Jurisdiction Act, 1979, to make sure each step of appeal is followed by the appellant. In the case *DPP v Jafari M M Kawawa*.²⁰² In allowing appeal, Court of Appeal Tanzania held, a second appeal brought under the provisions of section 5(7) of The Appellate Jurisdiction Act, 1979, lay the point/points of law and court look at the relevant evidence and make its own finding of fact. Where a respondent was duly served with a notice of hearing of the appeal and does not appear, the appeal would proceed in his absence under the provision of rule 73 (6) of the Tanzania Court of Appeal Rules, 1979.²⁰³

That means, appeals is proper or harmonious whether in civil or criminal cases and ensures that substantive justice is to be done to any aggrieved part. It can be concluded that Appeals are backbone to the Administration of Criminal Justice System worldwide.

3.9 Long Sentences in Relation to Prison Congestion Tree

In a Criminal trial where it is decided that the accused person is guilty, the basic elements of the decision of the court are judgment, conviction and sentence, the first being a pre-requisite for the last.²⁰⁴ After hearing a case, the judge or Magistrate will then proceed to pass judgment, if in its judgment the court has entered a guilty

¹⁹⁹ Section 362 (1) Ibid.

²⁰⁰ Section 362 (2)

²⁰¹ The Magistrate Court's Act. 1984 [CAP 11 R.E. 200].

²⁰² [1981] T L R.

²⁰³ *Court of Appeal Tanzania in the case DPP V Wilbert Moshi* [1981] TLR 160.

²⁰⁴ *Ramadhan Masha V R* [1985] TLR 172.

verdict, that is to say, it has convicted the accused; the next step would be to enter to sentencing the accused²⁰⁵ after conviction by a competent court.²⁰⁶

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just peaceful and safe society by imposing just sanctions that have one or more objectives:

- i. To denounce unlawful conduct;
- ii. To deter the offender and other person from committing offences;
- iii. To separate offenders from society, where necessary;
- iv. To assist in rehabilitating offenders;
- v. To provide reparations for harm done to victims or to the community; and
- vi. To promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community”.²⁰⁷

Punishment is reformatory where, by such punishment, the evildoer may be made to realise the futility of his criminal pursuits and so be made to turn over a new leaf.²⁰⁸ In deciding the appropriate sentence, a court should always be guided by certain considerations. The first and foremost is the public interest. The Criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it.²⁰⁹

A proper sentence is the amalgam of many factors, such as the nature of the offence, circumstances, extenuating or aggravating of the offence, prior criminal record of the offender, age and background of the offender, home life, sobriety, social adjustment,

²⁰⁵ Section 235 and 298 (3) CPA [Cap.20 R.E 2002].

²⁰⁶ *State of Maharashtra V Chandrabhan*, AIR 1983 SC 803 (808): (1983) 3 SCC 387.

²⁰⁷ Engera A. Kileo (2012) “Sentencing and Areas of Potential Law Reform” *Journal of the Tanzania Judges Association. (TAWJA)* Vol.1 July, 2012 p 49.

²⁰⁸ B.D. Chipeta (2013) *Magistrate Manual*, Reprint Dar es Salaam, Tanzania, Law Africa Publishing (T) Ltd.

²⁰⁹ In the English Court of Appeal in the case of *Kenneth John Ball*, 35 Criminal Appeal R. 164 on page 165 - 166.

emotional and mental condition, the prospects for his rehabilitation etc. All these and similar considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence, and therefore to be taken into account by the court at the time of imposition of sentence on the offender.²¹⁰ The determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule laid down - - - but court has always to bear in mind the necessity of proportion between an offence and the punishment.

In Tanzania assessing sentences, one of guides is the penal provision of the offence in question. Legislation gives the modes of punishment for given offences and the maximum or minimum punishment that may be imposed on an offender for a given offence. There are various penal sanctions that are available in our Criminal Justice System Hereby mentioned;

- i. Sentence of death²¹¹
- ii. Imprisonment
- iii. Fine
- iv. Community service order²¹²
- v. Forfeiture
- vi. Condition discharge
- vii. Compensation
- viii. Disqualification/suspension of driving licence.
- ix. Security for keeping the peace etc.

²¹⁰ *Dagdu V State of Maharashtra*, AIR 1977 SC 1579, *Jagmohan Sing V State of U.P.*; AIR 1973 SC 947 *Ram Narain V State of UP*, AIR 1973 SC 2200, *Krishna V. State of Bihar*, AIR 2002 SC 1965: 2002 CrI.J 2645: (2002) 6 SCC 81.

²¹¹ Section 39 Penal Code for treason, section 196 Ibid for Murder.

²¹² Cap. 291

However, the judges have developed guidelines with regards to factors that are to be considered in the determination of an appropriate sentence. Factors which may be considered are:

- i. Whether the accused is a first offender.
- ii. Whether has shown remorse by pleading guilty
- iii. The prevalence of the offence may also be taken into consideration.²¹³
- iv. The time the accused has spent in remand custody;
- v. The age of the offender;
- vi. As well interest of children.

Example; The facts that the accused was HIV positive entitled to lesser sentence than would have otherwise been imposed.²¹⁴ However, the long sentence in Tanzania makes no measurable contribution towards acceptable reformation goals. Currently, the number of offences which take long sentence such as rape, murder and the act of terrorism Tanga and the killing of eight (8) Police Officers at Sitakishari Police Station and the killing of religious leaders at Mwanza mosque are increasing without the fear of the punishment and lead to most prisons take almost three times more than the authorised accommodation. At Butimba Prison in Mwanza on 26.05.2012 there were 2381 inmates while the authorised accommodation was 934.²¹⁵

3.10 Conclusion

The Prison congestion tree, is a tree which is rooted to the components of criminal justice system, Tanzania Police Force, The Court, Tanzania Prison, Advocates, PCCB and among other components the components which are (most important) back bone of the Justice if are clearly performing their duties with demarcation of rule, procedures and law. However, there are factor leading to prison congestion which

²¹³ *Athuman Hussein V Republic* (1988) TLR 246 (A).

