

THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION OF TANZANIA



**REPORT OF THE COMMISSION
ON THE PROBLEM OF
CONGESTION IN PRISONS**

**PRESENTED TO THE MINISTER FOR JUSTICE AND
CONSTITUTIONAL AFFAIRS DAR ES SALAAM**

APRIL, 1994

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The Law Reform Commission of Tanzania was established by section 3 of Law Reform Commission of Tanzania Act, 1980 to take and keep under review all the Law of the United Republic with a view to its systematic development and reform.

The Commissioners are:

1. Hon. Mr. Justice R. A. Mwaikasu - Chairman
2. Mr. G.B. Liundi - Full Time Commissioner
3. Hon. Pius Msekwa (MP) - Commissioner
4. Mr. H.R. Nsekela - Commissioner
5. Ms. M.S. Longway - Commissioner
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List of Members of the Working Group

| S/NO. | NAME | ADDRESS | TITLE |
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| *1. | Mr. Ernest L.K. Mwipopo Justice Department | Director of Public Prosecutions | Chairman |
| ***2, | Mr. Joseph E.C. Masanche | Principal Resident Magistrate Kisutu, Dar es Salaam | Member |
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*He is now Judge of the High Court of Tanzania

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THE UNITED REPUBLIC OF TANZANIA

THE HIGH COURT OF TANZANIA

Hon. Justice E.L.K. Mwipopo,
High Court of Tanzania,
P.O. Box 9004
Dar es Salaam

10th November, 1991

Ref. No. JC/J.10/40/71
The Hon. Mr. Justice R. Mwaikasu,
Chairman,
Law Reform Commission of Tanzania,
P.O. Box 3580,
Dar es Salaam

**LETTER OF TRANSMITTAL OF THE REPORT OF THE
WORKING GROUP ON THE PROBLEM OF CONGESTION
IN PRISONS:**

Time wise, may not be very proud to transmit this Report to you now, six years after our Working Group was Commissioned by the Law Reform Commission to study the Problem of Congestion in Prisons in Tanzania Mainland.

But, every cloud has a silver line. Here, the longtime lapse has enabled our Working Group to prove conclusively that temporally and that its lasting solution lies in accepting the grave reality of the situation and the permanency of the problem, and in changing completely the policy and strategies of identified and submitted to the Government by the Executive Committee on the Problem of Congestion in Prisons in 1986/87 as improved or added upon by the recommendations contained in this Report.

Quite honestly, our Working Group feels greatly relieved to have reached this last chapter of its work despite the numerous hindrances encountered initially and throughout the working programme. Having finalized all the other contents of this Report the Working Group leaves the usual Secretarial matters of bindery including the preparation of the executive summary in item (v) of the contents etc of this Report to the Secretary of the Working Group and the Secretary to the Commission. The members of the Working Group would appreciate a lot if they will be availed a copy each of their bound Report to the Commission.

On behalf of the entire Working Group, may I in transmitting this Report to you by signing it hereunder, express our deep most appreciation to you and your predecessor the Hon. Mr. Justice H. Msumi, Commissioner G. Liundi, our Working Group s Secretary Miss F. Ngowi and the rest of your staff for the assistance rendered to our Working Group and above all for the patience in bearing with us all as we did with you all.

Yours Sincerely,

Justice Ernest L.K. Mwipopo
Chairman
Working Group on the Problem of
CONGESTION IN PRISONS

Copy to: Each Member of the Working Group.

EXECUTIVE SUMMARY

INTRODUCTION:

According to the terms of reference drawn up by the Law Reform Commission of Tanzania on the problem of Congestion in Prisons, the Working Group was required to undertake the examination of the problem and make recommendations thereof.

The Working Group on the Problem of Congestion in Prisons carried out research on the magnitude of the problem, reasons for congestion in prisons and lastly gave its recommendations on how to solve the problem.

Before the establishment of this Working Group by the Law Reform Commission of Tanzania, several committees had tried to research on congestion in both Prisons and Remand Prisons in the country. Among these, was a committee established by the State House which was known as Executive Committee. This committee was established under a special Task Force set by Government in 1986 to examine the causes of the problem of overcrowding in Prisons and to recommend policies and measures for its alleviation.

The formulation of the Project on Congestion in Prisons by the Commission was in conformity with Section 9(1) of the Law Reform Commission of Tanzania Act, 1980, which provides as follows: -

The Commission may subject to informing the Attorney General in that behalf undertake the examination of any matter without waiting for reference on it by the Attorney-General.

