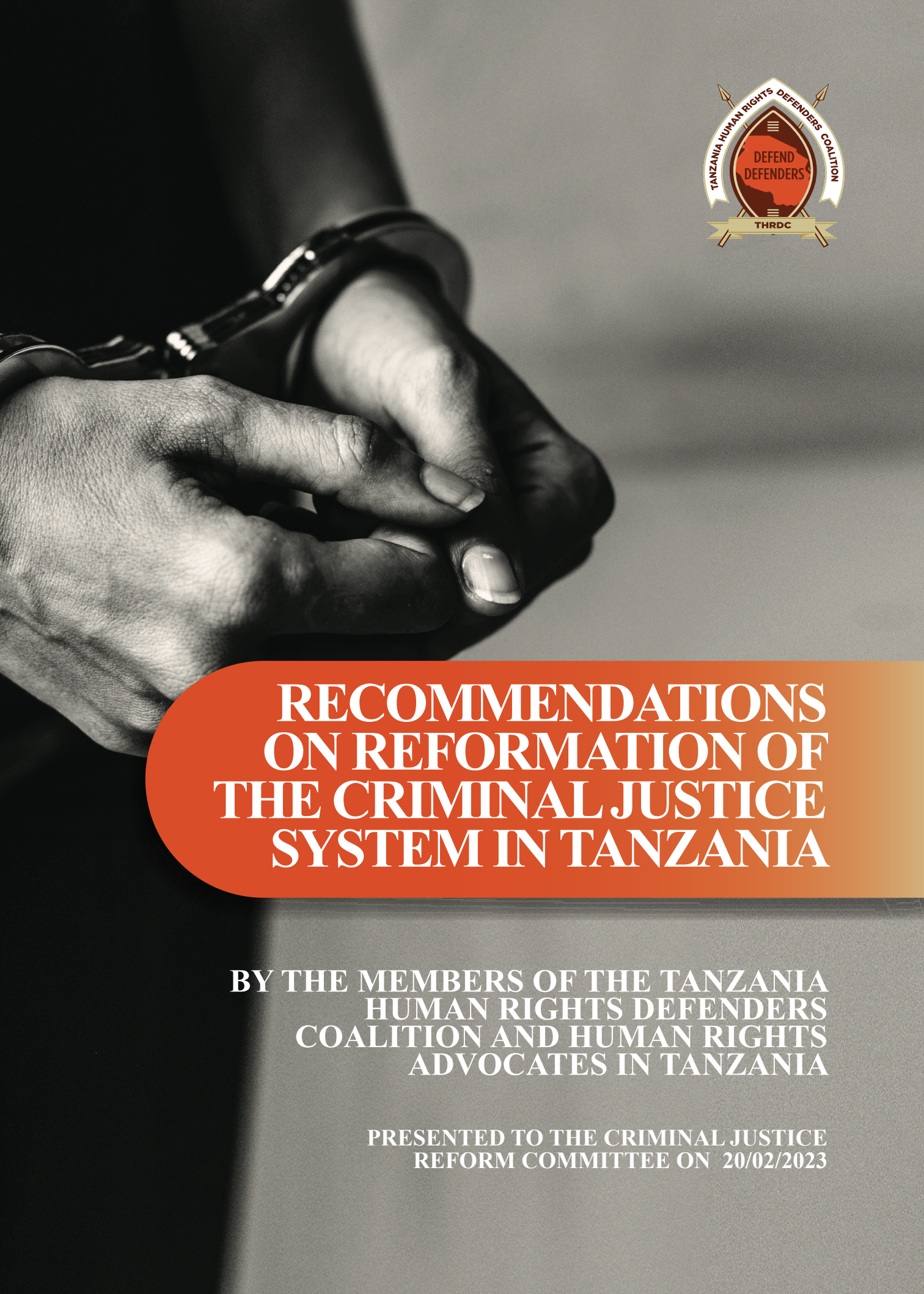

RECOMMENDATIONS ON REFORMATION OF THE CRIMINAL JUSTICE SYSTEM IN TANZANIA

BY THE MEMBERS OF THE TANZANIA HUMAN RIGHTS DEFENDERS COALITION AND HUMAN RIGHTS ADVOCATES IN TANZANIA

PRESENTED TO THE CRIMINAL JUSTICE REFORM COMMITTEE ON 20/02/2023

PART 01

GENERAL INTRODUCTION

1.1 ABOUT THRDC

Tanzania Human Rights Defenders Coalition (THRDC) is a membership and umbrella organization with more than 250 human rights organizations across Tanzania mainland and Zanzibar. It was registered in 2012 under the NGOs Act of 2002. THRDC's overall goal is to contribute to the growth of civic space in which human rights defenders' (HRDs) working environment is improved in accordance with the 1998 UN Declaration on Human Rights Defenders. THRDC works throughout Tanzania (Mainland and Zanzibar) and has deliberately categorized its members in 11 (eleven) operational zones. This categorization has simplified the access to support HRDs in need and has brought power at the grassroot level. Currently, the Coalition has two offices, its headquarter being in Dar es Salaam and THRDC Branch Office in Zanzibar.

The current strategic plan of the coalition is stemmed on working towards reversing the drivers contributing to the shrinking of the civic space. To realize this goal, THRDC works to mobilize its members and the public in general to effectively address HRDs rights and human rights protection issues; Capacity building and empowerment to its members/ HRDs and other stakeholders to efficiently engage in protection and promotion of HRDs' rights; Engagement for Legal and Policy Reforms and implementation in favor of HRDs, the national human rights mechanisms on HRDs; Improving HRDs' security and protection through legal representation and lastly, enhancement of the performance and sustainability of the Coalition.

MISSION

The Coalition strives to maximize the protection, respect, and recognition of HRDs in Tanzania through, protection, capacity building and advocacy.

VISION

The Coalition envisages a free and secured working environment for Human Rights Defenders in Tanzania

MANDATE

The mandate of the THRD-Coalition is to protect, empower and support human rights defenders in Tanzania.

1.2 ABOUT THE RECOMMENDATIONS

The annexed recommendations on the reformation of the criminal justice system in Tanzania have been jointly conceived by THRDC Secretariat, human rights advocates who have been litigating human rights and criminal cases,[1] THRDC members and other human rights stakeholders who have been working on the areas of criminal justice system. These recommendations focus on the general overview of the criminal justice system in Tanzania (Part Two), recommendations on specific institutions responsible for dispensation of criminal justice (Part Three), recommendations on the main laws on the criminal justice system in Tanzania (Part Four) and lastly, we have recommended the integration of international human rights instruments and practices into our criminal laws.

Our recommendations are mainly focusing on proposing comprehensive review of criminal justice system in Tanzania. This system has strongly been criticised by human rights defenders and the public on the grounds that it's colonial and operating on laws which are arbitrary, unconstitutional and against human rights principles. The criminal justice system has created a loophole for law enforcers to abuse the law and use them to punish the weaker side (the community, human rights defenders, and suspects).

The criminal justice system has created social classes within the community by making the criminal and institutional laws targeting certain group of the community such as human rights defenders, activists, and active politicians.

Our recommendations are striving to improve the criminal justice system by focusing on decriminalization and depenalization in the criminal justice system. The major flaw in the present system is that it imposes sanctions which inflict suffering to suspects, offenders, whether for the purpose of retribution, custody, rehabilitation, or general prevention. For instance, the penal process erodes the capacity of offenders to correct themselves and readapt to free society. This injustice generates a credibility gap between the public and the criminal justice system,widening the gap and creating animosity between law enforcers and the public. Therefore decriminalization and depenalization should be the main priority through this process of reforming criminal justice system.

We recommend the review of all laws to decriminalize many petty offenses and make them admistrative or civil matters without penal remedies. Depenalization and decriminalization could be applied to victimless crimes (i.e., public intoxication, vagrancy, gambling, narcotics, prostitution, sexual misconduct, euthanasia), intrafamily conflicts, and juvenile delinquency. This will provide a room for the criminal justice system to focus on major reforms of criminal behavior, and communities would fully participate in reforming of nonviolent offenders.

We also emphasize on modernization of the criminal justice system especially on the use of modern technology for quick dispensation of justice in Tanzania. Most of the Criminal justice institutions operate in an old fashion thus denying people's right to access justice. In order to ensure exclusivity in the criminal justice system having a gender sensitive criminal justice system is critical. We also recommend the criminal justice system to get rid of the old mentality of dealing with matters of criminal justice in deep secrecy while restricting access to information, curtailing freedom of expression and the media.. Importantly, when a new constitution is enacted it will almost certainly address many of our recommendations that require constitutional review for them to be effected.

