

INTRODUCTION

1:1 Normally, Prisons have three basic functions. Firstly, to secure and control offenders, secondly, to punish offenders and thirdly to rehabilitate or reform offenders. The use of prisons as a means of dealing with society's offenders is of fairly recent origin. In England, the first Prison Act was passed in 1898. Before then, prisons and jails were places where people were indiscriminately locked up to await execution, torture banishment or the arrival of a Magistrate when he came on his circuit. Current pathological assessment of prisons reflects basically three schools of thought. Firstly, hardliners (or conservatives) believe that prisons should be retained as places of punishing offenders and protecting the society outside. They want prisons conditions to be harsh and retributive. Secondly there are those who believe that prisons are indispensable but should be reformed to make them less punitive and more humane with more of rehabilitation programmes. Finally, there are some who subscribe to the view that prisons are instruments of revenge, that they serve no purpose and should be phased out immediately. In this group there are some penologists who have labelled prisons as "the belly of the best" "the black flower of our Civilization", "intrinsically evil", "bar basic" etc.

Be that as it may, there seems to be a consensus that a progressive penal system should treat prisoners as human beings. In other words any form of inhuman, cruel and degrading treatment should be avoided. Tanzania subscribes to these principles, at least in theory. In practice it would appear that imprisonment has continued to serve largely a punitive rather than a reformatory role. The problem of Congestion in Prisons means that the general welfare of prisoners has suffered in recent years thus justifying the retributive rather than reformatory grounds for imprisonment. With this background there is no doubt that the appointment of a Working Group has been quite timely.

1:2 Appointment

Our Working Group on the Problem of Congestion in Prisons was appointed in the last half of 1986 and we held our first working session on 5th May, 1987.

1:3 Terms of Reference

The terms of reference given were to examine the nature, magnitude and likely causes of the problem of congestion in prisons of Tanzania Mainland and to make any appropriate legislative or administrative recommendations or otherwise to the Commission for the purpose of eradicating or minimizing the problem.

1:4 Locus Standi of the Commission

The formation of the project on Congestion in prisons by the Commission was in conformity with Section (1) of the Law Reform Commission of Tanzania Act, 1980 which provides that:-

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

The letter of reference on this project by the Commission to the Attorney-General dated 4th July, 1986, is marked APPENDIX "A". This letter is the source of the terms of reference of working group.

1:5 Executive Committee

Prior to the establishment of this Working Group, another Government Committee known as the "Executive Committee" examined through its special Task Force the same problem of Congestion in Prisons and made recommendations which are

quite relevant to our present exercise as can be seen from its report in appendix "E" attached herewith.

1:6 The Trigger

The magnitude of the problem of congestion in Prisons 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 that number i.e. 1934 prisoners.

1:6 METHODOLOGY OF WORK

1:6:1 Work-Programme of regular meetings of all members of the Committee with an allowance being made for smaller groups of members for doing specific tasks which nevertheless would have to be approved by the working group at the end of the day.

1:6:2 Relevant data collected was left in the hands of the Secretary of the Working Group or any other member as assigned by the Working Group. Data was to be collected mainly from the Prison Department, Police Force and Bureau of Statistics.

1:6:3 Library Research

Library research was conducted in Dar es Salaam. It involved physical perusal of Statutory legislation related to the problem of congestion in prisons. The Committee collected several papers and literary work on this field.

1:6:4 Field Survey

Visits to prisons in selected regions were made as follows:

The first team visited Dodoma, Singida, Tabora and Shinyanga. Iringa and Mbeya Regions were visited by the second group. Mwanza, Kagera and Mara regions were visited by the 3rd team. Arusha, Kilimanjaro and Tanga regions were visited by the 4th team and lastly Morogoro and Dar es Salaam Regions were visited by the fifth team.

Each team had the opportunity of having factual observation of the situation and discussing with various people, including the Regional Prison Officers of the respective regions, Officers incharge of the Prisons, Regional Commissioners and Regional Development Directors, Prisons Officers and other prison visiting justices.

In the course of field investigation the following aspects were covered, inter-alia:

- Congestion problem in the particular prison
- inspecting the accommodation premises and getting figures of its capacity and the actual prison population on the day of the visit.
- reaction of prison officers and inmates and other interviewees on the terms of reference and whether problem of congestion may be alleviated by statute or administratively.
- emphasis was made on the fact that the views and opinion they expressed at the meeting did not necessarily reflect those of Prison Department; and that they should feel free to say what they conceived to be the nature and the magnitude of the problem.
- how has the problem of congestion affection the stress/patience of the officers?
is congestion conducive to the riot mentality on the part of prisoners?
- is the rehabilitation process hindered by overcrowding etc.

- 1:6:5 The Working Group as a group or by its individual or its teams held audience with a few personalities or group of Officials experienced in prisons establishment or policy or with the causes of Congestion in Prisons.

THE PROBLEM OF CONGESTION IN PRISONS

2:1 The rationale for imprisonment

Imprisonment entails basically the curtailment of freedom of movement, of association and of speech of a criminal suspect or convict or of a civil debtor by keeping him in confinement in premises or areas which are government control of a specialised department called the Tanzania Prison Service. The source of the problem is threefold, firstly, the existence of the internationally prevailing modern policy practice of the institutionalizing of the prison service as a means of punishing criminal offenders and civil debtors. Secondly the existence of penal legislations which provide confinement or imprisonment as a punishment for committing criminal offences or civil wrongs. Thirdly it is the existence and increase of civil criminality in the societies as a whole. Without criminal activities there would be no place for confining the suspects or convicts. Indeed, without the penalty of imprisonment in our legislations there would be no imprisoned convict. The problem of congested prisons would not arise at all!

2:2 Practical Reality

The ideal situation of having no imprisonment at all as explained in paragraph 2:1 is far from the practical reality of any modern state. The crux of the problem now is the irrational proportion between between the space available for confining criminal suspects and convicts and the actual number of inmates themselves. The problem of congestion can only arise when there are more inmates than capacity space for keeping them inside. If it were possible to have the room capacity of prisons in proportion to the increase of prisoners against there would be no problem of congestion.

On the other hand the legislative, administrative, investigative and initial with powers to confine suspects, imprisonment are not responsible or answerable for the upkeep or overflow of inmates.

The Prison Department too, has no power to refuse accepting into custody inmates above the capacity of the prison. Actually there is no consultation or coordination at all between the "sentencing authority" which orders people to be kept into custody and the "custodian authority" which keeps the inmates. The day to day activities of the two organs and the laws which regulate and legalize their existence, powers and activities are parallel to and totally oblivious to the existence and problems of the other such that the "sentencing authority" would rather hear a probation officer than the "Custodian authority" i.e. the Prison Officer.

2:3 ELABORATION OF THE PROBLEM OF CONGESTION IN PRISON BY DATA

The best elaboration of the problem of Congestion can be done by data as shown in tables A to F herein below which cover all the 20 regions of Tanzania Mainland.

Each table reflects the number of inmates of all categories in Tanzania Mainland at the beginning of each new financial year which is the 1st July, The latitudal columns show the number of each different category of inmates in the particular region with the total number of inmates in prison in all the regions for each category of inmates ending up with the rational total of actual number of the inmates and the required national

capacity of the prisons thereof.

The longitudinal columns show the names of the 20 regions covered and the different categories of the inmates in abbreviations which means the followings:-

RPCT	- Remandees
RDCT	- Ramandees by District Courts
RHCT	- Remandees by High Courts
REOC	- Remandees for Economic and Organized
CCP	- Convicted Condemned Prisoners (Sentenced to death)
COP	- Convicted Ordinary Prisoners (Sentenced to imprisonment)
POD	- Political and other Detainees
HCR	- Habitual Criminals

The last two longitudinal columns show the total actual number of inmates incarcerated in each region and the required capacity of prisons in each region.

2:3:1 RANDOM SAMPLE DATE

It is worth mentioning at this stage that the sample date which triggered the Commission to form our Working group on the Problem of Congestion in Prisons was picked up in 1986 at random from a few individual prisons which data our working group has not incorporated into Table "A".

TABLE A

1.7.1986 (NUMBER OF INMATES OF ALL CATEGORIES IN TANZANIA
MAINLAND ON 1ST JULY, 1986)

MKOA (REGION)										
1. Arusha	205	386	127	89	-	787	-	-	1594	336
2. D'Salaam	538	605	501	-	5	-	-	6	3344	1080
3. Dodoma	144	366	65	502	104	1783	-	2	2966	1123
4. Iringa	85	488	135	-	-	1517	-	1	2226	725
5. Kagera	95	561	-	403	-	1247	-	37	2344	1075
6. Kigoma	79	213	8	1	-	640	-	-	1943	759

1. Arusha	127	414	132	33	-	787	-	-	1450	336
2. D'Salaam	992	529	100	87	20	744	-	24	3689	1080
3. Dodoma	129	317	21	961	116	1295	-	3	2842	1125
4. Iringa	104	360	63	-	-	1313	-	-	1840	725
5. Kagera	135	706	139	6	-	1226	-	32	2244	1075
6. Kigoma	46	191	27	47	-	746	-	-	1057	759
7. Kilimanjaro	109	388	116	184	-	849	-	-	1646	950
8. Lindi	98	83	4	20	6	998	1	-	1210	
9. Mara	75	925	149	170	-	947	-	12	2278	1157
10. Mbeya	70	230	101	135	1	1855	-	636	2448	1001
11. Morogoro	115	209	44	110	4	3257	-	-	3739	3290
12. Mtwara	76	143	48	56	-	1105	1	6	1435	1004
13. Mwanza	250	363	659	-	21	1722	-	-	3015	1372
14. Pwani	11	38	74	-	-	142211	-	-	1545	770
15. ruvuma	31	123	34	50	-	14	-	-	1352	550
16. Rukwa	61	89	25	61	-	880	-	-	1116	790
17. Singida	222	497	30	-	-	662	-	-	1371	390
18. Shinyanga	310	753	114	-	-	1042	-	4	2001	696
19. Tabora	68	276	71	39	18	965	1	-	1438	1125
20. Tanga	297	132	71	253	15	1600	-	-	2368	1179
JUMLA					201		3	117		

TABLE C

TABLE D
 IDADI YA WAFUNGWA WA AINA ZOTE TANZANIA BARA YA TAREHE 1.7.1989
 (NUMBER OF INMATES OF ALL CATEGORIES IN TANZANIA MAINLAND
 ON 1ST JULY, 1989)

Mkoa (Region)										
1. Arusha	141	167	108	8	-	1173	-	-		31
2. D'Salaam	934	590	132	0	50	2119	-	29	3924	117
3. Dodoma	140	234	101	200	151	1891	-	44	2721	117
4. Iringa	117	489	90	-	3	1411	-	-	2110	72
5. Kagera	110	828	181	126	-	1331	-	29		112
6. Kigoma	64	230	11	12	-	642	-	-	962	107
7. K'Njaro	87	169	204	65	-	1331	-	-	1856	94
8. Lindi	26	84	9	-	26	1026	-	-	1171	53
9. Mara	90	533	142	4	-	1123	-	2	1894	120
10. Mbeya	134	203	102	32	-	2154	-	25	2650	100
11. Morogoro	120	345	30	15	-	2952	-	-	3462	355
12. Mtwara	154	203	102	32	-	2154	-	25	2659	100
13. Mwanza	178	521	137	33	21	1196	-	-	2086	155
14. Pwani	72	17	-	-	-	1434	-	-	1523	77
15. Ruvuma	123	177	35	2	8	833	-	-	1178	69

16. Rukwa	62	183	17	11	-	1101	-	35	1409	55
17. Singida	198	225	89	-	-	671	-	4	1187	43
18. Shinyanga	231	544	21	-	-	1025	-	-	1821	56
19. Tabora	36	272	135	5	20	1091	-	-	1559	112
20. Tanga	134	329	50	43	50	1580	-	4	2190	165
	3131	6643	1696	658	329	28238	-	160	40855	2118

TABLE E

IDADI YA WAFUNGWA WA AINA ZOTE TANZANIA BARA YA TAREHE 1.7.90

(NUMBER OF INMATES OF ALL CATEGORIES IN TANZANIA MAINLAND

ON 1ST JULY, 1990)

Mkoa (Region)										
1. Arusha	198	403	113	-	-	1117	-	-	1832	318
2. D'Salaam	1217	468	125	60	55	2503	-	17	4545	1175
3. Dodoma	174	315	112	196	140	2237	-	5	3179	1173
4. Iringa	141	390	116	-	-	1733	-	-	2339	726

5. Kagera	36	688	239	61	-	1540	-	27	2591	1125
6. Kigoma	56	176	9	16	-	723	-	-	982	1071
7. K'Njaro	144	279	172	11	-	1075	-	1	1682	940
8. Lindi	42	86	8	10	27	1010	-	1	1184	531
9. Mara	93	844	133	15	-	961	-	3	2051	1206
10. Mbeya	82	339	126	7	-	2078	-	27	2697	1001
11. Morogoro	160	290	164	3	-	3661	-	-	4278	3555
12. Mtwara	125	98	4	-	9	1636	-	4	1876	1004
13. Mwanza	141	467	142	27	22	1655	-	-	2454	1852
14. Pwani	117	6	-	-	-	1431	-	-	1554	775
15. Ruvuma	31	188	33	10	-	860	-	-	1122	695
16. Rukwa	74	190	34	9	-	1278	-	-	1585	538
17. Singida	148	217	90	-	-	808	-	-	1263	439
18. Shinyanga	107	506	123	-	-	1266	-	-	2002	566
19. Tabora	95	159	188	6	23	1202	-	-	1673	1127
20. Tanga	148	288	17	65	41	1885	-	222	2466	1656
	3329	6397	1947	496	318	30661	-	207	43353	21188

TABLE F

IDADI YA WAFUNGWA WA AINA ZOTE TANZANIA BARA YA TAREHE 1.7.1991

(NUMBER OF INMATES OF ALL CATEGORIES IN TANZANIA MAINLAND

ON 1ST JULY, 1991)