The magnitude of the problem of congestion in Prison became apparent to the Commission when in mid 1986 a random survey was made upon 5 prisons in the country, namely Keko in Dar es Salaam, Musoma, Tarime, Manyoni and Singida which had a total capacity of 893 prisoners only but were at that time found to be holding more than double i.e. 1934 prisoners.

RECOMMENDATIONS:

On the basis of the research conducted on the problem of congestion, the following are the recommendations to the Government on how to alleviate the problem.

(1) Expansion and Modernization of Prisons:

- (a) The Commission recommends the construction of new prisons in proportion to administrative areas, with priority given to areas with high crime rates: And while the existing prisons are rehabilitated with a view to making them modern and spacious.
- (b) The Commission recommends that the following areas be given priority in building Remand Prisons because of the serious problem of congestion or absence of prisons facilities in the neighborhood.

- i) Dar es Salaam - Ilala and Kinondoni Districts
- ii) Coast - Kibaha and Kisarawe District
- iii) Arusha - Arusha Municipality and Monduli Districts
- iv) Kilimanjaro - Hai, rombo and Mwanga District
- v) Bukoba - Bukoba town, Muleba and Biharamulo District
- vi) Singida - Singida Town
- vii) Iringa - Mufindi District and Makete District
- viii) Mbeya - Ileje, Mbozi and Kyela District
- ix) Morogoro - Morogoro Municipality
- x) Mwanza - Mwanza Municipality and Ngudu District
- xi) Shinyanga - Shinyanga town

The above recommendation has been undertaken inter-alia the following reasons:

- a) the vastness of the country;
- b) transport and communication problem;
- c) the rates of population
- d) crime growth and
- e) multiplication of administrative areas.

Consequently, any future demarcation of new administrative areas should also take into account the construction of new Police Stations, Courts and Prisons. However, these new prisons, police stations and courts should be constructed to supplement the old prisons, police stations and courts within the specific problematic areas in the country.

(2) Delays in Hearing of Cases:

As part of an endeavor to solve the chronic problem of delays in the hearing of cases, the Commission commends the action taken by Judiciary in establishing Case Flow Management Committees and a two —shift system of hearing cases in District and Resident

Magistrate Courts and recommends that these Committees should be strengthened legislatively.

The Commission recommends further that the Criminal Procedure Act, 1985 Section 366 (2) (b) should be amended so that failure by the convicted appellant to appear at the time of hearing of the appeal should not bar the Judge from proceeding with the hearing, even in cases where the appellant has indicated the wish to be present.

As regard delays in the delivery of copies of judgment to appellants who are in prison, the Commission recommends that adequate typing facilities and competent personnel should be provided to District and Resident Magistrates, courts with appropriate incentives.

(3) The Need to Establish a Research Unit
(Research Unit within the Ministry of Home Affairs)

To improve the process of investigation of cases the Commission recommends that a Research Unit be established with the aim of conducting research into trends of criminality in Tanzania and advise the government on appropriate measures to deal with the problem. The Unit may inter alias do the following: -

- i) conduct research on the causes of crime in Tanzania;
- ii) the trends in criminality in the country
- iii) to act as custodian for all crime statistics in the country in the Field of Crime Prevention, Treatment and Rehabilitation of Offenders;
- iv) to co-operate with other local and international organizations and institutions with similar aims in disseminating information on crime and possible remedies.
- v) To act as the advisory organ to the government on all matters relating to crime prevention and the treatment of offenders.

It is hope that with such an organ the Government will be kept informed at all times, on the crime situation in the country to enable it take appropriate measures to arrest explosive situation on time. It is envisaged that in the long run more people will refrain from indulging into criminality and thus keep themselves away from committing crimes hence reducing congestion in the prisons.

(4) Monthly and Annual Returns of Inmates:

Monthly and annual returns of inmates from the Prison Department e.g. delay in criminal trial which is submitted to the appropriate courts and the Registrar of the High Court should also be made available to the Chairmen of the Case Flow Management Committees

in their respective Districts, Regions and Zones as well as the Director of Public Prosecutions. These returns should provide the necessary data on the current situation of inmate to enable the determination of appropriate action.

(5) Establishment of the Summons Serving Squad:

The Commission recommends for the establishment of a Summons Serving Squad in all regional and district crime offices. These squads could be placed under the officer-in-charge of prosecution for easy of co-ordination between investigators, prosecutors and the courts.

