

Tanzania detainee facilities in relation to international standards (UN standard)

By

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Abstract

Justice for pre-trial detainees in Tanzania remains a critical issue, with ongoing challenges despite efforts to improve conditions. This study examines the rights of detainees awaiting trial and draws on Tanzania's experience with the United Nations Detention Facility in Arusha. Notwithstanding of Tanzania being signatories to number of treaties which provide for the protection of the detainees' rights and recognition of article 9(1) of the International Covenant on Civil and Political Rights, article 6 of the African Charter of Human and Peoples' Rights, article 7(1) of the American Convention on Human Rights and article 5(1) of the European Convention on Human Rights guarantee a person's right to liberty and security, treatment of pre-trial detainee awaiting trial is incompatible with the principles of the Charter of the United Nations as well as with the fundamental principles enunciated in the Universal declaration of Human Rights and the United Nations Standards minimum rules for the treatment of prisoners. This study inter alia exposes the situation that deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is incompatible with the principles of the Charter of the United Nations. Among the objective of the study was to evaluate the current conditions of human rights of detainees awaiting trial in selected Tanzanian pre-trial detention facilities as well to examine Tanzania's adherence to international, regional, and domestic legal frameworks of pre-trial detainees' rights. It analyzed the human rights of detainees awaiting trial in the Tanzanian pre-trial detention facilities with a comparative look at the practice of the United Nations Detention Facility that the country hosted from 1996 to 2023 in Arusha and highlight, from a comparative perspective, the best practices of the United Nations Detention Facility in Arusha that Tanzania can learn from to improve the rights of pre-trial detainees in its own facilities. This study used doctrinal research, which is qualitative in nature. The finding has revealed that there is little compliance of the Tanzanian government with international legal framework especially on enhancing the rights to detainee during their pre-trial phase which has exposed Tanzania among worst countries in guaranteeing human rights to the detainee.

Keywords: *Arusha, Pre-trial, detainee, United Nations Detention Facility, justice, Tanzania, International Criminal Tribunal for Rwanda, prisoner, inhuman treatment, human right.*

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1.0 Introduction

The violation of the right of a person detained in police custody is a chronic, yet sensitive topic, since the colonial era.² The United Republic of Tanzania is committed to the protection and promotion of human rights as defined in its Constitution of 1977, the Universal Declaration of Human Rights of 1948, and other regional and international instruments. Since the unification of Tanganyika and Zanzibar in 1964, Tanzania has undertaken significant initiatives in the area of protection and promotion of human rights by ratifying and domesticating various international and regional human rights instruments, repealing unconstitutional laws, establishing national institutions, such as the Commission for Human Rights and Good Governance (CHRAGG) and implementing the Legal Sector Reform Programme (LSRP) through the Ministry of Constitutional and Legal Affairs. The objectives of the reform include a speedy dispensation of justice, affordability, and access to justice for all social groups, integrity and professionalism of legal officers and enhancement of independence of the judiciary; thus, conforming to international standards in regard to the rights of detainees.³ In addition to the legal instruments highlighted above, there are also the International Covenant on Civil and Political Rights (ICCPR) and the international Covenant on Economic, Social and Cultural Rights (ICESCR) which hold the authorities responsible for the detainees' rights. In African countries like Tanzania, pre-trial detainees are confined in police cells for prolonged periods of time, even though police stations are not equipped with the facilities, infrastructure, personnel, or budget necessary to accommodate people for such times. Consequently, pre-trial detainees are often held in conditions worse than those experienced by convicted prisoners. Police cells may be overcrowded to such an extent that it amounts to cruel, inhuman, or degrading treatment or punishment; in particular when suspects are kept in police custody for extended periods. Following the transfer to a detention facility, the lack of separation between detainees awaiting trial and convicted prisoners is a serious cause for concern. According to International Law, these categories of prisoners must be held in separate facilities or sections of the same facility.⁴ Given that pre-trial detainees are presumed to be innocent and may not even have been charged at this stage, pre-trial detention must not assume the characteristics of a prison sentence. While in custody, pre-trial detainees face many challenges; but mostly the violation of their basic rights such as the right to food, clean water, sanitation, privacy, and freedom from torture, health services, delay of their case and appeals, violation of their right

² Maina C. P. "Human Right of Tanzania cases and materials." Koln: koppe, 1997 page 720

³ Article 11, "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions"

⁴ Sandra T. & Rehema M, "Human Rights of detainees in Mainland Tanzania: Are they observed?" LLB Dissertation, Faculty of Law, University of Iringa, 2009.

to be presumed innocent and many others. As a result of these violations, the detainees' access to justice gets severely hampered which is the reason for a global campaign for pre-trial detainees' rights.⁵

Despite Tanzania hosting the UNDF in Arusha, the country has not fully adopted the lessons learned from the facility, particularly in improving local detention conditions. Although Tanzanian prison officials received training from UN experts, the application of these lessons in local prisons remains insufficient. The lack of consistency between Tanzania's prison laws and international standards reflects a deeper issue of institutional or operational capacity, compounded by the fact that the UNDF was a temporary facility with significant international investment. The opportunity to improve detainee rights in Tanzania is largely untapped, despite the potential benefits derived from the training and expertise gained from the United Nations Detention Facility.