²¹⁴ In the case *Hassan Hussein V.R* criminal session No.150 of 2005, High Court of Tanzania, sitting at Bukoba.

²¹⁵ Data obtained upon a visit of the prison by Justice of Appeal as visiting Justice.

also are contributors to the problem like staff constraints to all components of the criminal justice system, budget constraints etc.

Turning back to the words of Lord Drl Vin In *Privy Council In Ambard V. AG for Trinidad & Tobago* (1946) AC 335 justice is not a cloistered virtue. They must be allowed to suffer the scrutiny and respectful comments of ordinary men.

CHAPTER FOUR

ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction

This Chapter discusses the problem of Prisons in Tanzania, focusing on, number of prisons and capacity level, general prisons' conditions, examining prison's facility especially Mara Prison, and its categories of inmates' mistreatment, as part of the components in the criminal justice system.

4.2 Tanzania Prisons' Infrastructure

Majority of Prisons in Tanzania were built by the "Colonial administration" and Tanzania authority predating the era Tanzania gained its independence in 1961. The conditions of these prisons are in alarming state and hence need high repair, with sense of privacy or renovation reflective of civilised Nation. (See Appendix 1).

However, even after the Independence, the Government had never stopped to use the prisons which were built during colonial era. But still the population was increasing rapidly and the delay of criminal offences was rapidly increasing. This led the Tanzania government to build new prisons. (See Appendix 2).

4.3 The Rights of Convicted and Remandees

Human Rights are the rights which a human being needs necessarily to receive according of human dignity. The Rights which are fundamental Principles and not gift, the right which no one can take away without cause. However, there are some right that can be stopped a while according to the law of the land and not otherwise. The persons who are convicted and sentenced to prison and the remandees have been deprived some of their basics rights though still they had rights which cannot be deprived.

4.4 Tanzania Prisons and International Instruments, Constitution, Legislation and Principles

All the basic rights of inmates whether convicted or remandees are well stipulated in the International Instruments, constitution of the United Republic of Tanzania and the legislation. The United Nations had come up with key standard and norms for prison reform Globally, Regional, National, but in analysis it found that they are not followed almost in all prisons.

- i. UN SMR (1957) especially rules 9-22.
- ii. International concern on civil and political rights (1966).
- iii. Universal declaration of Human Rights (1984).
- iv. Tokyo Rules on Non-Custodial measures.
- v. The Body of Principles for protection (1988).
- vi. The Basic Principles for the treatment of prisoners (1990).
- vii. The Kampala Declaration on prison conditions in Africa (1996).
- viii. The Arusha Declaration on good Prison practice (1999) Lilongwe Declaration on accessing legal Aids;
- ix. The United Nations Standard Minimum Rules for the treatment of Prisoners 1955/57 and 1977.
- x. United Nations standard Minimum Rules for Non-Custodian Measures (The Tokyo Rules).
- xi. Kampala Declaration on Prison Condition in Africa 1996.
- xii. Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, 2002.
- xiii. Basic Principles for the Treatment of Prisoners 1990.
- xiv. United Nation Rules for the Protection of Juvenile Deprived of Liberty 1990.
- xv. Body of Principles for the protection of all persons under any form of Detention or Imprisonment, 1988.
- xvi. Guidelines and measures for prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

Tanzania's obligations under International standards on treatment of inmates and the management of prisons, the legislation enacted were:

- i. The constitution of the United Republic of Tanzania, 1977.
- ii. The Prisons Act, 1967²¹⁶
- iii. The Parole Boards Act, 1994²¹⁷
- iv. The Criminal Procedure Act, 1985²¹⁸
- v. The Penal Code²¹⁹
- vi. The Children Act. 2009 ²²⁰
- vii. The Commission for Human Rights and Good Government Act. 2001. ²²¹
- viii. The Preventive Dentation Act, 1962²²²
- ix. The Transfer of Prison Act, 2004²²³

The Constitution of the United Republic of Tanzania part III stipulates Basic Rights and duties (The Right to Equality.²²⁴ The prisons Act, part IX stipulates the privileges of Prisoners and the remission of sentence²²⁵ and the principle found in constitution and administration of the Prison service as prescribed in the prisons Act and other relevant legislations. Examples, the right to clothing, bedding, food, gratuity payment, spiritual training, recreation, good conduct, health, privileges, information to relatives, letter, books, newspapers and among other things are all subject to whether one is convicted or remandees - the one awaiting trial.

²¹⁶ Cap.58 [RE 2002]

²¹⁷ Cap.400 [RE. 2002]

²¹⁸ Cap. 20 [RE. 2002]

²¹⁹ Cap. 16 [RE. 2002]

²²⁰ Cap. 13 [RE. 2002]

²²¹ Cap.391 [RE. 2002]

²²² Cap. 361 [RE. 2002] Community service, extra mural and Parole board.

²²³ Act. No. 10 of 2004.

²²⁴ Art 12(2) Act. No. 15 of 1984 Art.6 & Article 12 (6) (d) (c) Every person is entitled to recognition and respect for his dignity, for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and processes and in any other matters for which a person is restrained or in the execution of a sentence; and no person shall be subjected to torture or inhuman or degrading punishment or treatment.

²²⁵ Chapter 58 [RE. 2002].

