



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Evaluation on Death Sentence in Tanzania: A Challenge to International Standards on Rehabilitation of Prisoners

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ABSTRACT

This is the study titled “Evaluation on death sentence in Tanzania: A challenge to international standards on rehabilitation of prisoners.” It critically examines the death sentence in Tanzania and its challenges with international human rights obligations, particularly the standards of prisoner rehabilitation and the right to life. The research revealed that Tanzania’s retention and mandatory imposition of the death sentence for murder and treason violates regional and international instruments. These instruments include the International Covenant on Civil and Political Rights (ICCPR) and The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It also contravenes the African Charter on Human and Peoples’ Rights, as affirmed by various cases of the African Court including the cases of *Ally Rajabu and others v Tanzania*. Furthermore, the practice creates a discriminatory prison environment, where condemned prisoners are kept in solitary confinement under stringent security, explicitly excluded from educational, labour, and social rehabilitation programs afforded to other inmates, which amounts to cruel, inhuman, and torturous treatment. The research underscores the risk of executing the innocent persons, a profound and irreversible flaw of capital punishment. Ultimately, the study confirmed that Tanzania current laws and practices regarding the death sentence fail to comply with international standards of prisoner rehabilitation. It argues for a shift toward restorative justice and rehabilitation models that afford all individuals, including convicted persons, a second chance to prove change and successfully reintegrate into society.

KEY WORDS: Prisoner, Death sentence, Prisoner rehabilitation, International standards

1.0 Introduction

The study is grounded in contention that the death sentence in Tanzania directly challenges the international standards of rehabilitation of prisoners. Tanzania retains the death sentence under its Penal Code, mandating it as the sole punishment for murder and treason, a practice upheld even after the 2023 amendment. This research reveals that the imposition and the subsequent treatment of condemned prisoners constitute a direct violation of the state’s international obligations, particularly those concerned with the reformatory purpose of incarceration. The support of this study is based from legal analysis, particularly referencing international covenants like the ICCPR and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). This study is also supported by judicial precedents. The judicial precedents from the African Court on Human and Peoples’ Rights, have ruled that the mandatory death sentence constitutes an arbitrary deprivation of life and cruel treatment have also been used to support the study. This is due to the fact that for the purpose of rehabilitation, it requires a person to be alive. Furthermore, the data collected has proved in detail the discriminatory treatment of death row inmates. The researcher further argues that the permanence and finality of the death sentence are inherently irreconcilable with the objectives of rehabilitation and restorative justice, necessitating a reform of the legal framework to uphold human rights and foster social reintegration.

1.2 Conceptualization

1.2.1 Prisoner

The term prisoner is defined to mean any person whether convicted or not under detention in any prison,¹ it also means someone detained in prison, whether under a sentence or as a remand.² The term prisoner can further be defined as a person deprived of liberty and kept under involuntary restraint, confinement, or custody especially one on trial or prison.³

¹ The Prison Act, Cap. 58, Act No 34 Of 1967 R.E. 2023, Section 2

² *Salima Said V R*, (2022) Mtwara, HC Criminal Appeal No. 35, 2021 p. 6

³ Prisoner, accessed from <https://www.merriam-webster.com> (Accessed On 15 June 2025)

Prisoners can be either remand or convicted prisoners. The Convicts are those persons who have been found guilty by the court. The unconvict persons detained in prisons are called remand prisoners.⁴ When a person is remanded in custody it means that they will be detained in a prison until a later date when a trial or sentencing hearing will take place. The other categories of prisoners include civil prisoners who include the debtors, any person ordered to be detained in custody under the provisions of the Mental Disease Ordinance or a detainee under the Preventative Detention Act, 1962.⁵ Furthermore, there are prisoners of war, who are whether combatants or non-combatants, held in custody by a belligerent power during or immediately after an armed conflict.⁶

1.2.2 Death sentence

A sentence is a punishment or sanction imposed on a criminal wrong doer for disobeying the law.⁷ In Tanzania, sentencing comes after the conviction of an accused person, either after his own plea of guilty or after a full trial in a court of law. So, a person is said to have been sentenced if he is charged under a law which creates a specific offence that can be judicially ascertained and which prescribes a specific punishment for the offence. In relation to this article the researcher discusses the death sentence.