Mkoa (Region)										
1. Arusha	209	357	69	4	2	1310	-	-	1951	318
2. D'Salaam	710	575	521	60	67	2654	-	22	4609	1175
3. Dodoma	229	436	62	202	145	2196	-	9	3279	1173
4. Iringa	187	334	52	-	-	1866	-	-	2439	726
5. Kagera	45	647	13	35	-	1367	-	14	2421	1125
6. Kigoma	39	127	81	7	-	1002	-	-	1729	1071
7. K'Njaro	184	375	62	4	-	1102	-	2	1729	940
8. Lindi	24	62	8	4	39	1111	-	-	1248	531
9. Mara	203	674	163	4	-	1467	-	-	2511	1286
10. Mbeya	153	273	143	15	-	2045	-	20	2649	1001
11. Morogoro	270	411	48	6	-	3952	-	-	4687	3555
12. Mtwara	85	96	8	-	8	1562	-	5	1764	1004
13. Mwanza	254	497	188	44	30	2130	-	-	3143	1852
14. Pwani	43	97	-	-	-	1394	-	-	1534	779
15. Ruvuma	39	98	45	2	7	955	-	1	1147	695
16. Rukwa	43	198	38	16	-	1375	-	-	1670	538
17. Singida	182	100	36	-	1	895	-	-	1304	439
18. Shinyanga	41	556	138	-	-	1525	-	-	2260	366
19. Tabora	76	177	226	6	20	1397	-	-	1902	1127
20. Tanga	172	246	15	107	51	2172	-	-	2763	1656
	3188	6426	2216	516	370	33477	-	73		21188

2:3:8. OTHER DATA

The Working Group collected numerous data which are filed in Secretary's correspondence file and in each members' relevant official files. We have marked up a few of them for incorporation into this report as shown in tables G, H, I, J, K, L and M herein below:

TABLE: AA: PRISON POPULATION (NATIONAL)

I. (a)

1960 - 1965	-	11,436
1970 - 1975	-	23,505
1980 - 1985	-	36,233

(b) Average maximum capacity during the years:

1960 - 1965	-	12,495
1970 - 1975	-	18,332
1980 - 1985	-	19,433

II. BB: RATE OF GROWTH OF PRISON POPULATION:

1960 - 1965	-	37.5%
1970 - 1975	-	63.4%
1980 - 1985	-	26.5%

CC: DELAY IN THE DISPOSAL OF CRIMINAL CASES:

DATE	PRISON	OVER 2 MONTHS TO 1 YEAR	ONE YEAR TO 2 YEARS	OVER 3 YRS
	ND MOROGORO ANGA RISONS IN TANZANIA MAINL			

DD: THE PRESIDENTIAL PARDON:

BEEN 1960 - 1961	68,616.1	6,200
BEEN 1970 - 1975	632.7	9,664
BEEN 1980 - 1985	217,398	17,915
87 AS OF 1.5.87		
	26,816	1,833

EE: MINIMUM SENTENCE PRISONER

YEAR	NO. OF ALL CONVICTS IN JAIL	MSA, 1972 CONVICTS (NUMBER OF)	MSA CONVICTS AS A% ALL CONVICTS IN JAIL
1972	32,107	5,374	16.7%
1973	34,040	6,219	18.3%
1975	38,524	6,895	17.8%
1982	28,933	7,006	24.2%
1985	33,685	7,874	23.4%

FF: ECONOMIC AND ORGANISED CRIME REMAND PRISONERS

YEAR	TOTAL NO. OF REMAND PRISONERS	REMAND PRISONERS UNDER THE ECONOMIC AND ORGANISED CRIME CONTROL ACT, 1984	EXPRESSED AS % OF ALL REMAND PRISONERS
1987	12,372	2,353	19%

GG: EXTRA-MURAL PENAL EMPLOYMENT

YEAR	TOTAL NUMBER OF CONVICTS IN JAIL	NO. OF CONVICTS SERVING 6 MONTHS IMPRISONMENT OR LESS	OF CONVICTS SERVING MONTHS IMPRISONMENT LESS	ANNUAL NO. OF PRISONERS ON EXTRA MURAL EMPLOYMENT
1972	32,107	17,771	7,787	2,881
1973	34,040	18,760	8,308	3,032
1974	34,789	16,896	9,035	2,155
1975	38,724	20,005	99.4	1,856

HH: TOTAL NUMBER OF CONVICTS IN THE PRISONS
FOR THE YEARS SHOWN BELOW

8		Average for 6 years
3		11,426
3		
1		
4		
2		- 68,616.1
2		Average for
8		- 16,821.3
2		
2		- 67,285.1
6		Average for
4		- 23,505.5
4		
2		
8		
3		- 141,032.7
6		Average for

	2	- 30,775.2
	8	- 123,100.7
	5	Average for
	9	- 36,233
	8	
	8	- 217,398

II. HIGHLY CONGESTED PRISONS AS ON 1/5/87

S/NO.	PRISON	AUTHORISED ACCOMMODA TION	CONVICTS	UNCONVICT ED	TOTAL	INCREAS E %
D'Salaam	1. Keko	248	98	1,480	1558	528.
	2. Ukonga	640	1770	181	1951	204
Morogoro	3. Mahabusu-Morogoro	42	110	239	349	730.
Shinyanga	4. Shinyanga	42	169	209	378	671.
Mwanza	5. Butimba	818	1057	616	1673	104.
Dodoma	6. Isanga	688	704	1145	1849	168.
Iringa	7. Iringa	95	232	379	611	545.
Mara	8. Musoma	195	219	451	670	243.5
Kagera	9. Bukoba	304	228	565	793	160.8
Mbeya	10 Ruanda Mbeya	320	408	505	913	185.3
Tabora	11 Uyui	588	563	248	811	37.9
K'Njaro	12 Karanga Moshi	640	786	727	1413	136.4
Tanga	13 Maweni	188	784	432	1216	76.7
Singida	14 Singida	112	223	332	555	395.5
Arusha	15 Arusha	195	394	653	957	390.7

IN MAY 1983 (300)

YEAR	MAINLAND	ZANZIBAR	TANZANIA
1961	10266	301	10567
1962	10323	309	10832
1963	10786	317	11103
1964	11055	326	11381
1965	11332	335	11667
1966	11615	344	11959
1967	11910	353	12263
1968	12220	363	12583
1969	12538	373	12911
1970	12864	383	13247
1971	13325	394	13719
1972	13803	404	14027
1973	14298	415	14713
1974	14811	426	15237
1975	15391	438	15829
1976	15895	450	16345
1977	15895	450	16345
1978	16952	474	17426
1979	17504	487	17994
1980	18080	500	18580
1981	18658	513	19171
1982	19255	527	19782
1983	19871	541	20412
1984	20506	556	21062
1985	21162	588	22462
1987	22611	606	22462
1988	23372	625	23997
1989	24159	643	24802
1990	24972	663	25635
1995	29589	787	30372
2000	35063	946	36009

KK: FROM BUREAU OF STATISTICS
POPULATION FIGURES OF TANZANIA

YEAR/CYCLE	MAINLAND	ZANZIBAR
1960 -1965	2.47	2.68
1965 - 1970	2.54	2.68
1970 - 1975	3.59	2.69
1975 - 1980	3.22	2.65
1980 - 1985	3.15	2.66
1985 - 1990	3.31	2.99
1990 - 1995	3.39	3.43
1995 - 2000	3.40	3.68

*These population figures refer to mid-year estimates for Mainland and Zanzibar for period between 1961 - 2000.

(PRISON CAPACITY AND CORRESPONDING ACTUAL POPULATION
OF PRISONERS IN SELECTED PRISONS)

GEREZA (PRISON)	ENEO LA CHUMBA Sq. ft.	WANA O STAHILI REQUIRED CAPACITY	WALIO KUWAMO ACTUAL INMATES	MAELEZO EXPLANATION
Isanga (Dodoma)	450	15	25	TB Wing
Singida	300	10	56	
Arusha	450	15	76	
Karanga (Moshi)	90	3	11	
Maweni (Tanga)	600	20	42	TB Wing
	30	1	5	TB Wing
Iringa	240	8	58	
Ruanda (Mbeya)	630	21	81	
Keko (Dar es Salaam)	450	15	83	
	630	210	64	
Ukongu (Dar es Salaam)	600	20	43	

TABLE I
INMATES POPULATION BY RETURNS ON 1986
MAFUNGULIO YA WAFUNGWA/MAHABUSU
MAGEREZA TANZANIA BARA KWA TAREHE 1/4/1986

MKOA									
Arusha	110	448	213	-	967	-	-	1738	
D'Salaam	615	719	245	-	1508	13	5	3111	1080
Dodoma	158	388	526	100	1699	4	2	2877	1123
Iringa	94	521	128	-	1571	-	-	2314	725
Kagera	325	558	123	5	1168	-	37	2216	1075
Kigoma	103	209	10	-	624	-	-	946	759
K'Njaro	162	550	163	-	980	-	-	1855	950
Lindi	102	48	15	6	1020	2	4	197	357
Mara	105	729	81	-	1103	-	27	2055	1156
Mbeya	107	185	254	1	1799	-	38	2384	1001
Morogoro	120	303	159	-	3839	-	-	4421	3294
Mtwara	103	179	83	-	1150	3	5	1523	1004
Mwanza	391	597	214	21	1417	-	-	2640	1372
Pwani	62	66	-	-	1833	-	-	1961	779
Rukwa	81	104	61	-	979	-	-	1225	550
Ruvuma	53	146	37	-	999	-	-	1235	790
Shinyanga	134	780	177	-	1200	-	-	2295	696
Tabora	133	373	152	7	1235	1	1	1902	1127
Tanga	191	341	125	9	1554	-	10	2230	1173
Singida	127	444	73	-	753		-	1387	390
JUMLA	3276	7688	2839	155	27398	23	133	41512	19737

2:3:12 AGE OF PRISON FACILITIES

The Working Group listed down the existing prison facilities and the period (year) each prison was built as shown in Table J herein below. Where there has been any extension to an existing prison, such extension for the purpose of this work has been treated as a new prison.

TABLE J
IDADI YA MAGEREZA YOTE TANZANIA BARA
PAMOJA NA MWAKA WA KUJENGWA
(NUMBER OF ALL PRISONS IN TANZANIA MAINLAND
AND THE YEAR BUILT

(REGION) MKOA	(PRISON) GEREZA	PRISON CATEGORY AINA YA GEREZA	(YEAR BUILT) MWAKA WA KUJENGWA	(CAPACITY) UWEZO WAKE
DAR ES SALAAM	Ukonga	Central Prison	-	-
	Keko	- do -	1957	340
	Wazo Hill	Open Prison	1976	100
MOROGORO	M/Simba	Open Prison	-	630
	M/Mara	-"	-	192
	W/Kuu	"	1964	751
	W/Vijana	"	1964	251
	G/Wanawake	"	-	90
	Mbigiri	"	1967	250
	Idete	"	1973	698
	Kilosa	District Prison	-	86
	Mahenge	"	1983	45
	Morogoro	"	-	42
	Kihonda	Open Prison	1977	150
Kiberege	Central Prison	-	500	
SHINYANGA	Shinyanga	District Prison	-	-
	Maswa	"	-	49
	Kahama	"	-	33
	Bariadi	"	1974	34
	Malya	"	1959	403

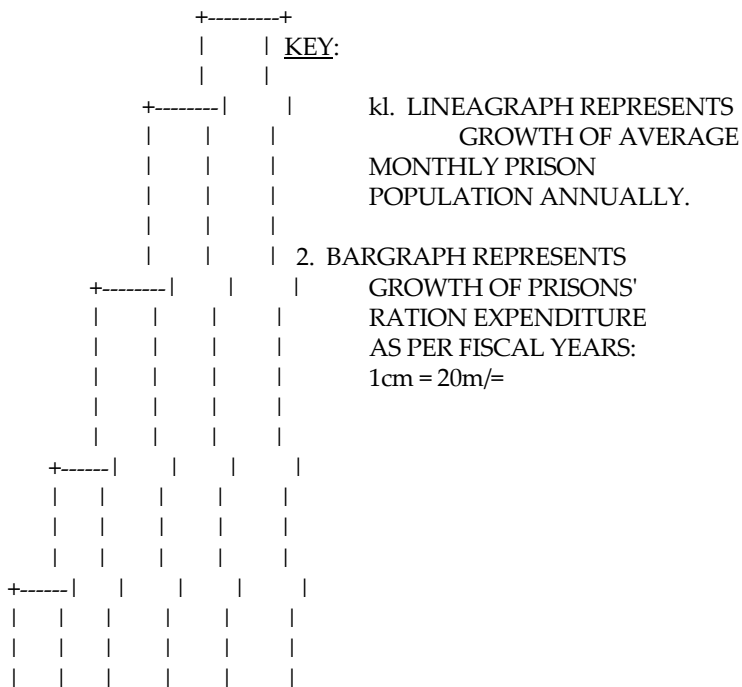
MWANZA	Butimba	Central Prison	1951	850
	Geita	District Prison	1944	147
	Ukerewe	"	1962	48
	Ngudu	"	1929	27
	Butundwe	Open Prison	1976	120
	Kasungamile	Open Prison	1979	60
KIGOMA	Bangwe	District Prison	1914	66
	Ilagala		1968	450
	Kasulu		1936	105
	Kibondo		1975	200
	Kwitanga		1981	250
PWANI	Bagamoyo	Open Prison	1969	217
	Utete	District Prison	-	22
	Kibiti	Open Prison	1968	150
	Mafia	District Prison	-	22
	Ubena	Open Prison	1964	273
DODOMA	Kongwa	District Prison	-	116
	Kondoa	"	-	69
	Kin'ang'a	Open Prison	1974	250
	Isanga	Central Prison		688
LINDI	K'Ngundwa	Open Prison	1969	-
	N'Ngwea	District Prison	1972	-
	Kilwa	"	1964	-
	Mahabusu			
	Lindi	Central Prison	1976	-
	Liwale	District Prison	-	-
IRINGA	Iringa	District Prison	-	96
	Isupilo	Open Prison	1971	181
	Njombe	District Prison	1966	253
	Pawaga	Open Prison	1975	96
	Ludewa	District Prison	1977	100
MARA	Musoma	District Prison	1938	195
	K'kari	Open Prison	1971	482
	Mugumu	"	1975	331
	Tarime	District Prison	1942	148
	M/Mugumu	"	-	150
	Bunda	"	-	100
KAGERA	Kitengule	Open Prison	1964	297
	Bukoba	District Prison	-	304
	B'mulo	"	-	47
	Rwamurumba	"	1970	230

	Ngara Kayanga Muleba	" " "	- 1977 1978	47 100 100
MBEYA	Rwanda-Mbeya Songwe Tukuyu Ngwala Ileje	Central Prison Open Prison District Prison Open Prison District Prison	1950 1967 1979 1979 1979	320 376 105 100 50