It is further recommended that these squads be equipped with motor cycles to enable them perform their tasks efficiently; allowances should be paid to members of these squads to motivate them.

Further since the current penalty for failure to obey a witness summons is shs.500/= only a trivial amount which is rarely enforced by the courts, the Commission recommends that the amount of penalty be increased to shs.5,000/= and courts should strictly enforce it, unless a reasonable explanation is given for failing to obey summonses.

(6) Resettlement of Habitual Offenders:

The Commission recommends that habitual criminals, life prisoners and those convicted of serious offences be kept in maximum-security prisons. Only persons serving light sentences or those on parole or about to be released should be kept in camps.

For the purpose of facilitating supervision of habitual criminals, the system of police supervision should be strengthened in order to arrest the problem of recidivism. This system of supervision can effectively be maintained by the criminal records office which should be established at all Regional CID Offices.

(7) Principle of Bail:

The Commission recommends that Section 148 of the Criminal Procedure Act of 1985 should be reviewed in order to maintain the principle that, that bail is a right (and not a privilege) of the accused person. That the accused is presumed to be innocent until proved guilty and that an accused person should not be denied bail as a means of punishing him.

(8) Extra — Mural Penal Employment:

The Commission makes following recommendations:

- a) the Extra-Mural Penal Employment Scheme should be revived and strengthened all over the country;
- b) the Department of Justice should embark on an educational programme to enlighten the relevant authorities on the existence and implementation of the scheme, its advantages and its functioning:

- c) the prison Act No. 34 of 1967 should be amended to include prisoners serving up to two years imprisonment to benefit from the scheme as opposed to the present limitation of one year;

Consequently the scheme should remain in its present form and that prisoners serving sentences of up to two years be eligible for the scheme, on the condition that those serving sentence of over one year must serve at least one quarter of their sentences before qualifying for release under the Extra-Mural Penal Employment Scheme.

Further, courts should be empowered to disqualify a person duly convicted from benefiting from the scheme even though the sentence does not exceed two years. Reasons should be given every case of disqualification.

- d) The Organization which will utilize the labour of Extra-Mural Penal Employment Scheme be extended to include: Government Departments, all Public Enterprises, indulging Parastatal Organizations and local Government Authorities but under no circumstances should private individuals be provided with prisoner under the scheme.

(9) Minor Offenders:

The Commission recommends that at no time should development levy defaulters, idle and disorderly persons, rogues and vagabonds who are first offenders be imprisoned in jail. The only substantive penalty for the development levy defaulters, idle and disorderly persons, rogues and vagabonds should be fine and for those who fail to pay the fine imposed by the courts should be ordered to do manual labour or any other community based programme given to them by the District/City/Municipal/Town Councils/Village government concerned.

I:

| Amount of Development Levy due or fined | Period of serving community service |
|---|-------------------------------------|
| Exceed 10,000/= | Not less than 6 months |
| Exceeds 5,000/= | Not less than 3 months |
| Exceeds 1,000/= but not less than 5,000/= | Not less than 45 days |
| Less than 1,000/= | 30 days |

II: Under other Laws:

All offences with substantive penalty not exceeding two years imprisonment or fine not exceeding shs. 10,000/= should be as follows:-

Offences Suitable for Summary Trial as a Measure to Reduce Congestion in Prisons:

In principle all misdemeanors under the penal code:

| | | |
|----------------|--|----------|
| Section 75 | Unlawful assembly ----- | -1 year |
| Section 76 | Riot ----- | -2 years |
| Section 89A | Watching and setting (Consent of DPP to be removed) ----- | 6 months |
| Section 89B(1) | Intimidation (Consent of DPP to be removed) ----- | 1 year |
| Section 100 | Personating public officers ----- | -2 years |
| Section 101 | Threatening injury to persons employed in the public service ----- | -2 years |
| Section 111 | Compounding felonies ----- | -2 years |
| Section 112 | Compounding penal actions ----- | -2 years |
| Section 113 | Advertisement for stolen property ----- | -2 years |
| Section 114 | Contempt of Court- ----- | 6 months |
| Section 114A | Willfully preventing obstructing service or execution of process ----- | 1 year |
| Section 116 | Escaping from lawful custody ----- | 2 years |
| Section 116A | (1)-Absence from Extra-Mural Employment ----- | 2 years |
| Section 122 | Giving false information to a person employed in the public service ----- | 6 months |
| Section 124 | Disobedience of lawful orders ----- | 2 years |
| Section 125 | Insult to religion ----- | 2 years |
| Section 127 | Trespassing on burial places ----- | 2 years |
| Section 129 | Uttering words with intent to would religious feelings ----- | 1 year |
| Section 143 | Detention in premises with intent or | |