2.0 Tanzania compliance to UN standards

When comparing the detention facilities in Tanzania with those established or overseen by the United Nations (UN), it is essential to delineate the legal and operational paradigms that distinguish these institutions. Tanzania's detention facilities operate under the jurisdiction of its domestic legal framework, which includes adherence to national penal codes and criminal procedures. These facilities are designed to house individuals accused or convicted of crimes under Tanzanian law and are governed by the Tanzanian Penal Code and the Prisons Act, among other pertinent statutes.

In contrast, the UN detention facilities are often established in the context of international mandates and are governed by an array of international legal instruments and human rights standards. These facilities typically emerge in scenarios involving international criminal tribunals or peacekeeping missions where the UN operates with a mandate to uphold international humanitarian law and human rights principles. Notably, the UN's detention facilities are subject to the oversight of international bodies such as the International Criminal Court (ICC) or the International Criminal Tribunal for Rwanda (ICTR), and they adhere to a framework of international norms that include the Geneva Conventions and various UN human rights treaties. International norms often prescribe higher standards for detention conditions, including adequate space, nutrition, and medical care, reflecting the UN's commitment to human rights. Tanzanian facilities, while adhering to national standards, may not always align with the same rigorous international criteria, depending on available resources and enforcement.

⁵ Open Society Foundations, *Improving Pretrial Justice: The Roles of Lawyers and Paralegals, A Global Campaign for Pretrial Justice Report*, 2012.

In some jurisdictions, the adequacy of detention facilities for detainees has emerged as a critical area of concern.⁶ A substantial number of detention centers suffer from severe overcrowding and a lack of essential amenities, thereby impeding the detainees' ability to live a life of decency while in custody.⁷ Such conditions not only encroach upon the fundamental right to liberty but also infringe upon various other human rights, including the right to humane treatment and personal dignity. This results in the imposition of cruel and inhumane treatment upon individuals. Moreover, the protracted duration of detention has adverse implications on the economic and social rights of detainees.⁸ Empirical evidence indicates that many detainees emerge from incarceration profoundly affected by the deplorable conditions prevalent within these facilities.⁹ There is an exigent need for systemic reform to align detention conditions with the international minimum standards established for the treatment of offenders. Regrettably, this imperative reform appears to be inadequately prioritized by states, exacerbating the deterioration of detention facilities and the mistreatment of detainees.¹⁰ The reluctance of states to invest in the construction of new correctional facilities or remand centers primarily due to financial constraints, lack of political will, and other factors further compounds the issue.¹¹ This reluctance not only perpetuates the decline in detention conditions but also continues to adversely impact the treatment of detainees within these establishments.¹²

3.0 Legal framework against poor treatment of detainee

Like in many other countries of sub-Saharan Africa, Tanzania possesses legal documents and policies designed to enhance the conditions of individuals in custody. The essence for access to justice for pre-trial detainees in Tanzania is derived from constitutional provisions and other legally binding instruments.

3.1 The Constitution of the United Republic of Tanzania of 1977

This is the “mother law” of all the laws of the United Republic of Tanzania. The Constitution indicates government’s commitment to the fulfilment of the rights contained in the Universal

⁶ UN Human Rights Committee, general Comment No. 9: Article 10 (Humane treatment of persons deprived of their liberty) HRI/Gen/1/Rev.9 Vol. I Pp. 180 - 181

⁷ Lema, D.N. “Constitutional Limitations on the Conditions of Pretrial Detention” Yale Law Journal, Vol 79, No 5, 1970 pp 141 – 143

⁸ Nangela D, “The State of Human Rights Practices in the Prisons Service Department of Tanzania”, The paper presented in the two days’ workshop for the Senior Officers of the Prisons Services Department in Tanzania: July 2010, pp 14 - 22

⁹ Open Society Justice Initiative: The Socioeconomic Impact of Pretrial Detention: A Global Campaign for Pre Trial-Justice Report, Open Society Foundation, New York, 2011

¹⁰ Makaramba R.V, “Promoting the Sound Working Relationship between the Prison Department and the Court”. The paper presented in the two days’ workshop for the Senior Officers of the Prisons Services Department in Tanzania. 2010

¹¹ Supra, footnote No. 77

¹² Pocket Book on International Human Rights Standards for Prison Officials” Published by United Nations Office of the Commissioner for Human Rights, New York and Geneva, 2005

