

# Wrongful Conviction in Tanzania

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## Abstract

Wrongful convictions in Tanzania are a serious issue that undermines the integrity of the criminal justice system and the fundamental rights of individuals. Despite legal safeguards, factors such as prosecutorial misconduct, police malpractice, judicial errors, and investigative failures contribute to miscarriages of justice. This paper explores the key causes of wrongful convictions, such as false testimonies, coerced confessions, misidentifications, and forged evidence, which lead to innocent individuals being convicted of crimes they did not commit.

The research focuses on the systemic issues within Tanzania's justice system, particularly faulty eyewitness identification, police misconduct, and forced confessions, often obtained through torture or duress. The study also reveals flaws in forensic practices and prosecutorial misconduct, including the improper handling of evidence and the failure to follow due process. These errors not only violate the right to a fair trial but also have profound psychological, social, and economic effects on the wrongfully convicted and their families.

Through a doctrinal approach, the research analyzes relevant legal frameworks, such as Tanzania's Constitution, the Criminal Procedure Act, and the Evidence Act, alongside international human rights standards like the UDHR and ICCPR. By identifying gaps in these laws and practices, the paper advocates for reforms aimed at preventing wrongful convictions. These reforms include improvements in investigative procedures, better defense mechanisms for accused individuals, stricter oversight of law enforcement, and adherence to international human rights standards. The research emphasizes the importance of protecting human rights, particularly the right to a fair trial, to restore public trust in the criminal justice system.

**Keywords:** Wrongful conviction, Tanzania, Human Rights, Judicial errors, Police misconduct, Torture

## 1.1 Introduction

In criminal procedure, the final judgment of the court does not imply that the court has established absolute truth of the guilt of the individual who alleged to commit an offence. Many things that occur during trial can deny the defendant the due process of law, such as prosecutor can engage in misconduct, judge can make erroneous ruling on evidence, investigator can misbehave in course of investigation, so that there are hundreds, if not thousand of events that might occur during pre-trial and trial to undermine a defendant's rights to due process.<sup>1</sup> Although there many types of misconduct in criminal justice system the basic erroneous which law considering is that, the identified conduct or event during pre-trial and

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<sup>1</sup>Feldmeir, P. J. and Schemalleger, F. Criminal law and Procedure for Legal Professionals .published by Prentice Hall (2012) Pearson Education. Inc

trial has to follow below some objective standard for legal propriety and it resulted to the defendant substantial prejudice or harm to the point where it interfered with the ability to receive a fair trial.<sup>2</sup>

The effective protection of human rights in the world demand not only the recognitions in the domestic legal system but also it needs the enforcement mechanisms.<sup>3</sup> It means that legal instrument must be available and active in operative to individuals. Some states legal system is available but not operative to individuals, in order human rights to be protected there must legal machinery for prevent possible violation of human rights or remedy for such violation if violation occurred.<sup>4</sup> The effective remedy to the violation of human rights should be emphasized especially in situation where there is grave violation of human rights.<sup>5</sup>

In case when a person has been wrongly found guilty of committing criminal offence and as a result deprived of his liberty, in this situation person is deprived of one of the core human rights, it means his personal rights to liberty and when he detained also his ability to exercise other human rights is limited. This situation of such deprivation, regardless how long that person spent in incarceration, often have high consequences for the of the wrongfully convicted person.<sup>6</sup> There are need to overcome this problem in our criminal legal system, by eliminating miscarriage of justice, however the miscarriage of justice is inevitable. Non of the criminal justice system is flawless

Even if objective obstacle could be neutralized, there are still situations where wrongful convictions occur, even though criminal justice acted in due diligence, this due to the false testimonies, forged document or undiscovered exculpatory evidence are the factors that cannot be eliminated even in the perfectly shaped legal machinery.<sup>7</sup> Although there is numerous procedural safeguard which are placed by domestic legal system and international instrument are helpful but cannot guarantee the infallibility of the court.

Considering the risk inherent in undertaking justice there is pressing need to adopt effective remedies applicable law in case where breaches of the rights to liberty, including wrongful conviction happen.<sup>8</sup>

### **1.2 Wrongful conviction or Miscarriage of justice**

The strength of every criminal justice system depends on its accuracy, it means its ability to convict those who have committed crimes and to clear those who are innocent, but because of human error some time we that innocent people are wrongly convicted, although the exact number of wrongfully conviction is unknown.<sup>9</sup> Every wrongful conviction is miscarriage of justice that affects all levels of our society, the impact of this wrongful conviction is long -lasting on the people who have been wrongly convicted, their families and society at large.

Before going on with wrongful conviction it is better for us to understand well about miscarriage of justice, miscarriage of justice, is border and inclusive since it includes many errors of justice such as

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<sup>2</sup> Lonati S. Compensation for Wrongful Conviction in Italy (eds)

<sup>3</sup> Jasin'ski W. and Kremens k. 'In quest of the Optimum model for compensating wrongful convictions .Routledge New York (2023)

<sup>4</sup> Feldmeir, P.J and Schemalleger. Criminal law and Procedure for Legal Professionals. Published by Prentice Hall (2012) Pearson Education.

