

# **FROM RETRIBUTIVE JUSTICE TO REFORMATIVE JUSTICE: ADVANTAGES OF COMMUNITY SERVICE IN ADMINISTRATION OF CRIMINAL JUSTICE IN TANZANIA**

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## **ABSTRACT**

Many people in the community tends to give preference to Retributive justice rather than Reformative justice, retributive justice as one amongst the theories of criminal justice has many followers compared to reformative justice which is also a theory of criminal justice. Aside from giving preference to criminal justice there are a few people who are aware of reformative justice mainly because such people have been exposed to retributive justice compared with reformative justice. However, despite being good retributive justice is not the only best methodology to deal and handle the convicted criminals whereby, it should be taken into account that even reformative justice is important and that is why it tends to exist. Therefore, this article speaks of community service which is one of sentences falling under reformative criminal justice, the focus being on the importance of community service and the challenges that faces the implementation of community service in the United Republic of Tanzania.

## **INTRODUCTION TO COMMUNITY SERVICE**

There is no hard and fast rule when it comes to defining the term “*community service*.” Due to the fact that there are many jurists who define the term community service differently. However, *Community Service Act*<sup>i</sup> under section 3(2)(a) states that it comprises of unpaid public work within a community, for the benefit of that community, for a period to be fixed by the court but not exceeding the term of imprisonment for which the court would have sentenced the offender. Also community service can be defined as unpaid work that is intended to be of social use, that a convicted criminal offender is required to do instead of undergoing imprisonment, therefore community service is an alternative to imprisonment.<sup>ii</sup> Some of the works that can be included under the umbrella of community service include cleaning, farming, forestry, construction, fumigations, carpentry and others which would produce benefit to the entire community.

The point to note and take into consideration is that community service is an order of the court of law which should be distinguished from volunteer service; as a result such community service by the order of the court should be stricken so as to provide punishment to the convicted offender(s).<sup>iii</sup> Therefore, community service is a non-custodial sentence which falls under the auspice of reformatory theory of criminal justice.

## **COMMUNITY SERVICE AS A REFORMATORY PENAL JUSTICE**

Community service was introduced as one amongst penal sentences or sanctions whose purpose is not only to punish the wrongdoers and to reform them mentally and psychologically rather than just punishing them. This is because community service is associated with carrying out of several social activities which are for the public good as well as it tends to reintegrate the convicted offenders back to the community. The community which is composed of experts and non-experts in the legal field has a great appreciation on retributive justice considering sentences associated with such as imprisonment and fines as the best remedies against convicted offenders. However, it is high time for the perception of the community to be changed for the community to be aware of community service which is under the umbrella of reformatory justice.

## RETRIBUTIVE JUSTICE VERSUS REFORMATIVE JUSTICE THEORIES OF CRIMINAL JUSTICE

Before drilling deep to get water from the rock bottom by explaining on the importance of reformatory theory of criminal justice, prudence requires that the top surface of the ground be cleared and that there is a need to understand first the two concepts of retributive justice theory and reformatory justice theory of criminal justice system.

### *Retributive Theory of Criminal Justice*

When speaking about as to why punishments does exist, this theory entails that when an person willingly breaks the laws and other orders in the society, justice demands that as a payback they should suffer in return; however the response to a crime that is the punishment should be proportional to the offence committed.<sup>iv</sup> This theory provides to the effect that one shall reap from what he sows, to mean that every criminal offender should not benefit from his evil deed regardless of how big or small it may look, rather all criminal offenders should be penalised as a payback to what they have done.<sup>v</sup> This comes from the notion that every criminal deserves to get from what he committed that is pay evil with punishment and good deeds with rewards in the sense that punishment if the appropriate reward for all evil deeds.