Declaration of Human Rights, 1948 (UDHR)¹³ and other international human rights instruments as listed above. The UDHR is categorically referred to or incorporated by Article 9(f) of this Constitution. Moreover, in an effort to realize these rights, the Constitution has the Bill of Rights and Duties¹⁴ incorporated by the 5th Constitutional amendment; *Basic Rights and Duties Enforcement Act* of 1994.¹⁵ It was enacted to enforce the rights enshrined under the Bill of Rights in the constitution. It follows from this logic that, all rules, regulations, policies, and practices in Tanzania, are required to conform to the same spirit of the Constitution and any law which violates the principles entailed in the constitution becomes invalid or void *ab initio*. The Constitution has the provision related to the rights of prisoners or those in pre-trial detention. In this respect, prisoners are treated on equal basis with all other persons and all rights guaranteed to people, including those in detention. The Constitution guarantees the right of presumption of innocence¹⁶ for everyone including a prisoner and all other persons detained but not convicted by the Court with competent jurisdiction.¹⁷ The constitution also prohibits inhuman treatment and torture of detained persons. Article 17(1) of the said Constitution allows detention of a person for the purpose of implementing punishment legally pronounced by the court of competent jurisdiction. Fundamentally and in line with the presumption of innocence, the Constitution recognizes the right to bail as the constitutional guarantee to all people accused of committing various offences. This means that the constitution by itself is against the pre-trial detention and guarantees people freedom from been detained. However, and as mentioned earlier on, this has not been fully implemented for the protection of detainees; hence, the detention of many pre-trial detainees in Tanzania.¹⁸

3.2 The Prison Act of 1967 R.E 2019

This Act delineates provisions pertaining to the organizational structure and administration of detention facilities, the disciplinary measures applicable to prisoners, the powers and responsibilities vested in prison officials, as well as the entitlements and duties of detainees.¹⁹ It encompasses specific stipulations regarding the governance of prisons. Part Seven is concerned with matters relating to individuals who have been convicted, whereas Part Twelve addresses issues pertinent to individuals who have yet to be convicted. Part Thirteen prescribes the procedural framework for the release of prisoners, while the remaining sections address

¹³ The UDHR was adopted by the resolution of the United Nations General Assembly (UNGA) on 10 December 1948. The UDHR recognizes civil, political, economic, social, cultural and other rights. Although this is not binding document, the principles contained in UDHR are now considered to be legally binding on States either as customary International law, general principles of law, or fundamental principle of humanity.

¹⁴ Articles 12 to 29 of the Constitution of Tanzania of 1977

¹⁵ Cap. 3 of the R.E 2020 of the Laws of Tanzania

¹⁶ Article 13(6)(b) of the Constitution of Tanzania, 1977

¹⁷ Article 107A of the Constitution of Tanzania provides that, The Judiciary shall be the authority with final

¹⁸ Supra, footnote No. 83

¹⁹ part 6 of the Prisons Act of 1967

various offenses.²⁰ The Act enshrines several fundamental human rights of detainees, including, but not limited to, the rights to education, medical care, clothing, bedding, sustenance, religious observance, communication, and the disbursement of gratuity payments.²¹ It is absurd that, despite the details provided in this law still prison conditions deteriorate on the daily basis. Mistreatment of prisoners and pre trial detainees are rampant and provisions of the basic needs articulated in this law remain uncertain.

3.3 Penal Code, Cap 16 R.E 2022

This law provides for a range of offences and seeks to protect rights, life, dignity, respect and protect rights of all people including prisoners. This law prohibits a range of offenses such as assaults,²²unnatural sex (anal sex),²³ murder, ²⁴wounding;²⁵ sexual offences such as rape and sexual assaults²⁶ and other criminal offence. Prisoners and all people in custody such as pre-trial detainees enjoy the rights detailed in this law and can be held liable in case they commit these offences while behind the bars as well. The tragedy is despite all these provisions, people behind bars have been subjected to some of these treatments without offenders being held accountable. For instance, individuals may suffer assault by fellow inmates, experience sexual harassment, rape, or be injured by prison officials, with the perpetrators often escaping accountability. Despite these violations, such acts are explicitly prohibited by law, and those responsible, regardless of their position, must be held accountable. Thus, while the law clearly forbids certain offenses, non-compliance results in the infringement of detainees' rights. Consequently, failure to adhere to legal provisions leads to the violation of rights guaranteed to detainees under national laws, thereby undermining their access to justice.

At the international level, both binding and non-binding instruments exist to safeguard the rights of vulnerable groups, such as women, children, minorities, and individuals at risk of human rights violations due to their circumstances. This protection extends to those in detention, including psychiatric patients and detainees, who are afforded similar protections under international law. These instruments aim to uphold detainees' right to justice by establishing recognized standards for their treatment and promoting the timely resolution of their cases. The inclusion of access to justice provisions in many of these key instruments underscores that access to justice for pre-trial detainees is a significant human rights issue.

3.4 Universal Declaration of Human Rights (UDHR)

²⁰ Sections 20, 21, 22, 54, 58, 59, 61, 65 and 74 of the Prisons Act, Cap. 58.

²¹ Section 67 of the Prisons Act; provide that “[A] prisoner may be paid gratuity by the government in accordance with the rates prescribed

²² Sections 240 to 243 of the Penal Code, Cap. 16.

²³ Section 54 of the Penal Code, Cap. 16.

