

RUAHA CATHOLIC UNIVERSITY



(RUCU)

FACULTY OF LAW

**TITLE: LEGAL EXAMINATION OF KIDNAPPING IN TANZANIA WITH SPECIAL
REFERENCE TO TANZANIA INTELLIGENCE AND SECURITY SERVICE ACT**

**A Research Proposal Submitted in Partial Fulfillment of Requirements for the award of
the Bachelors of Laws Degree (LLB) of Ruaha Catholic University**

BY

ANGEL MTIMILI

RU/LLB/2021/089

Prepared under the supervision of

MR. JUSTN MLAY

At Faculty of Law

2025

CERTIFICATION

I certify that, I have read and here by recommend for acceptance by the Ruaha Catholic University a dissertation entitled; titled, **“legal examination of kidnapping in Tanzania with special reference to Tanzania intelligence and security service Act”**. A research paper submitted in a partial fulfillment of the requirement of Bachelor degree of law (LLB) at Ruaha catholic university.

.....

Mr. Justin Mlay

(Supervisor)

Date.....

DECLARATION

I, Angel Mtimili, I do hereby declare that this research paper is my own work and that it has never been presented to any other university or to any place for a similar or any other degree award.

.....

Angel Mtimili

(Researcher)

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ACKNOWLEDGEMENT

A work of this kind could not have been easy without the assistance, guidance and moral support from a number of people. It is therefore, my pleasure to extend my wholehearted thanks to all persons who in one way or another have provided inputs to this work.

First and foremost, thanks go to our Almighty God for his everlasting grace to me and his care and for everything. Besides the help and blessings of God, a lot of people have heavily contributed towards the accomplishment of this work. However, my supervisor, Mr. Justin Mlay deserves a special mention because he assisted me not only by his insights and constructive ideas but also reading and editing the paper, notwithstanding his other crucial official duties and responsibilities. His close supervision and patient guidance enabled me to complete the work.

He has always been there to grant every assistance I required from him. His suggestions and criticisms contributed a lot to enrichment of this work. Without him this work would not have the quality it has now. So I am proudly thankful to him and for sure I am heavily indebted for the good supervision gladly rendered. I also wish to express my sincere gratitude to My mother Joyce L. Mwakibinga for financial support and her prayers towards me, and my fellow colleagues to mention Zulfa Chongowe, Levesia Maona, Selina Ntalindanya for advices and support may almighty God bless you abundantly.

DEDICATION

This work is hereby dedicated to my late father Mr. Stanslaus Mtimili who passed away some few years ago for his courage, love, care, and support through education. Also it is dedicated to my guardian Dr. Amon Cornel Mwasandube, my beloved mother Joice Luka Mwakibinga, my young brother and my sister. I wish them a lot of success and happiness throughout. May the blessings of the lord be with them always.

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2006

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International convention on civil and political Rights 1966

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Kamundi v R [2025] KEHC 7790

ABBREVIATIONS

TISS	Tanzania intelligence and security service
CPA	Criminal Procedure Act
NISS	National Intelligence and Security Service
IGP	Inspector General of police
CID	Criminal investigation department
FFU	Field force unit
UDHR	Universal declaration of human Rights
ICCEDP	International convention for the protection of all persons from enforced disappearances
ACHPR	African charter on human and people's Rights
ICCPR	International convention on civil and political Rights

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ABSTRACT

The dissertation which has a title legal examination of kidnapping in Tanzania with special reference to Tanzania intelligence and security service Act examines the legal framework governing kidnapping in Tanzania, with a special focus on the role and limitations of the Tanzania Intelligence and Security Service (TISS) under the Tanzania Intelligence and Security Service Act.

While kidnapping is clearly criminalized under the Penal Code, concerns have emerged over the involvement of intelligence officers in activities amounting to unlawful arrests, secret detentions, or enforced disappearances acts which may legally and practically resemble kidnapping. The study explores whether TISS, whose mandate is primarily intelligence gathering, operates within the boundaries of the Constitution and criminal law, especially in light of human rights obligations. Through doctrinal and comparative analysis, this research highlights legal gaps, enforcement challenges, and the risk of abuse where oversight mechanisms are weak. It concludes by recommending legal reforms to clarify TISS powers, strengthen accountability, and ensure that national security operations do not violate fundamental rights.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the study

The Tanzania intelligence and security services are the national intelligence and security agency of Tanzania. The agency works closely with other national and international intelligence agencies and security organs in the promotion and maintenance of peace, safety and security in and outside Tanzania's borders¹. During the colonial Era, the intelligence work was conducted by the colonial authorities, primarily under British rule. The system was designed not for national security as we understand it today, but to protect colonial interests and suppress anti- colonial movement. Under the British colonial control, intelligence operations were part of the colonial police structure, specifically under a unit known as special branch. The special branch was tasked with monitoring local populations spying on African political activists and gathering information on movements pushing for independence². The special branch was staffed mostly by Europeans with few Africans in low-level positions. It worked closely with British intelligence services like MIS to manage colonial intelligence. The function of this special branch was surveillance of political meetings and activists, reporting to British colonial administrators and preventing uprising and resistance to colonial policies³. During the post-independence period, after Tanganyika gained independence in 1961, the

¹ J. Shadrack, *The private security industry in Tanzania, challenges, issues and regulations*, Oxford University press, 2011. Pg. 56

² R. Shaffer, *The African intelligence service, Early post-colonial and contemporary challenges*, Roman and Littlefield, 2021 pg. 40

³ Institute of security studies, monograph 128, civil security relations in Tanzania, 2006

new government inherited the special branch, a unit of the colonial police force responsible for intelligence gathering. This unit became the foundation of Tanzania's modern intelligence system⁴.

In 1961-1970 the continuation of the special branch remained under the Tanzania police force, reporting to the ministry of home affairs. It was repurposed to protect the sovereignty of the new nation, focusing on internal security, monitoring political opposition and countering foreign influence. After the union of Tanganyika and Zanzibar in 1964, efforts were made to merge intelligence operations from both sides into a unified national system. In 1970, the special branch was officially separated from the police force and established as an independent body. It began operating directly under the office of the president marking a shift toward centralized national intelligence oversight, its main duties included political surveillance state security and supporting government stability, especially during the Ujamaa (African socialism era)Era⁵. In 1996, the Tanzania intelligence and security services act (Cap 406) was enacted officially creating the Tanzania intelligence and security services (TISS). The act defines TISS as a civilian intelligence agency with a clear mandate to protect national security, gather and analyze intelligence, advice the government on security matters. In 2023 a major amendment placed TISS directly under the president's authority, removed ministerial

⁴ H. Gurman, *The history of national security disclosures and the cult of secrecy*, Columbia University press, 2020 pg. 56

⁵ R. Shaffer, *The Handbook of African Intelligence Culture*, Rowman and little fields, 2023 pg. 63

oversight and expanded its rules including vetting public officials, protecting national leaders and foreign dignitaries, securing strategic installations⁶

1.2 Statement of the Problem

The organ responsible for defense and security is the police force which has duties as stipulated under the police force and auxiliary law [cap 322 R.E 2002] the duties under section 5 include preservation of peace, the maintainable of law and order, the prevention and detection of crimes, the apprehension and guarding of offenders, and the protection of property and for the performance of all such duties and shall be entitled to carry arms⁷. Other duties are Arrest individuals suspected of committing crimes by following due process.