TABORA	Uyui M/Tabora Urambo M/Urambo Nzega	Central Prison District Prison Open Prison District Prison "	- - - - -	588 81 - - 53
RUKWA	Mollo K/Su'nga Kalila Mpanda	Open Prison District Prison Open Prison District Prison	1967 1929 1957 1957	200 137 198 115
RUVUMA	Kitai Mkwaya-Mbinga M/Songea Tunduru	Open Prison District Prison " "	1970 1975 1961 1961	384 133 76 52
MTWARA	Masasi Lilungu Newala Chumvi	District Prison Central Prison District Prison Open Prison	1940 1952 1975	75 748 131 50
TANGA	Maweni Korogwe M/Tanga Pangani Lushoto Kwamgumi Handeni Mng'aro	Central Prison Open Prison District Prison " " " " " Open Prison	1943 1955 - - - - 1972 - -	869 56 84 91 36 300 320 -
SINGIDA	Manyoni Singida Kiomboi Ushora	District Prison " " "	1959 - 1959 1976	115 117 50 156
ARUSHA	Arusha Mbulu Babati Loliondo	District Prison " " "	1963 1935 1973 1922	195 53 50 20
KILIMANJARO	Karanga Same Mwanga	Central Prison District Prison "	1949 1952 -	840 100 50

KIAMBATISHO 'A'

GROWTH OF PRISON POPULATION AND
RATION EXPENDITURE 1981 - 1985



2:3:14 INMATES RELEASED ON PRESIDENTIAL PARDON

The problem of congestion in prisons has sometimes been relieved temporarily by releasing convicted prisoners on Presidential Pardon as shown in Table L herein below:

TABLE LWAFUNGWA WALIOFAIDIKA NA MSAMAHAWA RAIS - TAREHE 7/7/1991

1. Waliostahili kuachiliwa baada ya kutimiza masharti ya Msamaha ni wafungwa	13,750
2. Wenye kifungo kisichozidi miaka mitatu (3) wanaopaswa kukaa gerezani miezi 3 (mitatu) na ambao wataachiliwa hatua kwa hatua hadi tarehe 6/10/91 ni	4,130
3. Wenye kifungo zaidi ya miaka mitatu (3) lakini sio zaidi ya miaka 10 ambao wamefunguziwa 1/3 ya kifungo chao zaidi ya msamaha wa kawaida ni	4,681
4. Wenye kifungo zaidi ya miaka 10 ambao wamefunguziwa 1/6 ya kifungo chao hivyo kuwafanya wapunguziwe 1/2 ya kifungo chao badala ya 1/3 kama ilivyo kawaida ni	<u>547</u>
Idadi kamili ya Wafungwa wote walionufaika na Msamaha huu ni	23,108

TABLE L - AA

GOVERNMENT NOTICE NO. Published on

THE PRISONS ACT, 1967

NO. 34 OF 1967

O R D E R

Made under section 50

THE PRISONS (GRANT OF REMISSION) ORDER,1991

WHEREAS by section 50 of the Prisons Act, 1967, the President of the United Republic is empowered on recommendation of the Principal Commissioner of Prisons, to grant remission to certain categories of prisoners:

AND WHEREAS the Principal Commissioner of Prisons has recommended to the President that remission granted to certain categories of prisoners:

NOW THEREFORE, I, ALI HASSAN MWINYI, do hereby, in exercise of the powers conferred by section 50 of Prisons Act, 1967, order as follows:

1. This Order may be cited as the Prisons (Grant of Remission) Order, 1991, and shall be deemed to have come into operation on the seventh day of July, 1991, in this Order referred to as "the effective date".
2. Subject to paragraph 3 of this Order -
 - (a) The remainder of the sentence of any prisoner, serving a term of imprisonment that does not exceed three years, and who has immediately before the effective date, already served three months or more of his term of imprisonment;
 - (b) The remainder of the sentence of any prisoner who has been, by the effective date, sentenced to serve a term of imprisonment that does not exceed three years, and who shall first serve three months of his term of imprisonment;
 - (c) One third of the sentence of any prisoner who has been, on or before the effective date, sentenced to serve a term of imprisonment exceeding three years but not exceeding ten years;
 - (d) One sixth of the sentence of any prisoner who has, on or before the effective date, been serving a

term of imprisonment exceeding ten years;:

(e) The remainder of the sentence of any woman Prisoners who is pregnant or breast feeding immediately before the effective date;

(f) Any prisoner who by the effective date is sixty years old or more;

(g) Any prisoner who has been certified by the appropriate Regional or District Medical Officer as suffering from terminal or contagious disease;

(h) Any Prisoner who is blind, crippled or incapable of working due to his physical incapacity is hereby remitted.

3. (1) Subject to sub-paragraph (2), the remission granted under this Order shall not apply to any prisoner who was -

(a) convicted and sentenced for robbery;

(b) convicted and sentenced under the Economic and Organized Crime Control Act, 1984 and the Economic Sabotage (Special Provisions) Act, 1983;

(c) Convicted and sentenced for being in possession of or using dangerous drugs;

(d) Convicted and sentenced for cattle theft;

(e) Convicted and sentenced for sexual offences;

(f) Convicted and sentenced to life imprisonment;

(g) Convicted and sentenced to death.

(2) The provisions of paragraph 3(1)(a), (b), (c), (d) and (e) shall not apply to prisoners specified in paragraph 2(e), (f), (g) and (h) of this Order.

Sgd.
The State House
Dar es Salaam,
5/8/1991.

ALI HASSAN MWINYI
President

The Police Crime Data has also been collected and shown in Table M herein below:

TABLE M: CRIME STATISTICS

*Statistical Abstracts for crimes reported for the years 1960 - 1965, 1970 - 1975, 1980 - 1985 and 1987 (May).

CRIME STATISTICS - 1960 - 1965

<u>YEAR</u>		<u>REPORTED</u>		<u>SOLVED</u>
1960	-		-	
1961	-		-	
1962	-	85,127	-	29,677
1963	-	75,581	-	22,962
1964	-	90,276	-	28,624
1965	-	102,604	-	24,300

VARIOUS CATEGORIES OF CRIMES

Against Lawful Authority (Total)

1960	-		-	
1961	-		-	
1962	-	1,251	-	565
1963	-	1,173	-	389
1964	-	1,897	-	578
1965	-	1,586	-	475

Against the Person

1960	-		-
1961	-		-
1962	-	18,373	- 9,570
1963	-	17,547	- 1,060
1964	-	23,210	- 10,768
1965	-	26,642	- 8,985

Against the property

1960	-		-
1961	-		-
1962	-	65,493	- 19,542
1963	-	56,906	- 14,513
1964	-	64,571	- 17,278
1965	-	74,376	- 14,840

<u>YEAR</u>		<u>REPORTED</u>		<u>SOLVED</u>
1960	-		-	
1961	-		-	
1962	-	2,481	-	1,216
1963	-	2,172	-	865
1964	-	1,522	-	561
1965	-	1,625	-	412

OTHER OFFENCES

1960	-		-
1961	-		-
1962	-	13,027	- 5,865
1963	-	12,116	- 4,989
1964	-	17,479	- 7,953
1965	-	18,647	- 6,347

CRIME STATISTICS - 1970 - 1975

1970	-	114,437	-	17,815
1971	-	103,444	-	16,716
1972	-	100,667	-	15,578
1973	-	87,530	-	13,405
1974	-	102,130	-	13,759
1975	-	114,253	-	12,675

VARIOUS CATEGORIES OF CRIMEAGAINST LAWFUL AUTHORITY (TOTAL)

31

1970	-	1,789	-	552
1971	-	1,724	-	491
1972	-	1,643	-	442
1973	-	1,999	-	541
1974	-	1,974	-	618
1975	-	2,566	-	985

AGAINST THE PERSON

1970	-	37,154	-	8,554
1971	-	34,598	-	8,223
1972	-	31,702	-	7,236
1973	-	31,882	-	6,622
1974	-	30,907	-	6,064
1975	-	31,370	-	5,071

AGAINST PROPERTY

<u>YEAR</u>		<u>REPORTED</u>		<u>SOLVED</u>
1970	-	73,916	-	8,409
1971	-	65,739	-	7,728
1972	-	66,036	-	7,666
1973	-	45,855	-	4,750
1974	-	66,639	-	6,657
1975	-	74,966	-	6,405

AGAINST PUBLIC MORALITY

1970	-	1,578	-	300
1971	-	1,383	-	274
1972	-	1,286	-	234
1973	-	-	-	-
1974	-	-	-	-
1975	-	469	-	102 others.

OTHER OFFENCES

1970	-	8,660	-	1,510
1971	-	6,175	-	1,254
1972	-	6,624	-	1,492
1973	-	6,309	-	1,265
1974	-	1,143	-	201
1975	-	3,347	-	311

CRIME STATISTICS 1980 - 1985

1980	-	214,180
1981	-	227,350
1982	-	222,113
1983	-	239,531
1984	-	240,898
1985	-	231,648

VARIOUS CATEGORIES OF CRIMESAGAINST LAWFUL AUTHORITY (TOTAL)

1980) Not Available.

1985)

AGAINST THE PERSON

1980	-	1,503
1981	-	1,553
1982	-	1,571
1983	-	1,694
1984	-	1,789
1985	-	1,797

AGAINST PROPERTYARMED ROBBERY

<u>YEAR</u>		<u>REPORTED</u>
1980	-	635
1981	-	524
1982	-	602
1983	-	527
1984	-	613
1985	-	524

ROBBERY WITH VIOLENCE

<u>YEAR</u>		<u>REPORTED</u>
1980	-	486
1981	-	484
1982	-	438
1983	-	502
1984	-	581
1985	-	661

Cattle theft

1980	-	1,581
1981	-	1,975
1982	-	1,736
1983	-	1,326
1984	-	1,559
1985	-	1,430

Theft of Parastatal Organization

1980	-	989
1981	-	1,214
1982	-	1,811
1983	-	861
1984	-	912
1985	-	880

<u>Theft of Govt. Property</u>			<u>Theft of Motor-Vehicles</u>		
1980	-	545	1980	-	192
1981	-	669	1981	-	223
1982	-	665	1982	-	215
1983	-	567	1983	-	138
1984	-	621	1984	-	181
1985	-	587	1985	-	183
<u>Buglary and House Breaking</u>			<u>Against Public Morality</u>		
1980	-	1,521	1980	-	44
1981	-	1,969	1981	-	77
1982	-	2,865	1982	-	70
1983	-	2,767	1983	-	60
1984	-	3,512	1984	-	70
1985	-	3,700	1985	-	123
<u>Unnatural Offences</u>					
		1980	-		10
		1981	-		6
		1982	-		10
		1983	-		13
		1984	-		12
		1985	-		13

CRIME STATISTICS JAN - JUNE, 1987

1. Against lawful authority (Total) January) Not available
June)

2. Against the Person

Murder

January)

June) 1987 Reported - 720

Against the Property

Armed Robbery

Reported 217

Theft of M/Vehicles

Reported - 62

Robbery with Violence

Reported - 228

Burglary and House Breaking

Reported - 1,503

<u>Cattle theft</u>	<u>Against Public Morality</u>
Reported - 1,101	Rape - Reported -
<u>Parastatal Organization</u>	<u>Unnatural Offence</u>
Reported - 286	Reported -
<u>Government Property</u>	
Reported - 210.	

2:4 ANALYSIS OF THE DATE

Since it has taken over 5 years for our Working Group to prepare this report it is pertinent to start with the question of whether the problem of congestion in prison as it existed in mid 1986 when this working group was formed is still relevant today. From the data shown in table A, B, C, D and E the answer is simply yes. The inmates on July 1986 in all prisons in the country totalled 41,098 prisoners against the prison's capacity to accommodate only 19,737 inmates. By 1st July, 1991 the inmates total population in the country had grown to 46,266 prisoners against the prisons' capacity to accommodate only 2,188 inmates.

2:4:1 Problem of Congestion in Prison since Independence in 1961

From the data in table GAA, BB & HH and tables A - E it is apparent that prior to and after independence of Tanganyika (Tanzania Mainland) which was gained on 9th December, 1961 there was no problem of congestion in prison because whereas the coverage capacity of prison between 1960 and 1965 was 12,499 inmates the actual average population in prison for the same period was only 11,436 inmates. The problem grew worse than before during the period of 1980 - 1985 when the inmates population averaged 36,233 as against the prison capacity for 19,433 inmates only.

2:4:2 Crimes Reported

The Police statistics in Table M show that the population of prisons which we regard as a serious problem is just an iceberg in the sea of criminality in the country. In 1965 for example crimes reported to the police amounted to 102,604. The average rate of inmates as a result of arrest and convictions arising out of the same crime wave was only 11,436. By 1985 the crimes reported to the police had increased to 231,648 per annum where as the inmates population had increased to an average of 36,233 by 1985.

Normally, crimes reported to the Police are only a fraction of the actual crimes committed within

the country for many victims of crime, do not report at all to the police or to anybody. Also there are many other crimes committed which do not cause injury to any individual person or which go undetected etc.

2:4:3 Government Expenditure on Inmates

By keeping criminal suspects or convicts in prison it costs the government substantial amount of its budget. Table K shows by a graph diagram the increase in rations expenditure on inmates for the period of 1981 - 1985. The cost of ration for prisoners has arisen from 20.5 million in 1985 to over 311.7 million in 1985. Now it is many times higher than that.

2:4:4 Government Expantion on Prison Capacity

From Tables A - F and Table GAA (a) and (b) it can be seen as follows: between 1965 and 1975 there was a great expansion of prison capacity from a capacity of 12,499 inmates in 1965 to a capacity of 18,339 inmates in 1985.

Thereafter, construction of prisons was hardly done for prison capacity to accommodate inmates increased from 18,339 inmates in 1975 to only 21,188 inmates by 1st July, 1991, whereas we have shown above that prison population of inmates increased from an average of 11,436 inmates in 1965 to 23,505 inmates in 1975 and up to 46,266 inmates by 1st July 1991 (see Table F).

2:4:5 National Population Growth

Table G - JJ and KK show that national population growth and its percentage. Between the period of 1961 and 1991 the population of Tanzania has grown from 10,567,000 in 1961 to over 25,000,000 in 1991.

2:4:6 Presidential Pardon

One of the quickest ways of alleviating the problems of congestion in prison has been to release prisoners serving imprisonment terms of presidential pardon. This is shown in Tables G.DD, L and L.AA. There were 35,612 prisoners released in this manner between 1960 and 1987. On 7th July, 1991 as shown in Table L 13, 13,750 prisoners were released from prison and other 4,130 prisoners were released for the same reason of Presidential Pardon on 6th October, 1991 with a total of 17,880 prisoners out of 46,266 inmates. The total number of prisoners who will benefit from this clemency who add up to 23,108.

The Director of Public Prosecutions (DPP) for under reasons of public interest has served well in alleviating the problem of congestion of remandees through withdrawal of charges facing accused persons. For example: on 30th June 1991 the DPP directed the release of 159 remandees facing charges of manslaughter, attempted murder and infanticide after withdrawing charges which were pending in court for periods between 3 years to 10 years.