²⁴ Section 196 of the Penal Code, Cap.

²⁵ Section 228 of the Penal Code, Cap. 16.

²⁶ Sections 130, 135 and various provisions in the Penal Code

As the oldest and universally accepted set of human rights standards,²⁷ this declaration encompasses some of particularly important provisions related to the treatment of detainees and access to justice for pre-trial detainees in general. Some of these articles are like those related to the right to “life, “liberty and security,²⁸ “prohibition of torture²⁹ “equality before the law, prohibition of arbitrary arrest, fair trial, and presumption of innocence. As one can recall and as indicated above, The Universal Declaration came into being immediately after the Second World War. The period of Second World War was characterized by massive violation of human rights but mostly the captives and prisoners of war who most of the time were subjected to torture, killing and all types of human rights violations. At the end of the war, States resolved by formulating a new comprehensive treaty concerning the protection of various human rights, among which included specific provisions addressing the rights of individuals subjected to detention, particularly those who experienced mistreatment during periods of armed conflict. In this regard, it became imperative to ensure the full and effective protection of the rights of detainees.

Right to life meant to ensure that everybody’s right to life is guaranteed and secured. This means that in no circumstance a person’s right to life can be limited without justifiable grounds. Since then, many other instruments have held the same position.³⁰ Right to liberty, prohibition against arbitrary arrest, guarantee of fair trial, equality before the law and presumption of innocence sought to guarantee an individual total freedom and protection by the law. In this respect, a person’s liberty can no longer be limited without justifiable grounds. When lawfully arrested, the person must be presumed innocent and treated as such. Nonetheless, the arrested person must be promptly brought before a competent impartial body to determine his or her case. Freedom from torture ensures individuals are well treated as human beings and with all respect and dignity even when they are in custody for the accusations of committing offences. As the earliest covenant enjoying universal acceptance and recognition, it would be anticipated that its provisions, particularly those concerning access to justice for pre-trial detainees, would be rigorously enforced and adhered to by all states. However, this has not transpired, resulting not only in the erosion of the spirit and intent of the convention but also in undermining international efforts aimed at ensuring access to justice for individuals held in pre-trial detention.

²⁷ UDHR is one of the first human rights instruments to be adopted after the Second World War 1948. It is as well one of the most ratified international conventions and has also been adopted to form part of the bill of rights in some of the state’s constitution.

²⁸ Article 3 of the Universal Declaration of Human Rights, 1948

²⁹ Article 5 of the Universal Declaration of Human Rights, 1948

³⁰ International Covenant on Civil and Political Rights and International Covenant of Economic, Social and Cultural Rights which have some resemblance with UDHR

3.5 International Covenant on Civil and Political Rights

One of the most significant and widely endorsed agreements in this context is the International Covenant on Civil and Political Rights (ICCPR). This covenant is particularly notable for its comprehensive articulation of civil and political rights, with a special emphasis on the rights of detainees. Among its provisions, it addresses critical issues such as the prohibition of torture³¹, a pervasive concern in the treatment of pre-trial detainees across many countries.³² Additionally, it guarantees the right to liberty and security of the person, the right to humane treatment during deprivation of liberty, and the right to a fair trial.³³ The ICCPR also established the Human Rights Committee (HRC) which has played a pivotal role in interpreting, promoting, and safeguarding the human rights enshrined in the covenant.³⁴ The Human Rights Commission has adopted a large number of recommendations and interpretation related to the rights of detainees.³⁵ With the evolving interpretation of the rights enshrined in this instrument, in conjunction with the states' adherence to these rights, this instrument holds the potential to comprehensively safeguard the rights of pre-trial detainees. However, as is frequently observed, a disparity often exists between the provisions of the instrument and its practical implementation.

3.6 International Covenant on Economic Social and Cultural Rights (ICESCR)

This is yet another fundamental convention very relevant to the welfare of the detainees. As for the ICCPR, ICESCR came into force in 1966. Contrary to ICCPR though, ICESCR was not rigorously ratified by states and there are diverse reasons for that. This covenant covers vastly the issues related to the accessibility of economic, social and cultural rights by all people. These are very important determinants of access to justice for pretrial detainees. Some of the articles closely related to access to justice for pretrial detainees include right to health or medical services,³⁶ right to food³⁷ and right to education.³⁸ These are key players in ensuring other directed civil rights of the detainees are fulfilled in accordance with the provision of the laws. Availability of economic and social rights for the detainees upholds the fundamental principle of presumption of innocence but also right to life, dignity and freedom from torture. Even

³¹ Section 5 of the United Nation Declaration on Human Rights of 1948

³² Supra, footnote No. 100

³³ article 11 which states, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense

³⁴ Supra

³⁵ Article 10 of the International Covenant on Civil and Political Rights, 1966

³⁶ Article 12 of the convention which states, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