The death sentence, also known as capital punishment, refers to the judicial execution of an individual by the state as a punishment for a criminal offense, typically for crimes classified as capital offenses such as murder or treason.⁸ In Tanzania, the death sentence is a mandatory sentence for murder or treason as provided under the Penal Code.⁹ In Tanzania enforcement death sentence pertains to the procedural and institutional implementation of the death sentence from conviction to execution. This includes judicial confirmation, presidential assent and execution practices.¹⁰

1.2.3 Rehabilitation

The term rehabilitation refers to the process of reformation and social reintegration of an offender into society. It involves efforts to change an offender's behavior to prevent reoffending. It is the process that requires assistance of some form to achieve a change for the better or to vend to criminal behavior, which is necessary to achieve, and a return to a former state including return of all legal rights.¹¹ Rehabilitation is further defined as the process of helping inmates grow and change, allowing them to separate from environmental factors that have made them to commit crimes.¹² It is aimed at treating each of the major contributing factors in order to help give an inmate the ability to live a crime free life after they are released from prison.¹³ Criminal rehabilitation follows the ideas that people are not inherently bad but they are taught to make wrong decisions by number of factors such as alcohol and drugs, poverty, bad or absent parenting, association, mental illness, and lack of education.

There are various programs and initiatives to rehabilitate prisoners and facilitate their successful reintegration into society. These programs are designed to provide inmates with the skills and knowledge necessary to become productive citizens and reduce the rate of reoffending.¹⁴ These programs of rehabilitation for prisoners in Tanzania include, provision of practical skills that inmates can use to find employment or start their own businesses upon release. Examples of these practical skills in prisons involves industrial and craft activities, agricultural and livestock activities. Furthermore, prisons offer educational programs to improve the literacy and knowledge to prisoners. These programs range from basic literacy to formal education.¹⁵

The duty of rehabilitation to the prisoners in Tanzania, is vested to the Prisons service. The Prisons officers are responsible for the enforcement rules and keep order of the court, inside the prisons. They maintain security by settling disputes between inmates, preventing disturbances, assaults, and escapes.

1.3 Background of the problem

The death sentence, also known as capital punishment, has existed for centuries and was widely accepted as a legitimate form of punishment in many societies. In ancient Mesopotamia, the Code of Hammurabi prescribed death for various offenses. In ancient Greece and Rome, capital punishment was

⁴ The Prisons Act Cap. 58 R. E. 2023, Section 2

⁵ The Prisons Act Cap. 58 R. E. 2023, S. 2

⁶ Ibid.

⁷ Garner, B.A. *Black's Law Dictionary*, (7th Ed.), 1999, p. 1367.

⁸ Hood, R., & Hoyle, C., *The Death Penalty: A Worldwide Perspective*, 2015. Oxford: Oxford University Press.

⁹ The Penal Code [Cap. 16 R.E. 2023], S. 25, 39 40, 196 and 197

¹⁰ Prisons Standing Orders 4th Ed. [R.E.2003]. O. 608-616

¹¹ Shah, R., *The Meaning of Rehabilitation and Its Impact on Parole: There and Back again In California*, Florida: Taylor & Francis Group, 2017, p. 2-3.

¹² Criminal Rehabilitation. Accessed from <https://www.study.com> (last accessed on 20 June, 2025).

¹³ Siegert, R. J., and Levack, W. M., *Rehabilitation Goal Setting: Theory, Practice and Evidence*, Florida: CRC Press, 2014, Pg.105.

¹⁴ Prisons Standing Orders 4th Ed. [R.E.2003]. O. 404

¹⁵ Ibid

common for crimes such as murder, treason, and theft.¹⁶ In medieval Europe, public executions were used for both, as punishment and a tool of deterrence, often with religious and monarchical authority.

During the colonial period, European powers exported capital punishment to their colonies, including African nations. In Tanzania the death sentence was inherited from British colonial rule, where it was imposed for crimes like murder and treason.¹⁷ However, in modern times the abolition of death sentence and its replacement with other forms of sentence has been a practice in many jurisdictions.¹⁸ The main purpose of abolishing the death sentence is to make rehabilitation a central ideal of modern criminal justice system. The theoretical justifications for rehabilitation begun in the late eighteenth century.¹⁹ The various penal reformers including Cesare Beccaria, John Howard and Elizabeth Fry developed their ideas about the reformation or rehabilitation of offenders. They considered reformation as an alternative to what they saw as an overly punitive and disproportionate response to offending behavior.²⁰ Cesare Beccaria, who is often considered to have laid the ground for modern criminal justice reform, argued for humane treatment of prisoners and proportional punishment. Also, John Howard pushed for better sanitation, health and rehabilitation of prisoners,²¹ and Elizabeth Fry, advocated for education of prisoners and rehabilitation especially for women and children.

Internationally, the theory of rehabilitation gained momentum during the 20th century, particularly after World War II.²² The United Nations played a crucial role in shaping global standards for criminal justice by strongly advocating for the international human rights law and rehabilitation of offenders rather than their execution. The Covenants like the Second Optional Protocol to the International Covenant on Civil and Political Rights,²³ proclaims that no one within the jurisdiction of a State Party to the present Protocol shall be executed,²⁴ and each State Party should abolish the death sentence within its jurisdiction.