This exercise of withdrawing charges through nolle prosequi resulting into release of remandees from prison for reasons of public interest thereby reducing the problem of congestion of inmates and overduly delayed cases has previously been done by the DPP in 1983 and again 1989/90 in respect of

Sungusungu (traditional militia) remandees in Mara, Mwanza, Shinyanga and Tabora regions (see Table N).

There are many schools of thought in support or against release of convicted prisoners on presidential pardon or of remandees on nolle prosequi of the DPP. But, without going into argument of the merits and demerits of such release of inmates it serves the same good and lawful purpose of alleviating the problem of congestion in prison at any particular time when such exercise is executed.

2:4:7 Extra-Mural Penal Employment

The data collected by the Working Group, shows in Table G.GG that between 1972 and 1975 there were 9,924 convicted prisoners who were released from prison on extra-Mural Penal employment. This exercise contributed a lot towards reducing the problem of congestion in prison.

As a result of decentralization of Government in 1972 and abolition of local government authorities which were the main users of the extra-mural penal employment prisoners released from prison for serving the remaining punishment on extra-mural employment dwindled fast to a complete halt. The exercise of extral mural employment after re-introduction of local government authorities in 1982 has hardly been able to pick up sufficiently to have an impact in reducing the problem of Congestion in Prison.

2:4:8 Other Data

The short analysis of the data given here in above is not exhaustive. It is open for any different interpretation depending on the use upon which the data is put. There is also a mass of other data collected by the Working Group in the cause of its work which has not been incorporated into this report but is open for use by any interested party. It is contained in the respective correspondence files of the Secretariat to the Working Group and of each member of the Working Group.

TABLE N
MASHAURI YALIYOFUTWA MAHAKAMANI TAREHE 30 JUNI, 1991
KWA MAAGIZO YA MKURUGENZI WA MASHTAKA (DPP)

S/N0	JINA LA MAHABUSU	NAMBAY YA KESI	MAELEZO
1. 1.	<u>MKOA WA RUKWA</u> Madwelo Watson	H.C. Cr. Sess. 5/88	Tatizo la kupatikana mashahidi
2. 2. 3.	<u>MKOA WA MTWARA</u> Bakari Mussa Daudi Wandala	D/C.Cr.Sess.49/90 P./1/No. 11/88	Hukumu imeshatolewa na Mahakama Kuu Mtwara Nolle Prosequi
3. 4. 5. 6. 7. 8. 9.	<u>MKOA WA DODOMA</u> Daniel Matonya Mahindo Elias Mkunjile Samson Chiningu Chiban Stephen Ramadhan Opendo Richard Magagasi	H.C. CR.Sess.No... H.C. Cr. Sess.No.25/90 H.C.Cr.Sess.No.11/90 Cr.Sess.21/87-8.10.87 DR/CID/SCR/25/86 D/C/ Dodoma CC 198/88	Tatizo la ushahidi Hukumu imeshatolewa na Mahakama Kuu DODOMA Attempted Murder Nolle Prosequi Discharged on 4/3/91 by HEC Session at Kondo Amefungwa jela tarehe 2/5/1991

10.	Girengisa Mbuu -Hussein Hassan -Lelo Grery -Juma Athmani	D/C/ Kondo CC.18/88	Wameachiwa huru tarehe 8/5/1991 Nolle Prosequi Nolle Prosequi Nolle Prosequi
11.	Abbasi Ally	DR/CID/SCR/Y/394/82	
12.	Ramadhani Kidranga	D/C Kondo CC.21/84	Nolle Prosequi 5/3/1991
13.	Grant Valentine	H/C.85	
14.	Kaaya Degere -Jumanne Chori -Jumanne Hassani -Ramadhani Leba	D/C/ Kondo CC 1/85	Nolle Prosequi 5/3/91 Nolle Prosequi 5/3/91 Amehukumiwa kunyongwa - 20/3/91 Wamehukumiwa 5/3/1991
15.	Iddi Hamisi	D/C/ Kondo 15/86	
16.	Papa Sambisha	D/C/ Kondo CC 25/87	Amehukumiwa 8/3/91
17.	Ally Bakari	D/C Kondo CC 29/86	Amehukumiwa 8/4/91
18.	Waum Walidi	D/C Kondo CC 21/86	Amehukumiwa 8/4/91 Nolle Prosequi 24/4/91
19.	Hamisi Gregory		Amehukumiwa 14/3/91
20.	Hassani Ramadhani	D/C Kondo	Amehukumiwa 8/4/9a
21.	Ismail Mohamed	D/C/Kondo CC.17/86	Nolle Prosequi 6/2/91
22.	Ally Ismail	D/C Kondo CC.17/87	
23.	Mkotya Motoli	D/C CR. Sess. 1/90	Discharged 7/2/91
24.	Kisansa Bonno	D/C Dodoma CC.4/86	Amehukumiwa 17/1/91
25.	Iddi Shabani Chilunga Jongwa	D/C Cr. Sess. D/C Cr. Sess.	
26.	Chale Lemto		
27.	Amos Mbalega Manase Mashauri	D/C/ Dodoma CC.80/87 D/C Dodoma CC.271.87	

S/NO.	JINA LA MAHABUSU	NAMBA YA KESI	MAELEZO
4. <u>MKOA WA SINGIDA</u>			
28.	Bilauzo s/o Buhendo	NC.Cr.Sess.Case No.24 of 1990 NC.Cr.Sess.Case No.21 of 1990	Tatizo la mashahidi kupatikana
29.	Mwendo Naemia	NC.Cr.Sess.Case No?	Tatizo la mashahidi Manslaughter - self defence.
30.	Jumanne Iddi	NC.Cr.Sess. Case No.28 of 1989 NC.Cr.Sess.Case No.	Tatizo la mashahidi Tatizo la mashahidi
31.	Mustafa Saba		Tatizo la mashahidi
32.	Hadija Hanga	NC.Cr.Sess. Case No. 17/89 NC.Cr.Sess. Case No. 338/87	Tatizo la mashahidi
33.	John Mgana Aloys Mwaja Nkhandi		Tatizo la mashahidi
34.	Robert Gunda Mtakona Selemani		Mauaji bila kukusudia -mtuhumiwa alikuwa akijitetea. (Element of self Defence).
35.		HC.Cr. Sess.	Manslaughter - Kigo kwa bahati mbaya - bila kutegemewa

36.	Eliukondo Samson	HC.Cr. Sess. Case No... HC.Cr.Sess. Case No...	Nolle Prosequi Mauaji yalifanywa na watu wenti zaidi - (mob justice) si vyema kuwashtaki wawili tu Kifo kilisababishwa na kundi la watu
37. 38.	Charles Mathias David Masenepya Emmanuel Sekundo	HC.Cr. Sess. Case No...	
39.	Kipini Ngudu Mwantandu Gwau Charles Ghumbi		
5.	<u>MKOA WA MARA</u>		
40.	Odira Akuti	D/C TARIME CC. 158/87 HC Cr. Sess.133/88	Tatizo la mashahidi
41.	Julius Maregesi -Christoper Msubi -Chacha Mwita Chacha	D/ MUSOMA CC. 158/87 HC.Cr. Sess.133/88	Tatizo la mashahidi
42.	Kehengu Kirunguro -Bernard Chacha -Msiba Wandeti -Magesa Kingaro -Charles Kasumba	D/C/ MUSOMA CC. 306/86 HC.CR. Sess. 133/88	Tatizo la mashahidi
43.	Pius Oyego	CC.92/85 TAR/IR/STPO/7185	Shtaka liliondolewa Mahakamani

S/NO.	JINA LA MAHABUSU	NAMBA YA KESI/JALADA	MAELEZO
6.	<u>MKOA WA ARUSHA</u>		
44.	Sumay Sashan	1. Cr. Case 125/84	Kesi hii ilikwishasikilizwa na Mahakama Kuu. Crim. Sess. 24/87 mshitakiwa alipatikana na hatia na kuhukumiwa kunyongwa tarehe 27/3/91 Nolle Prosequi entered - 4/5/91 Mauaji (Mob justice) tarehe 7/10/88 saa 13.30 mchana katika Kijiji cha Acheni, Nojun Lazaro aliuawa na kikundi cha watu kwa kupigwa na fimbo kwa tuhuma za kudhulumiana mali _ Nolle Prosequi should be entered.
45.	Maleje Lemadal Lemadal	2. DC KITETO Cr. Case 77/87/KIB/IR/342/87	
46.	Godson Nathaniel -Humphrey Alexander -Ernest Nael -Felix Ataulo	3. DK ARUSHA Cr. Case 120/88TEN/IR/892/88	

	-John Michael		
7.	<u>MKOA WA KILIMANJARO</u>		
47.	Petro Babu	1. MOS-PI NO 31/81 MOS/IR/4811/81	Mahabusu huyu alikuwa anaugua ugonjwa wa akili. Shauri lake lilisikilizwa 27/2/87 kwa mujibu wa kifungu 219 CPA aliamuriwa kubaki gereza la vichaa Nolle Prosequi - was entered on 4/5/91.
48.	Abbas Ally	2. MOS/CC NO..62/84	Shauri hili liliisha baada ya mahabusu kuhukumiwa kunyongwa tarehe 10/4/1991
49.	Hilda Abel	3. Cr.Sess.No.12/88	Nolle Prosequi ilitolewa tarehe 4/5/1991
50.	Living Nicolaus	4. CC.34/87 MOS/IR/1585/87	Nolle Prosequi
51.	Aopald Joseph -Felix Rafail -Ally Issa Kileo	CC.NO. 10/87 HI/IR/1561/86	

52.	Moses Josephat	Cr.Sess.65/88	Kwa mujibu wa kifungu 219(a), Mahakama iliamuru mahabusu apelekwe tarehe 4/4/90
53.	Nicolaus -Malimito -Martini	MOS/IR/2500/87 KR/CID/SCR/691/87	Watuhumiwa hao hsuari lao limekwisha tarehe 15/3/1991 wote wamehukumiwa kunyongwa
54.	Cornel Mzee -Julius Mwisanga -Paulo David -Juma Hussein -Joseph	HC/CR/Sess. Case 28/29	Watuhumiwa wote waliachiliwa katika kikao cha Mahakama Kuu baada ya Nolle Prosequi kutolewa
55.	Arobogast Leonard	HC.Sess. 11/88	Acquitted - 12/4/1991
8.	<u>MKOA WA TANGA</u>		
56.	Waziri s/o Mwadibwa Ramadhani Rashidi	1. DC. Tanga CC.NO.120.88	Nolle Prosequi 15/5/1991
57.	Hassan s/o Zigo Kisasi	2. D/C Tanga CC.NO.497/87 TAN/IR/3462/87	Mnamo 7/12/87, Mshitakiwa alimpiga mwanae Mo. Hassan Zibe ambaye alifariki Hospitali tarehe 10/12/87. Mshitakiwa alimpiga makofi mawili usoni baada ya marehemu kukataa kwenda shule. Hakuna ushahidi wa

			Daktari kuonyesha "cause of death". The charges should be dropped.
58.	Almando Brash	3. D/C PANGANI HC CR. Sess. Case 8/91	Shitaka hili limeondolewa Mahakamani 8/5/91 na mshitakiwa kuachiwa huru
59.	Abibu Hussein	4. D/C/ KOROGWE CC.101/87 KOR/IR/758/87	Shitaka hili liliondolewa Mahakamani kwa "Nolle Prosequi" na mshitakiwa aliachiwa huru - 27/2/1991
9.	<u>MKOA WA MBEYA</u>		
60.	Andalwisye	1. D/C ILEJE CR.C.20/88 MB/IR/1591/83	Convicted Criminal Lunatic - 16/5/1991

61.	Andrew s/o Gabriel	2. D/C ILEJE CC.6/87 CR. CASE NO.70/88	Criminal Lunatic 2/4/1990
62.	Ngao Mjobege Christoper Sengo	3. D/C/ MBEYA CC.NO.1/88 CHU/IR/691 87 22/1/88	Marehemu SITA LUHENDE LUSHANGU aliuawa 21/10/87 alipigwa na watu. Hakuna ushahidi wa kutosha na 'Information for murder' ilikuwa 'filed' 11/5/1991. - <u>Shitaka liondolewe</u> (Nolle Prosequi should be entered).
10.	<u>MKOA WA IRINGA</u>		
63.	Gerevas Zakaria	1. D/C/LUDEWA CC.5/86	Mauaji -Rotalia Ngatwende alipigwa na mumewe (Mshitakiwa) tarehe 25/4/86 kwa mateke na kufariki 25/4/86 walimbania kirago. Hakuna ushahidi wa "cause of death" Kesi ifutwe
64.	Philipo K. Mzena	2. D/C LUDEWA CC.8/8/87 MLA/IR/78/87	Mauaji -Marehemu Catherine Ngai alifariki 27/5/87 baada ya kunywa ulanzi wenye sumu tarehe 26/5/87 Mshitakiwa ni mtalaka wake. - <u>Hakuna ushahidi</u> wa kumuunganisha na "alleged poisoning" - <u>Shitaka liondolewe</u>
65.	Charles s/o Mrope Barnaba Haule Ali Abdallah	3. D/C LUDEWA CR.SESS.105/90	Mauaji -Marehemu aliuawa kwenye ugomvi baada ya ulevi. "Main witness could not be traced". -Kesi ifutwe
66.	Simon s/o Kanyaswa	4. D.C IRINGA	Mauaji (Manslaughter)

		CR.SESS. NO.20/89	-Marehemu alifariki kwa kunaswa na umeme (accident) "Nolle Prosequi" should be entered
--	--	----------------------	--

67.	Mariam Ngope Victoria Mbwilo Daudi Ngoke	D/C NJOMBE CR.C.NO.178/90 NJ/IR/369/90	Mauaji (Manslaughter) "on mob justice"
68.	Daudi Mganga	6. D/C IRINGA CC.41/88 CR.SESS. 110/90	-Manslaughter - Deceased died after falling out of a moving vehicle. -Nolle Prosequi to be entered
69.	Julius s/o Sasiambili	7. D/C IRINGA CR. SESS. 77/88	-Deceased died after being hit with a stick on the head during a drunk squable
70	Asatea s/o K. Lukuwi	7. D/C/ IRINGA CC.34/88 CR.SESS. 160/90	-Deceased died after being hit on the stomach during drunk squable -Enter Nolle Prosequi
11.	<u>MKOA WA TABORA</u>		
71.	C367 PC SILVANUS	CR.SESS.CASE NO.87/90	Attempted Murder
72.	Petro Luswaga	CR.SESS.CASE NO....	Manslaughter (Self Defence)
73.	CR. Hamisi Tenes Issa Ramadhani Seleman Yasin Seleman Juma Hasan	CR.SESS.CASE NO. ...	Manslaughter (Self Defence)
74.	Manyanda Shija Ikuli	CR.SESS.CASE NO.326/86	Manslaughter (Self Defence)
12.	<u>MKOA WA KIGOMA</u>		
75.	Masimango Daudi	CR.SESS.CASE NO.326/86	Manslaughter (Self Defence)
76.	Tatu Kimzanye	CR.CASE 151/87 CR.SESS. 81/90	Attempted Murder
77.	Lucas Majengo	CR.SESS.125/87	Judgment was made - 22/2/1991
78.	Lazaro Madebe	CR.CASE 1/89 CR.SESS. 91/89	Judgment was made - 23/2/1991