This theory was clearly illustrated by the case of *Allan Milner, Nigerian Penal System*<sup>vi</sup> in which 60 people were sentenced to death for having killed a woman they believed to be a witch. In sentencing them while taking into account that a responsible criminal should be punished with a penalty proportionate to his offence, the court of law said, “the government does want not to legalise the killing of witches”. Also in the case of *Daudi Pete v Attorney General*<sup>vii</sup> it was found that though the death penalty as provided by section 197 of the *Penal Code*,<sup>viii</sup> offends article 13(6) (d) and (e) of the *Constitution of the United Republic of Tanzania*<sup>ix</sup> it is not arbitrary hence a lawful law, and it is reasonably necessary as a payback to the one who maliciously took the life of another, and it is thus the punishment is saved by article 30(2) of the *Constitution of the United Republic of Tanzania*.<sup>x</sup> From above mentioned case-laws, it can be seen that the appropriate award for a murderer is to receive a murder sentence as well. Therefore, many jurists arguing in favour of this theory are of the view that courts must be very strict in making sure that stiff sentence is given to the convicts so that the society at large must not be tempted to commit such a crime in the future.<sup>xi</sup>

But in all angles this theory insists that the punishment assigned to a person should not be excessive than the offence committed and such can be seen in the case of *Mbushuu alias Dominic Mnyaroje and Another v. Republic*<sup>xiii</sup> whereby the Court of Appeal of Tanzania stated to the effect that a law that allows derogation should be lawful in that it should not be arbitrary, and it should be proportional in that the limitation should not be more than reasonably necessary. Also in the case of *Basil Pesambili Mramba and Daniel Aggrey Ndhira Yona v. Republic* (Unreported)<sup>xiii</sup> the High Court of Tanzania Dar es Salaam District Registry stated to the effect that the weight of the punishment should correspond with the weight of the offence committed. On the other hand, this theory is goes contrary to the theory of revenge, whereby scholars in favour of this is theory argues to the effect that retributive justice is not personal, as it is directed only at wrongdoing, it has inherent limits, involves no pleasure at the suffering of others as it is not sadist in nature and employs procedural standards. Furthermore, retributive justice is in contrast with other purposes of punishment such as deterrence and rehabilitation of the convicted criminal offender.<sup>xiv</sup> This theory is criticised due to the fact that punishment *per se* is not a remedy for the mischief committed by the offender rather it merely aggravates the mischief. Punishment in itself evil and can be justified only on the ground that it yields better result and since retribution aims as revenge therefore it is a wild justice.<sup>xv</sup> Due to the proven fact that retribution is only a subsidiary purpose served by punishment, thus most Criminologists, Penologists and Sociologists oppose this theory as they believe that retributive punishment is brutal and barbaric since it promotes “an eye for an eye, a tooth for a tooth”.<sup>xvi</sup>

### ***Reformative Theory of Criminal Justice as a Custodial sentence***

Reformative theory of criminal justice falls under custodial sentence, whereby custodial sentence are punishments in which anyone found guilty by the court of law will be ordered to go direct to jail. It may also be defined as the sentence given by the court of law that involves a term of imprisonment. A person who is convicted will be imprisoned for a period of time set by the court depending on the length of the sentence as prescribed by the law which the accused was charged and convicted with.<sup>xvii</sup> Such kind of sentence requires either temporary or permanent suspension of an individual liberty and the assumption of responsibility over the individual by another body or institution. Custodial sentence can be seen under section 25(b) and (g) of the *Penal Code*<sup>xviii</sup> which provides to the effect that an offender once convicted can be sentenced into imprisonment.

### ***Reformative Justice Theory of Criminal Justice***

This is a newly introduced theory compared to the theory of reformative criminal justice. This theory is under the assumption that a criminal offender is a psychologically sick person who need to be treated. Some scholar term it as a rehabilitation theory. Reformation or rehabilitation, would seek, by means of education or therapy, to bring a criminal into a more peaceful state of mind, or into an attitude which would be helpful in the society, rather than being of harm to society.<sup>xix</sup> This is the best way as the exception because others are killing others because of state of mind so through rehabilitation centers which they are going to be sent it will help them psychologically and it will not happen again since they have been given a lot of education through being admitted into rehabilitation centers. This theory can be reflected under section 25(g) of the *Penal Code*<sup>xx</sup> which speaks that to the effect that a sentence can be pronounced against an offender so as finding security, to keep the peace and transform the offender for him to be of good behavior. While advocating for this theory in the case of *Samwel Kubeja v. Republic*<sup>xxi</sup> His Lordship Mroso, J (as he then was) stated to the effect that I am of the firm view that the confinement in a securely fenced area of the resettlement centre to which the applicant has been placed and where he is constantly guarded by armed prison warders is unlawful. Further, the alleged direction said to have emanated from seminars of prison officers and the circular from the Principal Commissioner of Prisons... are declared to be ultra vires and of no legal effect.