The United Nations Standard Minimum Rules for the Treatment of Prisoners,²⁵ provides that from the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.²⁶ This instrument is emphasizing rehabilitation over other punitive measures like deterrence retribution and incapacitation. This sets a global framework that advocate for the humane treatment of prisoners and the promotion of their social reintegration.²⁷

In Africa, the African Charter on Human and Peoples' Rights has not expressly declared the abolition of death sentence or insisted on rehabilitation. It expressly provides for protection of human dignity and prohibits cruel, inhuman, or degrading treatment,²⁸ which often includes the death sentence. The movement towards abolishing the death sentence in Africa has gained momentum in 1999 where the African Commission on Human and Peoples' Rights, decided to tackle the issue of the death sentence by adopting a resolution urging the states to abolish death sentence.

In its resolution of 2004, the Commission decided to set up a team, with a mandate, inter alia, to prepare a Study on the issue of the death sentence in Africa and to develop a strategic plan for its abolition within the continent and the study was completed in 2011.²⁹ Given the African continent and its

¹⁶Death penalty information center, *Early history of the death penalty*. (n.d). Accessed from <https://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/early-history-of-the-death-penalty> (last accessed on 19 May 2025)

¹⁷Mbelwa, A. A., "he Death Penalty and the African Court on Human and Peoples' Rights: A Case for its Abolition in Tanzania" (Vol. 13) *East African Journal of Peace & Human Rights* (2020) pp. 210- 212.

¹⁸ Death penalty information center, *Countries That Have Abolished the Death Penalty Since 1976*, available at <https://deathpenaltyinfo.org/policy-issues/policy/international/countries-that-have-abolished-the-death-penalty-since-1976> (last accessed on 19 May 2025)

¹⁹ Schneider C. E., "The Rise of Prisons and the origins of the Rehabilitative Ideal", Vol. 77(3) *Michigan Law Review*, Available at https://repository.law.umich.edu/cgi/viewcontent.cgi?params=/context/mlr/article/3685/&path_info= (last accessed on 09 April 2025)

²⁰Pifferi, M., *The Historical Origins and Evolution of Rehabilitative Punishment*, Chicago: The University of Chicago press, pp. 11-17 available at <https://www.journals.uchicago.edu/doi/10.1086/733432#:~:text=the%20current%20debate,-I,the%20late%20eighteenth%20century%20onward>. (Last accessed on 27 May 2025)

²¹ The state of the prisons, available at <https://www.abebooks.com/first-edition/state-prisons-John-Howard-J.M-Dent/31960823241/bd> (accessed on 12 April 2025)

²²*Reforming the prisoners*, available at <https://www.parliament.uk/business/publications/research/olympic-britain/crime-and-defence/reforming-prisons-reforming-prisoners/> Accessed on 10 April 2025

²³ The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), 1989, (1642 UNTS 414 Vol. 1642), Art. 1(1)(2)

²⁴*Reforming the prisoners* available at <https://www.parliament.uk/business/publications/research/olympic-britain/crime-and-defence/reforming-prisons-reforming-prisoners/> Accessed on 10 April 2025

²⁴ The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), 1989, (1642 UNTS 414 Vol. 1642), Art. 1(1)(2)

²⁵The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015 (UN Doc A/RES/70/175) Rule 107

²⁶*Ibid.* Rule 1

²⁷*Ibid.* Rule 4

²⁸The African Charter on Human and Peoples' Rights (ACHPR), 1981, Article 4-6

²⁹ African Commission on Human and Peoples' Rights (ACHPR), *Study on the Question of the Death Penalty in Africa*, African Commission on Human and Peoples Rights, 2011 Pp. 18

diversity following that resolution on death sentence to date, some countries have abolished the death sentence, while others including Tanzania continue to retain it, often as a form of retribution and deterrence.

However, in Tanzania after independence, there has been growing recognition that the death sentence is not conducive to rehabilitation.³⁰ In recent years in 2022 the Criminal Justice Law Reform Commission chaired by the former Chief Justice, Hon. Mohamed Othman Chande.³¹ The Commission conducted an analysis of the comments submitted to it and looked at the experience of other countries such as India and the United States. This experience revealed that in some countries murder cases are heard and concluded by the court, including issuing a death sentence. However, the President of the country concerned can grant pardon or commute the sentence of a person sentenced to death in accordance with the constitution of the country concerned. Furthermore, the Commission noted that the sentence has not been carried out for many years, thus it has caused those sentenced to live a life of fear while waiting for the execution of the sentence. The statistics showed up in 2023 there 691 prisoners who were awaiting execution. Therefore, according to that commission, *inter alia* the abolition of death sentence was strongly recommended.³² This examination from various views above is evidently that, the international and regional trend is in contrast with death sentence and it is upholding rehabilitation. It is hereby highlighted that the retention of the death sentence in Tanzania presents a challenge to efforts aimed at rehabilitating prisoners.