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PART 02

GENERAL OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM

S/N	ISSUE	RECOMMENDATION
01	Foundation of the criminal justice system is based on colonial laws. For example, we inherited laws from the colonial system like the Penal Code and the Prisons Act,	We must establish an independent criminal justice system which will not take any colonial elements.
02	The name of the Police Force was also inherited from colonial rulers.	As an institution the Police force should aim at providing services hence its name should be Police Service of Tanzania.
03	Laws conferring powers of arresting people by the executive leaders has led to the abuse of such laws and powers. For example, the Regional Administration Act which gives arresting powers to the District and Regional Commissioners.	Power to arrest criminals or persons alleged to have committed offences should be left to the Police officers
04	Our laws focus on punishing offenders rather than preventing crimes.	There should be well structured systems where people receive education to avoid committing crimes. The laws should focus on prevention of crimes. We should have means of engaging the community to deter crimes.
05	Lack of trust between law enforcers and the community leads to the failure to combating crimes in the society.	Fighting crimes can hardly succeed unless there is good relationship between the Police service and the community since even the criminals too live within the society. For example a criminal gang of youth calling itself Panya road.

06	Lack of general oversight bodies for monitoring criminal justice institutions.	There should be oversight bodies to monitor the conduct and take actions against another institution that may be accused of violating human rights. For example: Police Service, TANAPA, Prisons, Tanzania Intelligence and Security Service etc
07	Closed appointment mechanism of different heads of criminal justice institutions [Police, Prisons, Regional Police Commanders, Judges, Chief of Defence Forces, Judiciary, Director of Public Prosecutions, Director of Criminal Investigations, District and Regional Commissioners, etc]	The appointment should be open, competitive and must be approved by the Parliament.
08	Poor correctional services and sentencing of accused persons. Long sentences are imposed unnecessarily, thus breeding more criminals. Laws for alternative sentences are not observed, the court has been focusing on custodial sentences	Does the current sentencing and correctional services suit human needs? To what extent does the prison prepare prisoners to reform and rejoin the community when they are set free? Laws, judges, and magistrates should not only focus on incarceration but also noncustodial sentences and optional fine. The key objective should be first offender is fined instead of being jailed.
09	Poor management of criminal cases from arresting stage, investigation, handling of suspects and cases in courts to sentencing stage. The suspects are being tortures while in Police custody Police custody to force them to confess the crime, female suspects too are allegedly being raped while in Police custody by Police officers.	Nobody should be arrested when investigations are not completed. This will help to speed up handling of the cases and dispensation of justice in the courts of law. This should be applied to all offences including serious offences.
10	Staffing of Personnel in the criminal justice system, ethics, behaviour, discipline, and competence.	More regulations to address this and serious and frequent training are necessary.

10	Criminal justice and human rights	Criminal justice and human rights are in tandem. Therefore, a judge or a magistrate with little knowledge on human rights is not likely to deliver a fair judgement.
11	Specialization of judicial officers, investigators, and prosecutors in the relevant field	Actors of criminal justice system should specialize on human rights.
12	Lack of modern investigation tools	There should be modern tools for conducting investigation, monitoring, combating crimes and handling of cases.
13.	An old Constitution, the Criminal Justice system is founded the constitution which was developed long ago and under single political party system	We propose enactment of a New Constitution that will spell out foundation principles of the criminal justice system. Many of the recommendations on criminal justice institutions will require constitutional review to be effected.
14.	The Current Committal Proceedings under CPA delay the rights of accused people in Tanzania	We propose abandon the Committal proceedings and allow cases to be determined by courts of competent jurisdiction- See the Attached Petitions and ruling on cases filed against committal proceedings.
15.	Freedom of Expression and rights to access information suffer a major blow in the criminal justice systems. Criminal Justice Institutions don't allow citizens and the media to access data and information. The Media is also restricted to attend public cases.	15.1 We propose for all Criminal Justice institutions to have a clear policy on public and media communications and how they can share data and information with the media and the public. 15.2 Allow media presence and coverage to all public cases.
16	The Parliament of the United Republic of Tanzania enacted the Written Laws (Miscellaneous Amendment) No. 3 Act, 2020 which amended among other laws the Basic Rights and Duties Enforcement Act by introducing sections 4(2), (3), (4) and (5).	We recommend the following: 16.1 Section 4(2) and (3) should be repealed because personal interest is not required for institution of a public interest case. The interest is always of the public. Article 26(2) serves the public interest and article 30(3) serves personal interest as held in the case of Rev. Christopher Mtikila[2].

2 In the case Christopher Mtikila v. The Attorney General [1995] TLR 31

	Section 4(2) provides that an application shall not be admitted by the High Court unless it is accompanied by an affidavit stating the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution has affected such person personally. (3) For avoidance of doubt, a person exercising the right provided for under Article 26(2) of the Constitution shall abide with the provisions of Article 30(3) of the Constitution. (4) Notwithstanding any provisions to the contrary, where redress is sought against the President, Vice-President, Prime Minister, the Speaker, Deputy Speaker or Chief Justice for any act or omission done in the performance of their duties, a petition shall only be brought against the Attorney General.	16.2 Section 4(4) should be repealed to allow the President, Vice-President, Prime Minister, the Speaker, Deputy Speaker, or Chief Justice to be sued for any act or omission done in the performance of their duties. This is in line with the principle of accountability and rule of law in any democratic state.
17	Lack of the Human Rights and Constitutional Court Division	We recommend establishment of the Human Rights and Constitutional Court Division to deal with all human rights and constitutional cases

PART 03

RECOMMENDATIONS FOR CRIMINAL JUSTICE INSTITUTIONS

3.1 RECOMMENDATION FOR THE TANZANIA JUDICIARY

No	Issue	Recommendations
1.	Appointment of the Chief Justice	The process of obtaining the Chief Justice shall be by application to the Judicial Service Commission. An open and transparent interview shall be conducted and the Commission shall recommend two preferable candidates to the President. The President shall appoint one candidate who shall be approved by the Parliament after obtaining the majority votes from the members of Parliament. *For instance, the Chief Justice of Ghana is appointed by the President of Ghana acting in consultation with the Council of State and with the approval of the country's Parliament, Article 144(1) of the Constitution of Ghana.*
2.	Appointment of Judges	The process of obtaining Judges of the High Court shall be by application to the Judicial Service Commission. An open and transparent interview shall be conducted and the Commission shall recommend names to the President depending on the vacancy available. The President shall appoint all the recommended names to be Judges of the High Court.
3.	Appointment of Justice of Appeal	We propose the collegium of judges of the High Court to propose the names of judges to be justice of appeal. *Example, the Chief Justice, Judges of the Supreme Court and High Court in Zambia are appointed by the President on the advice of the Judicial Service Commission, subject to ratification by the National Assembly, Article 140 of the Constitution of Zambia.*
4.	Independence Judicial Service Commission	4.1 We propose that there should be an independent Judicial Service Commission for receiving applications, conducting interviews and recruitment of judicial officers, recommendation of salaries and emoluments, disciplinary issues, promotion and demotion of judges and magistrates.

		4.2 The composition of the Judicial Service Commission shall be the Chief Justice, two Justices of Appeal, two members from Judges and Magistrates Association and two Advocates from the Tanganyika Lawyers Society. The selection should always balance gender.
5.	Jurisdiction of the court	The judiciary should be vested with exclusive jurisdiction to determine all offences. The Director of Public Prosecutions should not be vested with powers of conferring jurisdiction to the court or any other person.
6.	Bail consideration by the court	6.1 The judiciary should be vested with exclusive jurisdiction to determine bail consideration to all offences. Laws and the Director of Public Prosecutions should not prohibit bail because such an act ousts the jurisdiction of the court. *Example, Article 49(1)(h) of the Constitution of Kenya gives an arrested person the right "to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released." Powers to grant bail are within the court.* 6.2 Further, bail conditions should be simplified, it should not be mandatory to have sureties who are government employees. A national identity card should suffice as a guarantee for a person to be granted bail.
7.	Judiciary work ethics, time respect and culture. The public is complaining about unreasonable delay in delivering judgements.	7.1 We recommend the judiciary to ensure time respect, ethics, and culture. There has been a tendency of arbitrary adjourning cases after the advocates have spent hours in the court waiting for cases without prior notice or informing the advocates despite of having phone numbers and email of advocates on the file. Unlike the High Court Commercial Division, One Stop Centre-Temeke, other registries including the Main registry. 7.2 Judges should know how to manage their diary, for instance two cases should not be scheduled at the same time. 7.3 We propose that the Chief Justice should prepare strict guidelines directing that judgements should be delivered within seven days or shortest time possible after conclusion of the hearing.
8.	State attorneys having prior discussion of cases with the magistrates or judges leads to breeding of injustice	We recommend that both State attorneys and private advocates should all enter in the court room for briefing with the magistrate or judges at the same time.