Further it is believed that the time for confinement is used and meant to teach a criminal offender some skills mentally and physically and make him a better citizen as on the other hand, let us give a touch on criminal law and reduce the brutalities of punishment is today's philosophy of law<sup>xxii</sup>. This is simply, a reformative theory of punishment and seems to be an overriding objective of punishment according to the wisdom of the Supreme Court of India in *Narotam\_Singh v. State of Punjab And Another*<sup>xxiii</sup> for the wording that, it should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to serve social justice assuming that all criminals are unskilled and unemployed. The government takes rehabilitation as a top priority as reflected in section 61 of the *Prison Act*<sup>xxiv</sup> whereby emphasis is laid on training of prisoners so that when released he becomes a good citizen, usefully and self-employed and that's why some prisoners tend to learn on carpentry, masonry, agriculture, entrepreneurship etc. Recently, it was reported the Prison Commissioner

informed the general public that they are in mission of giving prisoners some amount of money as a capital after being released from prison so that it can help an individual prisoner to face new challenge in the streets, since currently, most of the prisons in the country are self-satisfactory as they are producing their own food and other stuff necessary for running of the prisons and also the offenders are performing other activities which increase the incomes of many prisons in the country.<sup>xxv</sup>

This theory is praised by religious persons, sociologists and psychologists with the view that it is the most humane of all the theories which aims to reform the legal offenders by individual treatment. An Indian jurist Gandhi ji when advocating for this theory he was quoted saying that “hate the sin not sinner”. Other jurists argues further that the true purpose behind this theory is that no one is a born a criminal and criminals are also humans.<sup>xxvi</sup> Thus the true purpose of punishment should be treatment to a criminal like any other diseased person as it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists and it has been proved to be successful in case of young offenders. The main criticism of this theory is that if Criminals are sent to prison to be transformed into good citizens, a prison will no longer be a 'prison' but a dwelling house, also there are criticism that rehabilitation of criminal offenders has proved to be futile since there are some convicted criminal offenders who tend to continue committing the same or even more serious offences after being released from prisons which are believed and termed to be rehabilitation centres.<sup>xxvii</sup>

### ***Reformative Theory of Criminal Justice as a Non-Custodial Sentences***

Refers to all sentences which stands as an alternative to imprisonment. Non-custodial sentences are those sentence that do not include imprisonment such as discharges, fines and community orders. Non-custodial sentence came as a shift from the pre-existed custodial sentences thus offenders avoid imprisonment with its many undesirable consequences for the benefits of the society, the family of the offender and the offender himself as it may prevent the offenders from getting into the so called the revolving door syndrome.<sup>xxviii</sup> Non-custodial sentences include, community service, house arrest, curfew, suspended sentence, wearing an electronic tag, mandatory treatment programs especially to drug addicts and alcoholics, fine, apology to the victim, specific court orders and injunctions, regular reporting to probation officers,

corporal punishment. Non-custodial sentences can be seen under section 25 of the *Penal Code*<sup>xxix</sup> save for paragraph (b) which speaks of imprisonment.

## **REQUIREMENTS AND STEPS TO BE FOLLOWED IN IMPOSITION OF COMMUNITY SERVICE IN THE UNITED REPUBLIC OF TANZANIA**

Since Community Service is a penal sanction, it is being imposed to the convicted offender in line with statutory requirements and procedures, due to the fact that the law requires uniformity when subjecting offenders to serve under community service. Below are the requirements for one to undergo community service.

First and foremost community service is not a mandatory sentence to all convicted offenders as a result when one reads the *Community Service Act*<sup>xxx</sup> and other laws he or she will find out that the law does not say it is mandatory to sentence a person to community service. As a result community service is imposed to a convicted criminal offender whose sentence does not exceed the period of three years. The law under section 3(1) of the *Community Service Act*<sup>xxxi</sup> states that a judicial officer i.e. a Judge or a Resident Magistrate who convicts and sentences an offender of an offence which does not exceed three years jail time, may sentence such an offender community service where circumstances befits such a convict to be placed under community service.