1.4 Statement of the problem

The International Covenant on Civil and Political Rights (ICCPR), Provides that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.³³ Then the Second optional protocol of the covenant on civil and political rights came to insist on the abolition of death sentence by requiring each state part to take all necessary measures to abolish death sentence on its jurisdiction.³⁴ The international community is believing that abolition of the death sentence contributes to enhancement of human dignity and progressive development of human rights. Also, domestic laws like The Tanzania Prisons Standing Orders, states that the mission and vision of Tanzania Prisons Service is to pursue the rehabilitation of prisoners³⁵. That is to say, all prisoners have the right to take part in cultural activities and educational programmes aimed at their rehabilitation and full development of the human personality. Furthermore, the prisons standing orders declare that the Prisons Service will enable prisoners to undergo meaningful rehabilitation which will facilitate their reintegration into the society and permit them to contribute to their own development and that of their families.³⁶

Despite having domestic laws and international standards of rehabilitation, Tanzania still doesn't comply with rehabilitation standard and retain in its jurisdiction by implementing death sentence while it challenge rehabilitation of prisoner. For instance the Penal Code, provide for the death sentence and when a person is sentenced to death, he or she should suffer death by hanging.³⁷ Therefore, implementation of these provisions contravenes international standards on rehabilitation and the retention of death sentence occasionally has impact to the laws that govern Tanzania Prisons service specifically on rehabilitation of prisoners hence removes possibility of condemned prisoner's rehabilitation. This research was conducted to make an evaluation of enforcement of death sentence *vis-a-vis* international standards of prisoner's rehabilitation in Tanzania.

1.5 Research methodology

This study has applied the doctrinal type of research which have been supported by social-legal research sometimes termed as non doctrinal research in which researcher incorporated the field study or empirical research.³⁸ The researcher employed the doctrinal method of research for the reason that doctrinal research methodology mainly focuses on what the law is on a particular issue or matter.³⁹ This type of methodology helped the researcher to have sufficient knowledge on the problem and enrich legal content and interpretation of statutes. This method also, helped the researcher to acquire the significant legal information through theories and court decisions in order to analyse the outcome within the given limited time framework.⁴⁰

³⁰ Jamhuriya Muunganowa Tanzania, *Muhtasari Wa Ripoti Ya Tume Ya Kuangalia Jinsi Ya Kuboresha Taasisi Za Haki Jinai Nchini*, Dodoma: Jamhuriya Muunganowa Tanzania, 2023 pp 29-30

³¹ Wazambi, F., *Summary Of The Tanzania Human Rights Report 2022: The Journey of Criminal Justice Reforms to Safeguard Human Rights*, Legal and Human Rights Centre, 2023, pp.10-11 Available at https://humanrights.or.tz/report/download/thrr_2022_english (last accessed on 16 May 2025)

³² Jamhuriya Muunganowa Tanzania, *Muhtasari Wa Ripoti Ya Tume Ya Kuangalia Jinsi Ya Kuboresha Taasisi Za Haki Jinai Nchini*, Dodoma: Jamhuriya Muunganowa Tanzania, 2023 pp 29-30

³³ International Covenant on Civil and Political Rights, 1966, entered into force 23 March 1976 (999 UNTS 1711967) Art. 10(3)

³⁴ The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), 1989, (1642 UNTS 414 Vol. 1642), Art. 1(2)

³⁵ Prisons Standing Orders 4th Ed., [R.E.2003]. Preamble pp. ii paragraph one

³⁶ Prisons Standing Orders 4th Ed., [R.E.2003]. O. 2 (vi)(vii)

³⁷ Penal Code Cap. 16 [R.E. 2023]. Sections 25(a), 39, 40 and 197

³⁸ Kumar, R., *Research Methodology: A step by step for Beginners*, Los Angeles: SAGE Publications Limited, 2011 p.1-15.

³⁹ Wartkins, D. and Burton, M., *Research Methods in Law*, Rutledge Taylor & Francis, 2013 p.9.

