



Original Article

The Principle of Presumption of Innocence: A Human Rights-Based Assessment of the Laws and Practice in Tanzania

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The presumption of innocence is a cornerstone of criminal justice and a fundamental human right enshrined in Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977. It mandates that an accused person shall be deemed innocent until proven guilty by a competent court. This paper provides a human rights-based assessment of the legal framework and practical application of this principle in Tanzania. It argues on the historical and legal foundations of the presumption of innocence, its recognition in both domestic and international instruments, and critically analyses how Tanzanian laws and judicial practices often contradict the principle through denial of bail, prolonged pre-trial detention, and mistreatment of remandees. The study reveals that such practices lead to human rights violations, including loss of liberty, psychological trauma, economic hardship, prison overcrowding, and public mistrust in the justice system. Using key case examples and reports, the paper highlights the socio-economic and legal consequences of undermining this right. It concludes by recommending reforms such as amending bail laws, reducing pre-trial detention periods, and improving prison conditions to ensure compliance with international human rights standards and promote access to justice and fairness in the criminal justice system of Tanzania.

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INTRODUCTION

The presumption of innocence is a fundamental principle in criminal law, ensuring that an accused person is considered innocent until proven guilty by a competent court of law. This principle is enshrined in Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977, which guarantees that no person shall be treated as guilty unless proven so in accordance with the law. However, various legal and procedural realities contradict the essence of the presumption of innocence, particularly in cases where bail is denied, non-bailable offences exist, and pre-trial detention affects the accused. These contradictions raise concerns about human rights, access to justice, and the fairness of the criminal justice system.¹

Background Overview of the Presumption of Innocence

The presumption of innocence is a long-standing legal principle with its origins traced back to Roman law, with the phrase “*ei incumbit probatio qui dicit, non qui negat*” which means that the burden of proof is on the accuser, not the accused was established. This principle was later reinforced in English common law and became a fundamental element in modern legal systems worldwide, including Tanzania.

The principle of presumption of innocence has been appreciated and recognized even before the inclusion of human rights provisions in the Constitution of United Republic of Tanzania of 1977 in many years from 1979 by Honorable Judge as he was then, in the case of *Tito Douglas Lyimo vs Republi*² where he stated on the matter of bail as an indicator of presumption of innocence.

In Tanzania, the presumption of innocence was formally recognised in Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977, which states that no person shall be treated as guilty until proven so by a competent court. The

criminal justice system of Tanzania follows an adversarial model, which places the burden of proof on the prosecution to establish guilt beyond a reasonable doubt as enshrined under the Tanzania Evidence Act Cap 6. This principle is also upheld in international human rights instruments, including:

Despite its constitutional and international recognition, the practical application of the presumption of innocence in Tanzania has serious limitations, particularly due to the denial of bail, prolonged pre-trial detention, and mistreatment of remandees. These contradictions raise concerns about human rights violations and access to justice.

Aim of the Presentation

The aim of this presentation is to critically assess the laws and practices surrounding the Presumption of Innocence in Tanzania’s criminal justice system as a case study, explaining its legal foundation, inconsistencies in its application, the rationale behind denying bail, and the consequences of failing to uphold this fundamental right. The presentation, therefore, seeks to identify gaps between law and practice, critique existing challenges, and propose recommendations for a fairer justice system.

The Legal Foundation of Presumption of Innocence in Tanzania

The presumption of innocence is not just a constitutional guarantee but also a core principle in international human rights instruments that Tanzania has ratified, including:

Article 1 of the Universal Declaration of Human Rights (UDHR), 1948, Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), 1966, Article 7(1)(b) of the African Charter on Human and Peoples’ Rights (ACHPR), 1981.

Tanzania’s Criminal Procedure Act (CPA), Cap 20, also stresses the presumption of innocence,

¹Constitution of the United Republic of Tanzania, 1977,art13 (6) (b).

requiring that a person must be tried fairly and convicted only if there is sufficient evidence beyond a reasonable doubt. However, the implementation of this principle in Tanzania is not promising, particularly regarding bail and pre-trial detention.

The court has proved the principle in the case of *Hassan Othman Hassan versus the Republic*, where it was held that the court is guided by the principle that an accused person is presumed innocent until proven guilty. The court further said that an accused person should be left free and enjoy his rights so long as he does not abscond from appearing in court until his rights are determined in the criminal case.³

LITERATURE REVIEW

Mhando⁴ critically examines how extended pre-trial detention practices in Tanzanian courts undermine the constitutional guarantee of the presumption of innocence. He provides empirical data and legal analysis demonstrating the tension between law and practice, making it highly relevant for understanding real-world challenges in the criminal justice system. Kamara and Msuya (2023)⁵ analyse bail procedures and argue that judicial denial of bail in non-bailable offences frequently violates fundamental rights, including the presumption of innocence. The article discusses reforms and advocates for harmonising bail laws with international human rights standards, directly supporting your study's call for legal reforms.