The Tanzania intelligence and security services is a national defense and security organ operating under the general superintendence of the president as stipulated under section 4 subsection 3 of the Tanzania intelligence and security service (amendment)act 2023 which provides that the service shall operate as one of the defence and security organ under the general superintendence of the president⁸ which means that they have to maintain defense and security with in the country for the president but the problem comes in the course of arrest and detention.

⁶ E. Chahali, *The politicization of intelligence in Tanzania*, Oxford, 2023 pg 32

⁷ The police force and Auxiliary law [Cap 322 R.E 2002]

⁸ The Tanzania intelligence and security services act(amendment 2023) Cap 406

The criminal procedure act⁹ gives full power to the police officer to arrest under section 11, the Tanzania intelligence security service have no power to arrest since they do not have specific procedures to deal with convicts, nor prisons to keep prisoners, nor courts to deal with specific cases and investigation, the question comes to where do they take people after arresting? Because this has become a great problem in the country as to cases of kidnapping and missing of people because they are arrested and without knowing where exactly there are taken.

1.3 Literature Review

To lay down a foundation upon which the study stands, the research has traversed and reviewed several works by different authors, and hereunder is how the problem is explained

Makulilo¹⁰, critically examines the accountability mechanism of intelligence services in Africa, with specific focus on Tanzania's intelligence and security service. He argues that the lack of transparency and oversight in TISS operation has led to instances of arbitrary arrest, detention without trial, and enforced disappearance which contravention both constitutional provisions and international human rights standards. He highlights that the criminal procedure act in Tanzania assigns arrest power explicitly to the police, not to intelligence agents. This legal delineation creates a conflict when TISS operates beyond its mandate, engaging in activities such as arrest and detentions without proper legal authority. Furthermore, he draws comparisons with other African countries such as

⁹ The Criminal Procedure Act [Cap 20 R.E 2022]

¹⁰ A, Makulilo, *Accountability of Intelligence Service in Africa*, 2010 ,110-112

Nigeria and Kenya. Where intelligence agencies operate under a vague legal frameworks. These ambiguities often result in abuses of power, including unlawful detention and disappearance. He emphasizes the need for clear legal framework and robust oversight mechanism to prevent such human rights violation.

Mwaikusa¹¹, provides a comprehensive overview of criminal law in Tanzania and he examines various offenses including kidnapping. He explains that kidnapping is a serious criminal offenses that threatens personal security and public order, he emphasizes that kidnapping not only violates personal liberty but also undermines the rule of law when states organs misuse their authority under the pretext of national security. He also discusses how such crimes are defined and prosecuted in Tanzania. He emphasizes the importance of adhering to legal procedures and cautions against the misuse of authority by state organs, which can lead to Violations of individual rights and undermine the rule of law.

Kabwe¹², explains that the lack of clear oversight mechanism for TISS has contributed to incidents where arrest border on enforced disappearance, raising concerns of kidnapping disguised as security operations. He critiques the proposed amendment to the Tanzania intelligence and security service (TISS) act. He raises concerns about the lack of public oversight in the amendment processes and the potential for increased powers without accountability. He emphasizes that granting immunity to TISS officers for actions taken during their duties could lead to abuses of power including arbitrary arrest and enforced

¹¹ J. Mwaikusa, *Criminal Law in Tanzania, General Introduction*, Dar es salaam publishing house, 1995, 86

¹² Z. Kabwe, *What's Up With Tanzania's Proposed Intelligence and Security Service Act?*, chanzo publishers, 2021, 43.

disappearances. He advocates for the establishment of parliamentary intelligence affairs committee to ensure proper oversight and prevent misuse of authority.

Shaffer¹³, explains that the evolution and role of intelligence services across various African nations are examined, with particular attention to their historical context and Contemporary challenges. He highlights how many African intelligence services including those in Tanzania, inherited structures and practices from the colonial regimes. These services often continued to operate with similar mandates and methods, focusing on internal surveillance and control rather than adapting to the needs of the newly independent states. He explains that, these intelligence agencies were frequently utilized by ruling elites to suppress dissent and maintain political power. Instead of serving national security interests, these services often became tools for monitoring opposition and controlling internal political dynamic.

Tygi¹⁴, explains about criminal investigation as it consist the following steps: Proceeding to the scene of crime. ascertainment of the facts and the circumstances to the case, discovery and arrest of the suspected offender, collection of evidence relating to the commission of the offence which may consist of the examination of the various persons including accused and the reduction of all statements into writing. Therefore any one conducting arrest may it be the police officer or a private person must follow relevant procedures.

¹³ R. Shaffer, *The African Intelligence Service, Early Post-Colonial And Contemporary Challenges*, Roman and Littlefield, 2021

¹⁴ Tygi, S., *The code of criminal procedure*, 4th central law publisher Allahabad, 1999, 171

1.4 Hypothesis

It appears that The Tanzania intelligence and security service exercise arrest powers without clear legal procedure coordination with the police and judicial system the incident of unlawful arrest, re enforced disappearance of individuals and human right violation increase

1.5 Objectives

1.5.1 General objective

To examine kidnapping in Tanzania with special reference to Tanzania intelligence and security service Act.

15.2 Specific objectives

- i. To assess the implications of the TISS's actions on human rights protections.
- ii. To evaluate powers and limitation of the TISS on the matter of defense and security in accordance with the laws.

1.6 Significance of the Study

The study will provide a clear analysis of the legal framework governing kidnapping in Tanzania and the role of the intelligence and security service. It helps to clarify ambiguities regarding the powers of the Tanzania intelligence and security service, especially concerning arrest. Also the study may serve as a reference for lawmakers and policy makers to reform the TISS act and related laws, ensuring that intelligence work respects due process and the rule of law. By examining incidents of arbitrary arrest and

enforced disappearance allegedly linked to TISS operations, the study contributes to the broader goal of protecting constitutional and international human rights in Tanzania.

1.7 Research Methodology

The researcher used doctrinal research methodology, qualitative method that involved critical examination of laws through authoritative legal sources. The research relied on library research where by both primary and secondary source was used.

1.7.1 Primary sources

In primary sources it involved statutory laws such as the constitution of the United Republic of Tanzania of 1977 as amended time to time, the penal code, The Tanzania intelligence and security services Act, The police force and auxiliary service Act. And in

1.7.2 secondary source

It involved legal text books, journals, articles, the best places to obtain the required documents would be in the libraries including the library in Ruaha Catholic University, University of Iringa, Regional Library where it was easy to get different text books, journals, newspapers, articles which have covered some aspects which have got something to do with the research problem.

1.8 Scope and Limitation of the study

1.8.1 Scope of the study

The research had conducted in Iringa Municipality, Tanzania. This was due to lack of enough money to conduct within the whole country. Also the research based on the issues kidnapping and missing of individuals/ disappearance of individuals with in our societies in relation to the Tanzania intelligence and security service Act.

1.8.2 Limitations

The researcher encountered numerous challenges in course of conducting this study, these includes difficulties in accessing to information this was due to the classified nature of intelligence operations, some of the TISS records are confidential which limits the depth of practical analysis. Also lack of case laws, there are no publicity reported court cases directly involving TISS and kidnapping allegations which constrains judicial analysis.