<sup>5</sup> Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms Treaty 117.

<sup>6</sup> Article 3 of Protocol 7 to Convention for the protection of Human Right and Fundamental Freedoms Treaty 117.

<sup>7</sup> Sam P. and Gieve, J.D Miscarriages of Justice: What can we learn .Routledge (2018)

<sup>8</sup> Naughton, M. Rethinking miscarriage of justice (2003)

<sup>9</sup> M E. and Moore A. Advancing the Scholarship on Wrongful Convictions,(2023)

error in law, procedures and errors in fact.<sup>10</sup> So that in discussing miscarriage of justice we need to consider whole process of justice in the jurisdiction is.

A course of justice comprises different stages that are police intervention it means from arrest, search and interrogation, court process and the penalty measures. Thus miscarriage of justice to mean any serious wrong in these three stages which involving wrongful accusation, treatment, by the investigation agency and by the court including wrongful conviction and the wrongful penalty or abuse in prison.

Hence the miscarriage of justice occurred or arise from the misconduct, negligent or malicious actions of the state institutions such as police, prosecutors, defense attorney, and the court and others like expert. For examples if police or investigation agency and or the prosecution engage in some form of misconduct in investigating case or prosecution the person, so that in this situation it prima-facie attracts miscarriage of justice, it lead to wrongful conviction as a result the deprivation of right to liberty and other punishment.<sup>11</sup>

Miscarriage of justice also may arise in the court of law by itself, it occurs when the judge or magistrate errored in interpretation of or execution of the laws, due to the courts violating due process of law, it resulted in wrongful conviction to the innocent individuals. And in few miscarriages of justice occurred in prison, when individuals faced by difficult situation where they are locked behind the bar unjustifiably extended period of time than that of expected time in offence or sentence pronounced by the court.<sup>12</sup>

Miscarriages of justice in generally refer to a failure to reach the end goals of justice. The miscarriage of justice encompasses both factual innocence it means the individuals who did not committed the crime for which they were convicted and procedural innocence it means that the individuals committed the crime, but their rights of fair trial violated during the justice process so they should not have been convicted <sup>13</sup> So that the miscarriage of justice is breach of an individual's rights whether suspect, defendant, convict, victim or witness by the state agencies.

### 1.3 Wrongful conviction

This term used to refer to factual innocence, where the individual did not commit the offense. In question or that the act or crime did not occur in the place. It means this type of miscarriage of justice which is distinguished from others, wrongful conviction it deals only with factual innocence rather than erroneous conviction due to lack of culpability or procedural errors.<sup>14</sup>

In many criminal justice system it is difficult to measure the prevalence of wrongful conviction,<sup>15</sup> in most states there is no systematic check or collection of cases in which the authenticity of the convictions are reviewed.<sup>16</sup> This because the occurrence of wrongful conviction in past decade believed

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<sup>10</sup> Huff C. Ronald and M. Killians, 'Cross- National Perspectives and issues- Introduction', in Huff C Ronald and M. Killian(eds.),Wrongful Conviction: International perspectives on miscarriage of justice, Temple university press,philadelphia,2008

<sup>11</sup> Acarya,K. J, Regmi R. and Bista S. 'Compensation for the Wrongfully Convicted: A Pressing Need for Statutory Arrangement in Nepal. Kathamandu School of law Review Vol 9&10 (2021) PP 90-120 Available in <https://doi.org/10.46985/kslr.v10iS1.2187>. Accessed 30 May 2024.

<sup>12</sup> Padammaya Gurung v. Officer of PM and Council of Ministers and others Writ no 071-WO-0512

<sup>13</sup> Campbell, K, Why is Britain refusing to compensate victim of miscarriage of justice( 2015)

<sup>14</sup> Risinger M, Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate'( `2007)97 Journal of Criminal law and Criminology.761.

<sup>15</sup> Huff. R.C Wrongful Conviction: The American experience, Canadian Journal of Criminology and Criminal Justice,46(2)2004 p,107.

<sup>16</sup> Samuel R. Gross, 'How many False Conviction are There? How Many Exonerations Are There? In C Ronald Huff and M. Killias (eds), Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal justice System (Routledge,2013)

to impossible in any legal system. As per judge Learned Hand's oft-cited claim that "the ghost of the innocent man convicted haunting criminal procedure was an unreal dream"<sup>17</sup>

Since many scholars and jurist believe that legal system is competent to determine and decide in accuracy way. But the increasing of the complaints of wrongly convicted people around the world was awaken scholars to research on the matter and discovered there is unheard voice of wrongful convicted people in many prisons in world wide. This occurs due to errors in justice system or misconduct by law enforcers.

