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RESEARCH ARTICLE

CRIMINAL JUSTICE QUAGMIRE: THE NEED FOR RESTORATIVE JUSTICE IN TANZANIA

Sr. Ester John Kilatu Lsosf

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Abstract

Criminal Justice is paramount to guarantee a fair and just society. Over decades the public has been disgusted and befuddled at the exertion of some agencies in justice system. Sporadically, some police officers have been cited to be biased and tend to brutalize people in their custody. Besides, prosecutors have arraigned suspects in a selective manner, albeit it is undisputable that judges and magistrates have been occasionally accused for inordinate delay in dispensation of cases and for being biased where the victim is always a loser while some convicts pay fines to state coffers which only benefits the state. Further, there is a serious agony on congestion of prisons as the number of inmate is double the capacity of the building. It is undetermined whether public expectations in criminal justice system is rational or rather a matter of comparison. Consequently, it is unreasonable to expect a fair and efficacious justice system in which the lower social economic class rights is at stake. Accordingly, one could argue that Restorative Justice provide an alternative to criminal justice system since its procedures accommodates the needs of victims, offenders and the community by addressing harm, restoring relationship hence improve public confidence and satisfaction. This paper therefore, seeks to resolve the quagmire in criminal justice by mitigating its rigor with restorative justice.

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Introduction:-

The goal and principal objective of any criminal justice system is to ensure an effective and efficiency delivery of justice. In Tanzania there are several criminal justice organs, which are police as enforcement agency, judiciary as adjudicators, defense attorneys, prosecutions and correction officer's (prison) which together stand strong in ensuring the people's rights are protected.¹ Customarily the police take reports for crimes, investigate crimes, gather and protect evidence.

The court system is responsible for ascertaining the blameworthy of the culprit and pass sentence. Generally, there are two specific types of sentences options available to a judge or magistrate to wit custodial or non-custodial sentences. Courts are required to examine the different factors such as the character, health, age, social and economic factors surrounding the accused before making probation order.² The accused in turn is required to strictly

¹ https://www.academia.edu/17565625/A_critical_Analysis_of_the_Current_Criminal_Case, Accessed on 5th July, 2022 at 14: 09 hrs

² <http://jabashadrack.blogspot.com/2014/05/non-custodial-measures-tanzanian-context.html>. Accessed on 05th July, 2022 at 09:30 hrs

adhere to courts condition before the probation officer's supervision, failure to adhere would send back the accused to prison.

Commonly, some police officers have been accused for torturing and brutalizing people in their custody mercilessly. Definitely there is a grain of truth to the oft-repeated aphorism that a society is best judged by its prisons, and the treatment of its outcasts. The ethics of the society is certainly manifested by how it treats the offenders. The penal legislations fill this need but create the problem of defining the constitutional status of the resultant inmates.³ Consequently, externally dictated minimum standard is felt. Considering the prevailing criminal justice, it is irrefutable that irrespective of its aim there is an increased public dissatisfaction on criminal justice system hence the call to reintegrate restorative justice and traditional or indigenous justice practices for the purpose of reconciling parties and restoring the society at harmony.

Historical Background Of The Study Of Restorative Justice

Restorative justice exists since antequate. Its practices are as old as human history.⁴ It existed as a popular mode of dispute resolution in the world at large.⁵ Categorically, Restorative justice appeared first in 1955 in Germany literature as 'heilende Gerechtigkeit' which means healing justice.⁶ The term was later adopted by the so called grandfather of restorative justice-Howard Zehr⁷ before it was used by many other authors when dealing with victim-offender mediation programme worldwide.⁸

It is however viewed that traces of Restorative justice in form of probation originated from John Augustus (1785-1859), the Father of Probation, who offered to supervise minor offenders to report back to judges in exchange of prison. Apparently, Augustus a shoemaker agreed to stand surety in early 1840s on behalf of minor offenders. Convicts who behaved well were dropped while offenders who deviated were imprisoned. These efforts culminated to establishment of Probation laws in Massachusetts, United States in early 1878. It is recorded that all states in the United States by 1957 had in place probation laws.⁹

In 2002 the term received the attention of the UN at International level in the basic principles on the use of restorative justice principles in criminal justice programmes in criminal matters.¹⁰ Later in 2006 a comprehensive handbook on restorative justice programme was developed.¹¹

However modern restorative justice was successfully applied in court for the first time in 1974 in Kitchener Ontario Canada¹² where the probation officer persuaded the judge to apply mediation to offenders who had pleaded guilty to vandalism.¹³

³ Palmer S.E and Palmer J.W; (2004); Constitutional Rights of Prisoners; Seventh Edition; Anderson Publishing Co; Cincinnati; pp.350-351.