⁴⁰ Ihugba, B., *Introduction to Legal Research Method and Legal Writing*, Malthouse Press Limited 2020 pg.107

Furthermore, the researcher supplemented doctrinal method with social-legal research or non doctrinal research.⁴¹ This method helped the researcher to accomplish his research because Social-legal research or non-doctrinal research is better in revealing and explaining the practices and procedures of legal systems and the impact of legal phenomena on a range of social institutions, and citizens.⁴²

1.5.1 Research methods of data collection

The researcher in this study used documentary review and interview method of research because of the nature of the topic which is not purely on legal matters only. It is an evaluation which required to explore the existence of different views or opinions toward capital punishment.⁴³

1.6 Legal framework

The international standards on the rehabilitation of prisoners, are primary set out in the International Covenant on Civil and Political Rights (ICCPR).⁴⁴ This instrument establishes the purpose of the confinement for convicted persons should be rehabilitation. Then rehabilitation is a fundamental principle of the entire penitentiary system. This requirement of rehabilitation is further elaborated in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). The rules establish a foundational human rights obligation for states to ensure the penitentiary system is geared towards the essential goal of reformation and social reintegration. These standards are built on the core principle that all persons deprived of their liberty must be treated with humanity and respect for their inherent dignity. The standards seek to minimize the negative effects of incarceration and actively prepare prisoners for a law-abiding life back in the community. This holistic approach views imprisonment not merely as punishment, but as an opportunity for positive change, thereby enhancing public safety through reduced recidivism.

The Mandela Rules,⁴⁵ transform the broad principles of the ICCPR into detailed, practical guidance for prison administrations. They explicitly state that the prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity. To achieve the essential aim of reformation and social rehabilitation, the Rules emphasize tailored rehabilitation (Rules 86-98).⁴⁶ This includes providing prisoners with education, vocational training, and work which should be useful in their eventual return to society and should align with their individual needs. Furthermore, these instrument insist on the importance of social relations and after-care. These relation include r, family visits, and assistance after release to facilitate successful reintegration and support their willingness and ability to lead a law-abiding and self-supporting life.

1.7 Challenges of death sentence to international standards of rehabilitation

1.7.1 Death sentence under penal code as legal challenge

The study has found that Tanzania still retains death sentence under the Penal Code even after the amendment of 2023.⁴⁷ The courts continue to impose the death sentence as mandatory and sole punishment for the offences of murder and treason. However, this practice, and the mandatory nature of the sentence, remains as the violation of its obligations under the ICCPR,⁴⁸ because it maintains a system that is fundamentally opposed to the principles of reformation and rehabilitation as earlier discussed.⁴⁹ The retention of death sentence also contravene regional instruments as Tanzania Penal Code,⁵⁰ mandates the death sentence for murder and treason. This situation has been widely criticized various decided cases.⁵¹ For example, in the African Court on Human and Peoples' Rights, in cases such as *Ally Rajabu and others v Tanzania*,⁵² has found the death sentence is a violation of the right to life under the African Charter on Human and Peoples' Rights. The court ruled that the mandatory nature of the sentence, which does not allow for a consideration of mitigating factors, constitutes an arbitrary deprivation of life. In the case of *Marthine Christian Msuguri v Tanzania*,⁵³ before the African Court it was held that the mandatory death sentence had violated the applicant's right to life and undue delay in the trial violated the applicant's right to be tried within a reasonable time. Furthermore, the court stated that undue delay in the applicant's trial and the length of time he was confined on death row constituted cruel and inhuman treatment.

⁴¹Yaqin, A., *Legal research and Writing Methods*, (Lexis Nexis Publication, 2022. pp. 7

⁴²Yaqin, A., *Legal research and Writing Methods*, (Lexis Nexis Publication, 2022

⁴³Yaqin, A., *Legal research and Writing Methods*, New York City: Lexis Nexis Publication, 2022, pp. 106

⁴⁴International Covenant on Civil and Political Rights, 1966, entered into force 23 March 1976 (999 UNTS 1711967) Art. 10(1)(3)

⁴⁵The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015 (UN Doc A/RES/70/175) Rule 4.

⁴⁶ Rules 86-98).

⁴⁷ Penal Code [Cap. 16 R.E. 2023]. Sections 25(a), 39, 40 and 197

⁴⁸International Covenant on Civil and Political Rights, 1966, entered into force 23 March 1976 (999 UNTS 1711967). Art. 10(3)

⁴⁹*Ally Rajab & Others V. United Republic of Tanzania*, Application No 007/2015, African Court on Human and Peoples' Rights pp. 35-38

⁵⁰ Penal Code [Cap. 16 R.E. 2023]. Sections 25(a), 39, 40 and 197

⁵¹Kaijage R., "Capital punishment could soon be history in Tanzania," Africa Legal, October 2023 <https://www.africa-legal.com/news/capital-punishment-could-soon-be-history-in-tanzania/105083>

⁵²*Ally Rajabu and others v Tanzania*, Application No 007/2015, African Court on Human And Peoples' Rights

⁵³*Marthine Christian Msuguri v United Republic of Tanzania*, 052/2016/2022, AfCHPR.