#### **1.4 Causes of wrongful conviction**

The occurrence of false convictions in any jurisdiction is reflected by our ignorance, if the criminal justice system aware about the innocence of accused person it will not convicted them in the first place, The wrongful conviction was unobservable, many cases, the investigation institution did not take measures to find truth of the problem or some time misconduct by police, prosecutors and judge or magistrate lead to false conviction.<sup>18</sup> According to research which conducted there may be one or more causes that contribute to produce the result.<sup>19</sup> In most cases the false conviction were established after the true offender confession or when the deceased person turns up to alive, lying witness confesses to the crime and renounces his or her testimony some time result from DNA test or other evidence becomes acknowledged. The major factors contributing false conviction are: mistaken eyewitness testimony, false accusation, police misconduct and errors, prosecutorial misconduct and error, in adequacy of counsel, faulty expert testimony, false confessions, and community pressure for a conviction.<sup>20</sup> These led to the wrongful conviction

False accusation some witness makes false statement under other that incriminates and ultimately helps to convict the person accused of the criminal offense. This occurred when a person intentional taking the false oaths and false affirmation in real sense, this act in which people voluntarily violate the rule of law and do not speak the truth, this leads to many wrongful conviction

##### **1.4.1 Misleading or False Forensic Evidence**

The society believed that always forensic evidence 100 percent trustworthy, the most errors related to forensic evidence are not identification or classification errors by forensic scientists,<sup>21</sup> but some time there are some erroneous, like every one, forensic practitioners can make mistake, this mistake can be grouped in three groups such as forensic examiner committed the errors in question, sometime the errors occurred outside the control of an individuals forensic examiner or communication error between forensic and investigation department which including mixing up samples or contaminating specimens. There types of error which resulted to wrongful conviction.<sup>22</sup>

These are some time. A forensic report contains a misstatement related to a forensic science examination, the forensic examination contains an incorrect association of the piece of evidence with the source this can be occurred when two sample derive from same source, and Testimony at trial reported

<sup>17</sup> M. Yant, *presumed Guilty: When Innocent people are wrongly convicted*, Buffalo Prometheus Books, New York,(1991)

<sup>18</sup> Huff, c. R. and Killias, M. *Erroneous conviction and Miscarriages of Justice: Causes and Remedies in North American and European Criminal justice system* Routledge,(2013)

<sup>19</sup> Ibid

<sup>20</sup> Gould B,J. and Leo, R.A ,*One hundred years later: Erroneous conviction after a century of research*. Journal of

<sup>21</sup> Morgan J. *Wrongful conviction and Claims of False or misleading forensic evidence: vol 68 issue3/p.908-61 journal of Forensic Sciences*, online library available at <https://doi.org/10.1111/1556-4029.15233> accessed on 20th July 22, 2024.

<sup>22</sup> Ibid

forensic science result in erroneous manner. An error can be intended or unintended. In some cases, An officer of the court committed an error related to forensic evidence , such as potential exculpatory evidence was excluded from consideration during the trial, defense did not review the forensic evidence, inadequate cross examination during trial concerning to forensic evidence.<sup>23</sup>

Sometime forensic personnel negligent which lead to forensic analysts have fabricated results, hidden exculpatory evidence or reported results when testing had not been conducted. There are several situations in which a wrongfully convicted individual are set free after it discovered that the forensic testing used to convict them was done erroneously, based on unproven method or outright fraudulent.<sup>24</sup>

#### 1.4.2 Witness Misidentification

Eye witness misidentification said to be is leading factors of wrongful conviction in the world as provide in the case of Common wealth of *Pennsylvania v. Benjamin Walker A. 3d 766 (2014)* supreme court. It held that the recent advent of DNA test has raised the profile of erroneous eyewitness identification and resulting overturning of conviction based upon such testing has made the concern over the accuracy of eyewitness identification manifest.<sup>25</sup>

In some cases, witness may simply have a bad memory. When people experience a stressful event like crime, they are much less able to make an accurate identification.<sup>26</sup> As provided in the case of *Philimon Jumanne Agala@ J4 V. Republic criminal Appeal No 187 of (2015)*<sup>27</sup> in this case the public witness fail to identify well accused person in the scene of crime due to the stressful event which lead to the wrongful conviction of the appellant.

In some other instance, the witness may be shown a photo and lineup arrays can be suggestive and lead a witness to pick the wrong person. This can happen when the suspect is only person in a array who closely matches the description of the offender or police officer encourage them to pick a certain individuals, by they comments body language and positive feedback can steer the witness towards a particular suspect and then inflate the witness's confidence in their identification. in some situation police officer they asked them to identify Alleged perpetrator at the scene of crime after accused is already in the back of the car under police custody. Not only that but also some police officer when conducting identification parade, they make all measure to enable witness to identify the person whom they believe that is perpetrator of the alleged crime.

#### 1.4.3 False confessions

In many jurisdictions, when a crime is committed, police officer and other investigation authorities often do everything they can to hold someone accountable. In this situation some law enforcers used unjust method to obtain evidence and confession from accused.<sup>28</sup>As provides as follow

#### 1.4.4 Torture

'Any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or confession.'<sup>29</sup>

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<sup>23</sup> Ibid

<sup>24</sup> Journal of Forensic Sciences, published by Wiley Periodicals LLC on behalf o American Academy of Forensic Sciences 2023.