13.	<u>MKOA WA SHINYANGA</u>		
79.	Pascal Makangala James Ngusa	CR. CASE. 91/89	Mob Justice

80.	Mitanda Likunga Masanja Malongo	CR.SESS.84/89	Mob Justice
14.	<u>MKOA WA MWANZA</u>		
81.	Gervas Wiliam	CR.SESS. 79/90	Judgment was made on 20/2/91
82.	Charles Katemi	D/GEITA CC.40/88	Problem of witness
83.	Makanika Lufa Saida Mashina	D/C GEITA CC.19/88	Problem of witnesses
84.	Juma Lutenganja	D/C GEITA CC.1/89	Problem of witnesses
85.	Lweyenga Wanjala	D/C GEITA CC.10/89	Problem of witnesses
86.	Sayilwa Kateni D/C	D/C GEITA CC.21/89	Self Defence (Manslaughter)
87.	Balya Mahunga	D/C GEITA CC.26/89	Problem of witnesses
88.	Bwege Justice	D/C GEITA CC.26/89	Attempted Murder
89.	Mahiku Gagweli	D/C GEITA CC.35/89	Attempted Murder
90.	Mulekezi Inocent	D/C GEITA CC.42/89	Problem of witnesses
91.	Essau Sanjo	D/C GEITA CC.48/89	Problem of witnesses
92.	Nkwimba Masikini	CR.SESS.NO. 48/89	Self Defence (Manslaughter)
15.	<u>MKOA WA KAGERA</u>		
93.	Pascal Kamagwa	KAGR/CID/SCR/5/88 CC.5/88	Manslaughter (Self Defence)
94.	Honerine Aloyce	KAGR/CID/SCR/222/86 CC.52/86	Manslaughter (Self Defence)
95.	Amidu Ibrahim Ambrose Kasele	KAGR/CID/SCR/516/87 CC.69/87	Manslaughter (Self Defence)
96.	Kahamanyi Makuba	KAGR/CID/SCR/516/87 DI.85/87	Manslaughter (Self Defence)
97.	Rudovick Rwebukoba Jojina Petro	KAGR/CID/DCR/344/86	Manslaughter (Self Defence)
98.	Amidu Ibrahim	KAGR/CID/SCR/414/87 CC.69/87	Mob Justice
99.	Christina Petro Nestory Kambena	KAGR/CID/SCR/512/87	Mob Justice
100.	Felician Mkulasi	CR.C.16/87	Mob Justice

16.	<u>MKOA WA PWANI</u>		
101.	Waziri Salum Mkongogo	CR.SESS.64/89	Manslaughter arising out of a fig

	Yohana Waziri Mkongogo		
102.	Athuman Shomari	CR.SESS.68/88	Mob Justice
103.	Mandili Juma	CR. SESS. 50/90	Attempted Murder
104.	Boniface Chenya	CR.SESS. 25/90	Lack of Evidence
105.	L/CPL.Francis	PWA/CID/SCR/668/85	Accused found guilty of Manslaughter sentenced - 5 years
106.	Samwaja Omari	PWACID/SCR/155/88	'Manslaughter' Mistake of fact
<u>MKOA WA DAR ES SALAAM</u>			
107.	Frida Ringo Hamisi Mohamed	CR.SESS 78/88	Mob Justice
108.	Andrea Rock	CR.SESS. 48/86	Manslaughter (Self Defence and property)
109.	Hamisi Kilatu	CR.SESS.NO.82/88	Manslaughter (Self Defence and property)
110.	Jumanne Nassoro Mfaume Sultani Shabani	CR.SESS. NO.12/88	Lack of Evidence on one of the accused
111.	Venance Malikior	DSMR/CID/SCR/Y CC.1111/84	Lack of evidence and problem of witnesses
112.	Julias Mwanika	CR.SESS. NO.....	Lack of Evidence
113.	Rhoda Jackson	CR.SESS. NO. 113/88	Child destruction
114.	Ally Athuman	DSMR/CID/SCR/344/84 KIVUKONI 592/84	Mob Justice
115.	Zuberi Muntanda	CR.SESS. NO.15/86	Mob Justice
116.	Michael Michael	KIVUKONI CR. CASE NO.208/88	Lack of Evidence
<u>MKOA WA ARUSHA</u>			
117.	Giloguma Gigachinja	CR.SESS.CASE NO.71/86	Manslaughter (Self Defence)
118.	Mota Gwandu	CR.SESS.NO.68/85	Manslaughter Quarrel
119.	Dalagu Gidabu Ngole	HC.CR.SESS. 47/89	Manslaughter Quarrel
120.	Gidang'adi Sodoweya	CR.SESS.NO. 66/89	Manslaughter Quarrel
121.	Festo Joseph	CR. SESS. NO. 20/89	Innocent
122.	Gadiye Amnaay	CR.SESS.C.NO.25/90	Manslaughter - Fight
123.	Emmanuel August	CR.SESS. CASE NO.31/89	To enter Nolle
124.	Amsi Ngaida	CR.SESS.CASE NO. 31/89	Manslaughter Fight

			(Self Defence)
125.	Godson Nathanael	CR.CASE NO.120/88 D/C ARUSHA	Manslaughter - Fight
126.	Mohamed Abdallah	CR.SESS.CASE NO. 55/90	Manslaughter - Adultery
127.	Elias Batholomew	CR. 9 NO. 75/89	Manslaughter (Self Defence)
128.	Geje Tlatla	MBULU DC. 36/87	Manslaughter - Fight
129.	Nathanael Andrea	CR. 9 NO. 72/90	Manslaughter - Fight
130.	Matei Amedons Kisaka	PI/28/88	Manslaughter - Fight
	<u>MKOA WA TANGA</u>		
131.	Ezekiel Isack s/o Luhanyamo Bryson Luhanyamo Luhanyamo Luhanyamo	CR.SESS. NO.16/89	Manslaughter arising out of a fight
132.	Mahija Bakari	CR.SESS. NO. 29/88	Manslaughter - Fight
133.	Amaldo Brashi	CR.SESS.CASE NO.9/91	Manslaughter -Fight Nolle Prosequi
	<u>MKOA WA MBEYA</u>		
134.	Andalwisye Kitembo	CR.SESS. CASE NO. 20/89	Manslaughter - arising out of fight
135.	Daudi Mwashitete	CR.SESS. CASE NO. 43/89	Manslaughter (Self Defence)
136.	Exavery Mtandiji	CR.SESS. NO. 18/88	Probelm of witnesses
137.	Jaston Mlolo	CR.SESS. NO.6/89	Manslaughter - Fight
138.	Richard Tupa & Sichara	CR.SESS NO. 72/88	Manslaughter
140.	Bahati Mwibambalage	CR. SESS. NO. 30/89	Manslaughter - arising out of a fight
141.	Gervas Zakari	LUDEWA CR. 5/86	Manslaughter - Intoxication
142.	Charles Mrope Barnabas Haule Ali Abdallah	LUDEWA CR. SESS.	Manslaughter - Intoxication
143.	Gerald F. Sanga	LUDEWA DC 28/87	Manslaughter - Fight

144.	Simon Kanyagwa	CR. SESS. 20/89	Death accident/negligence
145.	Domnicus Kabwa & Christopher Kisuka	IRINGA DC CC. 33/88	Manslaughter - Out of quarrel

146.	Anthony Ngimbuzi	CR. SESS. NO. 108/88	Manslaughter out of a fight
147.	Julius Sasiambili	CR.SESS. NO. 77/88	Manslaughter out of a fight
148.	Astrea Lukuwi	CR. SESS. NO.160/90	Manslaughter - quarrel
149.	Athman Mandai	CR.SESS. NO.20/85	Mob Justice
150.	Daniel	DODOMA CR.SESS.4/85 1233/88	Manslaughter - Fight -Weak evidence
151.	Matonya Mahindo	CR.SESS.NO.25/90	Quarrel in a bar
152.	Lebwaga Maswaga	CR.SESS. NO.64/89	Fight in a Pombe bar
153.	Gideon Lolongain	DC.CC. 11/87	Manslaughter - after a quarrel
154.	Chimua Suma	CR.SESS. NO.34/91	Manslaughter - arising out of a quarrel
155.	Malongo Mkatalo	DODOMA CR.C. 11/88	Manslaughter - arising out of a quarrel
156.	Mtumila Mesanyi	DODOMA CC. 9/84	Accused of unsound mind

2:5: Other confinement facilities

We have to clarify that there are other confinement/detention/remand facilities which we have not covered in our work. These include police remands, court martial remands, primary court remands etc. which might be having the same problem of Congestion as in the Prisons.

We have not dealt with these other confinement facilities because they were not covered in our Working Group's terms of reference. Better opportunity might be found elsewhere to examine if there is any problem of Congestion in them.

2:5:2: Civil Prisoners

Prisons cater for civil prisoners too. But during our research we hardly encountered a single civil prisoner. From the Prisons records too, there appears to have hardly ever been a civil prisoner incarcerated in the prisons. Civil imprisonment therefore, is not a problem in this country although the law provides for it.

2:5:3: Remand homes and approved schools

(a) Under the Juvenile and Young Persons Ordinance criminal offenders who are under the age of 12 years (juveniles) and 16 years (young persons) are required to be kept in remand homes if upon being charged with criminal offences they fail to secure bail. At the end of their trial if they are convicted and sentenced to serve any imprisonment term they are required to be kept in approved schools where they can stay until they reach the maximum age of 18 years.

(b) At this stage a hint may be made upon persons above 16 years of age but under 18 years who are convicted of capital offences like murder or treason punishable by death. They can not under the Penal Code (Cap.16) be sentenced to death. Instead, they are required to be kept in prison at the President's pleasure i.e. until the President releases them from prison under his constitutional powers of prerogative of mercy. Since they are kept in normal prisons we have already covered their problem when dealing with the general problems of Congestion in Prisons.

(c) As for juvenile and young persons with less than 16 years our Working Group has covered them although outside the terms of reference because where there are no remand homes facilities available they are kept in custody in ordinary prisons. Since there are only 5 (five) remand homes in the whole country juvenile and young persons remandees in the rest of 15 regions and districts within the five regions which are far from the remand homes i.e. Handeni, Korogwe, Lushoto districts in Tanga region etc. are kept in the nearest prisons.

(d) The Working Group found out that the problem of Congestion in 5 remand homes exists only in the Dar es Salaam remand home and Moshi remand home. In the rest of the 15 regions where there are no remand homes, the problem of congestion in prisons affects the children and juvenile just like the adult prisoners in view of the fact that the requirement for children and juvenile to be kept separately from adult remandees and prisoners is hardly implemented whenever there is congestion in prison.

(e) The Probation Office which is responsible for keeping custody of children and juvenile offenders is currently a mere relegated Section within the Social Welfare Department of the Ministry of Labour, Youth and Social Welfare. But, its probation services are required in every High Court, region, district and even at the level of division and ward where there is a court with criminal jurisdiction. Moreover, the probation Office, besides dealing with probational matters in court, remand homes and approved schools is responsible for after care of ex-prisoners, ex-probationers, ex-approved-schoolers, juvenile delinquents, street-children and rehabilitation of habitual offenders. The probation office is also responsible for the resettlement of habitual offenders which is now being undertaken by the Prisons' Department as a result of incapacity by the probation Office to deal with it. The Probation Office also faces problems of under staffing or misallocation of trained staff to other functions within the Ministry, inadequate financial support and working tools. The probation Department in our view, can function better if placed as a fullyfledged/independent department in a more

relevant Ministry like The Ministry of Justice (currently the Prime Minister's Office) than the Ministry of Labour, Youth and Social Welfare.

PART III

3. THE REASONS FOR CONGESTION IN PRISONS

3:1 The research into the subject revealed the reasons which caused congestion in prison. These reasons are:-

The provisions of the law regulating bail pending trial or appeal are progressively becoming too restrictive and as a result many people who ought to have been out on bail are kept in remand as against the well established legal principle that an accused before a Court of Law entitled to be released on bail pending the determination of his or her case.

Under no circumstances should bail be withheld for the purpose of punishing an accused person. Section 15 of the constitution of Tanzania provides for the Right to Liberty, i.e. no one may be deprived of his or her freedom except in accordance with the Law.

3:1:1 The Law of bail in Tanzania was, however, drastically changed in 1985, and some offences were declared not bailable, while in respect of other offences a cumbersome process has to be followed (see example, section 148 of Criminal Procedure Act, 1985 and section 35 of the Economic and Organized Crime Control Act, 1984). Following this development it has become obvious that the provisions of the law regulating bail pending trial in respect of certain offences have become too restrictive and as a result many people who ought to have been out on bail are remanded in custody.

3:1:2 This departure from the pre- 1985 position defeats the object of bail and the principles behind this object. The main object of bail is to ensure that the accused person will attend his or her trial without him or her being detained in prison or remand. Prior to 1985, almost all offences were bailable, including murder and treason whose bail could be sought in the High Court. This seems to be the position in most Anglo-American jurisdictions.

3:2 The Working Group noted that Congestion in prisons is also partly caused by delays in hearing of appeals especially at the High Court level for Criminal appeals from the District and Resident Magistrate's Courts. A large number of prisoners who would otherwise be released from the prisons on acquittal from their conviction, unnecessarily remain in prison for a long time or until they finish serving their sentence before their appeals are heard.

In addition, the Prison Administration cannot transfer such convicted appellants to less congested prison until their appeals are heard, thus aggravating the problem.

3:2:1 This problem is partly caused by delays in delivery of copies of judgements to the prisoners who cannot appeal until their memorandum of appeal is accompanied by a certified copy of judgement.

3:2:2 At that time of hearing the appeal, where the convicted appellant has failed to attend for various reasons and if he had indicated a wish to be present, the High Court cannot proceed with the appeal and is bound to adjourn the appeal so long as the appellant does not appear. The High court is far too removed from where the appeals originate for it has been decentralized only up to the zonal level, for example appeals from the District Court of Mbinga or Mpanda have to be filed in the High Court at Mtwara or Mbeya respectively a distance of about 600 kilometres away. The Service of notices or summons to parties and costs of attending to the appeal are too restrictive to ensure quick dispensation of the appeals concerned.