Also there is a need for examination of a convicted offender's eligibility for community service, the law requires that where it appears that a Resident Magistrate or a Judge of the High Court wants to sentence an offender to community service then there must be a report on the eligibility of such an offender to community service. Whereby, community officers who are established under *Section 11 of the Probation of Offenders Act*.<sup>xxxii</sup> must be present to inquiry on whether or not such an offender is eligible for community service as it is so required under *Section 3 of the Community Service Act*.<sup>xxxiii</sup>

Lastly, there is a need for an offender to be placed under community service whereby community service is not absolute rather a conditional sentence; whereby, there is a need for the convicted criminal offender to give his or her consent on whether he or she is willing to

accept such a sentence. This requirement is posed under section 3(6) (a) of the *Community Service Act*<sup>xxxiv</sup> which provides to the effect that the court should not sentence a person to community service unless he consents to be placed under community service. Additionally, it should be noted that all the offenders sentenced to community service are required to serve their sentences in the community especially in the community where he or she resides or will reside as it is so provided in section 3(8) of the *Community Service Act*<sup>xxxv</sup>,

## **IMPORTANCE OR ADVANTAGES OF COMMUNITY SERVICE**

Community service is highly advantageous to an individual offender, to the family and friends of the offender and to the entire community where such an offender is a member to. Although this portion in the chapter does not test the framed hypothesis still it is paramount for there to be a discussion on the importance or advantages of community service.

### ***Community Service is Beneficial to the Wellbeing of an Individual Offender***

To avoid paralysing the economy by allowing the offenders to take part in economic activities, when an offender is imprisoned he loses contact and touch with the outside world something makes his or her social, political and economic activities and or engagements to stop as well. But when an offender is sentenced to imprisonment he or she is given a chance to continue with her life through earning the daily bread in the days and or hours that he is not required to serve his sentence. Thus this programme is helpful because despite that such an offender will not have whole freedom to engage in his or her economic activities but still he or she will have a chance to collect his or her earnings and pay for government taxes unlike those who are imprisoned, they are banned from working directly in the community.

As pointed out earlier community service falls under rehabilitative theory of punishment. And so once an offender is sentenced to community service he or she gets the chance to undergo treatment and physiological help which in-turn helps him or her to abstain from avoid reoffending. Whereby there are offenders who are sentenced to community service and are placed under Resettlement Centres in pursuance with the *Resettlement of Offenders Act*<sup>xxxvi</sup> and the *Resettlement of Offenders Regulations*<sup>xxxvii</sup>. In such Resettlement Centres the offenders who are regarded as settlers are not only required to work for the community, rather they are



required to undergo treatment as well. One of the psychological therapist who works at Wami Resettlement Centre when giving her response to the questionnaire was of the view that at Wami Resettlement Centre where she works, the settlers are required to work for the community without receiving a single cent, and that they are required to undergo psychological and behavioural treatments so as to cure the bad traits that made them to commit offences.

Also, community service helps to reintegrate and restore offenders back into the society; because community service is a sentence that must done in the society where an offender resides or will reside subject to section 3(8) of the *Community Service Act*<sup>xxviii</sup>. That being the case it allows the offender to mingle and integrate with people within his or society and that brings about acceptance of the society compared to the offenders who are isolated from the society by prison walls.

#### ***Advantageous to the Offender as it Helps to Keep the Offender's Family Together***

Apart from community service being helpful to an individual offender, community service is also helpful to the family of the offender whereby it facilitate the offenders to continue taking care of their families. This becomes of greatest advantage where it appears that the offender is the one who used to provide for the family, due to the fact that an offender can earn and provide for his family during free time he gets from community service. Financially, when one is imprisoned, he leaves behind his family unattended something which may increase poverty to the family if the offender was the one providing daily bread to his family. Health-wise, when a person is sick, he cannot get good health care at the prison due to poor and insufficient health facilities and further, one may enter the prison wall with good health status but due to congestion during his release he may come out with dangerous diseases such as Tuberculosis (TB) or even HIV/AIDs which will be dangerous to the society he is going to live with. Research done by many professionals particularly from that of legal, political science and criminal justice field have shown that alternative sentence to imprisonment bring more benefits to the society compared to imprisonment.<sup>xxxix</sup>