4.5 The Reality of Musoma Prison and the Statement of the Problem, Its Effects

Musoma Prison was established 1938 with legal capacity of 195 inmates. And it is situated in Musoma Municipal City Center. However, in 1990 it was rehabilitated and became with legal capacity to hold 324 inmates in terms of the convicted ones and remandees (those awaiting trials). Up to the date of the researcher visiting the prison, the prison had 480 inmates with excess of 156 inmates.

According to the statement of prison officer in charge since 1990, the legal capacity of 324 inmates was and still overcrowded, had never dropped. And there were a number of reasons given by inmates themselves who were randomly picked as well as some of the warders as hereby mentioned:

- i. The increase in the crime rate especially on the offences committed against persons (“world cup” the common name of offences known as murder as given Musoma inmates; in other prisons murder is called “Head Case”, rape, grievous harm, assaults - - -) and the offence against properties (theft, housebreaking, armed robbery, armed with violence, burglary - - -
- ii. Delay of determination of cases.
- iii. Delay of case file at state attorney office.
- iv. Delay of investigation.
- v. Delay of High Court Sessions sitting for the cases of murder that already had committal trial.
- vi. Delay on case file to RCO’ Offices.
- vii. Failure of remandees (the one’s awaiting trial) to meet the BAIL CONSTRAINTS.
- viii. Delay of investigation due to the technical report especially from hospital PRM – Post Mortem report on Murder cases paid Government Chemistry as DNA.
- ix. Scarcity of Staff the Magistrates and the judges.
- x. Complaints on fix up cases by Police.

- xi. Parole board constraints and the long sentenced are not beneficiaries.
- xii. Delay on proceedings and copy of the judgment to the convicted ones looking for appeal.
- xiii. The mixture of Juvenile in Musoma Prison.

4.6 The Musoma Prison and the Remandees (awaiting trials.), with the Reality of Reasons Mentioned above

The following table indicates the Musoma prison and the remandees awaiting trials. (See Appendix 3).

Apart from the example cases identified above there are a total of 78 cases which are nonbailable offences especially murder and armed robbery, most of the cases are murders with the common song in the ears of the remandees that Investigation Incomplete, Delay on Hearing in absence of witnesses, the absence of Presiding judges, magistrates, days of waiting for a copy of judgment and proceedings once one has been sentenced to be hanged to death to the convicted one and the chorus of waiting the High Court Sessions of murder cases. One Marwa Joel Gesato who stayed in Prison 19 years who on the first day was arrested on 04/05/1998 had never met JUSTICE up to the time of this study. He is now waiting for the case file from DPP after TCA had asked the DPP to Review the whole case file in collaboration with Police. He had met a number of complications as the exhibits seem to have got lost.

On the other side of the coin, there are randomly 40 cases picked up which are bailable offences that met the constraints of bail conditions, among the offences are hereby mentioned:

- i. Abusive language.
- ii. Assault
- iii. Brawling and threatening violence.
- iv. Rogues and vagabonds.

- v. Theft.
- vi. Common nuisance.
- vii. Idle and disorderly person.
- viii. House breaking with intents to steal.
- ix. Forcible entry.
- x. Challenge to fight a duel.

Most of the offences are repeated and have been originated from Primary Court. Also, there are a number of remandees who are mixed in the same prison with adults, against the rule of law due to the fact that in the whole region of Mara there is no Remand Home for the juvenile, among them are facing Murder cases and armed robbery cases. Table 4.4 illustrates the situation:

Table 4.4 Under-age inmates mixed with adults

S/N	Name	Offence	CC No.	Age
1	Ndumbilo s/o Satara	Murder	CC. 12/2016	16 years.
2	Aizak s/o Amos	Rape	CC. 61/2016.	15 years
3	Livingston s/o Ndila	Armed Robbery	CC. 51/2016.	17years
4	Marwa s/o Yoram	Criminal Trespass	CC. 23/2016	16 years
5	Mgabo s/o Joseph	Murder	CC. 14/2016	17 years
6	Baraka s/o Masumbuko	Challenging to fight duel	CC. 92/2016	17 years
7	Nyakangara Masumbuko s/o	Grievous Harm	CC. 115/2016	16 years

The researcher randomly picked up the convicted inmates with long sentences and short sentences that are eligible to the Parole board, community service instead to be sentenced into prison. (See Appendix 4).

A part of the selected convicts most of them with the long sentences imprisonment at Musoma Prison who are more than the convicts with short sentences imprisonment

and are eligible to the alternative service,²²⁶ parole,²²⁷ extra Mural Labour,²²⁸ probation and condition discharge.²²⁹

4.6.1 The Effects of Prison Congestion in Musoma Prison

Most significantly, recalling that one of the fundamental social functions of prison is to treat and rehabilitate prisoners (inmates) and among other good character. Realising that person sent to prisons would ultimately return back to the society, However, the Tanzania Prison have failed in its responsibility as the whole criminal justice system in Tanzania has failed and has no commitment to develop sustain programmes which will assist the criminals re-enter the community and live a worthwhile life free from committing again crime. The prison's congestion in Tanzania has negative effect on interned, penal Institutions and for the society community.

4.6.2 Effect on Inmates

The congestion in prisons suppresses correctional institutions and task its ability to provide the basic;

In facilities like health care, Food and accommodation, Undermines intended purpose of rehabilitation, Vocational and education training and among other things.

It also violates the basic rights of inmates such as right to an adequate standard of living and high standard of physical and mental health. The condition results in greater chances of;

- i. Infliction of injury,
- ii. High risk of contracting HIV/AIDS

²²⁶ Chapter 291.

²²⁷ Cap. 400 RE 2002.

²²⁸ Prison Standing Order (PSO) No. 641, 5th paragraph and section 73(2) [Cap.52 RE 2002].