<sup>25</sup> Common wealth case of *Pennsylvania v. Benjamin Walker A.3d766(2014)* Supreme Court.

<sup>26</sup> Zalman M Wrongful Convictions: A Comparative perspective(2016)SSRN Electronic journal Springer nature

<sup>27</sup> *Philimon Jumanne Agala@J4 v. Republic, Court of Appeal of Tanzania at Mwanza Appeal no 187 of 2015.*

<sup>28</sup> The united Nations Convention against Torture and other Cruel, inhuman or Degrading Treatment or punishment

<sup>29</sup> Ibid.

This regarded as a torture when the offence is committed by state organ or official, This is mainly done by police officers who have statutory power to deal with suspect of crime in jurisdiction.<sup>30</sup> According to the Tokyo Declaration made by the World Medical Association (WMA) of 1975 define torture as deliberate, systematic or wanton infliction of physical or mental suffering by one or more person acting alone on the order of any authority, to force another person to yield information to make a confession or for any other reason.

Sometime by using force, threats and duress as a result of false confession, As provided in the case of *R. v Daniel Ndababonye (2021)* in this case the high of Tanzania reject the caution statement in which accused person give his confession to police officer because of torture in order to save his life.<sup>31</sup> The use of force to procure confession is against to the requirement of the Tanzania Evidence Act, as per section 27(1).<sup>32</sup> it means due to this situation even innocent person can give confession in the crime which did not commit. Police might also provide false assurances that thing will go better, long interrogation will finally cease, only if person confesses, in truth in in this situation many people break under pressure, especially when they have been deprived food, water or other necessary for living. In most criminal cases, the due process of interrogation is determined based on whether the suspect's statement, admission or confessions were provided to authority voluntarily.<sup>33</sup> Example in the case of *Brown v. Mississippi (1936)*. The supreme court ruled that a confession procured after police physical beat suspect so was made involuntary and therefore was inadmissible under due process.<sup>34</sup>

### 1.5 International instruments

The prohibition of torture in international law is notable As per Article5 of the 1948 Universal Declaration of Human rights state that “No one shall be subjected to the torture or to cruel, inhuman or degrading treatment or punishment”

The right to be free from torture and other ill-will treatment is recognized by all international human rights instruments, such as United Nations Charter.<sup>35</sup> Universal Declaration of Human Rights,<sup>36</sup> International Convention on Civil and Political Rights,<sup>37</sup> and in African Region we have The African Charter on human and people's rights.<sup>38</sup> In order to make an emphases to this point of legal aspect, by international community in 1984 the UN adopted the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment, this position show that this is absolute prohibited and providing additional rules to assist the previous rules in prevention during investigation. These international instruments prohibit torture and other forms of inhuman treatment as follows;

#### 1.5.1 The United Nations Charter

Among the purpose of UN is to achieve international co- operation in solving international problem such

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<sup>30</sup> LHRC Report of 2009

<sup>31</sup> Republic v. Daniel Ndababonye, (criminal Session 13 of 2017) 2021 TZHC 3127 High court at Bukoba registry

<sup>32</sup> Sect 27 of Cap 6 R:E 2022

<sup>33</sup> Hussain, M S And Satyanarayana, p. (2016) 'Torture and Forced confession in the Administration of criminal Justice in the United Kingdom and Tanzania. The law school of Tanzania journal, 1(2), 36-50 Retrieved from <http://Istjournal.Ist.ac.tz./index.php/files/Article/view>.

<sup>34</sup> Feldmeier, P. J and Schmallerger F. Criminal law and procedure for legal professionals. Peason Education, Inc (2012)

<sup>35</sup> The Charter of the United Nations was signed on 26 June 1945.

<sup>36</sup> The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948 at Paris.

<sup>37</sup> The international Convention on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966.

<sup>38</sup> African [Banjul] Charter on Human and People's Rights, adopted June 27, 1981.

as conflict, economic, social, cultural and promoting and encouraging respect of human rights around the world. In order to maintain peace and security for sustainable development.<sup>39</sup>

### 1.5.2 The Universal Declaration of Human Rights

The main aims of Universal Declaration of human rights is to promote respect of human rights and freedom all over the world, and universally to all people regardless their race, economic status or religious as per Article 5 of UDHR prohibit torture or cruel or inhuman or degrading treatment. And it provides the rights of presumption of innocence to all person who charged with penal offence until proved guilty.

### 1.5.3 International Covenant on Civil and Political Rights

In this instrument provide the state to make sure that to act accordingly to the requirement of international law as it provided under Article 4 of ICCPR, and Article 7 of the covenant provide the prohibition on the act of torture, it states that 'No one shall be subjected torture or to cruel, inhuman or degrading treatment or punishment. Not only these but also Article 10 provide that the arrested persons or under-trial during their custody shall be treated with humanity and dignity.it means it prohibited any kind of torture and inhuman treatment, under Article 2(3) (a) of the covenant provides for the effective remedy, when the person rights or freedom are violated even when that violation has been made by the person acting in an official capacity.

The convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment

This convention of 1984 comes into force on 1987 on 26<sup>th</sup> June. This convention is adopted purposely in preventing torture in the world wide. By provides the duty of the state to the convention to ensure that all acts of the torture are punished. The convention provides for condemnation of any inhuman act,<sup>40</sup>in order the human rights to respected in the world this convention emphasizes the training of law enforcement personnel and other public official in order to prevent torture, this means sometime ill-treatment occurred because law enforcers did not understand their legal duty toward the accused persons.<sup>41</sup>It provide mandatory requirement to the state particular to take effective legislative, administrative, judicial or other measures to prevent acts of torture, under its jurisdiction.<sup>42</sup> Article 7 of the convention provides that all state particular has to ensure all acts of torture to be an offences under its criminal law, and victim of that acts shall be afforded redress and compensation in accordance with national law,<sup>43</sup>So that it the responsibility of the state to investigate and prosecute the allegations of torture or ill- treatment provided under convention. Much state has not ratified and others ratified but they did not implement the same in their states.

### 1.5.4 African Charter on Human and People's Rights

This Charter provide human rights legal framework in African continent,<sup>44</sup>it promoting the respect of human rights. Article 5 of the Charter provides that every individuals shall have the rights to dignity as human being and all form of torture, cruel, inhuman or degrading punishment should be prohibited. And in protecting the rights of accused person the Charter provide the rights to presumption of innocent until proved contrary with the competent court or tribunal.<sup>45</sup>

<sup>39</sup> As per Article 1 of the United Nations Charter

<sup>40</sup> Article 1 of the convention.

<sup>41</sup> Article 5 of the convention against Torture and other Cruel, inhuman or Degrading Treatment

<sup>42</sup> Article 2 of the convention

<sup>43</sup> Article 11 of the convention

<sup>44</sup> African Banjul Charter of Human and People's Rights adopted on June 27, 1981.

<sup>45</sup> Article 7.1 (b) of African Charter

## 1.6 Legal framework in Tanzania

In Tanzania, the state Constitution and statutes guide police officers to follow certain procedures in discharged their duties according to the requirement of the international law. These statutes provide the right of suspects during their interrogation in police custody.

### 1.6.1 The Constitution of the Union Republic of Tanzania, 1977

According to the 5<sup>th</sup> amendment of the Constitution of Tanzania of 1984 the bill of rights was incorporated under pArticle3 of the constitution. We can see in the Article 13 (6) (c) and (e) of the Constitution. According to this Article prohibit the act of torture, or inhuman treatments or punishment, this provision intended to ensure humane treatment of suspected persons in custody.

### 1.6.2 The criminal procedure Act

According to the 5<sup>th</sup> amendment of Tanzania constitution of 1977 as amended in 1984, the criminal procedure Act, police officer had given wide discretion in exercising their power of arrest, search and seizure.<sup>46</sup>In Tanzania statutory power to investigate in most vested to the police department. They required by law to perform their duty in due diligently and with the necessary expertise, they must use professionalism rather than force. Under Section 10 (3) of Criminal Procedure Act, provide the manner in which a person can be examined and in Section 10 (4) provide for police officer to inform examinee the duty to answer truly all question asked relating to the case.<sup>47</sup> Although the procedure provided by law is there but in practice police investigators did not follow this requirement, since their mind focus in procuring conviction against the defendant they do what they think fit to secure conviction. In other way Section 5 of Criminal Procedure Act, give police floodgate for abuse of power, this provision allows the police to put a person under restraint for the purpose of investigation on any offences which alleged to commit.

### 1.6.3 The Tanzania Evidence Act

In Tanzania law of evidence Act define voluntary evidence and involuntary confession, under Section 27(1) of the Act provides that confession which made voluntarily by accused person of any offence may be proved against that person, and Sub Section 27(3) provide the confession is voluntary if the court believes it was not obtained by induced by any threat, promise or other prejudice held out by a police officer to whom it was made or by any member of police force. The intention of legislation is that the confession should be free from any threat or inducement. But in section 29 of the Act give loophole the police, it provides that even where the torture was administered to the accused person if such accused gave a true statement upon such torture court will admit the confession.<sup>48</sup>

## 1.7 Official Misconduct

Many wrongful convictions can be traced back to constitutional violation committed by investigating officers and prosecutors, this misconduct that can occur during the investigation of crime and subsequent in trial, sometime prosecutor perceive the evidence or piece of evidence which would helpful to the defense he decides to hide that evidence because they believe that their job is to show the defendant

<sup>46</sup>Maina, C.P and Juma, I.H . Fundamental Rights and Freedom in Tanzania, Dar-es-Salaam: Dar-es-Salaam University press, 1998 at p146

<sup>47</sup> C Criminal procedure Act Cap 20[R: E 2022], S.10.

<sup>48</sup> Evidence Act, Cap 6[R:E 2022]S.29



guilt.<sup>49</sup> At the investigation stage, police engage in misconduct when they deliberately use suggestion in an identification procedure, coerce a witness to implicate a suspect, use improper interrogation techniques to secure a confession.