3: Delay in the determination of cases has sometimes been caused by financial constraints faced by the Judiciary, Police and other investigative organs or office of the Director of Public Prosecutions. One of the best examples occurred in March 1990, when all the High Court sessions in the country were suspended until the following financial year simply because the Justice Department did not have funds for travelling and subsistence allowances while on sessions outside the Zonal High Court centres. On a number of occasions, for lack of funds to pay witnesses' allowances cases have been put off pending availability of funds.

3:4 Another reason necessitating delays in the determination of cases is the non-appearance of witnesses when cases are fixed for hearing, thus causing unnecessary adjournments while suspects are kept in remand custody. The penalty for failure to obey a witness summons (fine of shs.500/=) is so trivial that some potential witnesses for economic or other reasons, do not bother to attend court. Their absence leads to adjournments which in turn cause, as pointed out above, congestion in prisons.

3:5 The Minimum Sentences Act, 1972 has had its role in increasing congestion in prisons due to its minimum long custodial sentences and the meagre value of property or amount involved in crimes covered by the Minimum Custodial sentence. There are other statutory provisions elsewhere which prescribe mandatory minimum custodial sentences and thereby leading to a number of offenders, who would otherwise be given non-custodial sentences, being sent to prison.

3:6 Delayed investigations have sometimes been caused as a result of lack of expert evidence. Most of the prosecutions of Criminal cases in Tanzania are conducted by the Police Force under the direction of Director of Public Prosecutions. The fundamental requirement in all criminal cases is that prosecution must prove its case beyond all reasonable doubt. Direct evidence (eye-witnesses' account), circumstantial evidence sometimes need to be supplemented with expert evidence in different fields like finger prints, handwriting, ballistics forensic medicine, pathological examination, chemists report, assayers analysis, photographic printers etc.

With the exception of the chemist and assayers which fall under the Chief Government Chemist and Government Assayers respectively the Police Force is equipped with experts in the remaining above mentioned fields. However, the Police Force has very few experts and cannot cope adequately with the number of cases investigated and requiring their expertise.

Since those few expertise have to examine specimen submitted to them from all over Tanzania it sometimes takes several months to obtain their reports and in the meantime cases are adjourned pending the availability of the experts reports and accused persons are kept in remand thus contributing to congestion in prisons.

3:7 The police are empowered by section 59 of the Criminal Procedure Act, No.9 of 1985 to take finger prints to people charged with any offence or in order to facilitate the investigation of any crime. All convicts are taken their fingerprints for the records of the Identification Bureau (IB).

It has, however, been noted that in recent years due to lack of records showing previous convictions of suspects, courts have metted out inadequate sentences with the result that such hard core criminals have avoided being taken to maximum security prisons where their escape would be contained and their rehabilitation programmes would have been undertaken more effectively. Although they are hard core criminals some of them had been punished with fine only or kept in custody in less secure prisons such as in open farm prisons due to the lack of the previous records. Once outside, these ex-convicts have resorted to further crime unabated, thus causing public insecurity outcry which leads to stiffer parliamentary enactments against bail or minimum and long custodial imprisonment.

3:8 At present, in cases involving unlawful possession of illicit liquor or cannabis sativa (bhang) the exhibits have to be taken from all over the country to the Government Chemist in Dar es Salaam for analysis and certification. Sometimes even where the accused person has pleaded guilty to the charge magistrates have insisted on being furnished with certificates from the Government Chemist to prove that the exhibits are what they are alleged to be. Meantime, accused persons are kept in remand thereby contributing to congestion in prisons. This is done despite the availability of experienced experts on the spot in identifying these items who are not recognized by the courts.

Organs dealing with administration of criminal justice i.e. investigative organ like the Police and Anti-Corruption Squad, the Director of Public Prosecutions' Office dealing with prosecutions, the judiciary dealing with adjudication and the Prisons Department dealing with custodial upkeep of suspects and convicts have such close inter-related duties and responsibility that any financial improvement in budget or in the welfare of personnel and working instruments and environment in one organ cannot bear fruitful results in criminal work without similar improvement in the other organs. Like-wise any handicaps or problem in the organ will directly affect the performance of the other organs. This is so because each of these organs is completely dependent on the other organs functionwise. This disparity in financial capabilities and motivations among the four pillar-organs. This is so because each of these organs is completely dependent on the other organs functionwise. Thus disparity in financial capabilities and motivations among the four pillar-organs dealing with administration of criminal justice has bogged down and frustrated quick dispensation of justice leading to Congestion in Prisons.

3:10 Section 341 of the Criminal Procedure Act provides inter-alia that persons twice convicted of

offences punishable with imprisonment of three years or more shall be subjected to police supervision after their release from prison. This provision enables the police to keep track on habitual criminals, especially robbers, burglars and house breakers, thereby preventing them from engaging in further criminal activities thus keeping them away from jail. Such preventive measures would be one way of easing congestion in prisons. But, it is hardly ever done by the courts and the Police in practice.

3:11 Under section 222 of the repealed Criminal Procedure Code the Police were empowered to withdraw charges of murder in respect of accused persons in preliminary sufficient evidence against the accused. As there is no such provision in the Criminal Procedure Act all such cases have to be referred to the State Attorney or Director of Public Prosecutions, who is empowered under section 91(1) of the Act to enter 'Nolle Prosequi' in these proceedings.

This is a lengthy process which takes a long time and has caused a considerable workload on the Police as well as on the Office of the Director of Public Prosecutions. Much time of investigating officers is taken up in compiling these case files whose statements have to be typed in quadruplicate. Covering reports and letters be prepared from the District CID for onward transmission to the Director of Public Prosecutions.

This cumbersome procedure has to be followed even where the suspect was arrested on mere suspicion without a shred of evidence. Most of these suspects are arrested on information received and are charged in court in order to abide by the law of limitation in keeping the suspect in police custody to uncover evidence. Provision charges are sometimes filed against the suspects for failure to arrest them in time results in their disappearing.

3:12 In its deliberations, the Working Group realised that lack of coherent programme of research, data collection in Crime Statistics and mass education on moral values have contributed immensely to the increase of Criminality in Tanzania.

3:13 The extra-mural penal employment scheme is stipulated in section 72 of the Prisons Act, 1967. Of late, however, the scheme has only remained in the books for the appropriate organs of the Government which are supposed to benefit from the scheme have not bothered to utilize it. In the course of their work, the members of the Working Group visited several prisons in the country and held meetings with several Government Officials on the subject of reviving this scheme. In the course of the discussions held between the members of the Working Group and the relevant authorities, it was clear that not many district and regional authorities were aware of the scheme.

Those few who were aware of the scheme expressed their appreciation of the scheme and suggested that it should be expanded to include prisoners other than those allowed to participate in the scheme under section 72 of the Prisons Act. Prisoners who can correctly benefit from this scheme are only those sentenced up to 6 months imprisonment or whose remaining sentence is less than 6 months imprisonment.

3:14 The Resettlement of habitual Offenders Act was enacted at the beginning of 1969 following the ruling Party's directive (TANU) to that effect. The Act provides for the establishment of centres of habitual criminals (recidivists). The purpose of establishing these centres was to try to resettle habitual criminals upon completion of their sentence in surroundings which resemble communal villages. The aim was to administer them outside the prison system, and the Department of Social Welfare was expected to be heavily involved in their administration.

However, a study conducted by prof. Shaidi in the late 1970s [refer East African Law Review Vol.15 (1982) pp.153 -174] shows that these centres have never been administered in accordance with the law establishing them and they are beset with a number of problems which have hindered the rehabilitation of recidivists.

One of the reasons that magnify the problem of congestion in our Prisons is the failure to curb recidivism. After a thorough and careful discussion on this aspect, the Working Group is of the view that the total lack of Parole system and the after-care department in Tanzania has aggravated congestion in prisons.

3:15 The Working Group is of the view that with the introduction of severe prison sentences under the Minimum Sentences Act, 1972 the Economic and Organized Crime Control Act, 1984 and other similar legislations, prisoners serving extraordinary long sentences are not fully employed, due to lack of facilities, like industries in maximum security prisons where this category of prisoners are kept, in view that for security reasons, prisoners in this category are not fit for employment in open farm prisons which employ about 70% of prison population.

3:16 Of late there have been incidents of corruption and complaints of corruption involving the

administration of personnel in the criminal justice organs. These complaints have reached alarming proportions and the Working Group views this trend as very damaging to proper and efficient functioning of the relevant organs.

3:17 When the Working Group on Congestion in Prisons visited the border areas of Kagera Region, for example, it found out that a large number of inmates were foreigners from neighbouring countries. For example, on 22 September, 1987 Kayanga Prison (Karagwe) had inmates from the following neighbouring countries:-

Rwanda	-	53
Uganda	-	11
Burundi	-	6
Kenya	-	1
Zaire	-	0

One obvious conclusion that the Working Group drew from that pattern of inmates was that there is apparently laxity in controlling immigration into these border areas. Another drawback that the Working Group found in these border areas was that both the Judiciary and Police have staff that are either indifferent or incompetent in handling problems peculiar to border areas.

We give an example of a District Magistrate, who at the time of our visit, had not been seen for two months, because he had gone on leave, then after leave, had gone for a funeral and then to a conference. For those two months court work was at complete stand still.

3:18. The Working Group visited those heavily congested prisons and discovered that in some of them there are lactating mothers who are not working at all (in the case of prisons for convicts). They are not working because they are engaged in taking care of their babies.

In some of these prisons, minors were found. It was, therefore, the view of the Working Group that these children find themselves in an environment not conducive to their proper up-bringing. This way the system could be nurturing future criminals inadvertently.

3:19. The Working Group found that one of the reasons for congestion of convicts and remandees in prisons was the deteriorating standard of moral behaviour of our youth, resulting in those youths committing all types of crime. A random glance at inmates by a justice of the peace who may visit prisons will discover that approximately half of the total number of inmates will be persons age between 12 and 35 years.

3:20. When the Working Group visited prisons, the issue of condemned prisoners was also considered. It is a general view that the number of prisoners facing the death penalty is relatively large, to the extent that three condemned prisoners would occupy one cell generally meant for one prisoner. This unusual congestion, the Working Group discovered is caused largely by the inordinate delay in getting the Final Order of their fate from the Committee on the Prerogative of Mercy.

It was generally felt that the Presidential Committee on Prerogative of Mercy that recommends for His Excellency the President on what to do with a condemned prisoner has not of late been fast in making its recommendations. The net result has been that these prisoners have been waiting for long to know their fate resulting into their congestion.

3:21. Even where, under the penal Code, the courts are empowered to impose a fine as an option, imprisonment is metted out without the option to pay fine.

3:22. Unnecessary adjournments are granted even where circumstances would warrant immediate hearing of a case.

3:23. The Economic Courts:

Attempts have been made by the Parliament to set up special judicial or quasi judicial bodies to expedite cases of a particular nature or to bring the services of administration of justice nearer to the people. For example in 1983 which established the Economic Sabotage Tribunal aimed at disposing off cases quickly on the spot by removing the hurdles of certain evidential procedural rights and the services defence advocates or the right of bail or appeal, inter alia.

Despite the success of tribunal in disposing off cases quickly it created other problems of congestion in prisons for lack of bail and long custodial sentences. Thus it was abandoned within only 1? years of its operation because its existence conflicted with basic human rights of being defended by an advocate or granted bail and the right of appeal. By 1987 the trial of economic sabotage cases were brought back to the normal court process with its inherit backlog and delays.

3:24. Trial by a Panel of Magistrates:

Attempts by the Judiciary in the late 1970s and early 1980s were made to win public Confidence by establishing a panel of three district and resident magistrates to hear certain sensitive cases for which there was public outcry and mistrust that a single district or resident magistrate would not handle properly or fairly such cases of sensitive nature or public interest. Despite the success of these panels of magistrates in instilling confidence in the judiciary and fair justice they caused many delays in determining cases due to many adjournments as a result of lack of quorum for various good reasons i.e. if one magistrate fell sick the rest could not continue with hearing of the case. If the accused are in remand, they stayed there longer than necessary due to such delay in determining their cases. Ultimately the trial by a panel of magistrates was abandoned in practice.

3:25. Accelerated trials:

In 1985 the Parliament in passing the criminal Criminal Procedure Act No.9 of 1985 brought in a new principle of accelerated trial and disposal of cases. In every criminal case before trial under section 192 of the Criminal Procedure Act, 1985 there shall be a preliminary hearing in which facts not in dispute can be agreed upon by the parties to the suit after which they need not be proved any further by calling witnesses.

This procedure applies both in the High Court and district courts in their original jurisdiction. Unfortunately this procedure applies only where the accused is defended by an advocate and does not apply to primary court. The majority of cases are not defended by advocates and are filed in the Primary Courts.

3:26. Under section 193 of the CPA (Criminal Procedure Act 1985) a person charged with a warrant offence (with punishment not exceeding 6 months or 1,000/= shillings fine) may plead guilty without attending court through an advocate or letter. In section 194 of the CPA the accused charged with non-warrant case which is not punishable with death or life imprisonment may give notice of his readiness to plead guilty and the court shall proceed to convict and punish him accordingly.

Under section 213 minor offences (which carry a punishment of 6 months imprisonment or 1,000/= fine) can be disposed of by the court without any formal recording of evidence etc. except for the judgement. Under section 206, 208 and 209 evidence of witness can be taken by commission at the nearest court if it is necessary for good of justice, or to avoid delay and other inconveniences.

In practice, most of these provisions mentioned in this part are hardly ever utilized by the courts, the prosecution or the accused on the simple reason of ignorance of their existence or lack of initiative to utilize. If these provisions were fully utilized there is no doubt that cases would have been quickly disposed off thus reducing congestion in prison.

3:27. The year of 1985 witnessed another monumental legislation called The Ward Tribunal Act No.7 of 1985 which was meant to reduce the workload of the judicial courts at the level of the primary and district courts. The Ward Tribunal is a kind of the pre-1963 local courts which dealt with customary laws and minor criminal offences. These tribunals must be established in every ward in Tanzania mainland and they have criminal jurisdiction to hear cases which are scheduled under the Act so long as punishment does not exceed 2 years imprisonment or fine of 2,000/=.

The Ward Tribunals have also civil jurisdiction to deal with dowry dispute, adultery and marriage reconciliations under the Marriage Act. The implementation of the ward tribunals has been compounded by the slow pace of their establishment. In the last six years it has been possible to establish the tribunals in only six regions i.e. Mwanza, Tabora, Shinyanga, Mara, Singida and Arusha out of the 20 regions of the Mainland. The main excuse has been lack of funds to carry out educational seminars to the officers who will implement the Act at the grass-roots level. With this strategy it might take another 10 years in order to establish the ward tribunals all over the country. There is need to change the whole strategy in implementing the establishment of the ward tribunals.

