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A CRITICAL ANALYSIS ON THE CRIMINAL PROCEDURE (AUDIO AND VIDEO RECORDING OF INTERVIEWS WITH SUSPECTS) RULES G.N 792/2023.

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Abstract

This article makes a critical analysis on the Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules GN NO.792 of 2023 which marked a significance step toward modernizing Tanzania's criminal justice system and aligning pre-trial procedures with constitutional and international fair trial standards.

These Rules aim to enhance transparency, accountability and integrity in criminal investigation by mandating the use of audio and video recordings during suspect interviews at the police station. However, while the Rules represent a commendable reform effort, this dissertation critically examines their structural, procedural and practical weaknesses that potentially undermine their intended objectives and the broader right of a fair trial as guaranteed under Article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977 and international human rights instruments such as ICCPR and the African Charter on Human and People's Rights.

The analysis identifies several challenges of the Rules including discretionary nature of recording requirement, which require law enforcement officers to bypass recording without clear, stringent justification.

KeyTerms: A suspect, police interview, compelled confession, and criminal justice system.

INTRODUCTION

In Tanzania, the administration of criminal justice is an essential pillar of the rule of law. One of the most sensitive phases of criminal proceedings is the investigation stage, where there is interrogation of suspects. The methods used by law enforcement agencies during interviewing of suspects significantly impact the reliability of evidence collected, the protection of suspects' rights and the overall fairness of the criminal process.

For decades, Tanzanian criminal procedure has relied heavily on "cautioned statements" taken by police during interrogation, with admissibility governed by The Evidence Act [Cap 6 R.E 2023] and The Criminal Procedure Act [Cap 20 R.E 2023]. There were a lot of challenges like claim of involuntariness, and factual disputes about what was said to the police officer during interrogations which has generated litigation and delays in criminal justice.

Recognizing the need and transparency and accountability, the Chief Justice of Tanzania issued the Criminal Procedure (Audio

and Video Recording of Interviews with Suspects) Rules G.N 792/2023. These Rules aims to safeguard against coerced confessions, provide accurate documentation of statements, and ensure compliance with constitutional guarantees of fair trial and due process. These rules apply to all audio and video recording of interviews of suspects by police offices under section 58 of the Criminal Procedure Act. These rules aim to safeguard against coerced confessions, promote accurate documentation of statements, and ensure compliance with constitutional guarantees of fair trial and due process.

The implementation of audio and video recording during suspect interviews represents a progressive step in aligning Tanzania's criminal justice system with international norms and best practices. The Rules intend to serve as a deterrent against police misconduct, reduce instances of torture, and enhance the evidentiary value of statements provided by suspects. Moreover, the recorded interviews are expected to facilitate judicial scrutiny of



interrogation procedures, thus fostering greater transparency and accountability in criminal investigators.

As explained above, these rules are purposely for increasing transparency and accuracy of police cautioned statements. This aim would have been significantly achieved if the practice would have been mandatory for all serious offences. Electronic devices for recording are currently available countrywide and mediums can be accessed everywhere. This would reduce the current outcries of forced admissions and confessions and the criminal justice system would be more transparent as the rules provide for very positive aspects in regard to police cautioned statements.

This article seeks to critically analyze on the Criminal Procedure (Audio and Video recording of interviews with suspects) Rules G.N 792/2023. It explores the extent to which Rules have been implemented, their impact on the protection of suspects' rights and the extent they comply with international human right standards.

THE BACKGROUND

For a very long time in Tanzania, it has been established practice of conducting police interviews with suspects in a secret environment involving a police officer and a suspect only with a paper-based mode of recording. This circumstance creates room for unethical police officers to be involved in violation of the rights of suspects guaranteed by the constitution, laws and international instruments.ⁱⁱ There have been complaints about subjecting the suspects to torture, threat, inhuman, degrading treatment and even death. With the said traditional secret and paper-based mode of interview, there have been complaints for a very long time from suspects restrained by the police force and the public at large on violation of rights of criminal suspects during an interview with police officers; some criminal suspects are subjected to torture inhuman and degrading treatment in order to procure confession to offences they are suspected for, in some circumstances suspects are tortured to death.ⁱⁱⁱ

The risk of violation of criminal suspect's rights under the traditional secret, paper-oriented mode of recording interviews with suspects makes it necessary to adopt changes in Science and Technology by accommodating a mode which can ensure transparency, authenticity of the suspect's statement and protection of the rights of the suspect^{iv}. With the advancement of ICT, this goal could only be achieved through the accommodation of the application of ICT devices during police interviews with suspects. The application of ICT devices in police interviews with suspects was statutorily introduced in Tanzania in 2018. Section 57 of The Criminal Procedure Act (CPA)¹ was amended by Act No. 7 of 2018 by adding section 57(5) -(7), which, for the first time, clearly introduced the application of audio and video recording devices during interviews with suspects. Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules.

