

THE UNITED REPUBLIC OF TANZANI
THE LAW REFORM COMMISSION OF TANZANIA

REPORT ON THE IMPACT OF CRIMINAL
JUSTICE SYSTEM IN COMBATING THEFTS/
EMBEZZLEMENT IN GOVERNMENT
INSTITUTIONS AND PUBLIC CORPORATIONS

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

APRIL, 1994

The Law Reform Commission of Tanzania was established by section 3 of the **Law Reform Commission of Tanzania Act, 1980** to take and keep under review systematic development and reform.

The Commissioners are:

- Hon. Mr. Justice Hamisi A. Msumi -
Judge of the High Court of Tanzania and the High Court of Zanzibar, Chairman.
- Mr. George B. Liundi -
Advocate of the High Court and Court of Appeal of Tanzania, Full Time Commissioner.
- Mr. Pius Msekwa -
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- Prof. Gamaliel Mgongo Fimbo -
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THE LAW REFORM COMMISSION OF TANZANIA

August, 1990

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REPORT ON THE IMPACT OF CRIMINAL JUSTICE SYSTEM IN COMBATING THEFTS/EMBEZZLEMENT IN GOVERNMENT INSTITUTIONS AND PUBLIC CORPORATIONS

Pursuant to section 9(1) of the Law Reform Commission of Tanzania Act, 1980 the Commission, acting on the statement of concern by His Excellency, the President of the United Republic of Tanzania, Ndugu Ali Hassan Mwinyi, while speaking at the annual meeting with local journalists at the State House on 24th December, 1988; on failure of the criminal justice system in combating thefts and embezzlement in Government institutions and public corporations, the Commission made a study of the problem with the view of advising the Government on:

- (a) changes, if any, which could be made in the laws as to cure the alleged mischief and;
- (b) structural and statutory alteration which could be made in the machinery established for criminal justice.

In our investigations, all statutory instruments for criminal justice were critically examined; in particular the Penal Code, the Criminal Procedure Act and the Evidence Act. Data was collected from all regions but our conclusions are derived from data collected in the Dar es Salaam Magistrates' area because this is the busiest Magistrates' area in the country.

In accordance with section 14(1) of the Law Reform Commission of Tanzania Act, 1980, we submit our Report on the Impact of the Criminal Justice System in Combating Thefts/Embezzlement in Government Institutions and Public Corporations.

Judge Hamisi A. Msumi
CHAIRMAN

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**REPORT ON THE IMPACT OF CRIMINAL JUSTICE
SYSTEM IN COMBATING THEFTS/EMBEZZLEMENT
IN GOVERNMENT INSTITUTIONS AND PUBLIC
CORPORATIONS**

1. INTRODUCTION:

- 1.1 On the 25th of December, 1988, the Sunday News carried a news item in its front page. Part of the news item ran as follows:-

“President Mwinyi has said the iron broom is sweeping quietly to avoid intimidating the faithful and alerting the unscrupulous elements in Government and public institutions.

Speaking at the annual meeting with local journalists at the State House in Dar es Salaam yesterday, the President, however, said the speed of the broom was being regulated by the rule of law.

“Since we accept that the rule of law should prevail, we should allow the law to take its course,” said the President, adding that the same law was at times protecting people who were publicly known to be wrong doers.

“The problem is not with the lawyers, it is with the law itself. That’s why we have the Law Reform Commission to review the law so that it does not protect undesirable elements,” President Mwinyi stressed.

The President, who is also Party Vice-Chairman, was answering questions (sic) prepared by local journalists under the auspices of the Tanzania Journalists Association (TAJA) on Christmas Eve.....”

- 1.2 We must admit that on reading the article we felt both flattered and frightened. Why flattered and frightened?, one may ask. Flattered because the fountain of executive authority on the land has put the Commission in the limelight: that the Commission has the mandate, and indeed the ability, to remedy all the defects in the laws operating in Tanzania. How could anybody else do any better?

On the other hand we were frightened because of the same reason for which we are flattered. Why? After being put on a pedestal as it were, the Commission has an uphill task in trying to live up to its new reputation. We say this bearing in mind the President’s statement that lawyers have no problems but the problem is with the law. One can easily envisage a situation where the Commission is made the whipping-boy of the legal establishment, and all the shortcomings of the law-enforcement, machinery thrown at the front door of the Commission!