²²⁹ Section 38 of the Penal Code [Cap.16 RE 2002].

- iii. Tuberculosis, respiratory tract infections, recently Musoma Municipality has been victim of cholera that led to the death of two inmates, due to poor hygiene and poor medical care.
- iv. Acute accommodation problem makes inmates scramble for space,
- v. Poor diet
- vi. Causing strains and stress to inmates beds
- vii. Violence and sexual exploitation, it happens in the male cells especial the strongest and the inmate Leaders does to the young and the inmates whose what more privilege like food.

4.6.3 What Inmates - Convicts, Remandees and The Ex-Convict Say on the Prison Conditions and the Magnitude of the Problem of Congestion

Regarding this question, the following aspects were mentioned by inmates saying that it done by some members of the staff and some of inmates whose selected is leaders to other inmates:

Food

- i. They eat bad single meal a day (ugali and boiled beans as major food no special diet for the sick one).
- ii. You must give in yourself for more food (homosexuality).
- iii. In the situations when there are no enough bowls and plates one must use a cloth he is wearing for holding the food.

Health

- i. Skin diseases/contagious diseases, TB, HIV, scabies and chlorella are rampant in prison.
- ii. Only Panadol is always served to treat stomachache, malaria, cholera, diarrhea, chest pain, coughing and swollen legs.

Clothes

- i. They are not enough, most of them are worn out, and some walking half naked.
- ii. They remain naked to dry up their clothes.
- iii. To have new pair one must buy or give in himself (homosexuality).

Accommodation

- i. Accommodation boys, rich one with relative, who can buy they are given up to four mattress. Head boys also took the advantage to sell.
- ii. The weak ones, poor ones sleep on bare floor with no blanket.
- iii. They sleep in turns and in reversed order.
- iv. They are mixed with mad, AIDS people.
- v. There is no separation and segregation of prisoners.

One inmate, aged 25, was sentenced to 30 years imprisonment when he was 16, served the sentence with the adult till he attained the age of adults without separation.

Inhumanity and Cruelty

One inmate said, being sentenced into prison one should forget about respect and human dignity. The human violation is part of life in prisons that is conducted by some prison officers: and inmates themselves

- i. Inmates bath and defecate openly without any privacy among inmates themselves making prisons in Tanzania not a place to be transformed, but is a place of destroying and retaining the characters.
- ii. Inmates are idle to frustration, uncertainty, interpersonal conflict and violence.
- iii. Violence to the juveniles interned with adult results in assault, rape and sexual exploitation.
- iv. There are psychological trauma, mistreatment from prison officers and mistreatments by inmates among themselves, which make life in prisons miserable as said by one ex-convict.

4.7 Conclusion

Prison congestion causes strains and makes the prison management undermine international human rights standards. Failure to provide basic needs for the inmates such as balanced diet, sanitation, and budget constraints also hinders prison officers in the management of vulnerable inmates like HIV ones, mad ones, juvenile and old inmates, as well as the effects on the community. Inmates will eventually be released back to the community, cause economic hardship, spread contagious diseases such as HIV/AIDS and Tuberculosis. All these effects caused by the Police, who are incompetent to investigate, prosecution and the delay in the system of criminal justice.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter provides conclusion based on the findings of the study in line with the research objectives as well as the research questions.

5.2 Conclusion

The majority of prisons in Tanzania are heavily congested as inmates are housed in a number above the capacity of a cell facility. The problem is mostly in all prisons in major cities and in some District prisons of the Country. Meanwhile a half of prisons were built by the colonial administration when the population was about one million; to date the Tanzanians are about 45 millions, 5th times at the colonial era information from Tanzania national census.

Meanwhile, the rate of crime has dramatically increased while the buildings remain the same; the cells also remain the same size, with minor rehabilitation of infrastructures especially building the toilets inside the cells and windows in some prisons for ventilation. The increase of crime in the society led the Government of Tanzania, through its organ called parliament, either now and then to repeal, amend some of legislations or to enact the new legislations to take the concerns that sever punishment to imprisonment as the last and least effective instrument for the prevention of crime, but however all offences with heavy punishment of imprisonment like murder, rape and armed robbery are still increasing and lead to congestions in prisons which becomes a big challenge to manage.

Also, the meager budgetary allocations hinder them from meeting basic standards in terms of inadequacy of:

- i. Tools to learn and practice,
- ii. Instructors to teach,
- iii. Space to teach for the purposes to rehabilitate,
- iv. Fields/spaces for exercises that leads to swollen legs and sometimes death to the inmates,
- v. Food (quantity/quality) as well as cooking equipment and eating utensils,
- vi. Clothing and accommodation facilities.

Chapter Two of this study I found out the establishment and the components of criminal justice system in Tanzania, emanated from the constitution with its own legislation to each component with guidelines on how to undertake its core functions; however each component fails to meet the standard required by the law and lead to the problem of congestion in prisons.

Chapter Three I discussed how the administration of criminal justice system is controlled; with due respect the state law with International Instrument requirements in its procedure in conducting criminal cases, but still all have failed and caused congestions in prisons. And in some angles the court had made the intervention to serve the purposes core functions of each component in the administration of criminal justice system.

Chapter four of the study I covered the findings and the analysis of one component; the prison, and the effects caused by the components of the criminal justice system. Also, the chapter shows the numbers of prisons built at colonial era and the prisons built after attaining the independence. The reality of Musoma prison and the congestion and its effects and international instruments where the truth is seen from

the inmates that the required minimum standard for the treatment of prisoners had failed totally and the mechanism to decongest are not effective.

5.3 Recommendations

To improve prison condition does not mean that prison life should be made soft, it means that it should be made human and sensible.