In November 2023, the Chief Justice of Tanzania issued the Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules 35. The Rules were issued so as to enhance the protection of the rights of suspects, and increase the exactitude

of statements made by the suspect during police interviews, it also helps to ensure that suspects' rights are fully protected and that suspects are not coerced or mistreated during the police interview. Furthermore, the recordings of the police interview can help to prevent miscarriages of justice by conserving what is said during suspect interviews. Moreover, the records of the interview can be used as a reference during training, feedback, and research as well as it helps to motivate police to improve their interviewing skills^v

Tanzanian courts have built a substantial jurisprudence on cautioned statements addressing voluntariness, repudiated or retracted confessions, and procedural compliance. By reference in case of Twaha Ally & 5 Others (unreported),^{vi} this case shows persistent factual disputes about what occurred in interview rooms and underscore why reliable recording matters.

Currently, It should be noted that the audio and video recorded interview is vital evidence to ensure accuracy and fairness in criminal justice. It is clear particularly when the analysis is properly done after following all the necessary procedures from the collection of evidence via video or audio recorded, storage, transfer for analysis and method(s) of analysis employed before the results are out and tendered in court. As shown in the case of Republic vs Mwita Koroso Mwita Johanes and Others^{vii} whereby the court stated that; The last aspect is advisory. It is advice or a reminder to those in criminal justice administration dealing with investigation. This Court has been constrained to give this advice because of the technical course that this case has taken. The point is that there is currently a modified and less controversial manner of recording suspects' confessions under the provisions of the CPA."

In this case, the trial judge emphasized the necessity of recording the police interview to ensure clarity in the criminal justice system, the trial judge found it necessary for the police officers to conduct audio or video recording of the interview despite the time of the judgment no enacted law covers the aspect of audio and video recording apart of the CPA, the trial judge stated that; "That said, the investigation authorities, if they have not, are advised to come out of tradition and embrace this scientific and sure way of recording suspects' statements and confessions. The authorities should not wait for the rules to be made under subsection (7) of section 57 of the CPA, because subsection (5) with its paragraphs (a), (b), (c) and (d) give sufficient guidelines to record statement by using video and audial recording devices. That is so because, as far as courts are concerned, it is not mandatory that subsection (7) must be acted upon first for subsection (5) to come into force. There is no such requirement in that Act." The existing legal frameworks accommodate the use of ICT during police interviews, however, the aspect has not been effectively realized as the same is not a mandatory requirement.

In Tanzania since these Rules were enacted during 2023, but there has been a lot of complaints by the suspects of complaining of being tortured by the police officers. There are many reports in Tanzania which continue to cite on the widespread of reports of police officers using beatings and other forms of abuse against criminal suspects. Example in May 2025 the Kenyan activist

Boniface Mwangi and Agather Atuhaire the journalist from Uganda, in Dar es salaam while were denied on entry to observe the trial of political opposition leader Tundu lissu, who was charged with treason. They were arrested by police officers where they were later forcibly deported. Reports detail graphic of torture aimed at extracting information and humiliating them.

In the decision by the African Court on Human and People's Rights (AfCHPR), which reiterated the absolute prohibition of torture. In Habyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania,^{viii} in this case involving two Burundian nationals, the African court found that Tanzania had violated the applicant's rights under Article 5 of the African Charter on Human and People's Rights (prohibiting torture) due to physical and mental abuse by law enforcement (the police officers). Crucially, the court concluded that the state's reliance on evidence obtained by torture was a violation, underscoring the legal unacceptability of such methods.

LEGAL FRAMEWORK GOVERNING STUDY

Criminal justice system in Tanzania is governed by The Constitution of the United Republic of Tanzania of 1977 as a mother law, followed by The Criminal Procedure Act (CPA), and the international instruments which are, Universal Declaration of Human Rights of 1948, International Convention for protection of All persons from enforced Disappearances, Convention against Torture and other Cruel, inhuman or Degrading Treatment or punishment of 1984, Optional Protocol to the Convention against Torture and other Cruel, inhuman or Degrading Treatment or punishment of 2002 and International Covenant on Civil and Political Rights (ICCPR) of 1966.