These cases have something to offer in this research for the reason that they emphasize on right to life and opportunity of mitigation. Therefore, it is in the same view the researcher believes that, if the right to life is upheld, the rehabilitation programs to prisoners can be done. This is because all prisoners will have sentence that give the second chance to live as good citizens after they have got rehabilitation in prisons. However, in practice death row prisoners are exempted from any of the activities while other prisoners are involved in, from social activities like sports and labour activities. The death row prisoners are separated from the rest of the prisoners. They are kept in solitary confinement with separate cells. They are very isolated and they live within very restricted parameters, and are not supposed to go out anywhere. The condemned prisoners are not employed industrial works, and they are not trained in schools.

1.7.2 Discriminatory treatment

This study revealed the death sentence results to the exclusion from rehabilitative programs prisoners on death row. The death row prisoners are frequently excluded from educational, vocational, and work programs. As highlighted in legal submissions regarding Tanzanian death row conditions, prison authorities may intentionally exclude condemned prisoners, often operating under the implicit or explicit assumption that providing such opportunities would be wasted on people who are condemned to die. This exclusion severely violates the right to self-development and purposeful activity guaranteed by the Mandela Rules.⁵⁴

Furthermore, the situations above, have made the researcher believe that the treatment of prisoners in Tanzania is discriminatory in nature. It is in a sense that the laws are discriminatory and violates the standards set by international laws because other prisoners are getting rehabilitated and others not but kept under strong security denied the programs offered to others. These kinds of living environment to the condemned amount to the form of torture, and so lead these prisoners suffer from the psychological impacts of the nature of their sentences.

1.7.3 Risk from wrongful conviction

The death sentence is considered as a permanent and final punishment. The execution of a convicted person eliminates any possibility of correcting a judicial error. It is associated with the risk of executing an innocent person due to irrefutable flaw in any justice system that retains capital punishment.⁵⁵ There have been numerous cases of individuals sentenced to death who were later exonerated. In Tanzania the specific data on exonerations of death row inmates is not widely published. The possibility of wrongful convictions is a constant threat, particularly for the poor who may lack adequate legal representation.⁵⁶ The researcher takes U.S.A as an example in only previous year 2024. The exonerated prisoners due to wrongful conviction were 81.⁵⁷

1.7.4 Death controversial to rehabilitation

The researcher had an opportunity of learning from the respondent who says,⁵⁸ in Tanzania judiciary performs its duties according to Article 107.⁵⁹ The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania. It is impartial to all without due regard to one's social or economic status. There is no delay in dispensation of justice without reasonable ground. By adhering to the law obligations no one is prejudiced and when the judgment is delivered it is the product of fair hearing. Even if the death sentence is delivered, it is delivered in accordance to the laws.⁶⁰ There is no possibility of prejudice because all matters relating to evidence and proof beyond reasonable doubt is observed.⁶¹

Furthermore, although death sentence is a product of provisions of laws and fair hearing, it has some challenges to be taken into consideration. It is now the time to see the need of putting forward rehabilitation and restorative justice over deterrence and incapacitation. The commission of crimes has been in existence from the origin of the universe. The manner of categorizing some crimes to be the capital offences depends on the specific society or states and it is the state that determines the kind of punishment to that particular offence. For example, in Tanzania murder and treason are punishable by death by hanging while in other countries murder is punishable by life imprisonment sentence. He further said it is overt, the severity of punishment depends on nature or gravity of offences. The offence of murder and treason are grave offences that attract the heavy punishment for the public interest.

⁵⁴ LHRC 2024 ANNUAL REPORT: Commemoration of the World Day Against the Death Penalty, LHRC 2024 https://humanrights.or.tz/en/news-events/abolish_death_penalty#:~:text=Legally%20and%20socially%2C%20the%20primary,serve%20as%20a%20role%20model.

⁵⁵ Monash University, "The death penalty protects no one" (World Day 2024 #2) - ELEOS -, Monash University, 2024 available at <https://www.monash.edu/law/research/eleos/blog/eleos-justice-blog-posts/the-death-penalty-protects-no-one-world-day-2024-2#:~:text=Thus%2C%20a%20malleable%20system%20sensitive,justice%20it%20purports%20to%20uphold>.