At the trial stage, prosecutor misconduct can occur during of criminal justice either during pretrial discovery, trial or posttrial appeals these types of misconduct is most implicated in wrongful conviction cases. Some prosecutors feel justified allowing a witness to lie about the fact in the court the process when they conceal exculpatory evidence such as the evidence which favorable to the defendant and sometimes they introduce false or perjured testimony.<sup>50</sup> This due to the tunnel vision of legal actors, since prosecutors any time believe that the defendant should be guilty<sup>51</sup> and their score-keeping mentality, that compels them to win at all costs, this mentality stems from institutional, professional and political pressure to win conviction

This include the situation in which police officers, prosecutors and other government officials may abuse their power or manipulated the judicial process, such as withholding evidence, destroying evidence, corruption and other dishonest things which destroy judicial independence. But in some situation these people are not intentional to create these mistakes. These officials focus on solving more cases rather than ensuring they serve their due diligence to the defendant in different cases, due to the workload, they are subjected to making mistakes. This leads to negligence, contributing to the wrong conviction witnessed among the officials. As provided in Supreme Court of Canada in the *case of R. Stinchcombe [1991] 3 SCR 326*<sup>52</sup> The Justice Sopinka held that” the Crown has a legal duty to disclose all relevant information to defense. The fruits of investigation which are in its possession are not the property of the crown for use in securing a conviction but the property of public to be used to ensure that justice is done”

## **1.8 The official misconduct includes;**

### **1.8.1 Witness tampering**

This is the situation where law enforcers involve attempting to influence or prevent a witness from testifying freely, fully and truthfully in which he understands in an official proceeding such as in trial or administrative tribunals. This situation it undermines the integrity of justice system and threatens the right of fair trial. these actions can have big impact, they affect not only individual cases but also trust in the legal system, these done by two ways these are by persuasion or intimidation, it means that the witness can be encourage to alter their testimony to the benefit of one side in legal dispute.

### **1.8.2 Fabricating Evidence**

This includes the forensic fraud, and planting drugs on innocent peoples, or false or forged information created or obtained illegally in order to sway the verdict in a court. Fabricating evidence can occur as a way to avoid prosecution or in an attempt to falsely convict someone. This includes false police report. The doctor who file an untrue medical report that support an accused testimony or other side of the case.

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<sup>49</sup> Bruce A. Marcfarlane, Q.c Wrongful Conviction: Is it proper For the Crown to Root Around, Looking for Miscarriage of justice? (2003) manitoba law journal 2012 vol36 no 14<sup>th</sup> Floor Robson Hall, Faculty of law university of Manitoba. Available at <http://www.academia.edu>> Manitoba law...

<sup>50</sup> Roberts, P. C, The Causes of Wrongful Conviction. The independent Review Vol.7, No4 (Spring2003) pp.567-574 published by independent institute. Available at <https://www.jstor.org/stable/24562560> accessed on 20th July 2024.

<sup>51</sup> Schoenfeld, H. Violated Trust, Conceptualizing Prosecutorial Misconduct. Journal of Contemporary Criminal Justice, Vol21(3):pp250-270, 2005, SAGE Publications, Inc. 2019

<sup>52</sup> See in the case R v. Stinchcombe [1991]

Not only this but also community pressure, it means that while the police investigators and prosecutors dealing with high profile cases, police faced many pressure when investigating high profile cases, these can come from public, their superiors, the media and victim's family and friends, the people in authority are often pressured to deliver the outcome of their investigation thus the increase of pressure leads to reduce productivity and unfairness in the justice system because only one person is served.

### 1.8.3 Tunnel vision

This is a significant problem under the umbrella of professional misconduct. According to the Morin inquiry, tunnel vision was defined as single- minded and overly narrow focus on particular investigative or prosecutorial theory, so as to unreasonably color the evaluation of information received and one's conduct in response to the information. In some cases, police and prosecutors seek evidence that fit their theory only as opposed to developing a theory based on existing evidence. They forget that the main purpose of investigation is to prove and to disprove the allegation, due to their tunnel vision which some time causes by their believed that in criminal cases the law enforcers is an adversary to the defendant and typically seek to secure conviction. Police and prosecutors affected by tunnel vision don't necessarily have bad intentions. They also don't necessarily realize they are suffering from it sinister effects,<sup>53</sup> this because to the pressure to solve a crime and ensure the perpetrator is brought to justice increase this psychological phenomenon in this situation law enforcers did not follow the due process in obtaining evidence from accused person such as miranda warnings as per *Miranda v. Arizona (1966)*<sup>54</sup>

### 1.8.4 Ineffective lawyers or inadequate Defense

According to international standard of fair trial in criminal justice, accuse rights to counsel is the core rights which guarantee the fair trial, for that right to be meaningful, a lawyer must meet at least the minimum standard of competence. Matters only become worse when person is represented by an ineffective, incompetent or overburdened defense lawyer, the failure of overworked lawyer to investigate, call witnesses or prepare for trial has led to the conviction of innocent people.