THE RIGHTS OF SUSPECTS

Rights of the Suspects

Suspects are entitled to various rights from the initial stage of arrest to the other stages of investigation. It is well settled position that for an arrest to be legal, specific requirements contained in National Constitutions, Criminal Procedure Laws, and Regional and International Treaties, must be met such as meeting the requirements of proportionality, legality and necessity, in making the arrest, the officer should not use greater force than is reasonable to apprehend a suspect, person arrested must be informed of the reason for the arrest at the time of, or as soon as practicable after, the arrest; informing the person to be arrested of the right to remain silent, and be warned of the consequences of making any statement, the arrested person must be brought before a court within a reasonable time and usually within 48 hours, not to be compelled a person arrested to make a confession or admission which could be used in evidence against him or her, an arrested person should be given the right to be segregated from convicted persons; and an arrested person has the right to be released from detention, with or without bail unless the interests of justice require otherwise. During a police interview, a suspect is entitled to the following rights.^{ix}

Right to Freedom from Coercion, Duress, Threat, Torture, or Cruel, Inhuman, or Degrading Treatment

Torture or Cruel, inhuman, or degrading treatment may be either may be either physical or mental. Many people wrongly believe that such treatment involves only physical Acts. The United Nations Human Rights Committee has stated that torture and Cruel treatment relates not only to acts that cause physical pain but also to acts that cause mental suffering to the person.^x

Police officer should treat suspects fairly in a such way that there is no any element of torture or cruel treatment.

In R. Vs. Godfrey James Ihuya and 3 Others,^{xi} The High Court of Tanzania at Mwanza case No. 8 of 1980, the accused persons who were members of the Police force tortured many people including the deceased for the purpose of extracting information from the suspects in which case they were stripped naked, beaten up, and shoved into their private parts and testicles tied with strings and pulled. It was held that the acts by the accused persons amounted to torture.

Right to legal representation

Suspects have the right to consult an advocate before and during questioning and to obtain legal counsel. The right to legal representation extends from the investigation stage to the trial stage.^{xii} The Constitution of the United Republic of Tanzania guarantees the right to legal representation, and the Constitution guarantees that a person who is charged with a criminal offence is eligible for a fair trial, which includes access to legal representation.

The interviewer must ensure that the rights of the interviewee are observed and accommodated. Commonly the law requires that certain mandatory cautions be given before an interview, and if those are not followed the evidence obtained may be in admissible.^{xiii} Always defense lawyers use it as the weakness. These may include right to information about rights, access to defense counsel and right to remain silent and right to have legal counsel present. where access to legal counsel is readily available, including in conflict and post-conflict settings, the police and law enforcement officials should enable the interviewee to arrange for counsel or provide for such access in due cognizance of their inherent rights.

Right to remain silent

Suspects have the right to remain silent during police interviews. The principle of "nemo tenetur se ipsum accusare" underscores the right to silence, emphasizing that individuals should not be compelled to provide self-incriminating evidence.^{xiv} The right to remain silent is recognized in various jurisdictions, but its scope can be limited depending on the nature of cases. In accordance with the Criminal Procedure Act,^{xv} during a police interview, a suspect has the right to remain silent and not to be required to make any statement without his consent, which could later be used as evidence before the court.

While investigative interviewing is intended to stimulate communication and information, it is not a tool to persuade

suspects to talk. There is no guarantee that a suspect will choose to offer a statement. interviewers should expect a variety of behaviors from suspects, from compliance to noncooperation from being overly friendly to being abusive or even hostile. The silent behavior and abrupt response can often frustrate or cause the interviewer to deviate from the professional standard. However, the suspect being silent an officer must continue the interview and offer suspects to respond. While suspects may choose to remain silent in response to some questions, there may others that they wish to answer.^{xvi} The interviewers should stimulate responses by drawing reference to evidence already in their possession. The evidence may tend to indicate the suspect's guilty, invite them to explain the evidence in their own words. An interviewee's silence should however, have no bearing on an eventual determination of guilt or innocence, nor should it affect their right to the presumption of innocence. States must ensure effective protection against forced self-incrimination in their code of criminal procedure, including the recognition of the right to remain silent.

Presumption of innocence

Inherent to the presumption of innocence is the right to remain silent and to be protected against incriminating oneself. These due process rights and procedural safeguards are integral components of the investigative interview process. Suspects have a right to presumed innocent until is proved guilty by the court during trial. So when treating the suspects police officers must treat them as innocent.

The extent to which the Rules comply with constitutional guarantee under A.13 (6) (a) of the Constitution of the United Republic of Tanzania and International human rights standards, particularly the right to a fair trial.

The findings of this objective answers the research question on to what extent do the Rules comply with the Constitution of the United Republic of Tanzania and relevant international Human Rights instruments? The findings of this objective is basically found by using documentary reviews, different literatures, the laws and cases involving the right of fair trial.

Article 13(6) (a) of the Constitutional of the United Republic of Tanzania^{xvii} guarantees the right and duties of any person are being determined by the court or any agency, that person shall be entitled to a fair hearing and the right of appeal or any other legal remedy against decisions.