CHAPTER TWO

LEGAL CONCEPTUAL FRAMEWORK

2.0 Introduction

This chapter explains some of the theoretic frameworks which will facilitate the understanding of different concepts underpinning the study these concepts are well explained as follows;

2.1 Tanzania intelligence and security service (TISS)

The Tanzania intelligence and security service is a Tanzania's national intelligence and security agency. it plays a key role in main peace and security and safety within Tanzania and beyond its borders¹⁵. The TISS works with other nationals and international intelligence agencies to achieve its goals. This service operates as one of the defense and security organs under the general superintendence of the president¹⁶ The TISS is led by the director-general who is appointed by the president, it operates through ministers [minister of defence for internal security or foreign affairs (for overseas intelligence)] depending on the specific focus, regional and district offices and the national security council.

The TISS'S function is to collect, analyze and disseminate intelligence related to security, and advising the government on security matters. The TISS also investigates potential threats, institutes surveillance when necessary and provides security vetting for various individuals. It has the power to investigate, collect information and conduct surveillance.

¹⁵ E, Chahali, Alisa *usalama WA Taifa ni mtu wa Aina gani? na anafanya nine*, Evarist Chahali, 2016, 62

¹⁶ Section 4 (3) The Tanzania intelligence and security service CAP 406 (amendment) 2023

It is responsible for maintaining the security of the nation and protect vital installations. It collaborates with other government agencies and international organizations to share information and coordinate security efforts¹⁷.

2.2. The Tanzania Police force

Police force is a body of trained officers entrusted by the government with maintenance of public peace and order, enforcement of laws and prevention and detection of crimes¹⁸.

Tanzania police force is a national law enforcement body established under the police force and auxiliary service act. It operates under the Ministry of home affairs and is responsible for maintaining law and order, preventing and detecting crimes, protecting life and property and enforcing laws¹⁹.

The police force is headed by Inspector General of police (IGP) and it is organized in criminal investigation department (CID), traffic police, field force unit (FFU), cybercrime and economic crimes units²⁰. The police officers are empowered to; arrest individuals suspected of criminal activity, use of reasonable force where necessary, carry and use fire arms when necessary and property extortionate, investigate crimes by collecting evidences, interview witnesses and prepare case files, search and seize, detain suspects with legally prescribed time limits before being brought to court, enforce court orders

¹⁷ T. Gwatiwa, *Contemporary Intelligence in Africa*, Taylor and Francis, 2024, 42

¹⁸ E. Kamau, *The police, the people, the Politics, Police Accountability In Tanzania, Commonwealth Human Right Initiative*, 2006, 44

¹⁹ The Police Force and Auxiliary Service Act

²⁰ African policing civilian oversight forum, *An audit of police oversight in Africa*, African minds for the African police oversight forum, 2008, 69

and government directives including evictions, summons and warrants. They also regulate traffic and enforce road safety rules²¹.

2.3 Arrest

2.3.1 Meaning of arrest

Is the process of stopping, seizing or apprehending a person by lawful authority, or the act of laying hands upon a person for the purpose of taking his body into custody of the law, the restraining of the liberty of a man's person in order to compel obedience to the order of a court of justice or to prevent the commission of crime, or to ensure that a person charged or suspected of a crime may be forthcoming to answer it.²²

2.3.2 How arrest is made

Arrest is deemed to be made when a police officer or any other person affecting an arrest actually touch or confine the body of a person to be arrested²³. Furthermore a person affecting an arrest is empowered to use all necessary means to effect arrest in the event where a person to be arrested forcibly resists to be arrested. However an arrested person should not be subjected to more restraints than necessary to prevent his escape²⁴

²¹ Section 5 of The police force and auxiliary service Act CAP 322 R.E 2

²² Black's law dictionary free online legal dictionary 2nd edition

²³ Section 11 (1) of the Criminal procedure Act CAP 20 R.E 2022

²⁴ Section 11 (2) of the Criminal procedure Act CAP 20 R.E 2022

2.3.3 Who may affect arrest

There are three classes of people who may affect arrest which are the police officer²⁵, a magistrate or a private person; a private person is given power to arrest any person who is in his presence commits any of the offense provided by the law, also a private person (the owner of the property) is given power to arrest without warrant any person found committing an offense involving injury to property²⁶. A magistrate may arrest a person for offenses committed in his presence and if the offense is committed within the local limits of his jurisdiction²⁷.

A police officer is given full power to arrest any person without warrant for offenses and circumstances provided therein.

2.3.4 What to do and not to do during arrest

A person who is arrested should be informed of the substance of offense for which he is arrested, however subject to certain exceptions a person cannot be inform with the substance of the offense. If by reason of the circumstances in which he is arrested, that person ought to know the substance of the offense for which he is arrested or if by reason of his actions the person arrested makes it impracticable for the person affecting the arrest to inform him of the offense for which he is arrested²⁸.

²⁵ Section 14 of the Criminal procedure Act CAP 20 R.E 2022

²⁶ Ibid, Section 16

²⁷ Ibid, Section 17

²⁸ E. Mwakisiki, *Criminal procedure law in Tanzania; Theory and Practices*, Moshi Cooperative University, 2017, 20

A police officer or other person shall not in the course of arresting a person use more force or subject to the person to greater indignity than is necessary to make arrest or to prevent the escape of the person after he has been arrested²⁹.

2.3.5 Warrant of arrest

An arrest warrant is an official document signed by a judge or magistrate which authorizes a police officer to arrest the person or people named in the warrant. Warrants typically identify the crime for which an arrest is provided. In the law of Tanzania a warrant of arrest shall be under the hand of a judge or magistrate issuing the same and shall bear the seal of the court and every warrant shall remain in force until it is executed or until it is canceled by the court which issued it. Though a person can be arrested with or without warrant by police officers³⁰.

2.4 Detention

2.4.1 Meaning of detention

Detention is the act of lawfully depriving a person of their freedom usually by holding them in custody by police or state authorities. It can occur before or after a person is charged with a crime or is an exercise of the power to deprive a person of his or her liberty by legal authority especially in response to criminal charge or suspicion³¹.

²⁹ E. Mwakisiki, *Criminal procedure law in Tanzania: Theory and Practices*, Moshi Cooperative University, 2017, 24

³⁰ Section 13 of the Criminal procedure Act CAP 20 R.E 2022

³¹ J. Kendall, *Regulating police detention*, Taylor and Francis, 2015, 5-6

According to the Black's law dictionary, detention is the act of fact of holding a person in custody, confinement or compulsory delay whereas custody is a care and control of a person or a thing for inspection, preservation or security³². This means detention should be the detainment of a person by virtue of lawful process or authority. This is known as the principle of legality under detention.

2.5 Types of Detention

2.5.1 Preventive Detention

Holding someone in custody before trial based on the belief they are a flight risk or a danger to public safety. This can include detention for the purpose of preventing further criminal acts. Or Preventive detention involves holding individuals in custody, not as punishment for a crime they have already committed, but to prevent them from committing future crimes or causing harm. This is often done before trial or after a sentence is served, when the person is deemed too dangerous to be released. It's a controversial practice that raises concerns about fairness and human rights, according to the United Nations Human Rights Committee³³.

³² Black's law dictionary free online legal dictionary 2nd edition

³³ A .Harding, preventive detention and security law: A comparative survey, springer Netherlands, 1993, 211

2.5.2 Remand Detention

Remand detention is the temporary holding of a person in custody, usually in a prison, by order of a court, while awaiting trial or sentencing. It is a form of pre-trial detention where individuals are held while legal proceedings are underway³⁴.