- 1.3 We have tried to formulate the issues arising from the Presidential Address of 24th December, as follows:

- 1.3.1 Whether or not many cases of theft/embezzlement “collapse” in court.
- 1.3.2 Whether or not the failure in criminal prosecutions result in acquittals thus leading to many criminals going Scott free.
- 1.3.3 Whether or not the acquittals are caused by structural defects in the law.
- 1.3.4 Generally, whether or not the criminal justice system protects the interests of wrongdoers.

2.0 **RESEARCH:**

The issues as formulated above could only be answered by data on the performance of the Criminal Justice system in the country. Field research on the subject began in December, 1988.

Data have been collected from the offices of the Director of Criminal Investigation (DCI) and the Dar es Salaam Resident Magistrate Court at Kisutu.

2.1 The figures from the Police are detailed and panterritorial. They give a breakdown of the "State of Crime", i.e., thefts in Government departments and public corporations in every region of Mainland Tanzania. The actual figures are attached to this report as Appendix "A" to "C". The following is the grand summary of the figures for the last three years:

YEAR	CASES REPORTED TO POLICE	CASES SENT TO COURT	CASES PENDING IN COURT	CASES WITHDRAWN U/S 2255 CPA	ACQUIT- TALS	CONVIC- TION
1985	1467	821	538	107	84	92
1986	1138	558	394	61	42	61
1987	1302	357	219	36	47	55

2.2 For court records, the Kisutu Court was selected because it is the biggest and busiest Magistrates' court in Dar es Salaam, and indeed in Tanzania. The Inquiry was restricted to cases of theft originating from Government offices and public corporations only. The only shortcoming in the data collected is that some three hundred (300) cases are missing in the 1985 data, otherwise the data is complete. The figures therefore read as follow:

YEAR	CASES REPORTED TO COURT	CASES WITHDRAWN	ACQUITTALS	CONVICTIONS
1985	79	17	14	24
1986	92	29	23	20
1987	136	42	13	15

2.3 As the figures above show the inquiry was restricted to thefts/embezzlement in Government Departments and other public institutions. This is because the thrust of the allegations of malfeasance was directed against these two groups of institutions.

3.0 LAW INVOLVED

3.1 The report of the address by the President in the Sunday News was non-committal, but for the person who heard the address live, and one who read the "Uhuru" newspaper version of the story, there is no doubt that the shortcomings referred to relate to the **criminal** and not the civil process. That is why the data collected is on the criminal process. Consequently the laws involved which will be discussed will be laws relating to the **criminal** process.

3.2 Criminal prosecutions are instituted by the state, and, very rarely, by private persons. Before a person is arraigned, he must be charged. The charge must show the offence with which the person is charged, the section, and the law under which that particular person is charged. The charge must also show the particulars of the charge with sufficient brevity and clarity so as to constitute a summary of what the case is all about. There is a lot of case law on what a good charge is and what a bad charge is, and many cases have been thrown out of court for want of good charges. A badly drafted charge can affect a case adversely. It has been said that lawyers **do not** have problems: it is only the law which has problems. A badly drafted

charge which results in a case being thrown out of court is a problem of the **lawyer** not of the law.

- 3.3 Prosecution is an art, as was aptly observed by Edward du Cann in his book "The art of the Advocate." As an art it must be learned, and then perfected through constant use. All those who have put in some years in the criminal justice system know that a good case, if badly prosecuted, is as good as lost. Even here **lawyers** can have problems.
- 3.4 In our system the laws used very frequently are the Penal Code, the Criminal Procedure Act, the Evidence Act, the Economic and Organised Crimes Act and the Minimum Sentences Act. In framing the charge the operative laws are the Penal Code and (sometimes) the Economic and Organised Crimes Act. The laws used in the trial procedure are mainly the Law of Evidence as embodied in the Evidence Act and Criminal Procedure Act. When it comes to sentencing the Minimum Sentences Act comes into play.
- 3.5 Of all the laws cited above none can be said to have left any loop-hole in favour of an accused person. Our Penal Code is still workable, our recently passed Economic and Organised Crimes Control Act and the Criminal Procedure Act, if anything can be said of them, is that they have gone further than before in giving more power to State Organs than before, and abridging the rights of citizens the more. Anybody who knows the historical development of our penal policy since independence can only say we have evolved a harsher, not a more lenient, penal regime.
- 3.6 Theoretically, we would venture to say that the present law on theft is not so bad as to picture it as an abomination. On a comparative basis with other similar jurisdictions, we would say that we do not lag behind, and certainly our penal law does not discriminate in favour of the accused person.