So fair hearing, right to legal remedy and presumption of innocence which the constitutional guarantees is thus not limited to courts but applies also to other agencies when rights or duties are being determined.^{xviii}

The question is on to what extent do the Rules comply with the Constitution of the United Republic of Tanzania and relevant international Human Rights instruments? The findings to answer this question here are the requirements where the Rules align well with constitutional or international fair trial guarantees.

Right to fair hearing

The Rules enhance transparency; suspect is informed of recording, has an opportunity to see it activated, to review prior statement, to clarify, to add anything. From the findings from the law fair hearing from the Rules involves interviews may have recorded in video or audio form, requiring clear picture and sound and the whole interview must be recorded. Also before interview starts, suspects must be informed about the recording, shown the medium is in use and the recording is active. The recording medium must be shown to be empty, sealed if necessary; date, time persons present must be included and suspect has a right to a copy of the recording.

Under ICCPR, Article 14 guarantees a fair trial, which includes that everyone charged with criminal offence has a right to adequate time and facilitates for the preparation of the defense. African Charter on Human and People's Rights (ACHPR), Article 7 provides that every individual shall have the right to be heard, including the right to defense and the right to fair trial.

Jurisprudence of international and human rights courts holds that confessions must satisfy voluntariness and be obtained in accordance with fair procedural safeguards, including being informed of rights, and audio or video recording of interviews is increasingly regarded as a best practice to evidential reliability.

Therefore, despite the fact that the Rules have a lot of challenges in its implementation but reflect substantial compliance with international human right norms concerning a fair hearing.

Presumption of innocence

The Rule provide the requirement that the suspect certify that the statement is free from threat, inducement and ensures that statements used are made voluntary. A suspect should not be treated as an accused person. It is a fundamental principal of criminal justice which holds that every person charged with a criminal offence shall be presumed innocent until proven guilty according to law. This rule protects individuals from wrongful conviction and ensures a fair trial. In Tanzania this principle is enshrined in both domestic law and international human rights instruments to which the country is a party. Article 14(2) of the ICCPR provides that *"everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."* Under Universal Declaration of Human Rights (UDHR) Article 11(1) recognizes the presumption of innocence as a global standard for criminal justice. In the case of *Alex Thomas v Republic*,^{xix} the court emphasized that the burden of proof in criminal matters rests on the prosecution and the person accused of an offence has to presumed innocent until proved guilty.

Right to appeal or remedy

The findings from literatures reveals that the right to appeal or remedy is a fundamental safeguard in criminal justice systems. It ensures that individuals have access to higher authority to review alleged legal or factual errors made during trial, thereby promoting justice, accountability and rule of law. The Rules includes that the suspect should be given a copy of recording or certificate which

facilitates later challenge or remedy if needed. Sealing of recording accounting for chain of custody which helps to be used as evidence in court. So if all procedures of interviewing suspect are not followed then the remedy to the suspect is that the court shall not admit the recordings as part of evidence and will not rely on it.

To comply with international human rights norms, under the Universal Declaration of Human Rights (UDHR) Article 8 affirms the right to an effective remedy by competent national tribunals for acts violating fundamental rights.

Preventing arbitrary detention

Recording the whole interview helps accountability and avoid denials on what was said. However, the Rules do not directly address delay in the criminal process overall.

Therefore, on the whole the new Rules are significant improvement over the prior situation. They embed procedural safeguards in the investigative stage, promote transparency, and attempt to align with the constitutional guarantees of fair hearing, presumption of innocence etc. many of the elements required by Article 13 (6) and international human Rights instruments are reflected in the Rules.

However, the discretionary nature of the Rules potential for inconsistency implementation, absence of clearly defined sanctions or remedies for noncompliance, and other challenges or weaknesses of the Rules which do not fully guarantee constitutional and international fair trial standards

CONCLUSION

the effectiveness of these Rules depends heavily on enforcement, resources and discretion of the police officer. There are a lot of challenges when it comes on the treatment of suspects when it comes in accessing of a fair trial including that of recording being a discretion and mandatory. While the Rules protecting suspects in interviews form a robust framework on paper, their transformative potential is limited by practical challenges. enjoying the benefits of these new Rules protection requires not only legal provisions but also political will, resources and a culture of accountability.

In Tanzania all rights of individuals are primarily rooted in the Constitution. The Rules among others provides on the right of fair trial which comply with Article 13(6) (a) of the Constitution and International Human Rights instruments which adjudicate on a fair hearing and fair trial. In ICCPR and The African Charter on human and people's rights. However, the absence of detailed procedural laws, weak institutional accountability and limited access to legal aid significantly dilute the effectiveness of these protection.

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