2.5.3 Immigration Detention

The imprisonment of individuals who have entered a country without authorization. Immigration detention is the practice where the government holds individuals in detention facilities while their immigration status is being determined or while they are awaiting deportation or removal. It's a form of administrative detention, not criminal punishment, and the conditions can mirror those of a prison³⁵.

2.5.4 Punitive Detention

Detention as a punishment for a crime, after a person has been convicted. It occurs after a trial and conviction by a court, serving as the main means of carrying out a sentence. This type of detention is distinct from preventive detention, which is intended to prevent future offenses rather than punish past ones³⁶.

³⁴ C. Maina, *Incarceration the innocent: preventive detention in Tanzania*, University press, 1997, 113-116

³⁵ D. Wilshire, *Immigration Detention: law history*, Cambridge University press, 2012 , 28

³⁶ D. Garland, *The culture of control crime and social order in contemporary society*, University of Chicago press, 2001 112-113

2.5.5 Administrative Detention

Detention authorized by an administrative order, rather than a judicial decree, often for security reasons is the practice of arresting and detaining individuals by the state without a trial or formal criminal conviction. It's often justified as a measure to address security threats, control immigration, or protects the ruling regime. Unlike criminal incarceration, which is punishment after a trial, administrative detention is seen as a preventive measure, focusing on potential future threats rather than past offenses³⁷

2.5.6 Civil Detention

Detention under civil procedures, also known as confinement or arrest in execution of a civil decree, refers to the temporary restriction of a person's personal freedom by a court order, typically to enforce a civil judgment, such as payment of debts or fines, or to compel compliance with court orders³⁸.

2.5.7 Military Detention

Refers to the confinement of military personnel or, in some cases, civilians, by a military force, typically for disciplinary reasons or as a result of a criminal offense or suspected criminal activity. It can also involve the detention of prisoners of war. Military detention

³⁷ S. Biddulph, *Legal Reforms and Administrative Detention Power in China*, Cambridge University press, 2007, 345

³⁸ L. Lazarus, *Civil Detention and Human Right: Law Power And Accountability*, Oxford University press, 2004, 45

can occur in various settings, including military prisons, detention facilities on naval vessels (brig), and specialized detention units³⁹.

2.6 Reasons for Detention

Detention may be furnished on various different grounds. The following are among the reasons which may lead to deprivation of a person's liberty by the legal authority:-

Firstly, the person may be deprived of his liberty for the purpose of holding him to answer for a criminal charge or civil demand. This is the main reason behind police and judicial detention where by the person will be lawfully detained so as to ensure that the criminal charges opened against him are answered and that the suspect is brought before the competent legal authority. Thus, the likelihood of the person failing to appear in court to answer any charge made against him may be the reason for the person to be put into⁴⁰.

Secondly, the person may be put into police or judicial detention so as to punish or prevent him from harming or causing dangerous act against the commit an offence if discharged from custody, also it is very difficult to predict whether or not an individual when released before trial will commit crimes. Imprisonment before conviction is punitive. Thus, refusing to release a person on bail on grounds of crime prevention must not be permitted⁴¹.

³⁹ F. De Londras, *Detention in the war Terror : can human right fight back?*, Cambridge University press, 2011, 34

⁴⁰ Ibid, 36-39

⁴¹ D. Wilshire, *Immigration Detention: law history*, Cambridge University press, 2012, 80

Furthermore, detention is commonly used by most of states on grounds of peace and security." This is made operational through Preventive Detention statutes such as the Preventive Detention Act, 2004⁴² For example, in *Shaban Khamis Mlool and Others v the Superintendent of Zanzibar Prisons and Another*⁴³, the applicants of direction of Habeas Corpus were detained so as not to disrupt peace and security.

Also, the person may be remanded for the purpose of reform. This is known as constructive detention in which the person's liberty will be controlled by the legal authority though not physically confining him. This is as it was stated in *Beckwith v. United States* that, "detention is not necessarily determined by the presence or absence of physical restraint nor is somebody necessarily in detention merely by virtue of being in an office in a police station." For instance, in parole and probation the person will be required not to freely move beyond the limit put by the court and will have to report to the parole or probation officer frequently as instructed.⁴⁴

On the other hand, the person may be remanded for the purpose of his own protection. This is when the person's safety is in threat. The goal of preventative justice is to protect the public from crime. For example, the person who is arrested after being found committing violence against the particular person be it the family members or his neighbours. If it is likely that the person if released would repeat the commission of such violence to that particular group of people then the person may further be remanded so

⁴² Preventive Detention Act CAP R.E 2004

⁴³ *Shaban Khamis Mlool and Others v the Superintendent of Zanzibar Prisons and Another*

⁴⁴ J. Kendall, *Regulating Police Detention*, Taylor and Francis, 2015

as to prevent this from happening as a protection device to the given members of the public⁴⁵.

Furthermore, the person may be remanded in detention because of the need to secure or preserve evidence of or relating to the crime committed or to obtain such evidence from the suspect by questioning him. Police may deny bail when they reasonably believe that the suspect is likely to interfere with investigation or destroy evidence." This is when the detention is authorized, hence, following the period upon which the suspect is detained so as to allow further investigations as it may be necessary or desirable⁴⁶.

Lastly, detention is used as a means of punishing the person or the convicted person. However, it is still disputed whether or not detention under preventive detention is also punishment. For example, in *Ernest Joseph Nyatando v R* the court was of the view that detention under the Preventive Detention Act amounts to punishment hence, it considered it contrary to the law for the court to impose another sentence on the accused as it would be contrary to section 21 of the Penal Code which prohibits a person to be punished twice. This use of detention is disputed as it was held in *DPP v Simon G. Marwa and Another* that detention under preventive detention does not amount to punishment as it is not possible to ascertain judicially what offence is created or committed⁴⁷.

⁴⁵ A. Harding, *Preventive Detention and Security Law: A Comparative Survey*, Springer Netherlands, 1993, 200

⁴⁶ Ibid, 205

⁴⁷ DPP v Simon G. Marwa and Another

2.7 Kidnapping

2.7.1 Meaning of kidnapping

Is the act of illegally taking and confining a person against their will, often for the purpose of demanding ransom or achieving another illegal goal. It involves the forcible abduction and detention of an individual without their consent. The act can be carried out through force, threat, or even deception⁴⁸.

2.7.2 Types of kidnapping

Traditional Kidnapping: This involves abducting a person and holding them captive, often for ransom, with the expectation of a financial payment for the victim's release.

Express Kidnapping: This type involves quickly forcing a victim to withdraw cash from an ATM or obtain money to pay a small ransom.

Virtual Kidnapping: A scam where victims are tricked into believing a loved one is kidnapped and demanding a ransom payment, but no actual abduction takes place⁴⁹.

Tiger Kidnapping: The kidnapper forces the victim to commit a crime, like robbery or murder, before releasing them.

Bride Kidnapping: A forced abduction, often of young women, for the purpose of marriage, though it can sometimes be presented as a staged elopement.

⁴⁸ The Black's law dictionary

⁴⁹ A. Harding, *Preventive Detention and Security Law: A Comparative Survey*, Springer Netherlands, 1993

Cross-border Kidnapping: This involves the abduction of a person from one country to another, potentially for reasons like political persecution or family disputes.

Political Kidnapping: Kidnapping used to further a political agenda or to exert political pressure.