3:28. Pleas of Guilty to Lesser Offences:

There are provisions in the Criminal Procedure Act 1985 allowing for conviction to kindred or lesser or minor offences even if the suspect was not originally charged with them (sections 300 - 306 CAA). In cases triable in subordinate courts these provisions do not pose much problem for courts at the time of taking the pleas of the accused if he pleads guilty to the offence.

charged or to a kindred offence the court can proceed convicting and sentencing him accordingly.

The conviction to a kindred offence can also be entered at the end of the trial. In some countries, unlike Tanzania, plea bargaining is allowed at the stage of arraignment or even during the trial. Plea bargaining involves either the defence offering to plead guilty to lesser offences if the more serious offences are dropped by the prosecution or the prosecution proposing to the defence advocate or accused to the same effect.

On other occasions the prosecution in plea bargaining may propose to the accused that if he reveals or cooperates in exposing the evidence incriminating other co-suspects or co-accused he could be given immunity from prosecution. Both these procedures could go along way towards reducing the backlog of Criminal cases.

3:29. The act of an accused pleading guilty to an offence charged or to a lesser offence does not amount in law to a mitigating factor to the sentence ensuring thereof. The rationale has mainly been that accused persons might be tempted by the lesser sentence to plead guilty even if he/they are innocent. This motion is falacious in view that even in offences with minimal sentences accused still don't plead guilty if they believe that they are innocent.

On the other hand there is no doubt that an accused person who does not plead guilty yet after trial he is convicted is less remorseful or sorry for the offence he committed thus more difficult to reform. He is also more of a financial burden to the state which has to meet all the expenses of witnesses for the prosecution and the defence. Worse still he leaves little room for reconciliation and breeds permanent enmity with the victim of crime in view that the act of denying the offence for those who are not innocent is invariably taken seriously by the victim of crime and the public at large as portrayal of the accused's arrogance and lack of sympathy for the injury or a loss suffered by the victim of his criminal acts.

Whereas if the plea of guilty by the accused is taken as a mitigating factor it would go a long way towards encouraging the accused person who is not innocent to do so at an earlier stage. After all, to plead guilty in this manner would positively contribute towards the reduction of remandees and delay in determining cases in addition to the other good effects expounded above.

3:30. Effective prosecution and control of unnecessary prosecution can reduce Congestion in prison considerably. Criminal investigations under the police, criminal prosecution under the Director of Public Prosecution and criminal adjudications under the Judiciary are vested in different organs for the statutory convenience of reducing concentration of criminal powers into the hands of one organ and as a means of "check and balance" against abuse of power by these organs.

The organ controlling criminal prosecution differs from country to country but in Commonwealth countries they are either placed under the DPP such as in Tanzania and Zambia or under the Attorney General such as they are in Kenya and Zanzibar or under the Director of Public Prosecution with the superintendence of the Attorney General as it is in England and Malawi. Before Tanganyika obtained Internal Self Government in July 1961 Criminal prosecution were directly under the Attorney General. For lack of qualified lawyers and adequate paralegal manpower the Attorney General as early as 1943 like in the Metropolitan State, delegated almost all prosecutions to the police officers with the rank of sub-inspector and above with the exception of those serious cases triable by information in the High Court in its original jurisdiction. This is the position until now. There is no doubt that concentration of power of investigation and prosecution in the Police Force has occasionally been abused through remanding suspects who are quite innocent and taking them to court for the fun of it or other ulterior motives.

3:31. As early as 1977 the Report of the Judicial System Review Commission recommended the improvement of criminal prosecution in the country through the expansion of the office of the Director of Public Prosecutions nearer to the Regional and District levels and by taking over all prosecutions from the Police and other organs which deal with criminal investigation as well as prosecutions.

3:32. If criminal prosecutions are taken over the appropriate office of the Director of Public Prosecutions the investigative organs like the police, Anti-Corruption Squad etc. will be relieved of the prosecutory role which is hardly part of their main function. These organs will be able to concentrate and improve on their investigatory functions in view of the reduced workload and additional personnel which is currently tied up with prosecutorial duties. With improvement in investigations and additional manpower criminal investigations will be quickly and properly done which will reduce congestion of unbailed suspects and delays of trial of cases. There has always been a serious problem of bogus, wrong or unnecessary charges. The abuse of this power to charge someone even if there is no sufficient evidence available will be curbed if not completely eliminated because the investigative organs would have to satisfy the office of the Director of Public Prosecutions that there is sufficient basis for charging a suspect in court before one is arraigned. The Criminal process of suspecting an offender, arrest, investigation, arraignment in court and prosecution is taken for granted as being one

transaction and automatic because it is done as one function by one organ i.e. The Police. This is wrong in principle for the victim of crime or the investigating organ is a keenly interested party unsuited to carry out the prosecution. The need for being objective, impartial, and free from personal whims and feelings must be maintained at the stage of charging a suspect in court because the decision to prosecute or not is quasi-judicial and must be done by qualified and experienced personnel directly under the control of the Director of Public Prosecutions. Many of the cases which go to court now and end up with acquittals after a lot of loss of time, trial expenses and ordeal on the part of the accused and witnesses could be properly pruned out at this stage.

Once the power to investigate and prosecute are separated the investigating organ will submit its investigation record to an independent public prosecutor who if evidence warrants will proceed with the proper charges in court like in the United States of America (USA) or since 1986 like in England which bequeathed to us the present system of the investigation and prosecution being done by the Police and other investigative organs but has now abandoned it by creating the crown office of public prosecutions under the Director of Public Prosecutions which has taken overal criminal prosecutions from the police and other investigative organs.

3:33. For the time being control of the majority of criminal prosecutions in Tanzania is hardly done in practice by the Director of Public Prosecutions or a State Attorney incharge of zonal offices except in serious offences triable by the High Court in its original jurisdiction or which are referred to the Director of Public Prosecutions or State Attorney by the investigating organs themselves or if the DPP himself or state attorney to whom he has delegated powers directly interviews under section 90 and 91 of the Criminal Procedure Act. The Office of the Director of Public Prosecutions had failed to control prosecution in the country for serious lack of facilities, personnel and offices. Until now the DPP has been able to extend his office down to 8 zones in a country with 20 regions. Anybody is left to guess what ill-effects have resulted from this vacuum, but no doubt abuse of the Criminal process resulting into congestion in prison could be one of the main side effects. Furthermore, the disciplining of public prosecutors who are appointed by the Director of Public Prosecution or are supposed to be under his control is vested into the other authorities with whom the public prosecutor is employed outside the office of Director of Public Prosecutions or the Justice Department. This breeds incompetent and relaxed prosecutions.

PART IV

4: CONSEQUENCES OF CONGESTION IN PRISONS

4.1. The increasing number of prisoners adversely affects the security, food services, full boarding facilities and medicines estimated for a specific population of prisoners. The ultimate result is a general denial of basic human rights of a prisoner as set out in the UN Convention of Treatment of Offenders and Prisoners and our own Municipal laws and regulations. The continuous denial of human rights to prisoners becomes a political question in the long run for prisoners are under the responsibility of the Government and the Prisons Department is an arm of the Executive.

4.2. Risk of contraction of contagious diseases. In most of the Prisons, congestion of prisoners is so serious that the inmates do not have enough living space. In terms of the law each prisoner is entitled to an area of 30 square feet. In contrast, it was observed for example that in Arusha in mid 1986 there were 76 prisoners which is 500% over congestion. By July 1st, 1991 the situation had worsened for there were 2110 prisoners in Arusha Prisons instead of required prisons capacity for 318 prisoners which is 605% over congestion.

A situation like this causes spread of diseases like tuberculosis (TB) cholera, scabies, diarrhoea etc. there are some prisoners who have even died in prison because of diseases contracted in prisons.

4.3. Owing to congestion in prisons, it is difficult for the Prison Officers to pursue their duty not only in guarding the prisoner, but also in rehabilitating them, for instance, it is very difficult for Prison Officers to identify or separate prisoners and suspects according to their character, behaviour or age. It is also difficult to train and rehabilitate them in preparation for their reception back into their societies on their release from prison.

4.4. The long stay of the suspects in remand prisons occasions loss to the Government by providing facilities and services for the people who in turn produce nothing for the Government. For example, in 1980 - 1981, the cost of food alone for remandees was about shs.208 million and in 1984 - 1985 the amount rose to shs. 311.7 million. The remandees unlike the convicted prisoners are by law excluded from working in view of the presumption that they are innocent until convicted by a court of law.

4.5. In view of the harsh conditions created by congestion in prison suspected criminals in order to avoid being remanded or imprisoned daringly undertake by hooks and crooks to pervert the course of justice so as to win their freedom through corruption, forgeries, escaping from custody, destruction of evidence and exhibits and even elimination of key witnesses through murder and political or blackmail intrigues.

4.6. As for the suspect or convicted prisoners and their close relatives or acquaintances who suffer the ordeals of the prison congestion they face the danger of developing permanent impairment of their sense of human faith in the Government and the entire system of administration of criminal justice thereby becoming a fertile ground for social and political revolution and disorder.

4.7. For the children and juvenile offenders in addition to the above the consequences of congestion in prison detrimentally affects their upbringing since they are exposed to and mixed with adults and hard core criminals who exploit them and irreparably damage their good character, behaviour and morality.

PART V

5: EXPANSION AND MODERNISATION OF PRISONS

5:1. The vastness of the country and its transport and communication problems, the rates of growth of the population, crime and multiplicity of administrative areas, all demand a corresponding increase in the number of prisons for both convicted and unconvicted prisoners.

The recommendation on these aspects calls for construction of new prisons in proportion to administrative areas, with priority given to areas with high crime rates.

5:1:2 It also calls for modernisation and expansion of old prisons.

5:1:3 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.

5:1:4 Every region should have one prison with an adequate wing for "condemned" prisoners; at least every district should have a district prison. The Working Group recommends that the following areas be given special priority in building remand prisons because of the serious problem of congestion or absence of prison facilities nearby.

ARUSHA:	Arusha Municipality and Monduli districts;
COAST:	Kibaha and Kisarawe districts;
DAR ES SALAAM:	Ilala and Kinondoni districts;
IRINGA:	Iringa Municipal, Mafinga Town in Mufindi District and Makete Districts;
KAGERA:	Bukoba Town, Muleba and Biharamulo districts;
KILIMANJARO:	Hai, Rombo and Mwanza districts;
MBEYA:	Ileje, Mbozi and Kyela districts, Chunya district and Mbeya Municipality;
MOROGORO:	Morogoro Municipality;
MWANZA:	Mwanza Municipality and Ngudu district;
SHINYANGA:	Shinyanga Town.

5:1:5 The Working Group recommends that there should be established (Constructed) six zonal prisons as recommended in the Report of the Executive Committee on the Problem of Congestion in Prisons herein attached as appendix 'E'.

5:2 EXPANSION OF REMAND HOMES AND APPROVED SCHOOLS AND IMPROVEMENT OF THE PROBATION DEPARTMENT:

5:2:1 The Department of Probation should be independent and placed in a more relevant ministry like the Ministry of Justice and should be improved by expansion of its service and trained manpower to the level of every court with original criminal jurisdiction.

5:2:2 The increase in juvenile delinquency calls for construction of more remand homes and approved schools. There should be built a remand home in every region.

5:3 DELAY IN THE HEARING OF CASES:

5:3:1 As part of an endeavour to solve the chronic problem of delays in the hearing of cases, the Working Group commends the action taken by Judiciary in establishing Case Flow Management Committees and a two-shift system of hearing cases in District and Resident Magistrates' Courts, and recommends that the committee should be strengthened.

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

5:3:3 As regards delays in the delivery of copies of judgements to appellants who are in prison, the Working Group recommends that enough typing and word processing facilities and competent personnel should be provided to District and Resident Magistrates' Courts and the Attorney General's Chambers. It should also be made statutorily possible to appeal without the copy of Judgement being attached.

5:3:4 It is also recommended that the Judiciary Administration should supply copies of judgement within a maximum period of three (3) months and take disciplinary action against any Court Official who without good cause or deliberately frustrates quick supply of copies of judgements to appellants.

5:3:5 Also, as regards the way the administration of Criminal justice is constitutionally arranged, it is recommended that plans for expansion, development and improvement in one organ related to dispensation of Criminal justice should involve the other organs must be co-ordinated in the implementation and supply of financial Material support and motive.

5:3:6 Furthermore, the Government should provide enough funds facilities to all relevant organs namely the Judiciary, Attorney Generals Chambers, the Police and Prison, to promote efficiency and uninterrupted services. Such facilities include office accomodation, personnels, motivation, court rooms, motor vehicles, stationery and equipment.

5:3:7 Preliminary Hearing:

It is recommended that preliminary hearing under section 192 of the Criminal Procedure Act (CPA) should be extended by statutory amendment to cover criminal proceedings in primary courts and even in cases which are not defended by advocates in District, Resident Magistrates, and High Court.

5:3:8 Preliminary Investigation:

In serious cases triable by the High Court in its original jurisdiction it is recommended that, the present committal proceedings should be improved upon by removing the statutory requirements in section 245(7), 246(1), (2), (3), (4) and (b) of the Criminal Procedure Act (CPA) and substituting therein the following procedure:-

(a) The Director of Public Prosecutions while filing information to the High Court in Compliance with section 245(6) of the Criminal Procedure Act shall send a copy of the same information to the subordinate court which on receiving it shall commit the accused for trial to the High Court and transfer the file to the Registrar of the High Court for the same purpose.

(b) The Registrar on receiving the information filed by the Director of Public Prosecutions and the accompanying copies of witness statements shall fix the case within a period which does not exceed one month for plea taking.

(c) At the time of plea taking if the accused pleads not guilty a date for preliminary hearing will be fixed. At the time of plea taking the accused or his advocate shall be served with the copy of the statements of witness etc.

(d) Thereafter, the procedure will proceed as per current statutory provisions of the Criminal Procedure Act. This new procedure is meant to hasten hearing of cases triable by the high Court and reduce long stay in custodial

remandees before hearing of High Court sessions. The purpose of the preliminary hearing was meant to keep the accused aware of the evidence available or amassed against him. This purpose in view of the newly introduced procedure of preliminary hearing, will still be maintained before the trial begins.

5:3:9 Accelerated trials

(a) Courts, suspects and advocates should fully utilize procedure for warrant offences (section 194). Judicial circular should be made to magistrates to enforce this recommendation.

(b) Warrant offences should be expanded to cover offences punishable with imprisonment of up to 3 years and fine of up to 100,000/-.