Rajabu⁶ provides the intersection of human rights principles and criminal law, focusing on Tanzanian compliance with international norms. Rajabu's analysis of the presumption of innocence, especially regarding judicial practices and detention conditions, provides essential

context and supports the critique of practical challenges to the presumption of innocence. Sanga discusses barriers to justice in Tanzania, including systemic issues affecting accused persons' rights. Sanga addresses bail systems, pre-trial detention, and prison conditions, offering policy recommendations aligned with the conclusion in this study for reform to protect the presumption of innocence.⁷

METHODOLOGY

This study used a doctrinal legal research approach to examine the presumption of innocence in Tanzania. It involves analysing primary legal sources such as the Constitution of the United Republic of Tanzania (1977), the Criminal Procedure Act, and relevant bail laws, alongside key judicial decisions that interpret and apply the principle. The research focused on how the law is written and applied in practice, particularly regarding bail, pre-trial detention, and treatment of accused persons.⁸

Additionally, the paper reviewed reports from international bodies like the United Nations Human Rights Committee and local organisations such as the Tanzania Human Rights Defenders Coalition to assess human rights implications. Scholarly legal commentaries and case law analyses support the evaluation of Tanzanian compliance with international law.

FINDINGS AND DISCUSSION

Human Rights Infractions in the Application of the Presumption of Innocence in Tanzania

Denial of Bail and Its Impact on the Right to Liberty

Legal and Human Rights Centre opines that bail is a constitutional right linked to personal liberty

³Criminal Appeal No. 15 of 2013, High Court DSM, (Unreported).

⁴Mhando, J. (2022) The impact of prolonged pre-trial detention on the presumption of innocence in Tanzania.

⁵Kamara, P. & Msuya, L. (2023). Bail practices and human rights in Tanzania: A study on judicial discretion and access to justice.

⁶Rajabu, M. (2021). Human Rights and Criminal Justice in Tanzania. Law Review Press.

⁷Sanga, J. M. (2023). Access to Justice and the Rule of Law in Tanzania, University of Dar es salaam Press.

⁸Mwaikusa, K (2020). Criminal Procedure in Tanzania: Principles and Practice.

as it is connected to the concept of presumptions of innocence as per article 13 (6) (b) of the Constitution of the United Republic of Tanzania of 1977.⁹ Already, His Lordship Mweisumo J, as he was then, in the case of *Tito Douglas Lyimo vs Republic*,¹⁰ appreciated the fact that, even before the recognition of the principle of presumption of innocence in the Constitution, courts still considered bail as a matter of right.¹¹

Despite the principle of presumption of innocence, some accused persons are denied bail and detained before conviction. Bail is a mechanism that allows accused persons to be temporarily released while awaiting trial, provided they meet certain conditions. However, under Tanzanian law, some offences are non-bailable, meaning an accused person must remain in custody until trial. Judicial discretion is sometimes restricted, making it difficult for accused persons to secure bail.

Examples of non-bailable offences under the Criminal Procedure Act and other laws include:

Murder which is provided under Criminal Procedure Act, section 148(5)(a), Treason under Section 148(5)(b) of Criminal Procedure Act, Terrorism-related offenses provided under Prevention of Terrorism Act, 2002, Drug trafficking offenses as per Drugs Control and Enforcement Act, 2015, Economic crimes (Economic and Organized Crimes Control Act, Cap 200).

Pre-Trial Detention and Its Consequences on the Right to a Fair Trial

In many cases, accused persons are detained for prolonged periods before trial, often due to delays in investigation, court backlogs, and sometimes because of bureaucratic inefficiencies. This has serious implications.¹²

⁹Legal and Human Rights Center (2021) 'Non-Bailable Offences in Tanzania, Justice Lugakingira House, Kijitonyama.

¹¹*Tito Douglas Lyimo vs Republic [1979], LRT NO. 5*

Persons detained for drug trafficking under the Drugs Control and Enforcement Act may spend years in remand prison, only to be acquitted due to a lack of evidence. By the time they are freed, they have lost years of their life, their dignity, and their livelihood. Because of unfair spending in the jail without proper justifications, most of the detainees experience psychological and emotional distress, where many detainees experience anxiety, depression, and stress, affecting their mental health.