Revenge Kidnapping: Kidnapping motivated by a desire to inflict harm or punish a person or group⁵⁰.

⁵⁰ A. Harding, *Preventive Detention and Security Law: A Comparative Survey*, Springer Netherlands, 1993

CHAPTER THREE

LEGAL AND INSTITUTION FRAMEWORK

3.0 INTRODUCTION

This chapter focuses on analysis of different laws that defines the issue of kidnapping in Tanzania with special reference to Tanzania intelligence and security service Act. Where by this chapter is designed to provide international instruments and Regional instruments in accordance to the study.

3.1 The international instruments

3.1.1 The universal declaration of human Rights (UDHR) 1948

This is an international document adopted by the United Nations general assembly that enshrines the rights and freedoms of all human beings. It marked all human as being free and equal regardless of sex, race, color, religion or other characteristics. It is based on principles of dignity, equality and mutual respect which are shared across culture, religion and philosophers. Under article 3 it is provided that everyone has the right to life, liberty and security of person, this means that one has a right to be protected from danger or any other harm so as to secure one's life and be safe⁵¹. Article 9 (1) states that no one shall be subjected to arbitrary arrest, detention or exile⁵². This means that on the matter of arrest there are people who are mandated to do so by following due process, also the one to arrested should be informed the substance of offense for which he is arrested. The Tanzania intelligence and security service are not given mandate to do so but rather to

⁵¹ Article 3 of The Universal Declaration Of Human Rights (UDHR) 1948

⁵² Ibid Article 9(1)

maintain security and defense services under the Superintendent of the president. This is because there are several cases of people missing and kidnapped without knowing where are they taken since they are not seen in our societies. Therefore the responsible organ should only deal with the matters of arrest and not otherwise to stop these issues of people missing and being kidnapped⁵³.

3.1.2 The international covenant on civil and political Rights 1966

This is the key international human right treaty adopted by the United Nations. It outlines civil and political rights including the right to life, freedom of thoughts, religion, speech and assembly as well as fair trial rights. The Act provides relevant articles in context of kidnap and intelligence security service. Article 6 of the provides right to life, it prohibits arbitrary deprivation of life, the act of kidnapping or enforce disappearance by state agents, if results to death or harm, it breaches this right⁵⁴.

Also article 7 provides for freedom from torture, it prohibits torture, cruel, in human or degrading treatment. Therefore the issue of kidnapping or abduction involves mistreatment of which violates this right⁵⁵. Article 9 provides for right to liberty and security of person, it protects against arbitrary and detentions where by it explains different aspects concerning arrest⁵⁶. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on criminal charge shall be brought promptly

⁵³ J. Lwehabura, *Civil Security Relations In Tanzania*, institute for security studies, 2006, 84

⁵⁴ Article 6 of the international covenant on civil and political Rights 1966

⁵⁵ Ibid Article 7

⁵⁶ Article 9 of the international covenant on civil and political Rights 1966

before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Therefore if the TISS arrests or detains without legal authority, it violates this right⁵⁷.

3.1.3 International convention for the protection of all persons from enforced disappearances (ICPPED) 2006

The act aims to prevent enforced disappearances, this is serious violation of human rights where individuals are secretly abducted or detained by the state or with its authorizations, followed by a refusal to acknowledge their fate or whereabouts. Tanzania has not yet ratified the ICPPED, but the convention is still influential as part of emerging customary international law. This Act provides key provisions relevant to kidnapping and intelligence service. Article 1 provides for prohibition of enforced disappearances under

⁵⁷ L. Scott & M. Alexander, *Intelligence And International Security: new perspective and agenda*, Taylor and Francis, 2013, 80

any circumstances⁵⁸. Article 2 defines enforced disappearance as arrest, detention, abduction, kidnap or any form of deprivation of liberty by state agents⁵⁹.

Article 6 holds state agents criminally responsible for enforced disappearance. Article 17 prohibits secret detention and mandate to official detention registers⁶⁰. The TISS act does not clearly outline arrest powers or legal accountability procedures, creating potential loopholes for enforced disappearances. Allegations in Tanzania suggests some individuals have been abducted or kidnapped or detained without trace by person allegedly linked to intelligence operations actions that may qualify as enforced disappearance under international law. Such practices even if intended for national security violate international human rights norms and contradict protection under the Tanzania constitution and the ICPPED framework⁶¹.

3.2 Regional instruments

Having seen the international instruments which mention the matter of kidnapping in Tanzania with special reference to Tanzania intelligence and security service act. So the following are the regional instruments as follows:

3.2.1 African charter on human and people's Rights (ACHPR) 1981

The ACHPR is also known as the Banjul charter, is a regional human rights instruments adopted by African Union member state including Tanzania. It guarantees civil, political,

⁵⁸ Article 1 of the International convention for the protection of all persons from enforced disappearances (ICPPED) 2006

⁵⁹ Ibid Article 2

⁶⁰ Ibid Article 17

⁶¹ T. Arellano, *National Intelligence system*, Cambridge University press, 2022, 41-43

economic and social rights. In this law, there are relevant articles in the context of kidnapping with special reference to TISS. Article 4 provides Right to life, no one shall be arbitrarily deprived of life⁶². The TISS should protect the life of individuals as organ of security and defense as provided by the laws and they should not lead to disappearance or death of individuals without accountability which leads to Violation of human rights.

Article 5 provides for the rights to dignity and freedom from torture, this prohibits torture, cruelty, inhuman or degrading punishment or treatment⁶³. Kidnapping or secret detention often includes mistreatment therefore the TISS practices of secret arrest and a detention violates human rights. Article 6 provides for right to liberty and security of person. Everyone has the right to liberty and protection from arbitrary arrest or detention⁶⁴. The TISS must not arrest or detain individuals outside legal procedure as this may amount to arbitrary arrest or enforced disappearance. Article 7 provides for a fair trial, everyone has the right to be heard and tried by a competent, impartial tribunal by following due process according to the court laws. TISS must not detain suspects without access to court or legal representation. TISS must not detain suspects without access to court or legal representation also the TISS's Act lacks clear provisions on arrest and detention power. When the TISS acts without warrants, oversight, or formal charges, it risks violating human right⁶⁵.

⁶² Article of the African charter on human and people's Rights

⁶³ Ibid Article 5

⁶⁴ Ibid Article 6

⁶⁵ K. OBrien, *The south African intelligence service*, Taylor & Francis, 2010, 241

3.2.2 The Constitution of the United Republic of Tanzania of 1977 as amended time to time

This is the fundamental law of the land in which the other laws should comply with the provisions of the constitution. In other words the validity of a particular law can only be determined against what is contained in the constitution. Part III of the constitution provides for the basic rights and duties, where by article 12 (2) provides that everyone is entitled to recognition and respect for his dignity⁶⁶. This entails that the dignity of a person will be continue to be respected all the time despite the fact that a person has been detained or arrested. Furthermore, Article 13 provides that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law⁶⁷. Also article 14 provides that every person has the right to live and to protection of his life in accordance with the laws⁶⁸. It guarantees that no person shall be deprived of life arbitrarily or unlawfully. The security organs are legally bound to protect and respect the life of every individual. Article 15(1) provides for right to personal freedom where it states that every person has the right to freedom and to live as a free person. Subsection 2 provides that for the purpose of preserving individual freedom and the right as a free person , no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom⁶⁹.