9.	Judges and magistrates have been upholding unnecessary objections to complete cases	Judges and magistrates should not uphold unnecessary objections to complete cases. Cases should be determined on merit.
10.	Corruption practices to judicial officers	10.1 We propose that there should be a specific department in the judiciary to deal with unethical behaviour and corruption among judicial officers 10.2 People should access civic education to know their rights whenever they are in the judiciary. For example, on the judicial ethics committee 10.3 The executive should stop bribing the judicial officers by awarding them positions or promoting them.
11.	Specific competence and specialization.	11.1 Judicial officers should have continuous legal education especially on new areas of legal practice. For example, on issues of carbon crediting, ICT, Data protection, cybercrimes etc. Such cases should be assigned to Judges or Magistrates with competence on such areas. 11.2 We should encourage judges to consider issues of specialization. For instance, a civil servant might have been working on labour matters, but he may be appointed to be a judge and assigned criminal cases to handle. 11.3 All Judges and Magistrates must have comprehensive knowledge on human rights and criminology, this will cure by 50% all the concerns about access to justice in our courts.
12.	District and Regional Judicial Ethics Committee	We propose all these committees to be removed because a District or Regional Commissioner is not a member of the judiciary but executive. It makes the committee to look like a political organ.
13.	Submitting the Judicial Annual Report before the Parliament	We propose the judiciary to table its annual report before the Parliament. For example, the following countries have been tabling judiciary reports to the Parliament: Kenya, Zambia, USA etc

14.	Inadequate exposure and inability to learn new things	14.1 14.2	Judges and magistrates must develop a culture of learning and sharing experiences with other fellow judicial officers outside the country. The Judiciary is advised to create interactive sessions with the public and other community groups for the purpose of sharing information and practical learning
15.	Centralized Human and Constitutional cases Registry. This has denied the citizens of Tanzania to access the court because all human rights cases are referred to Dar Es Salaam	15.1 15.2 15.3	We propose the High Court of Tanzania to assume the mandate to address human rights and constitutional cases. Only one Judge can determine and decide a petition arising from criminal cases We recommend comprehensive review of Basic Rights and Duties enforcement Act (BRADEA) and its regulations because some provisions violate the Constitution and the role of the court in dispensation of justice

3.2 RECOMMENDATIONS ON THE TANZANIA POLICE FORCE

No	Issue	Recommendations
16.	The current legal regime retains some colonial mentality about the treatment of suspects. Sometimes statements made by government or political leaders are treated by Police officers as lawful orders. Police officers normally call them "an order from above". For example, from the Minister, political leaders, ruling party.	Laws should categorically state the persons to issue orders. Police officers should act on lawful and professional orders.
17.	The name of the Tanzania Police Force needs to be changed to Tanzania Police Service to avoid a word force which has been ill-perceived by junior officers who have used it as a whim to harass the suspects.	· We recommend the Name Tanzania Police Force to be replaced by the Name "Tanzania Police Service". · *Example Article 243 (2)(a) of the Constitution of Kenya establishes the Kenya Police Service. There is also the National Police Service Act.*

18.	Appointment of the Inspector General of Police (IGP)	· The process of obtaining Inspector General of Police shall be by application to the Public Service Commission and an open and transparent interview shall be conducted and the Commission shall recommend two preferable candidates to the President. The President shall appoint one candidate who shall be approved by the Parliament after obtaining the majority votes of the members of Parliament. · *Example Article 245 (2)(a) of the Constitution of Kenya, the IGP is appointed by the President with the approval of Parliament*
19.	A victim of a criminal conduct is not protected in Tanzania	19.1 We recommend the Penal Code and the Criminal Procedure Act be amended to empower victims of crime to access justice through the courts or, in appropriate cases, to apply to alternative dispute resolution mechanisms at any stage of the criminal justice process. 19.2 For example, the current position is that in circumstances like when a girl has been raped, the investigating machinery is the Police, and she remains to be a witness of a criminal case if instituted. In a situation where the case is dismissed or the accused is acquitted, this victim remains with nothing. The law should be amended to put in place a mechanism of this victim to claim for her rights against the perpetrator of a criminal act. 19.3 Generally, victims of gender-based violence should be protected when seeking their rights A good example is the Constitution of Kenya which recognizes and seeks to protect the rights of victims of crime. Article 50(9) requires Parliament to *"enact legislation providing for the protection, rights and welfare of victims of offences."* Parliament has now enacted this legislation. In 2014 an Act was enacted, the Victim Protection Act 2014. This Act seeks to · recognize and give effect to the rights of victims of crime.

		· protect the dignity of victims of crime through, among other things, the provision of better information. · Foster cooperation among government departments, organizations and agencies involved in working with victims of crime
20.	Poor infrastructures and inhumane conditions of Police stations. For example, the suspects use baskets for short calls and the baskets are kept in the same room where suspects are detained. At times when the cell is congested disease outbreak may occur.	20.1 We recommend construction of decent washrooms at Police stations. 20.2 We recommend that the requirement of twenty-four hours should be strictly adhered, and a penalty should be imposed to the Officer Commanding Station if there is a delay for arraignment of an accused in court.
21.	Lack of complaint mechanisms in Police stations	21.1 We propose all Police centres to have complaints mechanism in which detainees will have an independent mechanism to raise their complaints and human rights violations in Police stations 21.2 There should be a suggestion box in every facility that will allow detainees to issue their complaints anonymously to the authorities. Additionally, due to the nature of the facilities, we suggest that the box to be opened in a presence of two or more people who are human rights stakeholders. 21.3 The suggestion box should be well secured and protected, always locked, kept in a visible area, to give freedom for anyone to submit complaints. Papers and pen should be made available for writing complaints. They should feel free and anonymous in presenting their complains
22.	Suspects are arrested before investigation is completed leading them to be detained for a long time or to be charged in court for non bailable offences because they were arrested without enough evidence	· We recommend that the Criminal Procedure Act, Police General Orders, and other relevant laws on arrest should be amended to the effect that investigation should be conducted before arresting a suspect. This should be applied to all offences.

		· *Example of persons who were arrested without investigation being completed are: Mdude Nyagali in 2016, 2018, Erick Kabendera in 2019, Tito Magoti and Theodory Faustin Giyan, 27 people in Loliondo who were charged with murder in Preliminary Inquiry No 11 of 2022 before the Resident Magistrates Court of Arusha*, etc.
23.	Absence of separate lockups for children and insufficient juvenile facilities contrary to the Law of the Child Act, 2009, separate lockups for pregnant women and persons with disabilities and lactating mothers.	23.1 There should be separate and sufficient lockups for children accused of committing crimes. 23.2 There should be separate and sufficient lockups for pregnant women and persons with disabilities, lactating mothers and similar groups.
24.	Torture of suspects detained under Police custody to make them confess they had committed the crimes. There are also concerns of women being raped by male Police officers at night shift. Some detainees are sometimes taken to undisclosed places to be physically and mentally tortured.	24.1 We recommend the Criminal Procedure Act and the Evidence Act to be amended with effect that confession made before the Police officer is inadmissible because such confessions are obtained by torture. 24.2 We propose creation of an offence of torture under the Penal Code because even under Article 15 of the Constitution, torture is prohibited. If an accused person raises a concern of being tortured by the Police, an independent oversight body must investigate. 24.3 We recommend Police officers be trained to avoid torturing the suspects. But also, once a complaint of torture has been raised in court, the court should keenly note it and not to simply ask the accused for medical receipts because he was not able to access medical treatment. *Example, Mdude Nyagali was abducted by Police officers, taken to undisclosed place heavily tortured and recorded in 2016[3] and he was abducted by the Police, tortured dumped in 2019 by the Police officers, see https://www.bbc.com/swahili/habari-48223452*

3 Miaka Mitano ya Mateso Katika Harakati, Mdude M. Nyagali

25.	Police officers have been arresting people in a degrading way, they attack instead of arresting, and without identification cards. In many cases Police officers arrest suspects in an ambush way, they don't introduce themselves.	• Arresting Police officers must introduce themselves, show identification cards and must inform the suspect the offence leading to his arrest. • *Example of illegal/unprocedural arrests see https://www.bbc.com/swahili/habari-48223452*
26.	No clear legal aid scheme in Police stations	• We propose the establishment of legal aid centres in Police stations with the support of advocates and paralegals in line with section 36 of the Legal Aid Act. There should be a legal aid desk at each Police station as a mechanism to comply with the Legal Aid Act. A good example is the gender desk which is established in most Police stations. • The Lilongwe Declaration states: ***"Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited para-legal, or legal assistant."*** · See the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (www.penalreform.org/files/rep-2004- lilongwe-declaration-en.pdf)
27.	Lack of communication mechanism in Police stations. The practice has been that detainees are denied means of communicating with their family members or their legal counsel.	We propose that there should be a communication centre to be established in Police stations so that detainees can make calls to their relatives, family, or advocates.
28.	Inadequate knowledge of human rights by the Police officers	We propose that Police training institutions to have compulsory human rights course. For those already in service, should undergo series of trainings from human rights experts. This will help to observe human rights at the time of arresting, interviewing suspects etc.