Hence, from this dissertation has come up with the recommendations on the mechanisms to decongest the prisons.

Adherence to the purposes of the statutes, which have bearing on regulation and management of criminal justice system and of the prisons in country as well as the standards required by the international instruments. Within the mainstream of preservation and promotion of human rights in compliance with the constitution of the land, the existing statutes are:

- i. The Community Service Act, 2002, (Act No. 6 of 2002)
- ii. The Child Act 2009
- iii. The Constitution of United Republic of Tanzania, 1977
- iv. The Criminal Procedure Act. (Act No. 9 of 1985 RE 2002)
- v. The Minimums Sentence Act, (Act No. 5 of 1971 RE: 2002)
- vi. The Parole Boards, Act, (Act No. 25 of 1994 RE 2002)
- vii. The Prison Act, (Act No. 34 of 1967 RE 2002)
- viii. The Probation of Offenders (cap 247 RE 2002)

(i) The Community Service Act, 2002 (Act No. 6 of 2002)

The Act was enacted with the main purpose to provide a credible alternative to short sentences in prison in a manner to fight prison congestion in prisons. Orders to be imposed to the convicted one by the court has extended to imprisonment for a term not exceeding years with or without the option of a fine; especially to the first

offenders with no fixed and permanent residence, age, nature of the offence committed and the health status of the convicted one.

(ii) The Child ACT 2009

The Act originated for the purposes to prevent the children and young persons to be mixed by hard core criminal offenders, under this legislation courts are empowered to order the parent or guardian to pay fine or compensation where a child or young person is convicted to an offence. The law forbade a child to be sentenced to imprisonment unless the court considers that there are no other methods in which the case may be legally dealt with, as stipulated under section 16 (a) and (a). However, the law provides that where a young person is sentenced to imprisonment, as far as circumstances permit, shall not be allowed to associate with adult prisoners, as provided under section 18(1) ---(6)

(iii) The Constitution of the United Republic of Tanzania of 1977

The constitution provides for the basic rights and duties. Equality of all human beings is stipulated under article 12(1) and the dignity and respect of person is found in article 12(2) article 16 gives for the right to privacy and personal security.

(iv) The Criminal Procedure Act, 1985 (Act 9 of 1985 RE 2002)

The Act, has a number of provisions, whereby if properly used by the components of criminal justice system, will be one of the mechanisms of decongesting, for example, time frame of investigation 60 days except for some offences like murder and fraud. After 60 days the court shall apply S. 225 (4) and (5) of the CPA. Section 148 (1) – (7) in respect of bail. Bail for an accused person is a right and not privilege if well practiced in the court, it will cut across the question of prison congestion, however the challenges from accused and securities always are jumping bail to evade justices.

(v) Minimum Sentence Act, 1972 (RE 2002)

The government has taken reformation or rehabilitation as a top priority, but judges and magistrates have denied their sentencing discretion by the minimum sentences Act in some of offences armed, robbery, rape however, the Act stipulates for the minimum sentences. The law prohibits the provisions of this Act to apply to juveniles, as provided under section 2. Section 3 defines a juvenile to mean any person under the apparent age of eighteen years.

Section 4 stipulates for the Minimum sentences where persons are convicted for the offences provided under the schedules of the Act. Section reads.

“Where any persons are convicted of as scheduled offence the court shall sentence which person to term of imprisonment which shall not be less than.

- i. Three years, where the offence is specified in the first schedule of this Act.
- ii. One year, where the offence is specified in the second schedule of this Act.
- iii. Six months, where the offence is specified in the third schedule of this Act.

Notwithstanding the provisions of section 4 the law provides for circumstances in which the court may award longer terms of imprisonment (section 5 and 10) there are also circumstances in which the court may not apply this Act (Section) 6.

(vi) The Parole Board Act (Cap 400 RE 2002)

The parole system is the one of best me charisma to decongest of prisoners from prisons before the expiration date of their imprisonment. The implementation started in 1999 an that time the prisoners sentence to serve eight years eligible and above were to be considered on parole Boards. However, amendments were made repealing the condition that a prisoner serving a sentence of eight years for parole and replaced by the condition of serving four years and above as eligibility condition to be considered on panel system , as per section 4 of the Act. However, according to this study the government have to come up with new idea to amend again the law with

new conditions on the question of eligibility to a prisoner as well to the implantation of nation and regional parole Boards, instead of sitting quarterly per year. Table below indicates the strands of meeting for 2003 – 20013.

Table 5.1 Trend of National Parole Board Meeting

Years	Number of sitting	Number of Convicts Released
2003/2004	3	725
2004/2005	3	600
2005/2006	3	725
2006/2007	3	598
2007/2008	3	338
2008/2009	1	78
2009/2010	2	379
2010/2011	2	249
2011/2012	1	142
2012/2013	1	118

Source: National Parole Board (2013)

Hence force the amendments of the law in the quotation of eligibility and procedures of national and regional board will cut across all the constraints of decongesting the prisons and the money/budget used to feed the inmates will be used to meet other requirement into prisons.

(vii) Extra Mural Labour Employments

Extra Mural Labour, is another non-custodial sentences to be used to meet the bridge to reduce prison overcrowding PSO – Prison standing order number 641, 5th paragraph, whereby is a legal process section 73 of the Prison Act (Cap 58 RE 2002) and PSO 4th Edition 2003. According to the statement of the problem and its effect, the Government had to review the law and prison standing order on the question of eligibility where today it requires the one to extra mural panel employment.

- i. He/she has been committed to prison for non-payment of a fine or cost even though his sentence exceeds twelve months.
- ii. He has been committed to prison for non-payment of a fine or cost even though his sentence exceeds twelve months.