³⁷ Article 11, "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

³⁸ See Article 14 of the ICESCR, 1966

though, right to life, dignity and presumption of innocence are guarantees of civil and political rights, manifestation of the realization of these rights partly depends on the fulfillment of economic, social, and cultural rights for detainees is essential. The extent to which a state upholds the civil and political rights of detainees can be reflected in its respect for and fulfillment of their economic, social, and cultural rights. Conversely, the denial of economic, social, or cultural rights can lead to violations of other civil rights. For example, if an accused individual is denied medical treatment due to the accusation, this may constitute a violation of their civil rights, such as the right to dignity, freedom from torture, and the right to life.³⁹ Thus, these rights are interdependent, and the violation of one set whether economic, social, or cultural can readily result in breaches of other rights, including civil and political rights. This interdependence underscores the importance of advocating for the indivisibility and interrelation of all human rights.⁴⁰

4.0 Condition of detainees awaiting trial in selected detention facilities in Tanzania

In Tanzania, selected detention facilities include Ukonga Prison, Segerea Prison, and Keko Prison, all located in Dar es Salaam. Ukonga, one of the largest, holds inmates serving both short and long sentences, while Segerea is a remand prison primarily for pre-trial detainees. In this study, the first research question asked about the current condition of detainees awaiting trial in selected detention facilities in Tanzania. This echoes the fundamental objective of this study that sought to analyse the human rights of detainees awaiting trial in the Tanzanian pre-trial detention facilities with a comparative look at the practice of the United Nations Detention Facility that the country hosted from 1996 to 2023 in Arusha. The condition of detainees awaiting trial in Tanzania has been the subject of scrutiny due to concerns about overcrowding, poor living conditions, and human rights violations. In Tanzania, pre-trial detention can last for extended periods, sometimes for years, due to inefficiencies in the justice system. This situation raises serious concerns regarding the protection of detainees' rights and the compliance with international human rights standards. The empirical evidence shows that Tanzanian detention facilities are overcrowded. Reports indicate that prisons often hold more inmates than their intended capacity due to the high number of pre-trial detainees. This overcrowding not only exacerbates the physical conditions within the facilities but also violates international standards for humane treatment. The lack of space forces detainees to live in unsanitary and degrading conditions, leading to poor hygiene, a lack of privacy, and an increased risk of the spread of communicable diseases. These conditions are especially problematic given that most detainees

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⁴⁰ Petersmann E.U. "Indivisibility" of Human Rights, EJIL (2003), Vol. 14 No 2 pp 381 - 385

have not been convicted of any crime and are simply awaiting trial, often for extended periods.⁴¹

Another critical issue facing detainees in Tanzania is the lack of access to adequate healthcare services. Overcrowded facilities make it difficult to provide even the most basic medical attention, which is often compounded by the lack of medical staff and supplies. Detainees suffering from chronic illnesses, mental health issues, or those who require emergency care are often neglected, leading to preventable suffering and death. Moreover, detainees frequently lack access to clean water, nutritious food, and other basic necessities, contributing to malnutrition and poor overall health. This situation not only violates the detainees' rights under Tanzanian law but also breaches international standards, such as those set by the United Nations Standard Minimum Rules for the Treatment of Prisoners.⁴² This contention echoes the case of *Republic vs. Tito Elia Magoti and Theodory Fustin Giyan*⁴³ which drew significant attention as a reflection of the ongoing challenges related to human rights, freedom of expression, and judicial independence in the country. This case has been widely perceived as politically motivated, particularly targeting the accused who are pioneers of Human Rights in Tanzania. The case serves as a cautionary tale for the state of democratic freedoms in Tanzania and underscores the urgent need for reform of laws that undermine human rights and civic space.

It would be correct to say that prolonged pre-trial detention is a systemic issue in Tanzania, caused by inefficiencies in the judicial system, corruption, and limited access to legal representation. Many detainees are held for months or even years without their cases being heard. This delay denies detainees their right to a fair and speedy trial as guaranteed by both domestic and international legal instruments, including the Tanzanian Constitution and the African Charter on Human and Peoples' Rights. The lack of timely judicial review often results in innocent individuals being subjected to unnecessary and unjust deprivation of liberty. It is absurd that this experience is in contrast to the practice of the UN Detention Facility that was located in Arusha despite the latter being hosted in the same country.

The continued development across the Commonwealth of the practice that only a judicial authority can issue an arrest warrant is a good method to protect some of the human rights of detainees. This offers an additional guarantee against arbitrary arrests, though recognizing that issues of corruption and lack of independence contrary to the rule of law also need to be overcome. This should be accompanied by legislation that clearly sets out all the alternatives

⁴¹ Joel,P. "An Assessment of The Impact of Presidential Pardon on the Rehabilitation and Reformation of Offenders in Tanzania, (2020)

⁴² See rule 4(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015

⁴³ Kisutu Resident Magistrate Court, 2019(Unreported)

to detention, such as parole, bail, and home confinement, and that these are used. Indeed, States need to be encouraged to limit the overall maximum duration of pre-trial detention. Although there is no international binding law on what constitutes the maximum acceptable duration of a detention period. Rules at the national level provide guarantees so that pre-trial detention is duly extended. There are also a number of administrative and practical actions that can occur that would protect the human rights of detainees These include to respect the separation between pre-trial and convicted individuals, to respect the separation between male and female detainees, and to respect the separation between detainees depending on the gravity of the charges against them. The detention facilities should comply with international standards, including appropriate washing facilities, clean bedding, single occupancy cells, and appropriate subsistence, as well as access to medical care.