⁴ Wright (2001) at 353; see also Kaitlyn E Tucker 'Mediating theft' 25 University of Florida journal of law and public policy 2014 at 28-29

⁵ James R 'Chip' Coldren Jr (2012); 'Commentary: Transnational crime and restorative justice' 6 Homeland security review ; p.181. Also see 8 Elmar G M Weitekamp,(2003); 'The history of restorative justice' in Gerry Johnstone (ed) A restorative justice reader: Text, sources; context Willan Publishing UK; p. 113

⁶ Elmar GM Weitekamp and Stephan Parmentier, (2016); 'Restorative justice as healing justice: Looking back to the future of the concept' 4(2) Restorative Justice: An International Journal; p. 142.

⁷ Paul Takagi and Gregory Shank 'Critique of Restorative Justice' 31 (3) Social Justice 2004 at 153; Van Ness and Strong (2010) at 24

⁸ Mark S Umbreit and Marilyn Peterson Armour, (2011); 'Restorative justice and dialogue: Impact, opportunities and challenges in the global community' 36 Washington University Journal of Law and Policy; p. 69

⁹ Bohm, R. M., & Halley, K. N. (1997). Introduction to Criminal Justice. McGraw Hill

¹⁰ UN Principles (2002)

¹¹ 'United Nations Handbook on Restorative Justice Programmes' Criminal Justice Handbook Series New York 2006.

¹² DE Peachey , (2010); 'The Kitchener experiment' in C Hoyle (ed) Restorative Justice: Critical Concepts in Criminology Vol.1 p. 125.

¹³ Roche, D. (2010). 'Dimensions of restorative justice' in Hoyle, C. (ed). Restorative justice: Critical Concepts in Criminology. Routledge: London and New York; p. 345

Skelton¹⁴ argues that both restorative justice and traditional or indigenous justice practices aim at reconciling parties and restoring the society at harmony.¹⁵

Conceptual And Theoretical Framework

Definitions of Concepts

Criminal Justice system

Criminal justice system is a system of practices and institutions of governments directed at upholding control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.¹⁶ The purpose of criminal justice is efficient delivery of justice. It is a “the constant and perpetual disposition of legal matters or disputes to render every man his due.”¹⁷

Traditionally, criminals played a trivial role in the criminal justice process. Conversely, under the restorative justice offender's apology and compensating the victim forms part of a sentence which is non custodial. According to Tokyo Rule 2.1, Non custodial measures means “Any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment; such decision can be made at any stage of the administration of criminal justice”¹⁸ There is need to reconcile the criminal justice with restorative justice since under traditional criminal justice system, relationship between the offender and the society is limited.¹⁹ This defeats the purpose of punishment as a means to serve social education and sanction the offender.

Punishment

Punishment means "any pain, penalty, suffering or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court; for some crime or offence committed by him, or his omission of a duty enjoined by the law".²⁰ Punishment include imprisonment, fine, non custodial sentence and death penalty especially serious cases. Less obviously, the accused conviction entails a social stigma that impedes accused possible employment, attract heavy punishment in case of future offences, the likelihood of losing one's voting right, denial to access to public housing and the likelihood of being deported. .²¹

There are different theories of punishment that is;

Deterrent theory-the wrong doer is given a kind of exemplary punishment which terrorizes others who have similar tendencies. In this theory punishment is determined by considering the nature of crime and not the criminal. It is argued that though the purpose of punishment is to deter the criminals, this is not always the case especially where crime is committed under the heat of passion in moments of provocation or extreme excitement.²²

¹⁴ Skelton (2005); Ann Skelton ‘Tapping indigenous knowledge: Traditional conflict resolution, restorative justice and the denunciation of crime in South Africa’ in Elrena van der Spuy, Stephan Parmentier and Amanda Dissel (eds) Restorative justice: Politics, policies and prospects Juta Cape Town South Africa 2007. See also chapter 4.