⁵⁶ Gabagambi, J. J., Tete-a-tete with Tete: supporting exonerees of wrongful convictions in Tanzania, *Internet Journal of Restorative Justice*, ISSN: 2056-2985, 2020, pp. 1-7 available at <https://www.rj4allpublications.com/product/tete-a-tete-with-tete-supporting-exonerees-of-wrongful-convictions-in-tanzania-through-restorative-justice/> (last accessed on 20 July 2025)

⁵⁷ The University of California Irvine Newkirk Center for Science & Society, *The National Registry of Exonerations: 2024 Annual Report*, The University of California & University of Michigan Law School, 2025 pp. 3-5

⁵⁸ Hon. Judge Ndunguru D. B., *Interview by author*, (20 August 2025, Judiciary of Tanzania - Iringa High Court)

⁵⁹ The Constitution of The United Republic of Tanzania, 1977 Article 107

⁶⁰ *Republic v George Menson Sanga and 2 Others* [2024] TZHC 6416 (8 July 2024) (2) Unreported

⁶¹ The Evidence Act Cap. 06 R. E. 2022 Section 110.

Furthermore, the death sentence has been used since the early age. Jesus Christ was condemned claiming to be a king in opposition to the Roman emperor. During that time for everyone who claimed to be a king sets himself against the emperor ought to be crucified.⁶² He said from that time to date the death sentence for serious crime have been in existence, this shows it holds no deterrence effects.

The respondent above further argued, the sentence of death has no room of mitigation but the judges although for the sake of justice, the judges have power to determine the weight of evidence and circumstance to mitigate the offence. That is why you may find the offence adduced by the prosecution is murder but the judge may convict the accused on manslaughter. In his views it is only proper to convict accused person for murder and sentence him to death. He gave the reasons that, it is proper because the laws provide no other sentence for the offence of murder and treason and the court has no mandate to impose other lenient sentence for such offences. After conviction the court orders by warrant the prisons authority to receive the prisoner and execute the sentence of death, because the main duty of prison department is to execute sentences awarded by court through due process.

However, as long as society exist the crimes are there, it is the behavioral nature of human and death for various reasons has been used before and after Christ. So, it is the time for the world to change perception and to opt to rehabilitation and restorative model. When a person is given a second chance or spared life we can determine whether he has changed or not. Both death sentence and life sentences do not fit to rehabilitation. Death sentence curtails the prisoner's life so it not easier to observe how rehabilitative program benefited them. Life imprisonment too is the same on a sense that when a person is under custody for their whole life it is not easy for them to commit crimes within prisons because they are kept under strong security. It is not easy to say the person has changed to good character while is in prison. The behavior of person is well determined when has got a chance to be free. It is better for them to have long sentence but with expectation that one day will be released and they will re integrate with society and prove their changes.

According to honorable Judge Dustan B. Ndunguru, people must be given a second chance to prove that they have grown changes or rehabilitated. It is not easy to say a person has changed while he is under confinement. The same you cannot say that you rehabilitate a person while he is going to die. Therefore, he suggested that the sitting president and the next should use the power of prerogative of mercy which have been given under the Constitution,⁶³ as many times as they can. This will help to ensure that the all convicts get a chance to prove the changes. All prisoners should be given a chance to prove their changes even life sentence is not proper sentence. In the same view he proposed the provision and semination of education to the citizens to prevent the crimes other than waiting to judge criminals.

1.7.5 Psychological and mental health problem

The death row prisoners often face prolonged periods of detention under conditions of extreme isolation, awaiting execution for years or decades a phenomenon that causes intense psychological distress. This isolation and the constant fear of execution severely compromise their mental health, which the Mandela Rules obligate the State to protect. Many of them are elders who have spent years in prison without knowing their fate. Psychologically, most of the prisoners suffer from mental health problems due to constant fear. They fear that they might be hanged at any time.⁶⁴ Also, the condemned segregations, often without access to communal activities, education, or even adequate family visits due to distance and restrictions, compounds the trauma and acts as an additional, severe form of punishment that is incompatible with the principle of human dignity⁶⁵

1.8 Conclusion

This study affirms that current laws in Tanzania do not comply with international standards of prisoner rehabilitation with specific regard that the death sentence is a direct challenge to these standards. The retention of the death sentence under the Penal Code, can be considered as contravention of Tanzania obligations under international law. The study found the discriminatory practice within the prisons system. The death row prisoners are isolated in solitary confinement, denied access to the rehabilitative and social programs like education, sports, and industrial work offered to other prisoners. The treatment of death row prisoners also found to have the psychological impact of impending execution. The researcher is in the view that, this situation amounts to cruel and inhuman treatment. Thus it can be considered as violating international norms. Moreover, the finality of capital punishment poses the risk of executing an innocent person and it cannot be reversed. The analysis, supported by judicial decisions and correctional perspectives, suggests that a commitment to restorative justice and providing a second chance through reformatory sentencing is paramount to achieving true compliance with human rights and promoting successful social reintegration.