29.	Lack of modern technology in Police stations for recording caution statements.	We propose modern technology for recording cautioned statement from a suspect which will be directly linked with the Director of Public Prosecutions to ensure that cautioned statements are not tampered with by the Police officer recording it.
30.	Denial of medical care for detainees under Police stations.	· We propose timely medical care to be provided to all detainees whenever a need arises. · *For example, Mdude Nyagali was denied timely medical services after the inhumane torture by the Police officers who arrested and tortured him in 2016, 2017 and 2018.*
31.	No separation of suspects depending on petty or major offenses alleged to be committed.	31.1 We propose the Penal Code and the Criminal Procedure Act to be amended to ensure that suspects of petty offences should not be detained. 31.2 We suggest that detainees to be separated in Police cells depending on their gender, age, and nature of their cases. At the moment suspects are clustered by gender only. 31.3 We further propose that persons accused of fine offences or offences punishable for less than 6 months should not be detained under custody. *Example, Article 49(2) of the Constitution of Kenya provides that "a person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months."*
32.	Food, sanitation, and Water challenges	32.1 The government should improve provision of social services in Police stations such as food, water, and sanitation etc. 32.2 To make use of Police bail and timely arraignment of suspects before the court to reduce congestion in Police custody.

33.	Restrictions to family members, relatives, and human rights organizations to visit detainees. In most practice, only advocates are allowed to see the detainees. Family members are denied access and even if they supply food, they are restricted to leave food at the front desk.	33.1 Relatives, family members and human rights stakeholders should be allowed to have the usual access with the detainees in Police custody to know the wellbeing of the detainee and collect any complains that can be solved immediately. 33.2 Human rights stakeholders, criminal justice oversight body should be allowed to monitor the situation of human rights in Police stations.
34.	Lack of hygiene and sanitary pads for female detainees, special groups, or persons with disabilities.	We propose for the development of guidelines for treatment of special detainees like female, pregnant women, and those with infants.
35.	Welfare of Police officials	The government should improve the welfare of Police officials i.e housing condition, salaries, allowances, psychosocial training with partners.
36.	Corruption practices among the Police officers	We recommend that there must be mechanisms to detect and deal with corruption practices at Police stations.
37.	Illegal conduct by Police officers. Police officers for a long time have been accused of illegal conducts in handling suspects such as torturing them and sometimes killing suspects	We recommend the Penal Code to be amended inserting provisions for a Police officer to be criminally responsible for the wrongful acts he/she commits during performance of his/her duties. This is in line with the Rome Statute to which Tanzania is a party.

3.3 RECOMMENDATIONS ON THE TANZANIA PRISON

No	Issue	Recommendations
38	Old legal regime and notion or perception that regulates prisons services in Tanzania. The legal regime retains some colonial mentality about the treatment of inmates	We propose that the government develops New Prison Policy and Enact New Prison Law
39	The name Prison doesn't reflect the objectives of correctional facilities	We recommend the Name Prison Service to be replaced by the Name Tanzania Correctional Services

40	Insufficient prison facilities in Tanzania hence congestion of prisoners and remandees in detention centres	40.1 Develop a ratio of not more than 100 prisoners in one prison 40.2 Develop more Correctional Facilities in all Regions in Tanzania, at least 10 facilities in high populated region like Dar es Salaam and 5 facilities in all other regions 40.3 Introduction of private prisons. Investors should be allowed to construct private prisons. Inmates who can pay for private prisons can pay and be detained there. 40.4 Home detention or house arrest 40.5 Taking a child to prison should be a measure of last resort and for a short period of time.
41	Lack of complaint mechanisms in prisons	41.1 We propose all prison facilities to be provided with complaints mechanism in which inmates will have an independent mechanism to raise their complaints and human rights violations in prisons 41.2 There should be a suggestion box in every facility that will allow the prisoners and detainees to issue their complaints anonymously to the authorities. Additionally, due to the nature of the facilities, we suggest that the box to be opened in a presence of two or more people who are human rights stakeholders. The box should be well secured and protected, always locked, it should be kept in a visible area, accessible, to give freedom for anyone to submit their complaints, Papers and pens should be made available for them to feel free, and anonymous in presenting complains 41.3 Prison Complain Guidelines should be developed
42	No separate lockups for children or sufficient juvenile facilities This is against the Law of the Child Act,2009	42.1 We propose establishment of separate homes for children and lockups for adults 42.2 We propose construction of remand homes for children to reduce congestion

		42.3 Rule 11 of the Mandela Rules on Treatment of Prisoners[4] insists on different categories of prisoners, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: *(a)* Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate; (b) Untried prisoners shall be kept separate from convicted prisoners; *(c)* Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence; *(d)* Young prisoners shall be kept separate from adults.
43	No adequate health facilities with specialized health officers	· Every prison should have a health centre with well-trained medical officers from a qualified health institution. Example, Rule 25 (2) of the Mandela Rules on Treatment of Prisoners[5] states that the health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry.
44	No clear legal aid scheme in prison	· We propose the establishment of legal aid centres in prisons with the support of advocates and paralegals. Section 36(1) of the Legal Aid Act, obliges the Tanzania Prison Services to 'designate mechanism for facilitating the provision of legal aid services by legal aid providers to accused or convicts in custody. · *The Lilongwe Declaration recognizes the "societal benefits" that result from the "elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations."*

4 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

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45	No freedom of expression and clear communication mechanism in prisons	We propose the law to allow inmates to communicate with external world though a secured communication centre to be established in prisons so that inmates can make calls to their relatives as well getting an opportunity to express themselves
46	No Recreational activities	46.1 We recommend creating recreational activities such as having a sports field (Football field and other), gym, library etc. Example Rule 23 (1) of the Mandela Rules on Treatment of Prisoners[6] states that every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. 46.2 We propose that prisoners may have special days for recreations like music dance as part of enjoying life in prison. Through they are prisoners, but they deserve social life enjoyments.
47	There is no right to conjugal right for remandees and inmates.	· We propose the rights of inmates and remandees to enjoy conjugal rights by establishing special facility for privacy. · *For example, in the Federal Republic of Germany, the Prison Act of 1976, provides that all inmates are eligible for up to twenty-one days a year of home leave. Inmates with this privilege are allowed to leave the prison for 1-2 days at a time to live with family or close friends.*
48	Lack of decent and modern technology at the prison check in points for inmates during inspections	48.1 The current prison practice of inspecting prisoners is degrading and inhuman. We propose the modern equipment's like scanners to be purchased and placed at prison check in points. 48.2 Also, all inspection should be done in a private room to maintain privacy. 48.3 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[7], Rule 1 imposes a mandate to the state to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment.

6 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

7 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

49	There is no facilitative and conducive prison environment for pregnant women, lactating mothers and persons with disabilities.	There should be special facility or environment in prisons which accommodate and ensure safety and wellbeing of a lactating mothers and a child, pregnant women and persons with disabilities.
50	Lack of human rights knowledge especially rights of inmates among prison officials	We propose specialized human rights courses for all prison officials before joining the prison services
51	No separation of offenders with petty offences and those with major offenses	We suggest that the prisoners to be living in clusters depending on their gender, age, and nature of their offences. Now they cluster them by gender only.
52	Lack of certificate of good character and service to those who completed their sentence.	52.1 The authority should issue a certificate of learning and good character to those who completed their term peacefully. His certificate should help them to create a base for their life once they are free. This will help to clear the negative perceptions about ex-prisoners 52.2 Also, the criminality records should not be used to criminalize or side-line ex-prisoners from post release services like being burned from travelling or being employed.
53	Restrictions to human rights organizations to visit prisoners	Human Rights Stakeholders should be allowed to have the usual visit to the facilities/prisons to know the wellbeing of the prisoners and collect any complaints that can be solved immediately. The visits are suggested to be at least twice a month.