| | | |
|----------------|---|--|
| | in brothel ----- | 2 years |
| Section 148 | Brothels ----- | 2 years |
| Section 170 | Common nuisance ----- | 1 year |
| Section 171 | Gaming houses ----- | 1 year |
| Section 172 | Betting houses ----- | 1 year |
| Section 173B | Chain Letters ----- | 6 months |
| Section 175 | Traffic in obscene publication ----- | 2 years |
| Section 176A | Harbouring Common Prostitutes ----- | 1 st shs.500 2 nd shs.1,000 |
| Section 177 | Rogue and vagabonds ----- | 3 months/1 year |
| Section 178(3) | Importing and Selling uniforms without authority ----- | 6 months/2,000/= fine |
| Section 179 | Negligent Act likely to speed infection ----- | 2 years |
| Section 180 | Adulteration of food or drink ----- | 2 years |
| Section 181 | Sale of noxious food or drink ----- | 2 years |
| Section 185 | Fouling air ----- | 2 years |
| Section 186 | Offensive trades ----- | 1 year |
| Section 235 | Handling of PrisonersSubstances in negligent manner ----- | 6 months |
| Section 238 | Conveying person by water for hire in unsafe or overloaded vessel ----- | 2 years |
| Section 239 | Danger or obstruction in public way or line of navigation ----- | Fine |
| Section 253 | Wrongful confinement ----- | 1 year/ 3000/= |
| Section 256 | Unlawful labour ----- | 2 years |
| Section 265 | Stealing (pick pocketing) where amount stolen does not exceed shs.10,000/= ----- | ? |

| | | |
|-----------------|--|------------|
| Section 304 | Cheating ----- | 3 years |
| Section 308 | Pretending to tell fortunes ----- | 2 years |
| Section 309 | Obtaining registration etc by false ----- | 2 years |
| Section 310 | False declaration for passport ----- | 2 years |
| Section 312A(2) | Unlawful possession of Government Stores ----- | 2 years |
| Section 325A(3) | Unlawful possession of service store ----- | 2 years |
| Section 325 | Injuring animals ----- | 2 years |
| Section 329 | Removing boundary marks with intent to defraud...3 years | |
| Section 332A | Defacing currency notes ----- | Fine1000/= |
| Section 357 | Melting down of currency ----- | 6 months |
| Section 360 | Uttering counterfeit ----- | 2 years |
| Section 362 | Uttering metal or metal coin ----- | 1 year |
| Section 366 | Paper and dyes for postage stamps ----- | 1 year |
| Section 369 | Personation ----- | 2 years |
| Section 370 | Falsely acknowledging deeds; etc. ----- | 2 years |
| Section 372 | Lending etc. certificate for personation ----- | 2 years |
| Section 373 | Personation of person named in a testimonial of character ----- | 1 year |
| Section 374 | Lending etc. testimony testimonial for personation ----- | 2 years |
| Section 381 | Attempt to commit offences ----- | 2 years |
| Section 383 | Neglect to prevent felony ----- | 2 years |
| Section 389 | Accessories after the fact to misdemeanours ----- | 2 years |
| Section 390 | Soliciting or inciting the commission of an offence ----- | 2 years |

10. Establishment of Parole and After-care Service in the Prisons Department:

- a) A parole system, which allows prisoners serving long sentences to be eligible for release on specific conditions before the expiry of their sentences, be introduced in Tanzania. The Commission is aware that this recommendation has previously been advanced by Executive Committee which submitted its report to the Government in 1986. The Commission recommends that report (Appendix D) be adopted for implementation.
- b) In introducing a Parole system in our prisons, the Government will need to establish a special machinery to supervise the paroles. The Commission recommends that a Parole and After-Care Division be established within the Prison Department to undertake this assignment.
- c) The Division proposed in par. (b) above should also take care of all prisoners released from prison from the time for their release until they reach their place of resident. The Division shall also communicate with village authorities and prospective employers with a view of finding employment/resettlement for the released inmates.