¹⁵ Skelton, A. (2007), ‘Tapping indigenous knowledge: Traditional conflict resolution, restorative justice and the denunciation of crime in South Africa’ in Van der Spuy, E., Parmentier, S. and Dissel, A. (eds). Restorative justice: Politics, policies and prospects. JUTA: Cape Town South Africa; p.231

¹⁶ https://www.academia.edu/17565625/A_critical_Analysis_of_the_Current_Criminal_Case, Accessed on 5th November, 2022 at 14: 09 hrs

¹⁷ Sr. Ester John Kilatu, “Justice against Child Abuse”, Volume. 4 Issue. 3, - 2019, International Journal of Innovative Science and Research Technology (IJISRT), www.ijisrt.com. ISSN - 2456-2165,p.571 cited from ROSCOE, Pond,(1925), Reading on the History and System of the Common Law, 2nd Edition, Cornell University, Chipman Publishing Company, p.1

¹⁸ The United Nations Standard Minimum Rules for Non-custodial measures (The Tokyo Rules), 1990

¹⁹ Niamh Joyce-Wojtas & Marie Keenan (2016) Is restorative justice for sexual crime compatible with various criminal justice systems?, Contemporary Justice Review, 19:1, 43-68, DOI: 10.1080/10282580.2015.1101689, p. 48

²⁰ Ressa E.J Kinemo, Contemporary Tanzanian Penal Policy : A Critical Analysis; A paper presented at the Crime Conference, organized by the British Institute in East Africa at Naivasha, Kenya.

²¹ Steiker C.S. et all, (2007); Criminal Law and Its Process Cases and Materials; Eighth Edition; Wolters Kluwer Law & Business; USA P. 67

²² Singh A, (2006) Introduction to Jurisprudence, 2ed Wadhwa & Co. Nagpur, p. 136.

Preventive theory is based on the belief that punishment is to disable or prevent the offender from repetition of crime by disabling his physical power to commit crimes. It deprives the wrong doer the power to repeat the offence either temporary or permanently. Under this theory death penult is the most effective punishment. Though death penult brutalizes human nature and cheapens human life, is unconstitutional for being inherently degrading and inhuman. Since it is not executed in public it lacks the deterrence effect to the society.

Reformative theory- is based on the idea that punishment is meant to reform the criminal. It is a well settled principle that even the prison remains a human being, he does not forfeit his inherent rights and dignit. For them the offender is a patient who requires proper treatment. The main idea of this theory is to reform the character of the wrongdoer; according to Salmond this is important but it would lead to astonishing and inadmissible results, since some criminals are incurably bad.

Retributive theory- is based on the idea of revenge against the offender. It is based on primitive societies principle for “an eye for an eye and tooth for a tooth” that the criminal should be rewarded in an equivalent suffering; for them corporal punishment is justifiable. It is a traditional theory based on deterrence. Prison authorities have also recognized the futility of corporal punishment.²³Tanzanian legislation asserts that corporal punishment may deter offenders, albeit it is undisputed that it does not reform or rehabilitate the offenders.²⁴

Further, Salmond avers that punishment by itself is an evil cannot be used as a means to attain a greater good since the ethical approach has been ignored while the sociological approach on social welfare of the society is widely supported.

Compensation theory- means the aim of punishment is to award compensation to victim rather than punishing the culprit. Arguably, compensating the victim does not lower the rate of crime in the society, where else, in most cases convicts pay fines to state coffers which only benefit the state at the expense of the victim.²⁵

Restorative Justice

Restorative justice safeguards society by restoring offender back to the community. It is an effective mechanism in addressing minor or less serious offences in which adults are involved. It serves the interest of reformative theory as it reconciles and restores back the offender to the community.²⁶ Under restorative justice the accused person is encouraged to take responsibility for his action and ensures victim participation in the whole process of justice something which build public confidence to justice system.

It has been proposed that the use of Family Group Conference (FGC) by proper involvement of trusted friends and family members, who freely participate during conference, is a viable and meaningful means.²⁷ Jürgen Habermas juxtaposed the terms ‘the system’ and ‘the life world’ implying that the system has to move towards the life world signifying two related but competing explanations of how society operates. ‘The system’ implies the formal criminal justice system in modern society with its administration, laws, politics, economy, organisations and paid professionals, while ‘the life world’ is the community, a network of relationships among family and friends who, unlike those in the system, look out for each other because they care, not because they are paid money to do so.²⁸Consequently, the criminal justice has failed to rehabilitate the offender and satisfy the public.