⁶² The holy Bible: New King James Version, (Thomas Nelson Inc. 1983) Mark 14:61-64, John 19:12-16

⁶³ The Constitution of the United Republic of Tanzania Cap. 2, 1977 Article 45(2)

⁶⁴ LHRC, 2024 ANNUAL REPORT: Commemoration of the World Day Against the Death Penalty, LHRC, 2024 https://humanrights.or.tz/en/news-events/abolish_death_penalty#:~:text=Legally%20and%20socially%2C%20the%20primary,serve%20as%20a%20role%20model.

⁶⁵ International Covenant on Civil and Political Rights, 1966, entered into force 23 March 1976 (999 UNTS 1711967) Art. 10(1)(3)

1.9 Recommendations

1.9.1 Abolition of the death sentence

The most direct and effective way to resolve the conflict between the death sentence and the principle of rehabilitation is to abolish capital punishment in Tanzania. As the study found, the death sentence, by its irreversible nature, makes rehabilitation impossible. Tanzania's *de facto* moratorium on executions, combined with the presidential commutation of sentences, demonstrates a practical reluctance to carry out executions. Formal abolition would align the country with the growing global trend and its international human rights obligations.

1.9.2 Replacement of death sentence by life imprisonment

It is overt that the steps towards abolition of death sentence might be taking long time. The researcher has considered the opinions of the respondents who said rehabilitation is impracticable to condemned prisoners. It has also commented that death sentence does not offer hope for the survival and it inconsistent to international standards of rehabilitation. Also, the researcher took into consideration those who said early release would amount to authorize the killing so they would preferably see murders to be kept in prison for the rest of their life. Therefore, the researcher is in the views that recommend that the death sentence be replaced with a sentence of life imprisonment with the possibility of parole or early release. This would eliminate the legal uncertainty and psychological distress faced by death row inmates and provide a consistent legal framework for their sentences. It would also allow for the possibility of future rehabilitation, as the sentence would no longer be final.

1.9.3 Enact specific legislation on rehabilitation

The researcher in previous chapter has revealed a legal gap regarding the definition and implementation of rehabilitation programs. Therefore, recommends that it is crucial to enact a specific law or regulation that clearly defines the purpose of rehabilitation. The law should outline the rights and responsibilities of both prisoners and the correctional service. It should highlight the mandatory use of professionalism. This law should include definition of rehabilitation to ensure a consistent understanding and application across all prisons. The rules should establish mandatory rehabilitation programs for all prisoners, including those serving long term or life sentences. These programs should include educational services, vocational training, counseling, and social support. The rules should reduce discretionary power of prison officials by creating a structured, legally mandated system for rehabilitation. This would prevent the arbitrary implementation of programs and ensure that a prisoner's access to rehabilitation is a right, not a privilege.

1.9.4 Reform the Prison Act and Prisons Standing Orders

The researcher recommends the amendment the current legislation to explicitly include a robust rehabilitation mandate for all prisoners, regardless of their sentence. The current Prisons Act and Prison Standing Orders have failed to adequately address the rehabilitation needs of all prisoners. The law should initiate specific rehabilitation programs that shall be designed to meet the needs of all prisoners, focusing on skills development and personal growth. Rehabilitation programs for prisoners who are serving life imprisonment sentences are not only important for promoting personal growth in prisons. The programs will also help the prisoners to, if they will get a chance for their sentence be commuted to determinant sentences reducing recidivism. It will also prepare inmates for reintegration into society, whether they are released at some point or remain incarcerated.

Also the mentioned laws should be amended to ensure the prisoners benefit from education programs from primary to university level of education that can help them gain skills that will be beneficial both during their sentence and if they are ever released. The aim of providing education to them is that, inmates may be provided with the tools to achieve intellectual growth, increase employability, and improve mental health. Nonetheless, the psychological and emotional rehabilitation programs are very important because many prisoners experience mental health challenges such as depression, anxiety, or anger issues. Therapeutic interventions should be designed to help prisoners identify negative thought patterns and develop healthier coping mechanisms. This will way in addressing underlying psychological issues that may have contributed to criminal behavior. Also, they may be helped in anger management and conflict resolution, as this is important for teaching inmates how to manage aggression and resolve disputes without violence. Nonetheless, the researcher recommends that the amendment of the Penal Code above, should go in line with the amendment of the Prisons Standing Orders. The amendment Prisons Standing Orders should focus on those orders which provide for the procedures of execution of death sentence⁶⁶

About Author

Frank Nkosi is a postgraduate student at the University of Iringa, specializing in International Criminal Justice and Human Rights. His research interests focus on the effectiveness of regional human rights mechanisms in Africa, with a particular emphasis on institutional capacity, state compliance, and the role of civil society in advancing accountability and human rights protection across the continent.

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