(c) The procedure for disposing off minor offences under section 213 of Criminal Procedure Act should be encouraged and offences to be treated as minor offences under this section should include all offences attracting a punishment of not more than 3 years or fine not exceeding 100,000/-. A judicial circular should be issued to Magistrates to implement the first part of this recommendation.

(d) Taking evidence of witnesses by commission (sections 207 - 9) within and outside the country should be encouraged. A judicial circular should be issued to Magistrates in this regard.

5:3:10 Establishment of Ward Tribunals

Ward Tribunal should be established throughout the country without further delay by doing the following:

(a) There should be held one or two seminars for the remaining regions of Tanzania Mainland in one or two centres only for all the RAO, DO, DED, and City Municipal and Town Directors, District Magistrates and solicitors in the affected areas who in turn would go and continue holding seminars in areas of jurisdiction within a given maximum period not exceeding any current financial year.

(b) Thereafter, each local government should be free to establish ward tribunals in their respective areas within a set time limit of 1? years at the maximum from the date of the all officers seminar above mentioned in paragraph (a) here in above.

(c) The present lawyers who conduct the seminars (from the Justice Department and Local Government Ministry) would then concentrate on inspection of all the Districts of the remaining regions in order to ensure national uniformity in establishing and implementing the ward tribunals throughout the country rather than carrying out the seminars themselves up to the level of the District or Town.

(d) The Criminal jurisdiction of ward tribunals should be further expanded to cover all offences punishable with imprisonment not exceeding 2 years or fine of 50,000/-.

(e) The rule and involvement of traditional defence groups and militia in keeping law and order and in preventing or detecting crimes within the confines of the law should be expanded and improved upon for with lesser crime prisons congestion will be reduced for lack of remandees or prisoners under incarceration.

5:3:11 Plea Bargaining and Pleas to lesser offences

(i) The Criminal Procedure Act 1983, the Economic and Organized Crimes Act 1984, the 3rd schedule to the Magistrates Courts Act and the Minimum Sentences Act 1972 should be amended so as to allow for plea bargaining, immunity from prosecution for cooperating accused persons and lesser custodial sentences regardless of the Minimum Sentences Act where an accused person pleads guilty to a lesser offence under this programme.

(ii) Plea taking should not be limited to the main offences charged but should cover all the minor or kindred offences allied to the main offence and for which the court has power to convict without drawing fresh charges. For example in a charge of robbery with violence the accused should plead not only to the main offence of robbery with violence but also to the minor offences of theft or assault causing actual bodily harm etc. In case he pleads to any of these lesser offences it should be open for the public prosecutor to consider withdrawing the serious offence of robbery charge in case the evidence on theft having taken place or actual

violence having been metted out respectively is questionable.

(iii) The principal of minor or kindred offences should be reviewed so as to cover a wider range of offences. For example armed robberies could have minor offences not only in theft and assault but also being found with offensive weapon under the National Security Act, 1970 or being in unlawful possession of firearm or ammunition under the Arms and Ammunitions Ordinance. Also where there is any charge jointly charging more than one person it should be possible to convict for minor offences of conspiracy leading organized crimes under the Economic and Organized Crimes Act 1984 Accessory after the fact, aiding and abetting, attempt etc. under any other law which turns up to have been infringed provided that the punishment to be imposed shall not be higher than that which would be imposed under the main offence charged.

5:3:12 Improvement of the Administration of Criminal Prosecution

It is recommended that the 1977 Msekwa Report of the Judicial System Review Commission Covering the area of improvement of Criminal prosecution should be implemented fully i.e.

(a) the expansion of the office of Director of Public Prosecutions (DPP) nearer to the people up to the regional and district level as a counter part to the resident Magistrates court and the District court should be implemented without further delay.

(b) the office of the DPP should take over all prosecutions from police and other organs which deal with Criminal investigation as well as prosecutions and recruit more professional presenter (State Attorneys) and non-professional Staff - (public prosecutors).

(c) to start with the present police public prosecutors and other public prosecutors should be seconded to the office of the DPP until such time when they can be absorbed into the DPP's department. The qualifications and services of the public prosecutors should be established in resemblance to that of the District Magistrates.

(d) the post of DPP should be made constitutional as it was in the 1961 Independence constitution of Tanganyika or as it is now in the Zambian or Mauritius Constitutions.

(e) the government should order a package of incentives especially designated to cater for state attorneys and public prosecutors in order to induce lawyers and other paralegal workers to work and specialize in prosecution as a life time job.

5:4 IMPROVEMENT IN DELAYED - INVESTIGATION OF CASES

5:4:1 It is recommended that specialised training in investigation be expanded so as to get more experts in the Police Force. Every regional Crime Office should have at least one expert in each particular field such as handwriting, fingerprints, ballistic pathology etc.

5:4:2 It is recommended further that a national forensic laboratory be established with the Police Force to be headed by a qualified person holding a post similar to that of the Government Chemist but answerable to the Director of Criminal Investigations and consequently to the Inspector General of Police.

5:4:3 It is also recommended that specialised units in the Police Force be strengthened and manned by trained personnel having proper equipment for executing their assignment efficiently. Such as:

- (a) Anti robbery squad
- (b) Homicide squad
- (c) Narcotics squad
- (d) Anti-smuggling squad
- (e) Fraud Unit

5:4:4 The System of fingerprints be taken all persons kept in police lock-ups as a matter of course irrespective of whether the person is to be charged in a court of law or not.

5:4:5 It is further recommended that there should be established a Criminal Records Office at every regional Criminal Crime Office for the preservation, comparison and identification of fingerprints in order to liaise with the courts and prisons

department thereby keeping a proper record for use by all three institutions i.e. the courts, police and prisons departments. National records should continue being maintained at the Identification Bureau as it is now.

5:5 ESTABLISHMENT OF THE SUMMONS SERVICING SQUAD:

5:5:1 It is recommended that a Summons serving squad be established in a new format in regional and district crime offices. This squad could be placed under O/C prosecution for easy Co-ordination between investigators, prosecutors and summons servers.

5:5:2 It is further recommended that these squad be equipped with motor cycles to enable them perform their tasks efficiently.

5:5:3 It is also recommended that some allowance be paid to members of these squad to motivate them.

5:5:4 It is further recommended that to facilitate compliance with witness summons, the current penalty of fine of shs.500/- for disobedience of witness summons should be increased to shs.5,000/- and courts should strictly enforce it unless reasonable explanation is given for failing to obey such summonses.

5:6 RESETTLEMENT OF HABITUAL OFFENDERS

5:6:1 It is recommended further 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 camp.

5:6:2 It is recommended that in order to minimise chances of collusion between dishonest Court Clerks who aid accused persons to jump bail the format of the forms be revised to accomodate residential addresses of the sureties, signature of the court clerk preparing the forms and that of the prosecutor. These forms should be prepared in three copies, original to be kept in the Court Case File, duplicate to be kept in the police case file and the triplicate to be in the Court Records File.

5:6:3 In order to supervise these criminals, the system of police supervision should be strengthened to check the problem of recidivism. This system could effectively be maintained by the Criminal Records Office to be established at Regional C.I.D. Offices.

5:7 WITHDRAWAL OF CHANGES BY THE POLICE:

5:7:1 In this regard in cases of unlawful possession of illicit liquor and Cannabis, sativa it is recommended that the relevant laws be amended to allow identification of these exhibits by long experienced police officers and/or ten cell leaders be admissible in evidence. This will speed up the hearing and determination of cases thereby giving relief to congestion in prisons.

5:8 PRINCIPAL OF BAIL

It is recommended that, section 148 of the Criminal Procedure Act of 1985 should be reviewed in order to maintain the principle that concept 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 or her vis a vis the principle that an accused person must attend trial etc.

5:9 THE NEED TO ESTABLISH A RESEARCH UNIT WITHIN THE MINISTRY OF HOME AFFAIRS

It is recommended that a permanent organ be established with the aim of conducting research into trends of Criminality in Tanzania and advice the government on appropriate measures to deal with the problem. The Commission may inter alia do the following:

- (i) conduct research on the causes of crime in Tanzania;
- (ii) the trends in criminality in the country;
- (iii) possible measures to arrest the situation;
- (iv) to act as custodian of all Crime statistics in the Country in the Field of Crime Prevention Treatment and the rehabilitation of offenders;
- (v) to co-operate with other local international organisations and institutions with similar aims in disseminating information on Crime and possible remedies.

(vi) to act as principal advisor to the government on all matters relating to crime prevention and the treatment of offenders.

It is hoped that with such organ in the country, the government will be kept aware at all times, of the crime situation in the country to enable it take possible measures to arrest explosive situation in time. By so doing, it is envisaged that in the long run more people will refrain from indulging into criminality and thus keep themselves away from prisons hence reducing Congestion in the Prisons.

5:10 MONTHLY AND ANNUAL RETURNS OF INMATES

Monthly and annual returns of inmates from the Prisons Department e.g. delay in criminal trials which is submitted to the appropriate courts and the Registrar of the High Court should also be made available to the Chairman of the Case Flow Management Committees in their respective Districts, Regions and Zones as well as the Director of Public Prosecutions and all other related organs. These returns should be the subject of discussion in all the appropriate organs and appropriate action be taken where necessary.

5:11 EXTRA-MURAL PANAL EMPLOYMENT:

The Working Groun recommends as follows:-

- (a) the scheme should be revived and strengthened all over the country;
- (b) The Ministries of Justice, Home Affairs and Local Government should embark on educational programme to educate the relevant authorities on the existence and implementation of the scheme.
- (c) the law 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.

In this regard we recommend that:

(i) the continuation of the Scheme as it is at present should remain, and in addition prisoners serving sentences of up to two years be eligible for the scheme provided that those serving sentences of over one year must serve at least one quarter of their sentences before qualifying for release under the Extra-Mural Penal employment scheme.

(ii) Courts should be empowered to disrecommend a person duly convicted from benefiting from the Scheme even though the sentence does not exceed two years.

(d) the agencies which may utilise the labour of Extra-Mural labour scheme be extended to include: Government Department, All Public Enterprises including Parastatal Organisation, Local Government Authorities but under circumstances should Private Individuals be provided with prisoners under the Extra-Mural Penal Employment scheme.

(e) Prisoners committed for a period not exceeding six months should be placed in the hands of local government leadership.

(i) In order to ensure that local Governments effectively and at all times make use of these people there is need to liason with the parent Ministry and require that all local governments or councils do establish in their administrative structure a permanent and adequately staffed section with adequate working facilities to deals with community service matters and remain a regular recipient of extre-mural labourers.

(ii) During their whole period of service such labourers should be entitled to, say, a quarter of a casual labourer's wage as lunch allowance, for each day worked.

(iii) In order to ensure that extra-mural labourer's own home economic wellbeing is not unduly disrupted, such laboureres should have some days in a week - (say three days) reserved for their own home activities. Such days could be counted as 1/3 remission of the prison term imposed.

Alternatively, such days could be discounted when computing the days to be served in the 6 month term.

(iv) In order to avoid the need to have to establish work camps, adequate transport facilities should be provided, provided always that of the two the cheapest course of action should be adopted.

(f) Prisoners committed for a higher period:

- (i) It is suggested that in order to ensure proper supervision and discipline these should be

left in the hands of prison leadership. They, too, could be coming from their respective homes but would be employed and utilized in prison economic projects outside prison, such as building projects, gardening or smallscale industrial projects.

(ii) to that end prisons should have an economic production section in their administrative structures to cater for such persons committed to community service for such period.

(iii) what has been said for the extra-mural labourers of lesser prison terms, in respect of much allowance, off-days in a week and remission, should apply to this category of extra-mural labourers as well.

5:12: MINOR OFFENDERS AND DEFAULTERS OF PAYMENT OF FINES
DEVELOPMENT LEVY-TAX DEFAULTERS

5:12:1 The Working Group recommends that at no time should defaulters idle and disorderly person, rogues and vagabonds who are first offenders be imprisoned in jail. The only substantive penalty the development levy defaulters, idle and disorderly person rogues and vagabonds should be fine. For those who fail to pay the fine imposed by the Court, they should be ordered to do communal-based labour given to them by the District/City/Municipal/Town councils, village government concerned.

5:12:2 Levy tax defaulters should be tried by Ward Tribunals besides the other Courts.

5:13 The Minimum Sentence Act, 1972 should be amended in sections 6 and 5 so that:

(a) the lowest amount of money or value of property to attract the Minimum custodial sentence of 3 years imprisonment should be increased from shs.100/- to 5000,000/-.

(b) the lowest amount of money or value of property to attract the minimum custodial sentence of 5 years imprisonment should be increased from 5,000/- to 1,000,000/-.

(c) The High Court should be given power to impose a sentence other than the minimum sentence in exceptional cases where special circumstances of the case make the Minimum Sentence imposed by the lower court to be both manifestly excessive and repugnant to good justice.

5:13:1 It is recommended further that, for long term prisoners, it is incumbent upon the government to provide the necessary facilities to facilitate their employment during their stay in Prison or else prison, to them (the long term prisoners) will appear to be a holiday resort which is not the purpose of imprisonment. Querries with the necessary equipment should be revived employment for the hard core criminals in an organised way. The government may also wish to introduce new industries in prisons such as the printing industry which is a common phenomena in Prisons all over the World. By introducing these industries in Prisons, Prisoners will acquire skills which will assist them to lead an honest life after release from Prison hence the possibility of preventing them from reverting to criminality with the possibility of re-admission for Prisons.

5:15 ESTABLISHMENT OF PAROLE AND AFTER CARE
SERVICES IN THE PRISON DEPARTMENT

It is recommended in this regard as follows:

(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 Working Group is aware that this proposal has been put forward before by a government appointed Committee which submitted its proposals to the government in 1986. The Committee has an opportunity to examine the said proposal and recommendations put forward by the Prison Department as part of implementation of the said Government Report, and this committee recommend the same be adopted for implementation. (A copy of the recommendations on Parole is attached herewith as Appendix 'D')

(b) In introducing a Parole system in our prisons, the Government has to establish a machinery to supervise the parolees. After care Department "be established within the Prison Department to undertake this assignment.

(c) The recommended department in para (b) above, shall also take care of all prisoners released from prison from the time of their release until they reach their place of residence. The department shall also communicate with village authorities and prospective employers with a view of finding employment/resettlement for the released inmates.

5:16 Corruption and Complacency within the Organs dealing
with Criminal Justice

The Working Group recommend as follows:

(i) all known corrupt elements within the criminal justice organs should be removed without any further delay.

(ii) the process of vetting public officials holding sensitive positions in the government should be carried out with special care and emphasis within the Judiciary, Prisons and the other organs dealing with the administration of Criminal Justice in the country.