54	Lack of hygiene and health services for female inmates, special groups and persons with disabilities	54.1 We recommend that prison administration shall make all reasonable accommodation and adjustment to ensure that prisoners with physical, mental or other disability have full and effective access to prison life on equitable basis. 54.2 We propose the development of guidelines for treatment of special inmates like female, pregnant inmates, and those with infants. Example Rule 24 of the Mandela Rules on Treatment of Prisoners[8] states that the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status
55	Poor social welfare and services including water, sanitary, balanced diet etc.	The government should improve the welfare of social services and welfare in prisons. Rule 22 of the Mandela Rules on Treatment of Prisoners[9] states that every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Also, drinking water shall be available to every prisoner whenever he or she needs it. Rule 27 of the Mandela Rules on Treatment of Prisoners[10] states that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

8 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

9 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

10 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

56	Poor prisons conditions contrary to the international standards on treatment of inmates (no adequate and decent toilets, overcrowded facilities, poor sleeping condition). For example, it is very hot in Dar es Salaam, thus small windows do not cope with human rights	56.1 We propose for development of many facilities to reduce overcrowding in prisons 56.2 Build decent toilet facilities 57.3 Provide them with bed and mattress Example Rule 13 of the Mandela Rules on Treatment of Prisoners[11] states that All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
57	No post detention life skills and support of inmates hence making ex-prisoners to face life challenges leading them re-engage in other crimes	Prisoners should be subjected to various activities which will help them to sustain their life after serving their sentence.
58	Education and prison system.	58.1 We propose establishment of proper education system for inmates to enjoy their right to education. 58.2 Inmates who were students and pupils at the time of sentence should pursue their right to education 58.3 The relevant authority should implement the skill development curriculum for the prisoners to enable them not to waste all the years without a career or education.
59	Human rights violations for inmates such as brutality in prisons, torture, rape and killing run by corrupt officials who abuse their powers.	Laws should be tightened to prevent such human rights violation in prison, continued human rights education to prison officers

11 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

60	Abusive officers or prisoners can engage in extreme cruelty, torture, and criminal misconduct if prisons are overcrowded and uncontrolled. When violent correctional officers or prisoners are not held accountable, a dangerous culture of impunity flourishes in prison and later in community	60.1 We propose proper handling of prisoners and avoid overcrowded prisons 60.2 Strict guidelines on prisoners' relation to avoid misconduct and crimes among prisoners 60.3 Conducting frequent visiting and assessment of prison conditions, prisoners with the aim of ascertaining if there are crimes committed in prison.
61	Overcrowding of inmates in prisons	61.1 We recommend that all offences should be bailable, this will ensure that no remandees in prison 61.2 We propose that petty offenders should not be sentenced to prison. 61.3 Alternative sentences should be encouraged such as house arrest, probation, fines, community service, presidential pardon, conditional discharge
		Example Rule 12 of the Mandela Rules on Treatment of Prisoners[12] states that where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room
62	Torture of inmates by Prison guards and other inmates or prisoners	We recommend special directives and guidelines for non-torture of inmates and prisoners by prison guards and prison officials. The guidelines should state clearly remedies for torture. We encourage separation of inmates and prisoners according to gender, age, nature of the offence

12 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015

3.4 RECOMMENDATIONS ON THE TANZANIA INTELLIGENCE AND SECURITY SERVICE (TISS)

For the previous years and the current practice indicates that TISS forms part of our criminal justice system and therefore this organ has to be reviewed as follows.

No	Issue	Recommendations
63	TISS official to arrest suspects or participate in active investigation or participate in task forces is major challenge to our criminal justice	63.1 It is clear under the law that TISS official main role is to gather intel analysis and communicate with law enforcers for action. 63.2 We recommend TISS officials should not be engaged in active investigation such as conduct search, arrest, or detain suspects this is role given to Police force. 63.3 In circumstance officials are participating in task forces the same has to be provided under the law and their role must remain passive and undercover.
64	Name of Tanzania Intelligence and Security Service (TISS) should be changed to reflect the current need and avoid threat perception from the public and operation of the services.	64.1 We recommend the name to be Tanzania Intelligence Service, and remove word Security. The word security it is believed to be coined as main focus of the service at that time 1996, with the development and nature of economy for now security can be taken as branch of the service and hence general name will suffice to enable the service to cover other area such as economic intelligence, financial, diplomacy, culture etc. 64.2 To remove the word security will enable the service to operate smoothly and remove perception from public that TISS is security agencies which can do anything and therefore most of the people have developed a tendency of introducing themselves as TISS officials to threaten people and this has a constant inflicted fear
65	Employment and recruitment of TISS officials	65.1 We understand the sensitivity of the services but is high time for some cadre/ position, recruitment should be advertised for qualified citizens to apply. This is not only in Tanzania even other country they recruit and advertise for such position for patriot citizen to save for their Nation.

		65.2 Employment should focus on merit basis such as intelligence of a person, capacity of analysis, critical thinking. People shouldn't be recruited because of their political affiliation but the level of intelligence and exposure on many things This will enable the service men to compete in the current world of economic, technological, and cyber intelligence.
66	TISS focuses on security rather on other work such as economic or financial intelligence	66.1 We recommend that instead of the service to focus on politics and security of the public officials, it is high time the service to expand and strengthen their department and units on issues like economic intelligence, International economic intelligence especially with neighbour countries which we compete for the same market and product. 66.2 Therefore, the Tanzania Intelligence and Security Service Act needs amendment to fit the current structure and needs.
67	Some TISS officials are associated with the ruling party, this is given the fact that during the foundation of TISS there were no multiple political parties.	67.1 We recommend TISS officials should not associate with the any political party but rather focus issues of Nation interest such as, security of the nation, economic intelligence, technological intelligence etc. 67.2 The work and interest of TISS should expand above political pressure but rather interest of the nation
68	Truth of the gathered intelligence which may lead to unfair arrest or malicious prosecution or unfair treatment	68.1 We recommend TISS to participate on the main activities listed on the law to avoid malicious gathering of intelligence for personal life which has nothing to do with security or economy of the country 68.2 We recommend intelligence gathered to be used for that purposes only to avoid other unfaithfully official to use the gathered intel to threat or gain advantage from citizens 68.3 We recommend TISS to abstain from normal criminal investigation which is role of police force

69	Forced Disappearance and Kidnapping. TISS has been accused of participating or coordinating forced disappearance and kidnapping in the country e.g the kidnap attempt of a famous businessman in Tarime, the kidnap of Dr. Stephen Ulimboka etc	We propose to have the law amended and add a provision that prevent TISS official to be involved in any incident of such nature to protect the image of this institution to the public

3.5 RECOMMENDATIONS ON THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

No	Issue	Recommendations
70	Abuse of Section 91(1) of the Criminal Procedure Act which allows the DPP to enter *nolle prosequi*. State attorneys have been misusing section 91(1) especially when they discover that the case isn't in their favour, they enter *nolle prosequi* and immediately after the accused is released, he is arrested by the Police on the instruction of the State attorneys and subsequently reinstitute charges based on similar facts.	We recommend that the DPP while entering *nolle prosequi* shall state reasons. After the DPP has entered *nolle prosequi*, the court should get involved in the aftermath. The court should issue an order to the effect that no subsequent proceeding shall be instituted against the accused person on the same facts. Should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied that there is sufficient cause to reinstitute. Before the court determines the application, the accused should be left at liberty.
71	Public prosecutors do not prepare their cases very well leading most of the cases ending at preliminary stages *"Waendesha mashitaka nao baadhi wamezidiwa kesi wako wachache kesi ni nyingi hawajiadai vizuri na kesi, kesi nyingi zinaharibika mikononi mwao"*- comment from the people.	We recommend that public prosecutors should be strictly supervised to ensure that they prepare well for all the cases they handle.

72	· Corruption practices by the public prosecutors. After receiving corruption from the offender(s), prosecutors destroy evidence hence the accused get released by the court. · There is no avenue for private investigation and institution of cases. There has been a tendency of investigators to receive corruption from the offenders, hence destroying evidence. Since there is no legal avenue for a victim to appeal or proceed with the case, he/she loses his or her rights.	We suggest that the law should be amended to allow private prosecution an avenue for the victim to proceed with the cases either on institution, appeal, or any remedy legally available. *"Kuwe na ruhusa ya kufanya uchunguzi private na kuendesha kesi private kwani kesi nyingi zinacheleweshwa makusundi ili waendelee kula hela kutoka kwa watuhumiwa"*- suggestion from THRDC members.
73	There has been an abuse of DPP's power under Section 98(a) of the Criminal Procedure Act after withdrawing charges against an accused person. Public prosecutors / State attorneys have been reinstituting charges based on similar facts.	We propose that the DPP while withdrawing the case shall state reasons. After the DPP has withdrawn charges against an accused person, the court should get involved in the aftermath. The court should issue an order to the effect that no subsequent proceeding shall be instituted against the accused person on the same facts. Should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied that there is sufficient cause to reinstitute before the court determines the application the accused should be left at liberty.
74	Public prosecutors / State attorneys have been abusing court's power after when the accused is discharged under Section 225(5) of the Criminal Procedure Act for want of prosecution.	We propose that after the court discharges an accused person, the DPP shall not be allowed to reinstitute similar charges based on similar facts unless he makes an application before the court and the court be satisfied that there is sufficient cause to reinstitute the charges.
75	The Director of Public Prosecutions is vested with powers of conferring jurisdiction to the court	We recommend that the DPP powers should be minimized, he should not have powers of conferring jurisdiction to the court.
76	The DPP has sometimes been demanding for cases to be investigated or doing investigation by himself, commanding for cases to be taken to court even if there is no evidence from the investigators.	We recommend that powers to investigate should be left to professionals who are the trained Police officers