4.3 The Tanzanian government compliance with international legal Frameworks on the rights of detainees awaiting trial.

The second research question asked about the extent to which the Tanzanian government adheres to international, regional, and domestic frameworks of the rights of detainees awaiting trial. This question tallies with the second objective that, *inter alia*, thought to examine Tanzania's adherence to international, regional, and domestic frameworks of pre-trial detainees' rights and its consequential effect when not complied with. The finding reveals that there is little compliance of the Tanzanian government with international legal framework especially on enhancing the rights to detainee during their pre-trial phase. Although this study primarily addresses the issue of access to justice for pre-trial detainees from a civil rights perspective, there exists an intrinsic interconnection between the enforcement of detainees' civil rights and the consequential impact on their economic, social, and cultural rights. The failure to uphold civil rights significantly affects the realization of these broader rights. Pre-trial detention, particularly when unnecessary or excessively prolonged, constitutes a violation of detainees' human rights, which in turn exacerbates infringements on their economic, social, and cultural rights. For example, the denial of bail leads to the prolonged detention of individuals, contributing to overcrowding in detention facilities. This overcrowding directly limits detainees' social rights, including adequate access to food, water, medical care, education, employment, and the right to overall development.

For instance, the researcher visited prisons in Dar es Salaam and Arusha, many detainees voiced complaints specifically concerning the deprivation of these essential social rights, underscoring the gravity of the issue and its compounding negative effects. Moreover, the failure to provide detainees with necessary social services impairs their ability to exercise and defend their civil rights. A detainee suffering from illness, hunger, or frustration is significantly hindered in mounting an effective legal defence. Thus, it is crucial to ensure that detainees'

social rights are adequately protected to enable them to engage in legal processes and defend their civil rights through due process. Despite the rights and treatment to pre-trial detainees as enshrined within the ICCPR and United Nations Standard Minimum Rules for the Treatment of Prisoners, there are still gross violations of those rights.

4.4 Status of the Tanzania detention facilities standards compared to the United Nations Detention Facilities.

The third research question concerned the status of the Tanzania detention facilities standards compared to the United Nations Detention Facility. This question aimed to highlight and make a comparative perspective, the best practices of the United Nations Detention Facility in Arusha that Tanzania may learn from to improve the rights of pre-trial detainees in its own facilities. The findings reveal that, the conditions in Tanzanian detention facilities are a topic of concern in the broader context of international human rights standards, particularly when compared to the United Nations Standard Minimum Rules for the Treatment of Prisoners⁴⁴ which set minimum guidelines for the humane treatment of detainees worldwide. In Tanzania, the conditions of detention facilities often fall short of the standards outlined by the Nelson Mandela Rules. Several human rights organizations, such as Amnesty International and Human Rights Watch, have documented cases of overcrowding, poor sanitation, inadequate healthcare, and excessive use of force by law enforcement.⁴⁵ The conditions are further compounded by the lengthy pre-trial detentions, often violating the principle of presumption of innocence and right to a speedy trial.⁴⁶

The United Nations emphasizes several critical aspects of detention, including the necessity for adequate space, ventilation, lighting, and sanitation. Each detainee must have his or her own bed and access to clean water, nutritious food, and medical care. In contrast, Tanzanian detention facilities are frequently overcrowded, with reports of inmates being forced to share small, unsanitary spaces.⁴⁷ A 2017 report by Tanzania's Commission for Human Rights and Good Governance (CHRAGG) highlighted these issues, citing cases where facilities operated at over 150% of their intended capacity. The Mandela Rules also stress that prisoners should not be subjected to inhumane punishment or excessive force, but there have been numerous

⁴⁴ UN Standard Minimum Rules for the Treatment of Prisoners, 2015

⁴⁵ Van Hout, MC. Mhlanga-Gunda, R. Prison health situation and health rights of young people incarcerated in sub-Saharan African prisons and detention centres: a scoping review of extant literature. *BMC Int. Health Hum Rights* 19, 17 (2019).

⁴⁶ Matagi, P.R. "Reasons for chronic existence of prison congestion in Tanzania: Critical analysis of the law and practice at Musoma prison." A Dissertation Submitted in Partial fulfilment of the Requirements for the award of Degree of Master of Law in Constitutional and Administrative Law of Mzumbe University, 2016

⁴⁷ Materu, N.J. "Reducing Overcrowding in Prisons: Public Perceptions on Community Services: The Case of Ilala Municipality, Dar -Es-Salaam, A dissertation submitted in partial fulfillment of the requirements for the degree of Master of Social Work department of sociology and social work the open university of Tanzania. (2021). Page 19

reports of torture and physical abuse in Tanzanian prisons, sometimes used to extract confessions.