Mistreatment of Remandees and Violation of Human Dignity

A major contradiction in the Tanzanian legal system is that remandees (those awaiting trial) are treated almost like convicts. Since, despite not being found guilty, they stay in prison-like conditions, often mixed with convicted prisoners. They also face harsh treatment, including overcrowding, poor nutrition, and lack of medical care, contradicting the constitutional principle that a person must be convicted before they can be legally punished. The violation of human dignity is prohibited under the Constitution of the United Republic of Tanzania and international laws.¹³

This raises the question.

If an accused person is truly presumed innocent, why are they treated like a convict?

Rationale for Denial of Bail and Its Critique

In the case of *Attorney General vs Dickson Paul Sanga*¹⁴, the court provides the reasons for the restrictions on bail as necessary for public safety, preventing accused persons from absconding, and ensuring that accused persons do not interfere with investigations. However, the reality is that denying bail undermines the presumption of innocence by treating persons who have not been convicted as if they are already guilty, and it has

¹²International Covenant on Civil and Political Rights (ICCPR), 1996, art9.

¹³Ibid, art10.

¹⁴*Attorney General vs Dickson Paul Sanga, Civil Appeal No. 175 of 2020, Court of Appeal of Tanzania, at Dar es salaam (unreported).*

led to unfair treatment of accused persons because:

- Bail conditions are often so strict that poor individuals cannot meet them, effectively turning bailable offences into non-bailable ones.
- Wealthy and influential individuals sometimes manage to obtain bail, while poor accused persons remain in custody.
- Some individuals are denied bail even when there is weak evidence against them.

Example: A person accused of economic crimes may remain in custody for months or even years before trial, despite the fact that the case has not been proven against them. This defeats the very essence of fairness and the right to liberty provided by the Tanzanian Constitution of 1977.

Human Rights Consequences of Failing to Implement the Right to Presumption of Innocence in Tanzania

Denying individuals their right to presumption of innocence has various consequences, affecting not only the accused but also their families, society, and the nation at large. Cases of wrongful detentions erode public trust in the judiciary, increase prison congestion and burden government resources,

In the case of *Attorney General vs. Jeremia Mtobesya*¹⁵ in Dodoma, Jeremia was imprisoned for ten years before being acquitted. His wife and children were left to struggle financially, leading to the children dropping out of school due to unpaid fees. Additionally, the emotional distress of having a loved one unjustly imprisoned can cause depression and anxiety among family members, leading to broken families and social instability.

¹⁵*Attorney General vs. Jeremia Mtobesya, Civil Appeal No.65 of 2016 High Court of Tanzania (Main Registry) at Dar es salaam.*

Loss of Public Trust in the Justice System

When innocent people are arrested and imprisoned for years, the public loses faith in the judiciary and law enforcement agencies. This distrust can lead to reduced cooperation between citizens and the police, making crime prevention and justice administration more difficult.

For instance, the 2017 case of 65 traders from Kariakoo, Dar es Salaam, who were detained for months on allegations of economic crimes but later released due to a lack of evidence, sparked public outrage. Many citizens questioned whether the judicial system serves justice or simply punishes the poor while protecting the wealthy. Such instances weaken the rule of law and can lead to civil unrest.

Overcrowding in Prisons and Increased Government Expenditure

Wrongful detentions and delays in trials contribute significantly to prison congestion. Overcrowding not only worsens living conditions for inmates but also strains government resources that could be used for other public services.

According to the Tanzania Prisons Service, as of 2023, the country's prisons held over 40,000 inmates, despite their official capacity being around 30,000. Many of these prisoners were remandees awaiting trial for years. The government spends millions on food, healthcare, and prison management, funds that could be allocated to education, healthcare, or infrastructure development.

For example, in Mwanza, the Butimba Prison exceeded its capacity by nearly 60%, leading to increased cases of malnutrition and infectious diseases among inmates.¹⁶ If the presumption of innocence were strictly upheld, many of these detainees would have been granted bail or expedited trials, reducing unnecessary costs and human suffering.

¹⁶Legal and Human Rights Center (2021) 'Non-Bailable Offences in Tanzania, Justice Lugakingira House, Kijitonyama.

RECOMMENDATIONS

To ensure the presumption of innocence is upheld as a human right, Tanzania must:

- Amend bail laws to allow judicial discretion based on individual circumstances and not as provided under section 148 (5) of the Criminal Procedure Act of Tanzania
- Reducing pre-trial detention by speeding up the case track, especially for petty offences
- Improving prison standards to align with the UN standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

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