- iii. The law provides the option to convict one and his right to declare as per section 73(2) (cap 58 RE 2002).
- iv. The law provides the option to convicted one and his right to declare as per section 73(2) (Cap 58 RE 2002)

One the Government made the review of the provision of section 73 and subsection of (Cap 58 RE 2002) and the prison standing order, 100/= It will be fruitful to decongest the prisons.

(viii) The Probation of Offenders Act (cap 247 RE: 2002).

The Act is another method to decongest and provide for the probation of offenders. The probation is defined as an order made under the ordinance placing an offender under the supervision of authorised officer. The law empowers the court to permit conditional release of offenders. It is stipulated by section 3 as amended by the magistrates courts Act, 1963 (Cap 11 RE 2002), provides that where a person is charged with an offence which is friable by a primary court, a district court or a court of a resident magistrate, the court may convict the offender and make a probation order, or without proceeding to the conviction make a potation order as it is expedient to release the offender an probation.

The studies found that there are offences triable by high court especially murder, the offenders are subjected to the sentences less than five years. The study found that it is the time for the government to review the law and the offence triable by the court especially manslaughter to be eligible under the probation offender Act (Lap 247 RE, 2002). The probation of offender Act, by 2007 – 2012 were implemented is few regions of Tanzania mainland and 499 offenders were subject of beneficiaries.

Table 5.2 Number of offenders subject to probation order

Year	Male	Female	Total
2007	4	8	12
2008	8	12	20
2009	44	8	52
2010	86	37	123
2011	122	42	164
2012	94	34	128
Total	358	141	499

Source: Probation and Community Service Department

(ix) The Presidential Amnesty

The presidential power to Pardon is another best mechanism to address congestion in prisons. The powers are provided by the CURT 1977. Article 45 (1) subject to the other provisions contained in the article, the president may do any of the following:

- i. Grant a pardon to any person convicted by a court of law of any offence, and he may subject to law in granting such pardon unconditionally or on conditions.
- ii. Grant any person a respite, either indefinitely or of a specified period, of the execution of any punishment imposed on that person for any offence.
- iii. Substitute a less secure form of punishment for any punishment imposed on any person for any offence, and.
- iv. Remit the whole or part of any punishment imposed on any person for any offence, or remit the whole or party of any penalty of fine or for future of property belong to a convicted person.
- v. The table below indicates the trend of prisoners released on Presidential amnesty December, 2005– April, 2013.

Table 5.3 Number of prisoners released on Presidential Amnest with some prisons sentences reduced and remain to serve in prison

Months	Date	Number
December	9/12/2005	3463
April	26/04/2006	2342
December	9/12/2006	4664
April	26/04/2007	4022
December	9/12/2007	4049
April	26/04/2008	3047
December	9/12/2008	4306
April	26/04/2009	3247
December	9/12/2009	4135
April	26/04/2010	3101
December	9/12/2010	3563
April	26/04/2011	3060
December	9/12/2011	3803
April	26/04/2012	2973
December	9/12/2012	3814
April	26/04/2013	4180
April	26/04/2014	5000
December	09/12/2014	3200
April	26/04/2015	4160
December	9/12/2015	3200
April	26/04/2016	3551
	Total	77,480

Source: Tanzania Prisons headquarters FOR 2004

As matter of practice the Presidential Amnesty is used on Independence Day of the country 9/12/1961 and the union day of Tanganyika and Zanzibar 26/04/1964. The Government through Ministry of Home Affairs and other ministries relevant to the study can advise the president to apply its powers to decongest the prisons.

Case flow Management

The prison congestion encompasses both the pre-trial remandees and convicted ones. In some prisons the number of pre-trial remandees is greater than the number of inmates who are convicted ones. Hence, other means of reducing the congestion is mechanism established by the Chief Justice's secular number 2 of 1987, known as case flow management committees, purposely to speed up criminal cases which are pending before court of law. The use of the circular from nation level to the district

level with all components of criminal justice system, will cut across the statement of two problems and its effect whereby the government has to insist the members to sit monthly as part and parcel of their duties, because now is not sitting frequently due to the concern of allowances.

Collect and use data to inform a rational humane and cost effective use of prison. Reducing congestion requires an understanding of the extent of the problem and reasons for which one has come about in prison. An onus will identify who is in prison and why and to that point it will be easy to the government to review the legislations which will enable the components of criminal justice system to have alternative punishment.

Reviewing and reforming the criminal justice system process

To review and reform the criminal justice system process as a whole from arrest to release, investigations and invest in crime prevention and reduction. The Government has to formulate strategic plans especially the whole components of criminal justice system of establishing measures which can act as direct alternatives to pretrial detention or sentences with wide range of methods to provide through social and situational measures and of ways to resolve harms and disputes without recourse to criminal law, for example informal and restorative justice approaches (By divert minor cases out of the criminal justice system.

- i. Improve access to justice and case management during pretrial detention.
- ii. Increase legal aid and assistance and supplementing by use of paralegals to provide advice to dependants.
- iii. Enforcing time limits in criminal proceedings
- iv. Offering bail and other alternative to pre-trial detention
- v. Holding "camp courts" inside the prison and

- vi. Reforming criminal procedure so that cases are reviewed regulatory and brought to a conclusion more speedily (circular of case management flow to be mandatory law).

Reducing the sentence length, and ensure consistent sentencing practice.

Prison sentences should be kept as short as possible consistent with justice being done. Judges and magistrates should be flexible according to the facts and the gravity of the offence committed by seeing mandatory or minimum sentences than required by the legislation. The Government here has to establish the panel policy.