4.0 INTERPRETATION OF THE DATA AVAILABLE:

- 4.1 In para 3.2 and 3.3. We have argued theoretically that problems with lawyers in the form of lack of technical fineness in the law affect the result of a prosecution.
- 4.2 What trends are evident in the data collected from the DCI and the Court of Principal Resident Magistrate at Kisumu? In 1985 a total of 1467 cases (see Appendix "A") were reported to the Police. Out of these 821 were sent to court and the rest closed by the Police as undetected. The number of cases thus closed was 646, which is 44.04% of all the cases reported to Police. In 1986 a total of 1138 cases (see Appendix "B") were reported to the police and 558 sent to court. This means 580 files were closed undetected which is 50.97% of the reported cases. In 1987 a total of 1302 cases were reported (see Appendix "C") and 37 sent to court, thus 945 files were closed undetected. This is 72.58% of all reported cases. The figures therefore show that for the three years more than half of reported cases remained closed undetected. What does this mean? It means that for the majority of cases reported to Police there was no chance of them being sent to court so that the law is put into operation. It is only through a trial that one can see the efficiency or inefficiency of a law. It is also noted that the figure of closed files goes up each year, to reach 72.58% for 1987! This figure is however, a **national** average. There are other stations/regions where the clearing up rate is

higher than the national average. The average figure therefore has no indication on the performance of individual stations, but as a national average it points to an alarming trend.

- 4.3 There are other cases which do not also go for trial. There are ones which are withdrawn in court. If those figures are added, the percentage of cases not tried goes higher.
- 4.4 For each year there are convictions where after a trial a decision has been made in favour of the state. These must be put in the same group as files closed undetected and withdrawals since no decision has been made in the cases against the state. If these figures are added the percentage will surely go higher. For each year if the number of files closed undetected are added up to those withdrawn and those where convictions have been secured we get the following picture -

YEAR	FILES CLOSED	CASES	
	UNDETECTED	WITHDRAWN	CONVICTIONS
1985	646	207	92
1986	580	61	61
1987	945	36	219

The totals for the years are 845 for 1985, 702 for 1986 and a staggering 1200 for 1987. Worked out in percentages, the above totals as against acquittals where decisions have been given against state interests the figures come to 9.9% and 3.9% of the decisions went against state interests. The figures also show that for each year there are more convictions than acquittals as shown below -

YEAR	CONVICTIONS	ACQUITTALS
1985	92	84
1986	61	42
1987	55	47

- 4.5 What is the positions with the court figures as shown in 2.2. The percentages of cases withdrawn as against those filed is 21.5% for 1985, 31.5% for 1985 and 30.8% for 1987. In court therefore the cases which go for trial are more than those which do not go for trial. This is not surprising because the initial sifting has already been made by the Police so what appears in court is a more refined product than the raw product presented to the Police; in the court figures, decisions against state interests are reflected in the acquittals which are 14 for 1985, 23 for 1986 and 13 for 1987. Percentage wise this works out against reported cases as 17.7% for 195, 25% for 1986 and 9.5% for 1987. He court figures therefore show that instances where the law has worked, after a full trial, against state interests is always less than a quarter of the total case load.

5.0 FINDINGS AND RECOMMENDATIONS:

- 5.1 The data available from the Police show that majority of the cases reported to the Police do not find their way to court. Most of these cases are fraud cases involving documentary evidence, and most do not proceed because of poor record keeping in the relevant institutions. There are also

evident cases of lack of financial discipline, and where things go bad, deliberate tempering with records to frustrate police work. If there are no records, police investigators cannot do miracles by "inventing" the documents. We therefore recommend that rather than blame the law, lawyers and the Police, efforts should be made to make sure that public institutions are manned by capable and honest people who should then instil financial discipline in the public institutions. In so doing, we hope that the appalling situation existing now will gradually disappear.

- 5.2 Through background checks should be made on all accounting personnel in public institutions, particularly those at senior levels. The same checking should also be made on senior personnel in public institutions who are eligible for appointment to posts where they can be Accounting Officers.
- 5.3 The Fraud Sections of the National Bank of Commerce and the Police Force should be strengthened through recruitment of capable officers and designing of schemes of training and insure the upward mobility of such officers.
- 5.4 The law as it is now is adequate to deal with any volume of work. The only supplement to this should be training of magistrates properly to be able to handle fraud cases which need a lot of intellectual effort.
- 5.5 Prosecution of fraud cases should be strengthened both at the level of the Attorney-General's Chambers and also with the prosecution service in the Police Force. This could be done by selecting personnel with aptitude in the art of prosecuting fraud cases and let these concentrate more on such type of cases to gain the relevant experience and expertise.