The TISS act provides for national security operations but does not explicitly grant powers of arrest. The act of secret arrests evokes kidnapping and enforced

⁶⁶ Article 12 of the constitution of the United republic of Tanzania 1977 as amended time to time

⁶⁷ Ibid, Article 13

⁶⁸ Ibid, Article 14

⁶⁹ Article 15 of the constitution of the United republic of Tanzania 1977 as amended time to time

disappearances of individuals in the society. This means that arrest without proper legal authority or fail to follow the constitutional safeguards. For example court appearance in 24 hours. The constitution sets clear limits on deprivation of liberty and protects individual's rights. For the TISS act to be consistent with Tanzania Supreme laws it must ensure arrest are legally authorized, detainees are promptly brought to court. Therefore this means that any act resembling kidnapping, torture is not just a criminal offense but also a constitutional violation⁷⁰.

3.2.3 Criminal procedure Act

Criminal procedure law entails a framework of laws and rules that govern the administration of justice in cases involving individuals accused of committing crimes. The procedure begins with the initial investigation of the crimes and concluded with either unconditional release of the accused by the virtual of the acquittal or by imposition of a term of punishment pursuant to conviction for the crime⁷¹. The fundamental purpose of criminal procedure was stated in the case of *Kamundi v R*⁷² where it was held that the purpose and intention of criminal procedure is to lay down provisions and procedures to see justice is done.

The CPA provides for the power to arrest. It allows police officer, private person and magistrates arrest without warrant for cognizable offenses and under special circumstances as provided by the law, section 14, 16 and 17 of the CPA provides for who

⁷⁰ East Africa Law report, Butterworth's ,2000, 43

⁷¹ The Black's law dictionary

⁷² [2025]KEHC 7790

can make arrest⁷³. The TISS is not explicitly listed among the bodies to arrest under the CPA. This means they act *ultravires* (beyond its legal powers) because it conducts arrest or detention without police involvement. Also section 32 explains on the presentation to court, any person must be brought before a court within 24 hours⁷⁴. Secret or prolonged detention without any judicial review violates this right. If the TISS holds individuals without court access it may amount to unlawful detention or even enforced disappearance. The TISS act does not grant explicit powers to arrest or detention like those under the CPA. For any detention to be lawful in Tanzania it must follow the CPA.

3.2.4 The police force and auxiliary service Act

The police force and auxiliary service act governs the establishment, powers, functions and operations of the Tanzania police force and related support services. The act provides for the duties of the force under section 5(1) where it states that the force shall be employed throughout the United republic for the preservation of peace, the maintenance of law and order, the prevention and detection of crimes, the apprehension and guarding of offenders and protection of property, and for the performance of all such duties and shall be entitled to carry arms⁷⁵.

Therefore, it means that they have a duty to prevention and detection of crimes, arrest and prosecutions of offenders, preservation of peace and public safety, enforcement of all laws and regulations. The police officers have also the authority to arrest with or

⁷³ Section 14 of the criminal procedure Act

⁷⁴ Ibid Section 32

⁷⁵ Section 5(1) of the police force and auxiliary service act

without warrant under certain conditions. The act places all core law enforcement functions including arrest, detention and prosecution under the police and not the TISS. Any independent arrest or detention by the TISS that is not supported by this Act and amounts to unlawful conduct⁷⁶.

3.2.5 The Tanzania intelligence and security service Act CAP 406 RE 2002 and The Tanzania intelligence and security service (amendment) Act 2023.

The Tanzania Intelligence and Security Service Act [Cap 406 R.E. 2002] and its amendment, the Tanzania Intelligence and Security Service (Amendment) Act No. 2 of 2002, establish the legal framework for the operations of the Tanzania Intelligence and Security Service (TISS). While these laws define the functions and powers of TISS, they do not explicitly grant the Service authority to conduct arrests or detention. CAP 406 RE 2002 TISS is tasked with function to collecting, analyzing, and disseminating intelligence related to national security and given Powers that the Service is authorized to investigate individuals or entities suspected of posing security threats and to conduct security assessments.

The Act does not confer law enforcement powers, such as arrest or detention, upon TISS. Amendment Act No. 2 of 2023 places TISS directly under the President's supervision as provided under section 4(3)⁷⁷ removing previous oversight by the Minister responsible for intelligence and security. Whereby the TISS's responsibilities now include protecting national leaders and foreign dignitaries, safeguarding vital installations, and managing

⁷⁶ The Tanzania police force and transition to Democracy, research and education for Democracy in Tanzania project, 2008, 121

⁷⁷ Section 4(3) of the TISS amendment act 2023

potential security threats. Concerns Regarding Secret Arrests and Kidnappings, despite the lack of explicit legal authority, there have been allegations and public concerns about TISS conducting secret arrests and detentions. Critics argue that the expanded powers and reduced oversight could lead to abuses, including kidnappings and enforced disappearances, especially in the absence of clear legal checks and balances⁷⁸. While the Tanzania Intelligence and Security Service Act and its amendment define the scope of TISS's operations, they do not authorize the Service to conduct arrests or detentions. The introduction of immunity provisions and expanded functions in the 2023 amendment has led to concerns about potential abuses, including secret arrests and kidnappings, without adequate legal recourse or oversight. To uphold the rule of law and protect human rights, it is essential to ensure that TISS operates within its legal mandate and that any allegations of misconduct are thoroughly investigated and addressed⁷⁹.

Conclusion

This chapter has explored the national, regional, and international legal instruments relevant to the offence of kidnapping, particularly in relation to actions conducted by the Tanzania Intelligence and Security Service (TISS). The analysis reveals that while kidnapping is criminalized under the Penal Code [Cap 16 R.E 2022], and arrest procedures are guided by the Criminal Procedure Act and the Police Force and Auxiliary Services Act, the TISS Act lacks clear provisions on powers of arrest and detention. International instruments such as the International Covenant on Civil and Political Rights

⁷⁸ T. Gwatiwa, *Contemporary Intelligence in Africa*, Taylor and Francis, 2024, 44

⁷⁹ A. Makulilo, *Accountability of Intelligence Service in Africa*, 2010 ,120

(ICCPR) and the International Convention for the Protection of All Persons from Enforced Disappearance provide binding standards against arbitrary arrest and detention, which should guide the conduct of security agencies. Similarly, regional instruments like the African Charter on Human and Peoples' Rights and the Constitution of Tanzania emphasize the right to personal liberty, protection from unlawful detention, and due process.

This chapter concludes that while laws exist to protect against kidnapping and unlawful arrest, there is a critical legal ambiguity in the TISS legal framework, creating room for potential abuse. The findings underscore the need for legal reforms to ensure that the exercise of security powers aligns with constitutional guarantees and international human rights standards.

CHAPTER FOUR

GENERAL ANALYSIS OF LEGAL RESEARCH FINDINGS

4.0 Introduction

This chapter is the product of what was found in the field by the researcher. The chapter is comprised of analysis of the research material collected in the field research. This chapter presents and analyzes the data collected to examine the legal and Human Rights Implications of alleged kidnapping associated with the Tanzania intelligence and security service (TISS).

4.1 Kidnapping

Kidnapping is the act of illegally seizing and holding a person against their will, often for ransom or other illegal purposes. It involves force, threats, or deception to confine or transport a person⁸⁰.

