



POLICY BRIEF

A POLICY BRIEF ON REFORMING NON BAILABLE OFFENCES AND UNLAWFUL ARREST IN TANZANIA

For a Just and Equitable Society



SUMMARY

Legal and Human Rights Centre (LHRC) advocates for urgent reforms within Tanzania's criminal justice system, particularly concerning non-bailable offenses and unlawful arrests. Despite constitutional guarantees and recent Presidential Commission recommendations, significant challenges persist. This policy brief highlights key issues such as denial of bail for bailable offenses, prevalent unlawful arrests, and inadequate infrastructure. Drawing on national laws, including the Constitution of the United Republic of Tanzania, 1977 and Police General Orders and Presidential Recommendations on Criminal Justice Reforms. LHRC reiterates critical recommendations from the Presidential Commission on Criminal Justice Reform. LHRC urge the government of Tanzania to prioritize and accelerate the implementation of these reforms to uphold human rights, enhance due process, and strengthen public trust in the justice system

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THE FOLLOWING ARE KEY CHALLENGES IDENTIFIED BY LHRC THROUGH RESEARCH AND ENGAGEMENT WITH AFFECTED COMMUNITIES

Denial of Bail on Bailable offences

Individuals are still being denied bail at police stations even for offenses that are bailable. It should be pointed out clearly that, Bail in Tanzania Mainland is a constitutional right, having its foundation in the Bill of Rights introduced in 1984 in the Constitution of the united republic of Tanzania of 1977 as amended from time to time, especially Article 13(6)(b) of it, provides;

"To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles namely: (b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence;" Article 15(1) of the same,

"Every person has the right to freedom and to live as a free person."

Despite the existence of the provisions of the mother law of the land (the constitution) that grants the right to bail, there is still a significant challenge for a suspect of a criminal offense to obtain bail while in police custody.

According to the 2021 Human Rights Report, Citizens expressed their opinions on the severity of the issue of obtaining bail. 46% stated that accessing bail is a problem, 35% said it is a very serious problem, 16% considered it a minor issue, while 1% said bail is not a problem at all. The research findings clearly indicate that obtaining police bail is a challenge in our society. The root of this problem is linked to the right to bail being used as a bargaining tool by investigators in certain cases.



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Unlawful Arrests and Abuse of Powers

Arrests that do not adhere to legal procedures continue to be a problem. There have been serious concerns over search and arrest conducts which are contrary to the law, these led to the emergence of arrest practices by people pretending to be law enforcers. On some occasions were ambivalent to differentiate between law enforcers and unknown assailants who camouflage themselves under the pretense of law enforcers.

For instance, there have been reported incidents of police officers arresting accused persons without uniforms or identification . Likely, other occasions bandit (robbers) applied the same methods pretending to be police officers.

Police General Order of 2021 (PGO No 1) Order 26 provides that; "Arrests involve the deprivation of a person's freedom and liberty and as such shall be carried out with all due care and diligence. All guidelines relating to arrests stipulated shall be strictly adhered to."



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Inadequate Infrastructure

Police stations and prisons often lack suitable infrastructure particularly for children, persons with disabilities, and women.

Recommendations of the Presidential Commission on Criminal Justice Reform.

The Commission's report highlighted systemic issues and offered numerous recommendations, including.

Regulating Arrest Powers

Restrict arrest powers to the police and regulate the use of force. Address the misuse of arrest powers by regional and district commissioners.

Bail

Reform bail laws to reduce the number of individuals denied bail on bailable offences, particularly in economic crimes and to establish the Bail Act.

Nolle Prosequi

Provide education on the use of Nolle Prosequi and ensure it is not used without sufficient evidence. Consider requiring judicial approval.

Strengthening Commission for Human Rights and Good Governance (CHRGG) to monitor and

Strengthening oversight mechanisms for the police by empowering the CHRAGG.

Investigation and Prosecution

Establish an independent National Bureau of Investigation to handle major crimes and set time limits for investigations.

Ethics and Corruption

Strengthen internal mechanisms to address misconduct and corruption within law enforcement and the judiciary



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Our call

LHRC calls the government to speed up implementation of recommendations provided by the Presidential Commission on Criminal Justice Reform. Citizens are suffering from the restrictive criminal justice legal framework which denied their rights before various criminal justice institutions

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CONCLUSION

LHRC is committed to working with all stakeholders to promote criminal justice reform. By working together to implement the Presidential Commission's reform recommendations for Criminal Justice, we can create a more just and effective system.

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