The Government has to build new standard prisons to meet the requirements of the worldwide standards including the private rooms for the couples to enjoy the marriage right. This will cut across the homosexual practice in prisons. Also, it has to review the death penalty, life imprisonment of 30 years in relation to section 61 of the prisons Act (Cap 58 RE 2002) and also the rehabilitation or reformation of offender policy and the building of remand homes for the young persons all over the country.

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HANSARD OF TANZANIA PARLIAMENT

Parliament Session 31st /October/2013. Lesson Period, Question and Answers. Effort to Reduce Congestion in Tanzania.

APPENDICES

Appendix 1: Year and who build the prison

	PRISON	YEAR	LEGAL CAPACITY	AUTHORITY BUILDER
P	LOLIONDO	1922	20	Colonial Administration
P	UKONGA	1951	751	Colonial Administration
P	KEKO	1957	350	Colonial Administration
P	ISANGA	1951	688	Colonial Administration
P	KONDOA	1938	68	Colonial Administration
P	KONGWA	1942	116	Colonial Administration
P	IRINGA	1935	83	Colonial Administration
P	BUKOBWA	1942	804	Colonial Administration
P	BIHARAMULO	1938	47	Colonial Administration
P	NGARA	1960	199	Colonial Administration
P	BANGWE	1914	66	Colonial Administration
P	KASULU	1936	105	Colonial Administration
P	SAME	1952	100	Colonial Administration
P	KARANGA	1949	840	Colonial Administration
P	MBULU	1935	53	Colonial Administration
P	MUSOMA	1938	195	Colonial Administration
P	TARIME	1942	148	Colonial Administration
P	RUANDA	1950	320	Colonial Administration
P	MTEGO WA LIMBA	1944	630	Colonial Administration
P	REMAND P. MOROGORO	1939	90	Colonial Administration
P	KILOSA	1944	45	Colonial Administration
P	MKONO WA MARA	1933	19	Colonial Administration
P	GEITA	1944	147	Colonial Administration
P	BUTIMBA	1951	850	Colonial Administration
P	NGUDU	1929	27	Colonial Administration
P	LILUNGU	1952	748	Colonial Administration
P	MASASI	1940	75	Colonial Administration
P	MAFIA	1945	30	Colonial Administration
P	UTETE	1945	30	Colonial Administration
P	KALIANKUKU	1957	198	Colonial Administration
P	MPANDA	1958	115	Colonial Administration
P	SUMBAWANGA	1925	37	Colonial Administration
P	SHINYANGA	1951	130	Colonial Administration
P	MALYA	1959	403	Colonial Administration
P	KAHAMA	1955	70	Colonial Administration
P	SINGIDA	1960	135	Colonial Administration
P	KIOMBOI	1959	50	Colonial Administration
P	MANYONI	1959	115	Colonial Administration
P	UYUI	1946	650	Colonial Administration
P	TABORA	1938	81	Colonial Administration

P	NZEGA	1922	55	Colonial Administration
P	LUSHOTO	1934	36	Colonial Administration
P	KOROGWE	1955	56	Colonial Administration
P	REMANDEES TANGA	1943	84	Colonial Administration
P	MAWENI	1949	869	Colonial Administration
P	PANGANI	1955	91	Colonial Administration

Appendix 2: The prisons built after the independence

	PRISONS	YEAR/STARTED	LEGAL CAPACITY
P	MANG'OLA	1976	100
P	ARUSHA	1963	400
P	BABATI	1973	50
P	KITETO	2003	105
P	WAZOHILL	1976	100
P	KING'ANG'A	1974	250
P	MSALATO	1976	200
P	MPWAPWA	1988	120
P	ISUPILO	1961	181
P	PAWAGA	1975	96
P	LUDEWA	1977	100
P	SEGEREA	1989	1200
P	NJOMBE	1966	253
P	MAKETE	1988	70
P	KITENGULE	1964	297
P	RWAMLUMBA	1970	230
P	MULEBA	1978	100
P	TOKYANGA	1977	150
P	KWITANGA	1981	250
P	ILAGALA	1968	450
P	KIBONDO	1975	200
P	ROMBO	1988	140
P	MWANGA	1978	120
P	KILWA	1964	48
P	KINGURUNGUNDA	1969	188
P	NACHINGWEA	1972	101
P	LINDI	1976	44
P	MUGUMU	1975	331
P	KITAKARI	1971	482
P	BUNDA	1985	150
P	SONGWE	1967	376
P	NG'WALA	1979	100
P	TUKUYU	1961	105
P	ILEJE	1979	507
P	WAMI KUU	1964	751
P	WAMI VIJANA	1964	250
P	MBIGIRI	1967	250
P	KIHONDA	1977	150
P	KIBEGERE	1984	371
P	IDETE	1973	698
P	BUTUNDWE	1976	120
P	KASUNGAMILE	1979	60
P	UKEREWE	1962	48
P	MAGU	1991	94
P	K-CHUMVI	1975	50
P	NEWALA	1973	131
P	UBENA	1964	273

P	KIGONGONI	1970	217
P	KIBITI	1968	150
P	MKUZA	1968	150
P	MOLLO	1967	200
P	SONGEA	1961	76
P	TUNDURU	1961	54
P	MKWAYA	1975	133
P	KITAI	1970	384
P	MAJIMAJI	1980	50
P	BARIADI	1975	150
P	MASWA	1963	170
P	USHORA	1976	156
P	URAMBO	1967	500
P	REMANDEES URAMBO	1981	100
P	HANDENI	1982	220
P	KWANGUNI	1972	300
P	MNG'ARO	1976	140