Besides, restorative justice is cost effective, provide more satisfaction to both victim and offenders, it benefits the society due to the fact that it focuses on repairing the harm rather than punishment only. Thus, a call for hybrid system of justice encompassing both conventional justice and restorative justice.

²³ Palmer S.E and Palmer J.W; (2004); Constitutional Rights of Prisoners; Seventh Edition; Anderson Publishing Co; Cincinnati; p.31.

²⁴ Also See Jackson v. Bishop, 268 F. Supp. 804, 813 (E.D Ark. 1967) where it was stated that whipping and other forms of corporal punishment were brutal and medieval and did not real good.

²⁵ Walker, L. (2013); ‘Restorative justice for victims without offender participation’ ; SAGE Publications; p.5

²⁶ Hand C.A, et al, (2012) Restorative Justice; Contemporary Justice Review; Vol.5 No. 4, Dec, 2012, Pp. 452.

²⁷ Ted Wachtel (2014) Restorative justice reform: the system versus the lifeworld, Restorative Justice, 2:3, 361-366, DOI: 10.5235/20504721.2.3.361, P. 363.

²⁸ *ibid*

Legal Framework on Restorative Justice**Local or Domestic Framework**

The Constitution of the United Republic of Tanzania of 1977 (under Art. 45 Prerogative of Mercy, Presidential Pardon or Amnesty which is read together with section 3 of Cap. 9; The Probation of Offender Act, Cap.247 (ss. 4 and 8 on probation order, disqualification or disability); The Community Service Act, Cap.291 (ss 3,4 and 5 on community service order by court, obligation of offender and breach of conditions respectively) ; The Prisons Act, Cap.58 (S. 52 on eligibility for release on community service and Section 72 on release of prisoners under sentence of death); The Parole Boards Act, Cap.400; Transfer of Prisoners Act, No. 10 of 2004, Section 12 and 13 on parole and prerogative of mercy); Criminal Procedure Act, Cap 20 (S. 91 on nolle prosequi, S. 152 on discharge and Section 390(1) on habeas corpus); The Extradition Act, Cap 368 (on habeas corpus); the Law of the Child Act, Cap 13 (ss. 101, 116 and 119); The Immigration Act, Cap 54 (S. 14 on conviction and deportation order); the Deportation Act, Cap. 380; the Penal Code, Cap 16 (S. 26 on) and the Resettlement of Offenders Act, Cap 71 (ss. 4, 5, 6 and 8)

International Framework

The United Nations Standard Minimum Rules for Non-custodial measures (The Tokyo Rules), 1990 [Rules 2.1, 5.1, 8.2 and 9.2]; UN Principles (2002); United Nations Handbook on Restorative Justice Programmes Criminal Justice Handbook Series New York 2006; UN Principles (2002); United Nations Handbook on Restorative Justice Programmes Criminal Justice Handbook Series New York 2006; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985 [Rule 18]; and The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (Restorative justice, Rule 8-17).

Tanzania Criminal Justice System

Administration of justice in Tanzania is vested under numerous organs as elucidated hereunder;

The Police

The first contact an offender has with criminal justice system is usually the police. The Tanzania Police force is vested with the function of preservation of peace, maintenance of law and order, prevention and detection of crime apprehension and guarding of offenders and protection of property.²⁹

Subject to the directives of the Minister for Home Affairs, the Inspector General Police has overall command and superintendence of the Tanzania Police force. For administrative purpose the Inspector general is assisted by four Commissioners heading on administration and finance, operation and Training, Criminal Investigation and one commissioner incharge of Police force in Zanzibar. The Criminal Investigation Department (CID) is structured in the same way as the rest of the police force. The principal assistant to the Inspector general of police is the Commissioner of Police in Charge of Criminal Investigation Department. At Regional level it is headed by the Regional Crime Officers while at District levels, CID units are headed by and District Officers in charge of Criminal Investigation. Regional Crime Officers are answerable to Regional Police Commanders and similarly District officers in charge of Criminal Investigation are answerable to District Police Commanders. The Police are directly involved in apprehending, prosecuting, defending, sentencing and punishing those who are suspected or convicted of criminal offences.³⁰

The Criminal investigation Department is hampered by inadequacy of trained personnel, lack of chemical or pathological laboratory and lack of transparency in recruiting and selection of trainees for investigation.³¹

Judicial System

Judicial system in Tanzania commenced with the High Court of Tanganyika in 1920 through the Tanganyika Order in Council.³² The British established a dual hierarchical structure, with Subordinate Courts and the High Court

²⁹ Section 5 of the Police Force Act, Cap 322.