In terms of access to medical care, the Mandela Rules require that all prisoners receive adequate healthcare, and those with mental or physical illnesses should be transferred to specialized facilities. In Tanzania, however, there have been several documented instances where prisoners with health conditions have been neglected. The United Nations Committee against Torture (CAT), in its review of Tanzania's compliance with international human rights treaties, noted in 2019 that medical services in Tanzanian detention centers were often inadequate, and in some cases, non-existent. Many facilities lack sufficient doctors, medicine, and equipment, further exacerbating the suffering of those detained.⁴⁸

Legal representation is another aspect where Tanzanian practices diverge from international standards. The International Covenant on Civil and Political Rights (ICCPR), to which Tanzania is a party, guarantees the right to legal assistance and access to justice. However, many detainees in Tanzania are denied this right due to systemic issues like corruption, inefficiencies within the judicial system, and lack of resources. Pre-trial detainees often languish in detention for years without access to a lawyer or a proper hearing, leading to *de facto* punishment without a trial.⁴⁹ The Legal and Human Rights Centre (LHRC) has consistently highlighted the injustice faced by detainees who are unable to afford legal counsel, which is a clear violation of the Mandela Rules and the ICCPR.⁵⁰

Torture and ill-treatment in Tanzanian detention facilities have also drawn significant attention from international bodies. Article 10 of the ICCPR mandates that all individuals deprived of their liberty must be treated with humanity and respect for their dignity. Furthermore, the Convention against Torture (CAT), to which Tanzania is a signatory, prohibits any form of torture or cruel, inhuman, or degrading treatment. Nonetheless, reports from organizations like Human Rights Watch indicate that law enforcement officials in Tanzania sometimes engage in the torture of detainees to extract confessions or punish perceived disobedience. These acts are often met with impunity, contributing to a culture of abuse and mistreatment within detention facilities.

While Tanzania has ratified several international human rights instruments, including the African Charter on Human and Peoples' Rights, the implementation of these standards within

⁴⁸ UNODC: Handbook on strategies to reduce overcrowding in prisons, criminal justice handbook series,

⁴⁹ Wallace et al., Remanded in custody and punished without trial: The Criminal Justice System and Remand Populations in Trinidad and Tobago," Justice Policy Journal Volume 17, Number 1 (Spring 2020)

⁵⁰ Country Reports on Human Rights Practices for 2022, United States Department of State Bureau of Democracy, Human Rights and Labour, 2023

its detention system remains weak. This has prompted periodic interventions from regional and international human rights bodies urging Tanzania to align its practices with global standards.

Another significant aspect of detention facility standards, as outlined by the Mandela Rules, is the provision of rehabilitation and educational programs for detainees to facilitate reintegration into society upon release. However, Tanzanian detention facilities often lack such programs. Prisoners are left idle without access to meaningful work or educational opportunities, which not only violates their rights but also diminishes their chances of successful rehabilitation.

Overall, when comparing Tanzanian detention facilities to the standards established by the United Nations, particularly the Nelson Mandela Rules, there is a clear gap between Tanzania's legal obligations and the reality within its prisons. Overcrowding, poor health care, lack of legal representation, and instances of torture are all pressing concerns that demonstrate Tanzania's challenges in meeting international detention standards.

However, it is important to note that efforts have been made to address some of these issues. In recent years, there have been calls for reforms within Tanzania's criminal justice system, particularly regarding pretrial detentions and prison overcrowding. International pressure from the United Nations Human Rights Council (UNHRC), along with domestic advocacy by civil society organizations, may lead to improvements in the treatment of detainees and prison conditions in the future. Nonetheless, without sustained commitment to human rights and reform, Tanzanian detention facilities are likely to continue falling short of international standards.

4.5 The separation between the UNDF and local prisons

The International Criminal Tribunal for Rwanda had a detention facility in the premises of the Tanzanian Arusha Prison. The basic question asked was why it was necessary to separate these two detentions facilities. The comprehensive answers to this question were categorized into three factors as discussed hereunder:

Firstly, the Tanzanian government had to avoid conflicts with the ICTR. Separating the facilities helped avoid conflicts of interest or misunderstandings that could arise from mingling international detainees with local prisoners. It also maintained the independence of the ICTR process from Tanzanian judicial matters, reinforcing the tribunal's impartiality and by doing so, it ensured integrity of the court and rights to the detainee who were under ICTR detention while awaiting trial.

Secondly, there were legal and jurisdictional differences. The ICTR, established by the United Nations Security Council, was governed by international law and was responsible for prosecuting individuals charged with serious crimes such as genocide, crimes against humanity, and war crimes committed during the Rwandan Genocide. In contrast, the Tanzanian

Arusha Prison is a domestic facility subject to Tanzanian national law. Maintaining separate facilities ensured that the ICTR detainees were held under conditions that met international standards, distinct from local judicial processes.