Community service is advantageous as it solves the problem of family separation; community service is helpful as it avoids family separation due to the fact that it is a trite of the law under section 25 of *Prisons Act*<sup>xl</sup> that every offender sentenced to imprisonment must be kept in a prison. Keeping an offender into a prison cell may lead to family separation especially when

an offender has been given a long time sentence; for instance section 101(d) of the *Law of Marriage Act*<sup>xli</sup> provides to the effect that imprisonment of a spouse for a period of least five years is a good ground for divorce. However when it comes to community service a sentenced offender is required to serve his or her sentence while in the community where he or she resides as per section 3(8) of the *Community Service Act*<sup>xlii</sup> as a result there can be no family separation which has been triggered by the conviction of the offender. There are inmates who suffer mentally to the point of falling into depression due to the fact that they have been imprisoned to the point that the family and friends of such an inmate never visit them, and others become shocked once their spouses seeks for divorce to be freed from inmate spouses, or much worse other inmates finds out that their spouses have found other conjugal partners. But when a person is convicted to community service he is likely to be saved from such hardships.<sup>xliii</sup> Furthermore community service brings the family together due to the fact that convicted persons will continue to be with their family and friends, something which helps in curing psychological trauma that tends to face prisoners due to loneliness, fear and challenges that are associated with being away from one's family and friends.<sup>xliv</sup>

### ***Community Service is Helpful in Reduction and or Avoidance of Prison Congestions***

Primarily, non-custodial sentence such as community service were introduced in the United Republic of Tanzania penal system aiming at reducing the number of offenders in prisons so as to overcome the problem of overcrowding. The introduction of community service had the objectives which include prevention of prison overcrowding which creates health hazards to inmates, undermine the control of violence inside the prison, creates dangerous environment for prison staff and makes it impossible to deliver the standards of detention requiring adequate light, air, decency and privacy. *Community Service Act*<sup>xlv</sup> and *Community Service Regulations*<sup>xlvi</sup> were enacted in the years 2002 and 2004 respectively aiming to be a reparative sanction that evokes responsibility from the offender for his/her actions and it can reduce the burden on the system of incarceration and finally reduce prisons congestion.<sup>xlvii</sup>

Sentencing an offender to community service is one amongst the ways to bring about avoidance of overcrowding in the prisons. As explained earlier that the problem of prison congestion has become very alarming in the EAC on each day that passes buy. The PRI published their report in the year 2016, on the status of prisons it was revealed that in the United Republic of Tanzania

and the rest of other EAC partner states there is a problem of overcrowding of prisoners. Also the report furnished by Centre for Civil and Political Rights (CCPR and LHRC) on year 2018 reveals that indeed there is a problem of overcrowding of prisoners in the United Republic of Tanzania,<sup>xlviii</sup> another report with similar findings was published by THRDC in 2018 showing that prisoners are not safe in the United Republic of Tanzania due to congestion of prisoners.<sup>xlix</sup> Therefore it is clear that the number of convicts inside the prisons is bigger than the capacity of the prisons but this can be solved through community service whereby community service has proved to be of great impact in avoidance of overcrowding in the prisons in many countries such as the UK, India and the US.

Also, to prevent petty offenders to learn criminality from dangerous offenders in prison by sharing negative skills, allowing the community to participate in monitoring of offenders, reduce the likelihood of first offender to re-commit another offence by providing viable, disciplined and worthwhile community-based sentence which may also induce rehabilitation and also making amends to victims and the community.<sup>1</sup>

#### ***Prevents the Use of Taxpayers Money Collected as Revenue to Maintain Convicts***

Saving taxpayers money in keeping the offenders; the budget that is allocated to the Ministry of Home Affairs includes the management of prisons. And therefore it is the taxpayers money that is being used in doing so, taxpayers monies that could be used in construction of economic and social infrastructures goes to waste when it is used to maintain prisoners who can be removed from prisons through community service by provision of food, accommodation facilities, treatments and other basic needs to such prisoners. Aside from that taxpayers monies goes into waste through employing prisons personnel, building prisons facilities and sometimes outsourcing private companies to manage prisons.

Indeed in prisons there are economic activities such as carpentry; manufacture of soaps and detergents; making of bricks; basketry; pottery; and many others that are carried out by prisoners so that prisons could collect money to be used in maintenance of prisons; whereby prisons should find ways to fully finance themselves in line with government's position that was given by the Minister for Home Affairs Hon. Simbachawene.<sup>li</sup> However such money has never been satisfactory hence there is always a need for the government to allocate funds to

be used in maintenance of prisons.<sup>lii</sup> But all these could easily be avoided through reducing the number of prisoners through community service.