3.6 RECOMMENDATIONS ON THE PREVENTION AND COMBATING OF CORRUPTION BUREAU (PCCB)

No	Issue	Recommendations
77	Big corruption scandals are never investigated by PCCB Officials. *"Kwahiyo Jamii inaamini TAKUKURU ni kwaajili ya kuwahangaisha wananchi wanyonge kwa maslahi ya wakubwa"*- a member commented	We recommend that PCCB officials should not be discriminatory against petty corruption *visa viz* big corruption scandals.
78	Employment of PCCB staffs is not competitive by qualified candidates	We recommend that employment of PCCB staffs should be competitive and subject to public scrutiny.
79	Corruption practices among the PCCB Officers / officials	We recommend that there must be mechanisms to detect and deal with corruption practices amongst the PCCB officials.
80	There are no simultaneous analysis reports of the gaps on corruption transactions by PCCB to the Public	We recommend that PCCB should conduct and issue simultaneous analysis reports of the gaps on corruption transactions to the Public and steps taken to remedy the gaps.
81	Little engagement of stakeholders in combating corruption	We recommend for a fully engagement of stakeholders from grass root level in combating corruption.
82	Confidentiality among PCCB officials for reported cases	We propose that PCCB officials to abide with the principle of confidentiality because they have been disclosing information of corruption to the accused persons leading to the failure in arresting the accused persons. However, family members of the accused person must be well informed about their relative under restraint of PCCB.
83	Submitting the PCCB Annual Report before the Parliament	We propose PCCB to table its annual report before the Parliament for the public to understand and creating awareness on the activities conducted by PCCB.

3.7 RECOMMENDATIONS ON THE DRUG CONTROL AND ENFORCEMENT AUTHORITY (DCEA)

No	Issue	Recommendations
84	The responsible DCEA officers conducting search have a tendency of putting drugs to the suspect and arrest him.	We recommend that responsible DCEA officers conducting search must be first searched by the suspect in open environment
85	Corruption practices among the DCEA Officers / officials	We recommend that there must be mechanisms to detect and deal with corruption practices amongst the DCEA officials.
86	There is little engagement of the people in dealing with drug control.	We recommend for a fully engagement of the people from grass root level in ensuring drug control.
87	Confidentiality among DCEA officials for reported cases	We propose that DCEA officials to abide with the principle of confidentiality because if the reporter of drug dealers is disclosed, his life will be in danger and many people with information may not disclose to DCEA.

3.8 RECOMMENDATIONS ON WILDLIFE ENFORCEMENT AGENCIES

S/N	ISSUES	RECOMMENDATION
88	Arresting and detention procedures of suspects are abused by the arresting officers in wildlife conservation areas.	We recommend observance of arresting procedures and laws regarding apprehension of suspects. We further recommend the suspect to be arraigned before the court within the prescribed time.
89	Insufficient modern technological equipments for detecting crimes committed within the wildlife areas.	We propose the government to ensure that there is sufficient supply and modern technological equipments in wildlife areas. For example, camera etc.
90	Violation of Human Rights by game and national park wardens in carrying out their operations, they are known for excessive use of force and brutal acts.	90.1 Since all national parks wardens and game wardens are government employees and they work under strict supervision of the government, we suggest that the government should conduct a special training which will educate and enlighten them including the poaching squad on how they are supposed to adhere to human rights when conducting their operations.

		90.2 We recommend that they should conduct their duties without violating the rights of civilians and the suspects. They should be educated that use of force and torture should be avoided when dealing with civilians and suspects alike. 90.3 We also suggest that if any game/ national park warden is found guilty of violation of human rights they should be brought before the courts of laws to face consequences.
91	Corruption practices, this involves the whole spectrum from pretty corruption of low-rank officers to grand corruption of senior government officers	We recommend that there should be a multi-agency structures which include non-traditional actors such as anti-corruption authorities and financial intelligence units.
92	Wildlife officers lack knowledge and useful skills in preserving the evidence, after arresting the government trophies do not know how to handle them and preserve them properly, as a results cases take a long time.	We recommend that the wildlife officers in general should be educated on how to collect, preserve and handle all evidences they will be used in the court of law and all investigation of the crime procedures so that to fasten the cases.
93	Disabling Legislations, some national laws are not enabling when it comes to wildlife law enforcement. They limit the enforcement power of investigators and nature of investigations. For example, putting wildlife crime in the EOCA while there are specific laws for wildlife conversation.	We recommend the wildlife laws should provide for the crimes and the punishment for the crimes and not otherwise.
94	· Imposition of Large fines comparing to the alleged offence, which make people unable to pay hence they lose their rights. · Section 18 (2), (3) and (4) of the Wildlife Conservation Act, this provision imposes large fines to the livestock grazed within the game reserves.	We recommend that the fines imposed should be reasonable and questionable in the light of international human rights obligations. And the fines should be given according to the seriousness of the offence.

95	Bad relationship between the national parks military personnel and citizens residing near/along the national parks, tend to threaten the lives and wellbeing of those local citizens.	We suggest the national parks military personnel should not only be friendly to the local people residing near the national parks/ game reserve but also educate them in a very friendly and proper way to ensure safety and avoid ecological threats to both indigenous people and the national parks.
96	Combating wildlife crime through effective prosecution	The successful wildlife law enforcement goes beyond the arrest of offenders. Hence, we recommend that the available laws and its implementation will pray crucial role and thus strong laws must come to robust, sensitize and effective judicial system

PART 04

RECOMMENDATIONS ON MAIN LAWS GOVERNING CRIMINAL JUSTICE SYSTEM

4.1 RECOMMENDATIONS ON THE PENAL CODE [CAP 16 R.E 2022]

S/N	How it reads	Proposed Provision	Reason
15(1) 15(2)	A person under the age of ten years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that, at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.	A person under the age of twelve years is not criminally responsible for any act or omission. It should be repealed	In General Comment 10, the Committee on the Rights of the Child concludes that 'a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable *(UN Committee on the Rights of the Child (CRC), General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, paragraph 32)* Rule 4 of the Beijing Rules recommends that any minimum age of criminal responsibility 'shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity'. The Commentary to this Rule states that "the modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour *(UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 4).*

			The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, 2002, recommended that States should "establish laws and procedures which set a minimum age below which children will be presumed not to have the criminal capacity to infringe criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.
15(4)	Any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act.	Any person under the age of eighteen years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act.	A child is person under the age of 18 according to the Law of the Child Act and under the Convention on the Rights of the Child
197	A person convicted of murder shall be sentenced to death.	A person convicted of murder may be sentenced to death.	**It is generally recognized worldwide that a mandatory death penalty for any offence is cruel and inhuman and denies an offender his or her basic human dignity**. Cases from India[13], the United States[14], Malawi[15], Uganda[16], Kenya[17], Belize[18], Saint Lucia[19],

13 Bachan Singh v State of Punjab 2 SCC 475; Mithu v Punjab(1983) 2 SCR 690 [Record p.210]
14 Woodson v North Carolina (1976) 428 US 280
15 Kafantayeni v Attorney General, Constitutional Case No. 12 of 2005 (27 April 2007) [Record p.91]
16 Kigula v Attorney General [2005] UGCC 8 [Record p.105]; [2009] UGSC 6
17 Muruatetu v RepublicPetition Nos. 15 and 16 of 2015 (14 December 2017) [Record p.67]
18 Reyes v Queen [2002] 2 AC 235 [Record p.169]
19 Hughes v R [2002] 2 AC 259

			the Bahamas[20], Mauritius[21], St. Christopher and Nevis[22], Barbados[23], Trinidad and Tobago[24], and Jamaica[25] have all reached the same conclusion. Indeed, **the Court of Appeal of Tanzania has already accepted that the death penalty itself is an inhuman and degrading penalty: Mbushuu (alias Dominic Mnyaroje) v Republic**[1995] TLR 97. In that case, this Court held that the death penalty contains "*elements of torture*" (**Mbushuu** p.111, I) and that the punishment violates the right to be treated with human dignity (**Mbushuu**p.112D). The African Court on Human and Peoples' Rights has held in several decisions that mandatory death penalty should be removed in the Penal Code[26]
55,63(b)(c) 89 Also, Sections 35, 36, 37, 38, 39, 40, 50,52,53,54,58 and 59 of the Media Services Act		These provisions should be repealed	These are offences in the Penal Code which are contrary to the right to freedom of expression as protected in article 18 of the Constitution. Rand J in the case of *Boucher v The King19* notes that: *"There is no modern authority which holds that the mere effect of tending to create discontent or disaffection among His Majesty's subjects or ill-wind or hostility between groups of them, but not tending to issue in illegal conduct, constitutes the crime, and this for obvious reasons. Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life…."*

20 Bowe v R[2006] UKPC 1
21 Boucherville v State[2008] UKPC 37
22 Fox v R [2002] 2 AC 284
23 Nervais v R [2018] CCJ 19 (AJ)
24 Matthew v State [2005] AC 433
25 Watson v R [2005] 1 AC 472
26 Marthine Christian Msuguri Vs United Republic of Tanzania, App.No 052/216

			The UN Human Rights Committee's General Comment 34 provides that restrictions on the exercise of freedom of expression "may not put in jeopardy the right itself" (para 21). The law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly" and "may not confer unfettered discretion for the restrictions of freedom of expression on those charged with its execution" and laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not" (para 25). Restrictions must be "necessary for a legitimate purpose" (para 33), must not be overbroad (para 34), must conform to the principle of proportionality, must be appropriate to achieve their protective function, must be the least intrusive instrument amongst those which might achieve their protective function and must be proportionate to the interest to be protected (para 34). The East African Court of Justice held a number of provisions of the Media Services Act to be repealed as they are contrary to freedom of expression guaranteed in the Constitution in the case of THRDC, MCT and LHRC The African Commission on Human and Peoples' Rights and the Pan African Parliament have called for the repeal of criminal defamation laws because of the chilling affect that these laws have on the media. Journalists, facing a criminal charge, can be arrested, detained awaiting trail and can be sentenced to periods of imprisonment if found guilty.