4.1.1 Position of the law in kidnapping in Tanzania with special reference to Tanzania intelligence and security service Act

The organ responsible for defense and security is the police force which has duties as stipulated under the police force and auxiliary law [cap 322 R.E 2002] the duties under section 5 include preservation of peace, the maintainable of law and order, the prevention and detection of crimes, the apprehension and guarding of offenders, and the protection of property and for the performance of all such duties and shall be

⁸⁰ The Black's law dictionary

entitled to carry arms⁸¹. Other duties are Arrest individuals suspected of committing crimes by following due process.

The Tanzania intelligence and security services is a national defense and security organ operating under the general superintendence of the president as stipulated under section 4 subsection 3 of the Tanzania intelligence and security service (amendment)act 2023 which provides that the service shall operate as one of the defence and security organ under the general superintendence of the president ⁸²which means that they have to maintain defense and security with in the country for the president but the problem comes in the course of arrest and detention. Prisoners, nor courts to deal with specific cases and investigation, the question comes to where do they take people after arresting? Because this has become a great problem in the country as to cases of kidnapping and missing of people because they are arrested and without knowing where exactly there are taken.

Part III of the constitution provides for the basic rights and duties, where by article 12 (2) provides that everyone is entitled to recognition and respect for his dignity⁸³. This entails that the dignity of a person will be continue to be respected all the time despite the fact that a person has been detained or arrested. Furthermore, Article 13 provides that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law⁸⁴. Also article 14 provides that every person has

⁸¹ Section 5 of the police force and auxiliary service act

⁸² Section 4(3) of the TISS amendment act 2023

⁸³ Article 12 of the constitution of the United republic of Tanzania as amended time to time

⁸⁴ ibid Article 13

the right to live and to protection of his life in accordance with the laws⁸⁵. It guarantees that no person shall be deprived of life arbitrarily or unlawfully. The security organs are legally bound to protect and respect the life of every individual. Article 15(1) provides for right to personal freedom where it states that every person has the right to freedom and to live as a free person. Subsection 2 provides that for the purpose of preserving individual freedom and the right as a free person, no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom.⁸⁶

The criminal procedure Act also provides for the three classes of people who may affect arrest which are the police officer, a magistrate or a private person; a private person is given power to arrest any person who is in his presence commits any of the offense provided by the law, also a private person (the owner of the property) is given power to arrest without warrant any person found committing an offense involving injury to property. A magistrate may arrest a person for offenses committed in his presence and if the offense is committed within the local limits of his jurisdiction. A police officer is given full power to arrest any person without warrant for offenses and circumstances provided therein.

⁸⁵ Article 14 of the constitution of the United republic of Tanzania as amended time to time

⁸⁶ Ibid Article 15

4.2 Powers and limitation of the Tanzania intelligence and security services

4.2.2 Powers of the Tanzania intelligence and security services.

The Tanzania intelligence and security services are the national intelligence and security agency of Tanzania. The agency works closely with other national and international intelligence agencies and security organs in the promotion and maintenance of peace, safety and security in and outside Tanzania's borders. The National Intelligence and Security Service (NISS) known in Tanzania as Tanzania Intelligence and Security Service (TISS) operate under the TISS Act, Cap. 406 [R.E. 2002] (as amended in 2023). Its core powers focus on intelligence and national security, not law enforcement⁸⁷.

The law provides for the powers of the TISS including Intelligence gathering where it involves collecting, process, and analyzing information related to internal and external threats to national security (e.g., terrorism, espionage, subversion). It also plays an advisory role to advise the President, government, and other state organs on national security and intelligence matters. It also Identify and help prevent acts of sabotage, treason, or any activities against the sovereignty and interests of Tanzania. The TISS must collaborate with police, military, immigration, and foreign intelligence agencies when necessary⁸⁸. It has to also conduct secret intelligence missions under the mandate of national security (though these must align with the Constitution and human rights obligations).

⁸⁷ TISS Act, Cap. 406 [R.E. 2002] (as amended in 2023).

⁸⁸ Ibid

4.2.2 Limitations of the Tanzania intelligence and security

The Tanzania intelligence and security service is limited in some matters including, it has no Express Arrest Power, TISS does not have statutory authority to arrest or detain, arrest powers are reserved for the police under the Criminal Procedure Act⁸⁹. Any arrest by TISS agents is legally questionable and may amount to unlawful detention or kidnapping. TISS must operate within the bounds of the Constitution especially Article 13 (right to equality before the law), Article 14 (right to life)⁹⁰, Article 15 (freedom from arbitrary detention)⁹¹. Violating these provisions exposes the agency to legal and constitutional challenges. It has no Prosecutorial Powers TISS cannot prosecute, it must refer intelligence or suspects to the police or Director of Public Prosecutions (DPP). These limitations aim to prevent abuse and ensure that national security does not override citizens' fundamental rights.

Conclusion

This chapter has presented a critical analysis of the findings on the legal examination of kidnapping in Tanzania with special reference to the Intelligence and Security Service Act. The chapter revealed that while Tanzania has legal provisions under the Penal Code, Criminal Procedure Act, and the Constitution to address kidnapping and regulate arrests, the mandate and actions of the Tanzania Intelligence and Security Service (TISS) remain legally ambiguous. It was found that TISS, although tasked with national security, sometimes operates beyond its statutory limits, especially in instances of secret arrests or detentions. These practices may qualify as enforced disappearances or even unlawful

⁸⁹ Criminal Procedure Act

⁹⁰ The Constitution of The United Republic of Tanzania of 1977

⁹¹ Ibid

kidnappings under both domestic and international law. The research showed that lack of transparency, absence of judicial oversight, and limited legal accountability contribute to possible human rights violations.

Furthermore, international and regional instruments such as the ICCPR, the Convention on Enforced Disappearances, and the African Charter were examined, and it became evident that Tanzania's obligations under these frameworks demand stricter compliance and legal reforms. This chapter demonstrated that the current legal framework is insufficient to safeguard individual rights when security agencies like TISS act outside their legal authority. There is a pressing need to amend relevant laws, establish clearer procedures, and strengthen oversight to balance state security interests with the protection of human rights.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter provides for the conclusion and recommendations based on the data analysis and findings. The researcher explains on what measures are to be taken from the observed problems and final concluded remarks for the research paper from the first chapter to the last chapter.

5.1 Conclusion

In conclusion the observation shows that the research has the possible solution over the cases of kidnapping. The issue of kidnapping in Tanzania, particularly when viewed through the lens of the Tanzania Intelligence and Security Service (TISS), presents a complex intersection of criminal law, national security, and human rights. This study set out to legally examine the act of kidnapping as defined under Tanzanian law, and to assess whether the operations of TISS especially in matters related to secret arrests or enforced disappearances fall within or outside the scope of the law. The research has revealed that while the Penal Code provides a comprehensive framework for defining and punishing kidnapping, the operational conduct of intelligence services remains legally ambiguous.

TISS, established under the TISS Act, is mandated to protect national security through intelligence gathering. However, the law is silent on granting the agency powers of arrest or detention, unlike the police under the Criminal Procedure Act. Despite this, there have

been reported cases and public concerns suggesting that TISS agents may be involved in activities resembling kidnapping such as seizing individuals without warrants, holding them in undisclosed locations, and denying them access to legal representation or due process. These actions, if proven, would not only exceed TISS's legal mandate but also violate constitutional guarantees under Articles 13, 14, and 15, which protect the right to personal liberty, equality before the law, and protection against arbitrary detention.