In many the countries like Tanzania lawyers who represent poor people often lack the resources necessary to investigate and defend against the evidence marshaled by robust police department, prosecutor office and crime laboratories. Without investigators experts and training defense counsel can not meaningfully challenge the government's case and the odds of wrongful conviction increases.

The right of accused person to receive the best possible legal representation and necessary resources to reverse a wrongful conviction.<sup>55</sup>

## 1.9 The Impact of the wrongful conviction

When person is wrongfully prosecuted, incarcerated to convicted, this act leaves an indelible scar on the life of victim, the loss of his precious and irrecoverable time with the psychological and economic impediments which are faced by the victim makes re-integration into society after release or acquittal

Wrongful conviction has caused tremendous harm to innocent persons and their families, to the crime victims and to the public, it has the profound negative impact on public trust in police, police legitimacy which break down the relationship between police and the community, this due to innocent are convicted

<sup>53</sup> Findley, K.A., & Scott, M.S. (2006) The multiple dimensions of Tunnel vision in Criminal cases. Wisconsin law Review 2006, pp, 291-397. Available at <http://ssrn.com/abstract=1604658>.

<sup>54</sup> Case of *Miranda v. Arizona (1966)*

<sup>55</sup> Alick.Audree (2023) What are the causes and Remedies of Wrongful Conviction?, 'The mid- Southern journal of criminal Justice; vol. 22 Article3 Available at <https://mds.marshall.edu/msjcj/vol122/iss1/3>

wrongly and perpetrators remains free and continued threat to public safety. And reduce the public trust of the criminal justice system.

Wrongful conviction has serious impact to the convicted person, As per professor John Wilson the professor of psychology at Cleveland State University state that "Normal peoples who by circumstance ended up in a very horrific system of injustice by the criminal justice system itself" He found that wrongful convicted people and exonerees endure a series of psychological challenges in the time of their arrest, at the first time enters a period of disbelief that it can not be true as if it was some mistake that led him to the arrest. Soon when mistake is not collected, they begin to experience feelings of Injustice.

Further, the sense of injustice develops in the victim which leads to a deep psychological impact and leaves a permanent psychological injury.<sup>56</sup>The person who convicted wrongly she or he has feeling of loss of freedom, loss of identity and dignity, shame, fear and it led to a traumatic experience, thus, leading to the development of post- traumatic stress disorder, anxiety, depression as adaptation to the wrongful conviction.

Apart from psychological effect, there are many other effects in the person like damages to health such as body injury, loss of income or earnings, loss of property, cost of family life, loss of opportunity, stigmatization and harm to reputation and others to accused family.<sup>57</sup> Those who served long prison terms and wrongly convicted at young age are most affected, during their period of wrongful incarceration, friend and family have gotten married, children have grown, and parents have passed away. This is grievous losses and feelings of what might have been follow the exonerated throughout their entire lives.

### 1.10 Judicial Decision in Tanzania

It is observed that there are many cases relating to misconduct by law enforcer in order to secure conviction which led to wrongful conviction such as force confession by police officer as in the case of *Stephen Jason and Others v. Republic*,<sup>58</sup> It held that "where an accused claims that he was tortured and is backed by visible mark of injuries it is incumbent upon the trial court to be more cautious in the evaluation and consideration of the cautioned statement even if its admissibility had not been objected to, and such cautioned statement should be given if no weight at air." Similarly, in case of *Republic v. Abbas Yusuf Issa & Five others*,<sup>59</sup> provided that, not only this but also cases relating to voluntariness of the confession as well as insisted in the case of *Josephat Somisha Maziku v R*<sup>60</sup> The court held that among other things that, it is law that the condition precedent for the admissibility of a confession is voluntarily given, a confession is not automatically inadmissible simply because it results from threats or promise. It is inadmissible only if the inducement or threat was of such a nature as was likely to cause an untrue admission of guilty. This position also provided in the case of *Mlomo and Others v R*<sup>61</sup> where it held that under Section 29 of the Evidence Act<sup>62</sup> an involuntary confession is admissible if the court believes it to be true.

<sup>56</sup> Wilson, J. A perpetual Battle of mind,

<sup>57</sup> Law Commission of India, Wrongful prosecution( miscarriage of justice):Legal Remedies 2018,

<sup>58</sup> Criminal Appeal No 70 of 2022 HC Dodoma,(unreported)

<sup>59</sup> [2022] Criminal case no111

<sup>60</sup> (1992) TRL,227

<sup>61</sup> (1995)TRL187

<sup>62</sup> Cap 6 R.E 2022

### **1.11 Recommendations for Wrongful Conviction in Tanzania**

These recommendations aim to create a fairer and more just criminal justice system in Tanzania, reducing the incidence of wrongful convictions and protecting the fundamental rights of all individuals. To achieve this goal, comprehensive reforms across various aspects of the justice system are necessary, including legal safeguards, police practices, judicial processes, and public awareness. Below are the detailed recommendations designed to address the causes and consequences of wrongful convictions in Tanzania;-

#### **First, Reform of Legal and Procedural Safeguards**

To ensure a more just and fair system, it is essential to strengthen the legal framework governing criminal investigations, arrests, and the treatment of suspects. This reform should align Tanzania's practices with international human rights standards. Specific attention must be paid to addressing gaps in the Tanzanian Constitution and the Criminal Procedure Act, especially regarding the admissibility of confessions obtained through torture or coercion. To prevent wrongful convictions, confessions must only be admissible if they are voluntary and free from duress, with no exceptions.