³⁰ Malcom Davies, (2005) Criminal Justice: and Introduction to criminal justice system in England and wales, London pearson Education Publisher.

³¹ These problems have existed for more than three decades now since revealed by the Judicial Review Commission in its report published in 1977.

³² The Tanganyika Order in Council of 1920.

operating principally under English Common Law.³³ Even after the Union of Tanganyika and Zanzibar in 1964, both countries retained their legal system and court's structure. After the decline of the East African community, the Court of Appeal of Tanzania was established to succeed the East African Court of Appeal in 1979.

The Judiciary in Tanzania has four tiers: The Court of Appeal of the United Republic of Tanzania; the High Courts for Mainland Tanzania and Tanzania Zanzibar, the Magistrates Courts, which are at two levels, i.e. the Resident Magistrate Courts and the District Court, both of which have concurrent jurisdiction, and the Primary Courts, which are the lowest in the judicial hierarchy.

The Court of Appeal of Tanzania:

This is the highest court in the hierarchy established under Article 117 of the Constitution.³⁴ It receives appeals from the High Court of Tanzania. The Court of Appeal is headed by the Chief Justice and Justices of Appeal.

The High Courts for Mainland Tanzania and Tanzania Zanzibar:

There exist two distinct high courts for Mainland Tanzania and Zanzibar which handle both civil and criminal cases. The High Courts in Tanzania mainland are further subdivided into four parts which are given as follows:³⁵

(i) The Commercial Court - this court handles all commercial cases.

(ii) The Land Court - this court solves all those disputes which are related to land, property and real estate in mainland Tanzania.

(iii) The Labor Court - this court is responsible for hearing and resolving all employment related cases and disputes.

(iv) The Economic, Corruption and Organized Crime Court - the special court which determines cases involving economic offences.

The High Court's in Tanzania mainland have numerous registries across the country having resident judges while the High Court of Zanzibar has got only two registries one in Zanzibar and the other in Pemba but the registry in Pemba does not have a resident judge.

Subordinate Courts in Tanzania Mainland:

we have resident magistrates Courts, District Courts and primary courts. Resident Magistrate's courts are found in major towns and cities,³⁶ while District Courts are found in every district in the country.³⁷ They normally receive appeals from primary courts.

The Primary Courts:

³⁸The primary courts are the lowest courts in the hierarchy that deals with both criminal and civil cases of private in nature that include family and property cases in which the law applicable is either customary or Islamic law³⁹ Magistrates under the primary court sits with lay assessors.⁴⁰

Administration of justice in Tanzania Zanzibar:

unlike Tanzania mainland, the courts system in Zanzibar retains the Islamic Courts which adjudicate all civil cases in family matters like custodial of children, divorce, property and inheritance where both parties are Muslim. The party aggrieved by the decision of the Islamic court may appeal to the Court of Appeal of Tanzania.

Courts are vested under the magistrates or judges, who decide whether to release offenders before the trial, control the trial process, convict or acquit and sentence offenders. Sometimes the society has negative perception once the offender is released be it under probation or parole they believe that the court has already received bribery.

³³ <https://unitedrepublicoftanzania.com/government-of-tanzania-and-the-society/education-in-tanzania-system/laws-of-tanzania/judiciary-of-tanzania-history-hierarchy>. Accessed on 05th November, 2022 at 08:30 hrs

³⁴ Art. 117 of the Constitution of the United Republic of Tanzania of 1977.

³⁵ Art. 108 of the Constitution of the United Republic of Tanzania of 1977.

³⁶ Section 5 of the Magistrates Courts Act, Cap 11 [R.E 2019]

³⁷ *Ibid*, Section 4

³⁸ Established under section 3 of the Magistrates Courts Act, Cap 11 [R.E 2019]

³⁹ *Ibid*

⁴⁰ The jury system does not apply in Tanzania

For many years people are struggling to have a speedier means to deliver criminal justice which is in fact is seen not to be timely done. Hon. C.J. Augustino Ramadhan,⁴¹ admitted that our courts process is at a snail's pace, this implies that delay of cases in delivery justice has come a sharp thorn. Judges and Magistrates has a tendency of sentencing the offender to imprisonment, they do this because they think the only sentence towards the convicted person is to be sentenced imprisonment. It is irrefutable that where judges are biased, the victim is always a loser although some convicts pay fines to state coffers to secure their freedom. This act seems to only benefit the state.⁴² Corporal punishment and death penalty still exist in Tanzania.⁴³ It has very little to do with rehabilitation nor reformation of offender as it is inherently inhuman, degrading and unconstitutional.⁴⁴