			We are of the view that all of the provisions of the Penal Code relating to criminal defamation do not comply with international standards for freedom of expression and should be repealed. We are of the view that other mechanisms can be used to deal with the publication of material that genuinely defames such persons, such as civil defamation as well as enforcement of media codes of ethics by self-regulatory bodies such as the Media Council of Tanzania. Courts in Africa have found that the offence of criminal defamation is disproportionate in its limitation of freedom of expression because of the chilling effect of the offence, the existence of a civil remedy, and the severe impact of imprisonment. This position was taken by the Zimbabwe Constitutional Court,[27] by the African Court on Human and Peoples' Rights,[28] by the Kenya High Court28 and by the Lesotho Constitutional Court.[29]
176 and 177		These provisions should be repealed	Punishment for petty offences in the Penal Code have led to a congestion of inmates in Police cells and Prison overcrowding. Even the arresting procedures are abused because people are being arrested and detained where there has been no proof of a criminal act. Therefore, these provisions are overly broad and confer too wide a discretion on law enforcement agencies to decide who to arrest which impacts disproportionately on vulnerable individuals in society. The manner in which petty offences are enforced is contrary to the basic principles of criminal law i.e., it undermines the presumption of innocence and thereby threatens the rule of law. *Reference on principles on the decriminalisation of petty offences in Africa of 2017*

27 Madanhire and Another v Attorney General CCZ 2/2014, [2014] ZWCC 2.

28 L_o_h_é _I_s_s_a_ _K_o_n_a_t_é _v_ _T_h_e_ _R_e_p_u_b_l_i_c_ _o_f_ _B_u_r_k_i_n_a_ _F_a_s_o_,_ _(2014) App 004 of 2013.

29 Basildon Peta v Minister of Law, Constitutional Affairs and Human Rights and Others (CC 11/2016) [2018] LSHC 3.

130 (2) (e)	A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the following descriptions: (e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man.	A male person commits the offense of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the following descriptions (e) with or without her consent when she is under eighteen years of age.	Early Child Marriage was declared unconstitutional by the Court of Appeal of Tanzania in the case of the Attorney General Vs. Rebecca Gyumi as a form of protecting child fundamental rights

4.2 RECOMMENDATIONS ON CRIMINAL PROCEDURE ACT [CAP 20 R.E 2022]

S/N	How it reads	Proposed Provision	Reason
7, 9 (1,2) &10 (1)		**10.-(**1) Where, from the information received or in any other way, a police officer has reason to suspect the commission of an offence or to apprehend a breach of the peace he shall, where necessary, proceed in person to the place to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender **after completing the investigation** where the offence is one for which he may arrest without warrant.	A Police officer has power to arrest a suspect based on information received from another person or on his own without thorough investigation. We propose that a Police officer shall first conduct thorough investigation before arresting a suspect. There should be sufficient evidence to warrant an arrest.

9(3)	Where in pursuance of any information given under this section proceedings are instituted in a magistrate's court, the magistrate shall, if the person giving the information has been named as a witness, cause a copy of the information and of any statement made by him under subsection (3) of section 10, to be furnished to the accused forthwith.	Where a criminal case is instituted in a magistrate's court, the accused shall be furnished with all the documentary evidence intended to be used against him prior hearing.	In summary trials (trials before the subordinate court) the accused is not made aware of the evidence that will be used against him in the course of trial. The accused is not given any evidence save for complainant's written statement. We propose that the accused should be given all the documentary evidence that is intended to be used against him. The essence is fair trial. The accused must be aware of the evidence that is intended to be used against him and prepare his defence well.
91 (1)(3)	(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi,* either by stating in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue; and thereupon the accused person shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged;	(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi,* either by stating in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue stating the reasons; and thereupon the accused person shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged; (3) Where the accused person is discharged under subsection (1) he shall not be rearrested and charged	There has been a tendency of an abuse of DPP's power to enter nolle prosequi and subsequently reinstitute charges basing on similar facts. We propose that the DPP while entering nolle prosequi shall state reasons. After the DPP has entered nolle prosequi, the court should get involved in the aftermath. The court should issue an order to the effect that no subsequent proceeding shall be instituted against the accused person on the same facts. Should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied

	but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts. (3) Where the accused person is discharged under subsection (1) he shall not be rearrested and charged on the same facts unless there is sufficient evidence and that the hearing proceedings shall commence on his first appearance before the court.	on the same facts and should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied that there is sufficient cause to reinstitute and before the court determines the application, the accused should be left at liberty.	that there is sufficient cause to reinstitute. Before the court determines the application, the accused should be left at liberty.
98 (a)	In any trial before a subordinate court, any public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged, and upon such withdrawal- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts provided that such	In any trial before a subordinate court, any public prosecutor may, with the consent of the court, at any time before judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged and state reasons, and upon such withdrawal- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged and he shall not be rearrested and charged on the same facts and should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied that there is sufficient cause to reinstitute and before the court determines the application, the accused should be left at liberty.	There has been an abuse of DPP's power after withdrawing charges against an accused person and subsequently reinstitute charges based on similar facts. We propose that the DPP while withdrawing the case shall state reasons. After the DPP has withdrawn charges against an accused person, the court should get involved in the aftermath. The court should issue an order to the effect that no subsequent proceeding shall be instituted against the accused person on the same facts. Should there be a need to reinstitute the charge, the DPP should make an application before the court and the court be satisfied that there is sufficient cause to reinstitute before the

	arrest shall abide to the terms stipulated under section 131A of this Act;		court determines the application the accused should be left at liberty.
148(5)	(5) A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if- (a) that person is charged with- (i) murder, treason, armed robbery, or defilement;	(5) A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if that person is charged with murder or treason.	We recommend that all offences should be bailable save for serious offences i.e murder and treason. Accused person charged for serious offences should apply for bail before the court.
169 (1)	**169**.-(1) Where, in any proceedings in a court in respect of an offence, objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, or of a failure to comply with a provision of this Act or any other law, in relation to a person, the court shall, in its absolute discretion, not admit the evidence unless it is, on the balance of probabilities, satisfied that the admission of the evidence would specifically and substantially benefit the public interest without unduly prejudicing the rights and freedom of any person.	**169**.-(1) Where, in any proceedings in a court in respect of an offence, objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, or of a failure to comply with a provision of this Act or any other law, in relation to a person, the court shall, in its absolute discretion, not admit the evidence.	It allows admission of evidence illegally obtained hence contravening the rules of procedure during investigation Justice is both means and the end. When you allow the means to be faulted, then the end cannot be justified. The section should be repealed to guard against violation of peoples' rights and procedural laws during investigation.

225(5)	Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, where the prosecution is unable to proceed with the hearing discharge the accused person in the court, save that any discharge under this section shall not operate as a bar to a subsequent charge being brought against the accused for the same offence.	Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, where the prosecution is unable to proceed with the hearing discharge the accused person in the court, and he shall not be rearrested and charged on the same facts.	There has been an abuse of court's power to discharge an accused person for want of prosecution After the court discharges an accused person, the DPP shall not be allowed to reinstitute similar charges based on similar facts before making an application before the court and the court be satisfied that there is sufficient cause to reinstitute the charges.
243-263		These provisions should be repealed	Committal proceedings has led to breeding ground for pre- trial detention and ousts the jurisdiction of the committal court
372(2)	(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge.	This provision should be repealed	It prohibits application for revision on preliminary or interlocutory decisions or orders of the subordinate court. It limits the remedy of an accused person in ensuring the accused's procedural rights while determining his substantive rights in a criminal matter. We propose that this subsection should be repealed to allow the accused to approach the High Court for revision.