### ***Community Service Reduces Government's Expenditure in Maintenance of Public Infrastructures***

Lastly community service orders are helpful in carrying out activities which are for the welfare of the entire community. Community service being an alternative to imprisonment is a sentence which is executed by ordering a convicted offender to perform public work such as construction or maintenance of public roads or roads of access, afforestation works, environmental conservation and enhancement works, projects for water conservation, management or distribution and supply, maintenance work in public schools, hospitals and other public social service amenities, work of any nature of a foster home or orphanage, general cleaning and related activities, rendering specialist or professional services in the community and for the benefit of the community, as well as other manual works as may be approved from time to time without receiving any sort of payment. As a result this helps the community in saving monies that could be used in hiring labourers for such activities. For instance in an Indian case of *R.K Anand v. Registrar High Court Delhi*<sup>liii</sup> the Supreme court of India held to the effect that instead of sending an offender to jail, it will be useful if we keep him out for him to be of service to the society in which he did wrong.

In the paper sponsored by Penal Reform International (PRI)<sup>liv</sup>, the paper narrates on how the community service was introduced in East Africa Countries and the advantages the countries are getting right now and how it may be improved, for instance the courts to give consideration to all cases where the offenders are eligible. The paper also suggested the way to promote Community Service so that it can be accepted by stakeholders in the criminal justice and the wider public through capacity building to professionals, training for magistrates, prisons officers and other stake holders, building support for community service among community leaders and the general public. The paper states further that community service is an important sentence as it offers the chance for an offenders to be a contributor to society rather than a cost, especially in low income countries where resources are limited.

## **CONCLUDING REMARKS ON CHALLENGES FACING COMMUNITY SERVICE**

Community service as an important sentence under the reformatory theory of criminal justice tends to face a lot of challenges such as opposition from the judicial members such as Judges and Magistrates who are empowered by the law to impose it, there is also critics from advocates and state attorneys who are key players in the administration of criminal justice. Aside from that different members of the community are unaware on the existence of community service as an important element in criminal justice system.

Raising awareness and changing the mentality of judicial officers and law enforcement officers; the above findings shows that judicial officers i.e Judges and Resident Magistrates; law enforcement such as Police Officers, and Prison Officers, PPs and SAs in the office of the DPP and Advocates are not well trained concerning the modern penal law reforms such as restorative justice which includes community service, and this makes them to prefer imprisonment of offenders. There is a need for the Government to collaborate with the Judiciary, Tanganyika Law Society (TLS) and Non Governmental Organisations (NGOs) such as Legal and Human Rights Centre (LHRC), Legal Service Forum (LSF) and Tanzania Human Rights Defenders Coalition (THRDC) in effecting that there are effective trainings to law enforcement officers, judicial officers and other officers responsible in administration of justice for them to be aware of community service.

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<sup>ii</sup> TWAHA, Issah & FUNDI, Salma (2020), *Factors Affecting the Use of Community Service Sentence Orders among Magistrates as Alternative to Imprisonment in Kinondoni Municipality, Tanzania*, International Journal of Humanities and Social Science, Vol. 8, No. 4, Dar es Salaam, Institute of Social Works Tanzania.

<sup>iii</sup> HOGG, Andrew, (2012) *The Privatization of Non-custodial Measures: An Uneasy Balance between Legitimacy and Immediacy*. Oñati Socio-legal Series, Vol. 2, No. 4.

<sup>iv</sup> BARNETT, Randy & HAGEL, John (eds.), (1977). *Assessing the Criminal: Restitution, Retribution and the Legal Process*. Cambridge, MA: Ballinger.

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- <sup>vi</sup> *Rex v. Mulumbix* (1972) 1950.
- <sup>vii</sup> [1993] TLR 23
- <sup>viii</sup> Cap. 16 of the Laws of Tanzania.
- <sup>ix</sup> Cap. 2 of the Laws of Tanzania.
- <sup>x</sup> *Supra*.
- <sup>xi</sup> HERRUP, Cynthia (1987). *The Common Peace: Participation and the Criminal Law in Seventeenth Century England*. Cambridge: Cambridge University Press.
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- <sup>xiii</sup> Consolidated Criminal Appeals No. 96 of 2015 and 113 of 2015.
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