Source: Tanzania prisons headquarters

Appendix 3 Remandees awaiting trials

S/N	Name of inmate	Offence	CC	Time of stay in prison	Reason(s)
1	Makonyo s/o John Kibuna & 2 others	Murder	CC. 53/2013 District Court/42/2014 High Court	3 years & 3 months	Still waiting High Court Session
2	Nyamsha s/o Omari	Murder	CC. 17/2013	3 years and 4 months	Investigation Incomplete.
3	Petro s/o Makasi	Murder	CC. 17/2013	3 years	Investigation Incomplete
4	Chombe s/o Deus	Murder	CC. 06/2015	4 years	Investigation Incomplete
5	Mayamba s/o Mjarifu & 3 others	Murder	CC. 08/2013	3 years and 3 months	Waiting committal proceedings
6	Musa s/o Daniel	Murder	CC. 15/2012	4 years and 3 months	Investigation Incomplete
7	Said s/o Hussein Moto	Economic Case	05/2015	8 months	Investigation Incomplete
8	Matata s/o Masamaki & 3 others	Murder	CC. 08/2013 District Court CC. 185/2015 High Court	3 years and 8 months	Waiting High Court Sessions
9	Godfrey Jackson & 5 others	Murder	CC. 13/2012	4 years and 2 months	Waiting the High Court Sessions
10	Godfrey s/o Samwel	Armed Robbery	CC. 134/2015	6 months	Investigation Incomplete
11	Machumbe s/o Nyakobenga	Murder	CC. 15/2012	4 years and 2 months	Investigation Incomplete
12	Samwel s/o Magaiwa & 4 others	Murder/Armed Robbery	CC. 15/2012, CC. 04/2016 & CC No. 05/2016	5 months	Investigation Incomplete
13	Juma s/o Msira	A/Robbery	CC. 05/2015	1 year	Stage of Case is Hearing
14	Bwire s/o Julius	A/Robbery	CC. 134/2015	5 months	Investigation Incomplete
15	Mseti s/o Marwa	Murder	CC. 17/2014	2 years	Investigation Incomplete
16	Juma s/o Mgaya & 2 others	Murder	CC. 09/2016	3 months	Investigation Incomplete
17	Lazaro s/o Justine	Murder	CC. 08/2012	4 years	The case waiting High Court Session
18	Magesa s/o Wambura	A/Robbery	CC. 81/2015	10 months	Investigation Incomplete
19	Magenda s/o Lameck & 3 others	Murder	CC. 14/2013	3 years	The case waiting the High Court Session

20	Laurent s/o Mjarifu	Murder	CC. 17/2013	3 years	The case waiting the High Court Session
21	Mwita s/o Mokami Ketando	Murder	CC. 13/2013	3 years	Investigation Incomplete
22	Hamis s/o Kome	A/Robbery	CC. 134/2015	5 months	Investigation Incomplete
23	Nyanyago s/o Wanzagi	Murder	CC. 09/2014	2 years	The Case waiting High Court Session
24	Mwinura s/o Fuguti	Murder	CC. 31/2014	1½ years	Investigation Incomplete
25	Otiende s/o Magape	Murder	CC. 12/2014	7 months	The case waiting the High Court
26	Peter s/o Marwa Makuba	Murder	CC. 08/2015	9 months	Investigation Incomplete
27	Japhet s/o Julius and another	Murder	CC. 13/2015	6 months	Investigation Incomplete
28	Dotto s/o Sosteness	Murder	CC. 10/2014	1 year	The Case waiting High Court Session

Appendix 4: Convicts

S/N	Number	Name of inmate	Sentence	Offence
1	No. 234/2016	William s/o Joseph	1 year	Theft.
2	No. 214/2016	Chima s/o Robert	Life imprisonment	Convicted by offence of Rape
3	No. 186/2016	Cleofas s/o Kasusu	8-year imprisonment	Convicted by House breaking & stealing
4	No. 227/2016	Maswi s/o Ogopa Kisiri	15-year imprisonment	Convicted by the offence of Economics claim
5	No. 205/2016	Mashaka s/o Rwangija	6-month imprisonment	Convicted by offence of Affray
6	No. 299/2016	Julius s/o Magoti	2-year imprisonment	Convicted by Manslaughter
7	No. 06/2016	Juma s/o Joseph	4-year imprisonment	Convicted by offence of Theft
8	No. 211/2016	Maiga s/o Marubira	Life Imprisonment	Convicted by offence of Rape
9	No. 180/2016	Maduhu s/o Nandi	20-year imprisonment	Convicted by offence of Economic Trophy. Appealed since 16/04/2016. However, up to the date of the questioner, had not received the copy of judgment and the proceedings of the case
10	No. 14/2016	Magere s/o Okombo	1 year Imprisonment	Convicted by offence of threatening. Had not appealed upon sentence
11	No. 168/2016	Wangwe s/o Daniel	5-year imprisonment.	Convicted by offence of the Grievous Harm. Had not appealed against conviction.
12	No. 05/2016	Joseph s/o Richard	3-year imprisonment	Convicted by offence of the Grievous Harm. Had not appealed against conviction.
13	No. 214/2016	Kayumba s/o Kachero	Life Imprisonment	Convicted with the offence of Rape. Had not appealed against the conviction
14	No. 163/2016	Marwa s/o Maregesi	2-year imprisonment	Convicted by the offence of the Grievous Harm Had not appealed against the conviction

15	No. 249/2016	Magoti s/o Miruka	3-year imprisonment	Convicted by offence of theft. Had not appealed against conviction.
16	No. 235/2016	Asubuhi s/o Daniel	1 year Imprisonment	Convicted by offence of threatening. Had not appealed against conviction
17	No. 22/2016	Nyabioma s/o Kitabuka	2-year imprisonment	Convicted by the offence of the Grievous bodily Harm Had not appealed against the conviction
18	No. 187/2016	George s/o Mwaja	90-year imprisonment	Convicted by the offence of Armed Robbery. Had not appealed against the conviction.