4.3 RECOMMENDATIONS ON THE ECONOMIC AND ORGANISED CRIME ACT [CAP 20 R.E 2022]

S/N	How it reads	Proposed Provision	Reason
12 (2)	Where the Court decides that it has no jurisdiction and makes an order under subsection (1), the accused shall be deemed to have been discharged for the purposes of proceedings before the Court, but the discharge shall not operate to preclude the arrest of the person for the purposes of proceedings in relation to him before an appropriate competent court in respect of the same facts on which he was brought before the Court.	Where the Court decides that it has no jurisdiction and makes an order under subsection (1), the accused shall be deemed to have been discharged for the purposes of proceedings before the Court and shall not be rearrested and charged on the same facts.	It allows forum shopping and arbitrary arrest and detention of the accused.
12 (3)	The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand, order that any case involving an offence triable by the Court under this Act be tried by such court subordinate to the High Court as he may specify in the certificate.	This section should be repealed	How can the DPP confer jurisdiction to the court?
29 (4)	(4) After the accused has been addressed as required by subsection (3), the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail- (a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the District Court and the court of a Resident Magistrate if the value of any property involved in the offence charged is less than three hundred million shillings.	(4) After the accused has been addressed as required by subsection (3), the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear and grant bail applications shall be	Jurisdiction is limited to the alleged pecuniary value of the property involved in the charges. The subordinate court should determine bail application

	(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court; (c) after the trial has commenced before the Court, is hereby vested in the Court; and (d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court.	made before the same court regardless of the value of property	not withs tanding the value of the property involved in the offence charged.
60 (2)	Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both such imprisonment and any other penal measure provided for under this Act: Provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence.	Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not more than ten years	It limits the discretion of the court in imposing minimum sentence. We propose that the section should be amended to allow the court to have mandate to determine minimum sentence to impose below the threshold set by the law.
1st Schedule Paragraph 21-39		These paragraphs should be repealed.	The listed offences under these paragraphs are also triable under other laws and treated as economic offences.


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PART 05

INTEGRATION OF THE INTERNATIONAL STANDARDS IN THE CRIMINAL JUSTICE SYSTEM

5.1 Ratification of International Instruments

We recommend the ratification of international human rights treaties and other standards into the criminal justice system. For example, Tanzania has not yet ratified and signed the Convention Against Torture which prohibits torture and any form of degrading treatment to human beings and enforced disappearance. Inmates in Tanzania have been subjected to different types of torture, inhuman and degrading treatment. International standards and good practices should also be adopted and integrated in the criminal justice system. The following international instruments have been annexed for easy reference.

Most of our court decisions don't reflect or apply various regional and international standards related to criminal justice and human rights.

5.2 List of Annexures

- *Advisory Opinion No. 001/2018 on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa*
- *Anti-Torture Network in Tanzania and the Tanzania Human Rights Defenders Coalition - November 2017*
- *Attorney General Versus Rebecca Z. Gyumi [Civil Appeal No. 204 of 2017]*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification, and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)*
- *General Comment No. 10 (2007) Children's rights in juvenile justice*
- *Guide to Reporting to the Committee against Torture*
- *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) adopted by the African Commission on Human and Peoples' Rights (the Commission) during its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014.*

- *International Convention for the Protection of All Persons from Enforced Disappearance*
- *International Human Rights Standards for Law Enforcement, A Pocket Book on Human Rights for the Police*
- *International Rules and Standards for Policing*
- *Marthine Christian Msuguri Vs United Republic of Tanzania, App.No 052/216*
- *Media Council of Tanzania, Legal and Human Rights Centre, Tanzania Human Rights Defenders Coalition Versus the Attorney General of the United Republic of Tanzania [Reference No 10 of 2017]*
- *Prevalence and common forms of torture in Tanzania -A Situation Report*
- *The Constitution of Zambia*
- *The Constitution of Ghana*
- *Principles on the decriminalisation of petty offences in Africa of 2017*
- *Report on the Review of the Zambia Penal Code and Criminal Procedure Code of 20 February 2021*
- *The Ouagadougou Declaration and Plan of Action on Accelerating Prisons' and Penal Reforms in Africa*
- *Torture and torture practices in Tanzania: Knowledge, attitudes, and practices among medical professionals*
- *UN Human Rights Standards and Practice for the Police New York and Geneva, 2004*
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985*
- *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015*
- *The Constitution of Kenya, 2010*

5.3 Creating offences relating to torture

In Tanzania, torture is clearly prohibited under national laws but not criminalized. Article 13(6)(e) of the Constitution of the United Republic of Tanzania of 1977 prohibits any kind of torture states "a person shall not be subjected to torture, or inhuman or degrading punishment or treatment". Section 55(1) and (2) of the Criminal Procedure Act Cap. 20 [R.E 2022] prohibits torture of any person under restraint and further Section 27 of the Evidence Act, Cap 6 [R.E 2022] provides that any evidence obtained by way of torture is inadmissible. Moreover, Tanzania is one of the few countries in Africa that has not ratified and signed the UN Convention Against Torture (CAT) which prevents the country from having to meet international standards and obligations in this area. Tanzania's failure to sign and ratify this convention sends a very bad message to the international community.

Despite of Constitutional and other legislations prohibiting torture, torture practices in Tanzania is still common and the evidence obtained through torture are being admissible in certain circumstances as provided under Section 169 of the Criminal Procedure Act Cap. 20 [R.E 2022] and Section 29 of the Evidence Act

In Tanzania the crime of assault is currently used to prosecute cases of torture hence we recommend enactment of provisions criminalising acts of torture and appropriate penalties that consider the grave nature of acts of torture. Tanzania should have an absolute prohibition of torture, as provided for in international law (*jus cogens*), whereby no exceptional circumstances whatsoever may be invoked to justify torture. This is in respect of protecting and promoting fundamental human rights in Tanzania.

We further submit that Tanzania should establish universal jurisdiction over perpetrators of torture in circumstances where the torture was not committed in Tanzania, by Tanzanians, or against Tanzanians, and the perpetrator is present in Tanzania but cannot be legally extradited to the appropriate country for prosecution. The principle of universal jurisdiction in this situation ensures that perpetrators do not avoid accountability.

Recommendation: All acts of torture should be included as substantive offences in the Penal Code.

5.4 Creating offences relating to crimes against peace and humanity

We note that Tanzania signed the Rome Statute of the International Criminal Court (Rome Statute) on 29 December 2000 and ratified the same on 20 August 2002. To uphold the country's obligation to domesticate this important treaty, we recommend the inclusion of specific crimes related thereto in the Penal Code.

As an example, the Angola Penal Code criminalizes crimes against humanity, and genocide, and has gone further to criminalize "other crimes against humanity", and "other war crimes" under international law, thus ensuring that these provisions are not cast in stone and incorporates developments in international law (Articles 386 and 390).

Article 372 of the Angola Penal Code prohibits torture, cruel, inhuman, or degrading treatment, carried out by Law enforcement and criminal justice personnel. It imposes a penalty of 1 to 6 years unless another Penal Code provision imposes a more severe penalty for the person's actions. Article 374 provides that persons superior to those who carried out the torture or cruel treatment, can be held criminally liable where they failed to denounce such actions once they became aware of it, and in instances where they expressly or tacitly allowed the practice by a subordinate, in which case they are liable to an aggravated sentence.

Also, the Lesotho Penal Code incorporates the crimes of genocide, crimes against humanity, and war crimes. We recommend the new section to read as:

A person commits an offence of genocide if by his or her act or omission he or she commits any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious group or any other identifiable group -

a) killing members of the group;
b) causing serious bodily or mental harm to members of the group;
c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) imposing measures intended to prevent births within the group; and
e) forcibly transferring children of the group to another group.

We recommend that the definitions of the crimes of genocide, war crimes and crimes against humanity in the Rome Statute be incorporated into the Penal Code to make those acts crimes under our domestic law.[30]

We recommend that, to ensure full cooperation with the complementarity principle in the Rome Statute,[31] the definitions of crimes in the Rome Statute should be inserted in the Penal Code making it clear that acts of genocide, war crimes, and crimes against humanity are crimes under Tanzanian laws irrespective of where they were committed, and by and against whom. This will ensure that Tanzania will be competent to prosecute Rome Statute crimes in situations where extradition to another country and referral to the International Criminal Court is inappropriate. **Recommendation:** Insert a new chapter in the Penal Code which addresses obligations under the Rome Statute and creates various new crimes, including genocide, war crimes and crimes against humanity.

30 Articles 6, 7, and 8 of the Rome Statute.

31 The Complementarity Principle in the Rome Statute confers primary jurisdiction and responsibility for prosecuting international crimes (as defined in the Rome Statute) on states. Only in cases where individual states are unwilling or unable to prosecute these crimes will the International Criminal Court have jurisdiction. The Principle therefore requires States, as part of their measures to domesticate the Rome Statute, to provide mechanisms in the domestic criminal justice systems to prosecute the Rome Statute crimes

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