Thirdly, the ICTR housed individuals accused of high-profile and sensitive crimes related to the Rwandan Genocide, which posed potential security risks. A separate detention facility allowed for enhanced security measures tailored to the unique needs of the tribunal, protecting both detainees and prison staff from potential external threats or retaliation, especially considering the political sensitivities surrounding the genocide trials. This indicates that UNDF operated under a special legal regime constituted by a mixture of international law, UN General Assembly resolutions, internal rules and regulations, and specific operational agreements with host countries. This legal regime enabled the UNDF to carry out its custodial mandate effectively while ensuring compliance with both international standards and internal UN governance structures.

4.6 Comparison between pre-trial detainees in Tanzania's prison and those at the United Nations Detention Facility

This study compares the life conditions of the Tanzanian pre-trial detainees with those at the UNDF and lessons to learn from the two correctional facilities. Respondent from the prison department from Segerea in Dar es Salaam were interviewed and had the following to say:-

In my opinion, those detainees you see under UN-backed tribunals generally benefit from improved conditions due to adherence to stringent international standards such as the Mandela Rules. These standards ensure humane treatment, adequate healthcare, nutrition, and legal access. International bodies are also subject to oversight by human rights groups, promoting compliance with human rights norms. In contrast, Tanzanian pre-trial detainees you see here most of them face severe conditions due to overcrowding and delays in the justice system. Resource constraints often lead to inadequate healthcare and limited legal representation, resulting in harsher conditions compared to those in international detention facilities.⁵¹

The respondent opinion portrays a significant disparity in the conditions experienced by detainees under international mechanisms versus those in Tanzanian pre-trial detention. It underscores that international bodies like the ICC and UN tribunals are bound by rigorous international standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners which mandate humane treatment. The critical interpretation here reveals a broader systemic issue. While international mechanisms are designed to meet high human rights standards and are subject to external scrutiny, national systems, like Tanzania's, often struggle

⁵¹ Interview with a prison officer in Arusha and Dar es Salaam on 10th August 2024

with fundamental issues such as overcrowding and resource limitations. It means that many pre-trial detainees languish in detention for prolonged periods, sometimes extending for years, due to systemic delays in the administration of justice. Although the Tanzania Prisons Act sets forth certain baseline standards, the implementation of these provisions frequently falls short.⁵² These arguments echo a decision in the case of *Mohamed Abubakari v The United Republic of Tanzania*.⁵³ The applicant alleged before the African Court on Human and Peoples' Rights that, upon his arrest, he was not afforded the right to call a lawyer and be assisted by him. The court found the respondent State to have violated the Applicant's 'right to have access to counsel upon his arrest.

4.7 Improvement under Tanzanian detention facilities.

During research, the study reached out to respondents who used to work under the UNDF and the IRMCT located in Arusha and sought their opinion about what need to improve in the detention facilities of Tanzania generally. The majority of respondents emphasized the need for an overhaul of correctional facilities in Tanzania. To align with international standards, Tanzanian detention facilities must adhere to fundamental principles that safeguard human rights and dignity. The researcher conducted an interview with a prison officer from Arusha Prison regarding the current state of detention facilities in Tanzania and whether they could be improved to meet international standards.

The respondents had the following to say:

Firstly, I would think enhancing health care services is crucial and detainees should have access to adequate medical treatment and mental health support. Our country need to learn from other developed countries and how international tribunals take care the detention facility. Unfortunately the situation of our prison cells are not good and I would urge the conditions of detention facilities improved to meet international human rights standards, including ensuring access to clean water, proper nutrition, and hygienic facilities..⁵⁴

From the respondents view and perspective, it is fairly to say that the provision of healthcare services within detention facilities must be enhanced to ensure that detainees receive adequate medical treatment and mental health support in compliance with established legal standards. Since detention conditions in Tanzania is worse, such condition must be improved to align with international human rights obligations, particularly by ensuring access to clean water, adequate

⁵² Shaw, M. "Reducing the Excessive Use of Pretrial Detention." Justice initiatives, A publication of the Open Society Justice Initiative, Spring 2008

⁵³ Application number 007/2013

⁵⁴ Interview with 3 advocates practicing at IRMCT, 10th August 2024

nutrition, and sanitary facilities. Lastly, it is imperative to establish and implement robust oversight and accountability mechanisms to prevent and remedy any incidents of mistreatment or abuse within detention settings.

4.8 Conclusion

This article has covered the rights of detainee awaiting trial and what have been lessons from established United Nations Detention Facility which was in Arusha. With political will and targeted laws, Tanzania stands to benefit from the UNDF's approach, which emphasized on the adherence to international standards and the humane treatment of detainees. The UNDF's model highlights, inter alia, the importance of effective judicial processes, timely hearings, and the provision of adequate legal resources. By adopting similar practices, Tanzania could improve its detention system, ensuring that detainees receive fair treatment, and their rights are upheld. It is unfortunate that the UNDF *modus operandi* on detainee awaiting trial was seen as something superficial and extra-ordinary beyond the reach and practice of Tanzania local prisons at the expense of to the rights of the detainees.

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