Furthermore, the absence of an independent oversight body over TISS activities contributes to a legal vacuum where accountability is lacking. Intelligence operations are, by nature, secretive but secrecy must not be used as a shield for human rights violations. The research found that current legal safeguards are inadequate to prevent misuse of power and protect victims of unlawful detention or abduction.

International instruments such as the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance affirm the global standard that even in matters of national security, fundamental human rights must be respected. Tanzania, being a signatory to such instruments, has an obligation to ensure that all its security organs operate within a clear legal and human rights framework. This study finds that there is a significant legal and practical gap between the TISS's operational behavior and its legal mandate. This disconnect poses a threat to the rule of law and human rights in Tanzania. There is a need for legislative reform to clearly define the powers and limitations of TISS, establish effective oversight mechanisms, and enhance public awareness of constitutional rights.

Unless addressed, the risk remains that national security efforts may be undermined by public mistrust and continued allegations of abuse. A balanced approach—where security and rights coexist is essential for democratic governance and the protection of individual freedoms.

5.2 Recommendation

In light of the findings and legal analysis conducted in this research, the following recommendations are proposed to address the challenges surrounding the offence of kidnapping in Tanzania, particularly in relation to the powers and operations of the Tanzania Intelligence and Security Service (TISS):

5.2.1 Amend the TISS Act to Clarify Its Legal Boundaries

The Tanzania Intelligence and Security Service Act should be amended to clearly define the scope of TISS's powers. The current law does not expressly empower TISS to arrest, detain, or interrogate suspects. Such ambiguities create room for abuse and human rights violations. The amended law should state that TISS is limited to intelligence gathering and must collaborate with law enforcement agencies when arrests are necessary.

5.2.2 Establish a Legal Oversight Mechanism

There is an urgent need to introduce an independent oversight body—such as a parliamentary intelligence committee or an ombudsman to monitor TISS activities. This body should have the authority to investigate complaints, review operational conduct,

and ensure that intelligence activities comply with constitutional and human rights standards.

5.2.3 Judicial Review and Accountability Mechanism

Courts should be empowered and encouraged to play a more active role in reviewing intelligence-related detentions. Any person detained by or through TISS involvement should be brought before a competent court within 24 hours, in compliance with section 32 of the Criminal Procedure Act and Article 15 of the Constitution. This would ensure legal accountability and prevent arbitrary detention.

5.2.4 Enhance Inter-Agency Coordination with Clear Mandates

The roles of police, TISS, and other security organs should be distinctly outlined through enabling legislation and operational protocols. While collaboration is essential in combating threats like terrorism or organized crime, overlapping powers without clarity lead to legal conflicts and violations of due process.

5.2.5 Introduce Human Rights Training for Intelligence Officers

Intelligence officers should receive regular training on constitutional rights, international human rights law, and lawful procedures for intelligence work. This will promote a culture of legality and respect for personal freedoms, and reduce the likelihood of unlawful practices such as secret arrests or enforced disappearances.

5.2.6 Public Awareness and Legal Empowerment

The general public should be sensitized about their constitutional rights, including the right to liberty and legal procedures governing arrest and detention. Legal aid programs and civil society groups can play a key role in educating citizens on how to respond to unlawful arrest or kidnapping.

5.2.7 Ratification and Domestication of International Instruments

Tanzania should not only ratify but also domesticate relevant international treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance. Domestic laws should be updated to incorporate international standards that prohibit secret detentions and mandate prompt judicial review.

5.2.8 Improved Data Collection and Transparency

The government should maintain and publish data on all arrests and detentions made under the pretext of national security. This would help identify patterns of abuse, ensure transparency, and guide legal and institutional reforms.

5.2.9 Promote a Rights-Based Approach to National Security

Finally, the state must adopt a balanced approach where national security does not override fundamental rights. Protecting the state and protecting human rights should be seen as mutually reinforcing, not contradictory.

These recommendations, if implemented, will not only bring clarity to the role of TISS but also reinforce the rule of law and enhance protection against kidnapping and

unlawful detention. Ensuring that all security operations are grounded in law, subject to oversight, and respectful of human rights is essential for public trust and constitutional governance in Tanzania.

BIBLIOGRAPHY

Arellano, T. *National Intelligence system*, Cambridge University press, 2022, 41-43

Biddulph, S. *Legal Reforms and Administrative Detention Power in China*, Cambridge University press, 2007, 345

Black's law dictionary free online legal dictionary 2nd edition

Chahali, E, Alisa *usalama WA Taifa ni mtu wa Aina gani? na anafanya nine*, Evarist Chahali, 2016, 62

Chahali, E. *The politicization of intelligence in Tanzania*, Oxford, 2023 pg. 32

De Londras, F. *Detention in the war Terror: can human right fight back?*, Cambridge University press, 2011, 34

Garland, D. *The culture of control crime and social order in contemporary society*, University of Chicago press, 2001 112-113

Gurman, H. *The history of national security disclosures and the cult of secrecy*, Columbia University press, 2020 pg. 56

Gwatiwa, T. *Contemporary Intelligence in Africa*, Taylor and Francis, 2024, 44

Gwatiwa, T. *Contemporary Intelligence in Africa*, Taylor and Francis, 2024, 42

Harding, A. *preventive detention and security law: A comparative survey*, springer Netherlands, 1993, 211

- Kabwe, Z. *What's Up With Tanzania's Proposed Intelligence and Security Service Act?*, chanzo publishers, 2021, 43.
- Kamau, E. *The police, the people, the Politics, Police Accountability In Tanzania, Commonwealth Human Right Initiative*, 2006, 44
- Kendall, J. *Regulating police detention*, Taylor and Francis, 2015, 5-6
- Lazarus, L. *Civil Detention and Human Right: Law Power and Accountability*, Oxford University press, 2004, 45
- Lwehabura, J. *Civil Security Relations in Tanzania*, institute for security studies, 2006, 84
- Maina, C. *Incarceration the innocent: preventive detention in Tanzania*, University press, 1997, 113-116
- Makulilo, A, *Accountability of Intelligence Service in Africa*, 2010, 110-112
- Mwaikusa, J. *Criminal Law in Tanzania, General Introduction*, Dar es Salaam publishing house, 1995, 86
- Mwakisiki, E. *Criminal procedure law in Tanzania; Theory and Practices*, Moshi Cooperative University, 2017, 20
- OBrien, K. *The South African intelligence service*, Taylor & Francis, 2010, 241
- Scott, L. & M. Alexander, *Intelligence and International Security: new perspective and agenda*, Taylor and Francis, 2013, 80

Shadrack, J. *The private security industry in Tanzania, challenges, issues and regulations*, Oxford University press, 2011. Pg. 56

Shaffer, R. *The African Intelligence Service, Early Post-Colonial and Contemporary Challenges*, Roman and Littlefield, 2021

Shaffer, R. *The handbook of African intelligence culture*, Rowman and little fields, 2023
pg. 63

Tygi, S., *The code of criminal procedure*, 4th central law publisher Allahabad, 1999, 171

Wilshire, D. *Immigration Detention: law history*, Cambridge University press, 2012, 28

REPORT AND ARTICLES

The Tanzania police force and transition to Democracy, research and education for Democracy in Tanzania project, 2008, 121

East Africa Law report, Butterworth's, 2000, 43

African policing civilian oversight forum, an audit of police oversight in Africa, African minds for the African police oversight forum, 2008, 69