APPENDIX "A"

WIZI KATIKA MASHIRIKA YA UMMA NA IDARA ZA SERIKALI 1985

REGIONS	CASES REPORTED TO POLICE	CASES SENT TO COURT	PENDING CASES	CONVICTED	ACQUITTED	W/D, U/S 2255 CAPA
D'Salalam	201	89	79	3	1	6
Pwani	44	27	14	5	3	5
Dodoma	73	42	30	7	1	4
Singida	24	15	10	1	1	3
Tabora	97	61	25	10	13	13
Morogoro	88	53	28	11	7	7
Mwanza	74	48	22	13	8	5
Kagera	52	35	30	3	1	1
Shinyanga	59	43	24	10	3	6
Mara	37	32	25	2	2	3
Arusha	54	37	27	5	1	4

Kilimanjaro	56	36	23	3	4	6
Tanga	73	42	29	2	6	5
Mbeya	72	32	10	6	5	11
Iringa	88	50	33	7	6	4
Ruvuma	30	19	15	2	2	-
Mtwara	47	31	21	3	5	2
Lindi	37	22	18	1	2	1
Kigoma	38	23	11	5	5	2
Rukwa	26	16	12	1	1	2
Mwadui	9	1	-	1	-	-
Reli	99	35	28	5	2	-
Tazara	43	5	3	1	1	-
Bandari	28	14	12	-	2	-
U/Ndege	18	13	9	-	2	2
JUMLA	1,467	821	538	107	84	92

APPENDIX "C"

**WIZI WA MALI YA MASHIRIKA YA UMMA NA IDARA ZA SERIKALI
1 JANUARI - 31 DESEMBA, 1986**

REGIONS	REPORTED CASES	CASES SENT TO COURT	PENDING CASES	CASES W/D, U/S 2255 CAPA	ACQUITTED CASES	CONVICTED CASES
D'Salalam	163	76	73	3	-	-
Pwani	38	16	16	-	-	1
Dodoma	70	37	23	8	2	4
Singida	22	6	3	1	-	2
Tabora	41	22	13	3	3	3
Morogoro	63	22	16	2	2	2
Mwanza	62	33	24	5	1	3
Kagera	37	22	16	-	1	5
Shinyanga	47	19	14	2	2	1
Mara	16	6	5	-	-	3

Arusha	42	31	26	2	2	1
Kilimanjaro	56	23	13	5	2	3
Tanga	43	17	8	4	1	4
Mbeya	68	39	19	9	5	6
Iringa	63	33	20	6	4	3
Ruvuma	26	19	12	2	1	4
Mtwara	38	20	15	1	-	4
Lindi	16	7	7	-	-	-
Kigoma	35	21	11	2	7	1
Rukwa	29	16	14	-	2	-
Mwadui	7	1	-	-	-	-
Reli	18	38	22	4	6	6
Tazara	34	9	8	-	-	1
Bandari	24	13	11	-	1	1
U/Ndege	17	9	5	2	-	2
JUMLA	1138	558	394	61	42	61

APPENDIX "C"

WIZI KATIKA IDARA ZA SERIKALI NA MASHIRIKA YA UMMA 1987

REGIONS	REPORTED CASES TO POLICE	CASES SENT TO COURT	CONVICTE D	ACQUITTED	CASES W/D, U/S 2255 CAPA	PENDING IN COURT
D'Salalam	238	57	3	5	3	46
Pwani	57	15	3	4	2	6
Dodoma	65	16	2	2	2	10
Singida	39	17	3	3	1	10
Tabora	47	17	3	2	1	11
Morogoro	81	23	5	6	3	9
Mwanza	53	21	2	1	3	15
Kagera	36	13	2	1	-	10
Shinyanga	34	11	1	-	-	10
Mara	28	10	-	1	3	6
Arusha	48	15	2	-	1	12
Kilimanjar	61	16	2	2	2	10

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Tanga	55	16	4	1	2	9
Mbeya	86	22	5	7	4	6
Iringa	67	13	3	2	-	8
Ruvuma	41	11	1	2	1	7
Mtwara	33	7	3	-	-	4
Lindi	26	9	-	1	2	6
Kigoma	48	17	17	3	4	6
Rukwa	25	9	9	2	1	4
Mwadui	12	-	-	-	-	-
Reli	55	6	1	-	-	5
Tazara	31	12	5	1	1	5
Bandari	19	3	-	-	-	3
U/Ndege	14	1	-	-	-	1
Benki Kuu	3	-	-	-	-	-
JUMLA	1302	357	55	47	36	219