Prosecution System

Criminal prosecution is vested upon the Director for Public Prosecution who is the appointee of the President of the United Republic of Tanzania.⁴⁵ The purpose of prosecution is to punish the offender and protect the innocent in order to ensure peace and harmony in the society.⁴⁶

It is revealed that the Director of Public Prosecutions may know nothing about a case except where his consent is required under the law. Undeniably, the prosecution is hampered by a number of problems such as inadequate personnel, budgetary constraint and that prosecutors are given wider discretion with regard to whether to prosecute or not.⁴⁷

Prisons System

After a successful process of criminal trial, the convict is usually sent to prison or other form of punishment. Imprisonment has been very severe in countries which have abolished death penalty.⁴⁸ There are other detention facilities which house arrested persons pending or undergoing criminal trial, they are not correctional facilities.⁴⁹ In order to rehabilitate criminals, prisons are required to encompass different programmes like carpentry, tailoring, hairdressing, farming, animal husbandry, shoe making and painting.

Congestion of prisons is a serious agony as it is apparent that the number of inmate in prisons is double the capacity of the building.⁵⁰ It is undetermined whether public expectations in criminal justice system is rational or rather a matter of comparison from other jurisdiction. Lack of balanced diet is evident to most prisons in Africa, brutality and terrorism are inflicted to prisoners by guards while prison doctors behave like prison guards. Surprisingly, Convicts are restricted to continue with their job and there are no conjugal visits in prisons something which renders cause prisoners to commit unnatural offences with fellow prisoners.⁵¹ Decidedly, criminals are victims of social economic and psychological forces in the society, we need to treat them with compassion and understanding in order to salvage and rehabilitate them. Besides, Juvenile training serves the best alternative to approved school. To mitigate this, it is argued that prisons be monitored electronically and Courts adhere with the Community Service Act to ensure a credible alternative to short sentences in prison in order to alleviate prisons congestion.⁵²

⁴¹ Hon. C.J. Augustino Ramadhan, Law Day Speech, 04th January, 2008

⁴² Walker, L. (2013); 'Restorative justice for victims without offender participation' ; SAGE Publications; p.5

⁴³ Sections 39 and 197 of the Penal Code

⁴⁴ Mbushuu Alias Domiic Mnyaroje & Another v. Republic [1995] TLR 97

⁴⁵ Section 89 and 90 of the Criminal Procedure Act, Cap 25 [R.E 2019]

⁴⁶ Laurean Mutahunwa Tibasana , Effective Administration of The Police and Prosecution in Criminal Justice: The Practice and Experience of the United Republic of Tanzania, 120th International Senior Seminar Participants' Papers

⁴⁷ Ibid ,also see, Sr. Ester John Kilatu, LSOSF(2021), Money laundering in Tanzania: legal and practical challenges, International Journal of Development Research, 11, (11), 51475-51484.

⁴⁸ <https://mkundilegalservice.blogspot.com/2019/02/prisons-and-imprisonment-in-tanzania.html>.. Accessed on 05th November, 2022 at 08:40 hrs

⁴⁹ Laufer, William S, at all,(2007), Criminology and the Criminal Justice; Sixth Edition; McGraw-Hill Higher Education, New York. Pg. 527

⁵⁰ Special report on inspection of Tanzania Mainland Prisons (2002/2003) By Commission of Human Rights and Good Governance.

⁵¹ See, Shadrack William v. R , Criminal Appeal No. 292 of 2019, CA of Tanzania at Shinyanga.

⁵² The Community Service Act, No. 6 of 2002.

Probation and Parole System

Before non-custodial movement, the effective ways of removing criminals' threat to the public safety was to issue sentence of execution or imprisonment. However, non-custodial measures would rehabilitate the offender and reconcile the offender with the victim while serving for reparation to the society. Again, in the past, victims of crimes had active involvement in the criminal justice process. Conversely, under current set up, through restorative justice there are great chances for the culprits to apologize and compensate the victim.⁵³

In the contemporary world, the first time offender is usually sentenced under Probation Service Order as alternative to imprisonment.⁵⁴ Community service is the services which arise from court's order where the offender is accorded an opportunity to compensate both the victim and the society by performing community services for his reparation.