#### **Second, Improvement in Police Practices and Accountability**

As the first point of contact in the criminal justice system, law enforcement officers play a crucial role in preventing wrongful convictions. Enhancing their training is key to safeguarding suspects' rights and ensuring adherence to due process. Proper handling of forensic evidence, as well as ensuring impartial investigations, is vital to avoid miscarriages of justice. Additionally, the establishment of independent oversight bodies is necessary to monitor police conduct, investigate complaints, and ensure accountability for any misconduct or abuse during arrests and investigations.

#### **Third, Judicial Reforms**

Judicial officers must be adequately trained on wrongful convictions and justice principles to rigorously evaluate evidence before making decisions. Judges play a fundamental role in ensuring justice, and strengthening their understanding of these issues is essential to avoid wrongful convictions. Courts must develop clear guidelines for handling cases involving torture and involuntary confessions. Additionally, judicial review mechanisms must be enhanced to ensure that evidence obtained through misconduct is excluded from trials.

#### **Fourth, Enhanced Access to Legal Representation**

Access to quality legal representation is a fundamental right for all accused individuals. To prevent wrongful convictions, it is critical to improve access to legal counsel, particularly for defendants facing serious charges. Expanding legal aid programs and ensuring that public defenders are properly trained and equipped will help protect defendants' rights. Legal defense teams should also have access to investigative resources to challenge wrongful evidence, testimony, and other factors that can lead to miscarriages of justice.

#### **Fifth, Promotion of Post-Conviction Review Mechanisms**

Even after a conviction, it is essential to have a system in place for the re-examination of cases where wrongful conviction is suspected. Establishing a robust post-conviction review system, particularly one that is independent and focused on identifying new evidence that may prove innocence, is vital. Furthermore, supporting exonerated individuals through compensation and rehabilitation programs will assist them in reintegrating into society and recovering from the psychological and social impacts of wrongful convictions.

### **Sixth, Public Awareness and Education**

Public awareness is crucial in preventing wrongful convictions and ensuring accountability within the justice system. Launching public education campaigns will inform citizens about their rights within the justice system, including their right to a fair trial and the consequences of wrongful convictions. By educating the public on the importance of fair trials, the reliability of eyewitness testimony, and the proper handling of forensic evidence, individuals will be better equipped to engage in ensuring justice is served. Additionally, public engagement can hold the judicial and law enforcement systems accountable for wrongful convictions.

### **Seventh, International Cooperation and Compliance**

Finally, Tanzania must strengthen its commitment to international human rights treaties to prevent wrongful convictions and uphold justice. By ensuring compliance with international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), Tanzania can help safeguard against human rights violations. Regular reporting on compliance to relevant UN bodies is essential to maintain transparency and accountability. Furthermore, collaborating with international human rights organizations and NGOs will enhance oversight and reform efforts, contributing to a more effective and just criminal justice system.

These interconnected recommendations aim to address the root causes of wrongful convictions, ensuring that Tanzania's criminal justice system operates with integrity, accountability, and respect for human rights.

## **1.12 Conclusions for Wrongful Conviction in Tanzania**

Wrongful convictions remain a critical concern within Tanzania's criminal justice system, undermining the rights of individuals and eroding public trust in legal institutions. The causes of wrongful convictions are multifaceted, involving investigative errors, prosecutorial misconduct, judicial failures, and the mishandling of confessions and evidence. These injustices not only devastate the lives of those wrongfully convicted but also have far-reaching social and psychological consequences for their families and society at large.

While Tanzania's legal framework provides some safeguards against wrongful convictions, there are significant gaps in the implementation and enforcement of these protections. The mishandling of confessions, the admissibility of evidence obtained through torture, and the overall lack of adequate legal representation for defendants contribute to the persistence of miscarriages of justice.

Addressing wrongful convictions requires comprehensive reforms in both legal practice and law enforcement. Strengthening the legal framework, improving police accountability, ensuring fair trials, and enhancing post-conviction review mechanisms are essential steps in preventing wrongful convictions. Moreover, Tanzania must honor its commitments to international human rights standards by ensuring that the treatment of suspects, the conduct of investigations, and the fairness of trials align with the principles of justice and human dignity.

Ultimately, the fight against wrongful convictions in Tanzania is not only about safeguarding the rights of the accused but also about restoring the integrity of the criminal justice system. By adopting the recommended reforms, Tanzania can ensure that justice is truly served, preventing future miscarriages of justice and protecting the fundamental rights of all its citizens.

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