Parole is a conditional release of prisoners before completion of their maximum sentence period. It is a privilege accorded to a prisoner who has at least served some percentage of his sentence, different from Probation order which is issued immediately upon conviction. The convict who is privileged for release under Parole is strictly required to observe certain conditions.⁵⁵ These include regular meeting with the parole officer, living within the community or their state, proof of residence and employment and alcohol test. Failure to adhere with the parole conditions will render to revocation of parole and the convict is imprisoned. Parole is not available for first degree convicts for murder, kidnapping, rape, arson and drug trafficking.

Non custodial sentence is necessary for it benefits as it reduces prisons overcrowding, cost effective for it reduces the amount of fund to be used by inmate, rehabilitate and reintegrates the offender to the society. It favours the reformatory theory which believes that if harsh punishment is inflicted upon the offenders, there will be no room for reform. There are however, guidelines to be observed by judges when according non custodial sentence, such as to consider the history, age, circumstances and motive under which the offender committed the offence and award punishment that suit those circumstances. It is supposedly that being sympathetic and loving treatment of the offender rehabilitates their character. However there must be a mix of both reformatory and deterrent in order to bring a successful result.

Conclusion And Recommendation:-**Conclusion:-**

Since criminals are victims of social economic and psychological forces in the society, we need to treat them with compassion and understanding in order to salvage and rehabilitate them. It is irrefutable that some police officers have been cited to be biased and tend to brutalize people in their custody amidst inordinate delay of their cases.

It revealed in practice that the Director of Public Prosecutions may know nothing about a case except where the law require his explicit consent in order to institute such cases.

Moreover, it is established that both corporal and capital punishment are inherently inhuman, degrading and unconstitutional. According to the nature of execution, such punishment does not rehabilitate nor reform the offender.

The court's process is at a snail's pace and restrict the implementation of alternative punishment specifically probation and parole because Judges and Magistrates has a tendency of sentencing the offender imprisonment, they do this because they think the only sentence towards the convicted person is to be sentenced imprisonment.

It is irrefutable that lack of balanced diet is evident to most prisons in Africa, brutality and terrorism are inflicted to prisoners by guards while prison doctors behave like prison guards, Convicts are restricted to continue with their job and there are no conjugal visits in prisons this cause prisoners to commit unnatural offences.

⁵³ <http://jabashadrack.blogspot.com/2014/05/non-custodial-measures-tanzanian-context.html>. Accessed on 05th November, 2022.

⁵⁴ <https://www.scirp.org/journal/paperinformation.aspx?paperid=116506>. Accessed on 05th November, 2022 at 09:20 hrs

⁵⁵ See Article 45 of the Constitution of the United Republic of Tanzania of 1977 and Section 3 The Presidential Affairs Act, Cap. 9.

Recommendations:-

Restorative justice is a viable mechanism for resolving both minor and non violent cases in which adults offenders are involved. It is recommended to incorporate the same to criminal justice system since its procedures accommodates the needs of victims, offenders and the community by addressing harm, restoring relationship hence improve public confidence and satisfaction.

Further, it is recommended for the purpose of preserving court's impartiality, the need to establish an independent Public Prosecution Service under the office of the Director of Public Prosecution for the and that court are to consider the sentence of fine payable to victim as alternative to imprisonment to make amend to those wronged as a means to creative restitution.

Additionally, the government should take steps or measures in working together with the police authority to control the commission of new serious offences like murder, rape and robbery because such offences restrict the offender to be released under the alternative punishments.

Moreover, the Government is required to ensure the development of technological supervision like electronic monitor or in other word it is called house arrest, using this electronic monitor will help the supervision officer not to visit the offenders because they will be monitored electronically.

Further, the society should be educated as regards to the idea of alternative punishments because the majorities have perception that once the offender is released whether under probation or parole they believe that the court has already received bribery.

It is recommended that juvenile should not be imprisoned; sending young offenders to approved school and rehabilitation center may not be effective as training them for practical jobs while convict having jobs be allowed to continue working, receive a pay minus their upkeep and conjugal visit be allowed in order to minimize the risk of committing unnatural offences to fellow prisoners.⁵⁶

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⁵⁶ See the case of Shadrack William v. R , Criminal Appeal No. 292 of 2019, CA of Tanzania at Shinyanga.

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