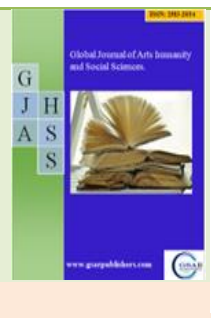


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Critical examination of conducting preliminary hearing in Tanzania's criminal justice system

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Abstract

Preliminary hearings constitute a foundational element of Tanzania's criminal justice system, codified under sections 198 of the Criminal Procedure Act. Their purpose is to streamline adjudication by clarifying undisputed facts, identifying contentious issues, and narrowing the evidential burden at trial. Functionally, they serve to enhance judicial efficiency, safeguard the rights of the accused under Article 13(6)(a) of the Constitution, and align domestic practice with international fair trial standards under Article 14 of the ICCPR and Article 7 of the African Charter on Human and Peoples' Rights. Despite this statutory recognition, the practice of preliminary hearings faces significant challenges. Legal practitioners often reduce hearings to perfunctory exercises, judicial oversight is limited, and unrepresented accused persons frequently lack the capacity to engage effectively. Systemic constraints including inadequate resources, insufficient training of magistrates and prosecutors, and poor infrastructure for documentation further compromise the hearings' efficacy. These weaknesses contribute to persistent case backlogs, delays, and, in some cases, miscarriages of justice. Comparative experiences, such as Kenya's pre-trial conferences under the Criminal Procedure Code and regional jurisprudence like *Uganda v. Paul Semwogerere and Others*, underscore the potential of structured pre-trial procedures to improve efficiency and safeguard fair trial rights. Tanzanian preliminary hearings, however, suffer from gaps in statutory guidance, inconsistent judicial application, and weak enforcement mechanisms, limiting their practical impact. To realize their intended purpose, reforms are necessary: strengthening statutory compliance mechanisms, instituting sanctions for non-compliance, expanding legal aid for unrepresented accused persons, and implementing judicial monitoring frameworks to standardize practice.

Keywords: *Preliminary hearing, criminal justice system, Tanzania, fair trial rights, Criminal Procedure Act, judicial efficiency, procedural safeguards, access to justice.*

Introduction

The right to a fair and speedy trial is universally acknowledged as a fundamental pillar of criminal justice, forming the foundation upon which democratic societies and the rule of law rest. In the Tanzanian context, this right is explicitly enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania,ⁱ which guarantees every person charged with a criminal offence the right to a fair hearing before an independent and impartial tribunal. However, the realization of this right has historically been impeded by systemic challenges within the criminal justice system, including delays in adjudication, procedural inefficiencies, and

congestion in courts. It is against this backdrop that the legislature, through the enactment of the Criminal Procedure Actⁱⁱ incorporated the mechanism of preliminary hearings as a remedial tool to enhance the fairness and efficiency of criminal trials.

Preliminary hearings, as codified under section 198 of the Act,ⁱⁱⁱ is a pre-trial procedure aimed at streamlining criminal proceedings by establishing undisputed facts, narrowing issues in contention, and recording admissions in advance of trial. The rationale is to reduce evidential disputes, prevent surprise tactics, and focus judicial attention on the substantive matters genuinely requiring adjudication. In principle, this procedural mechanism is designed to address persistent obstacles such as case backlogs, trial delays,



and the frequent misuse of procedural technicalities by litigants. By clarifying the scope of the trial at an early stage, preliminary hearings not only promote judicial economy but also enhance transparency and the predictability of the legal process.

The background to the introduction of preliminary hearings in Tanzania reflects broader global and regional trends in criminal justice reform. Many jurisdictions, including Kenya and Uganda, have adopted similar mechanisms such as pre-trial conferences and plea-bargaining frameworks aimed at curbing delays and protecting the constitutional right to a speedy trial.

The objectives of preliminary hearings in Tanzania are multi-dimensional. At the practical level, they are intended to promote efficiency by eliminating unnecessary evidentiary disputes and reducing the workload of trial courts. At the normative level, they seek to operationalize the constitutional guarantees of fair hearing and equality before the law, thereby strengthening public confidence in the judiciary. Moreover, preliminary hearings aim to align domestic procedural law with international human rights obligations, particularly those articulated under Article 14 of the International Covenant on Civil and Political Rights (ICCPR)^{iv} and Article 7 of the African Charter on Human and Peoples' Rights,^v both of which emphasize the right to a trial within a reasonable time. These objectives collectively highlight the central role of preliminary hearings in reconciling efficiency with fairness, and procedural economy with substantive justice.

The relevance of preliminary hearings to Tanzania's criminal justice system cannot be overstated. They respond directly to the crisis of backlog and delay, which has been documented by various studies and judicial reports. For example, the Judiciary of Tanzania's annual reports (2018-2022) consistently highlight the overwhelming volume of criminal cases pending in subordinate courts, many of which languish for years before determination. Such delays not only compromise the rights of accused persons but also erode public trust in the judiciary and diminish the deterrent function of criminal law. Preliminary hearings provide a structural response to these challenges by ensuring that trials are conducted with greater focus, efficiency, and fairness. Furthermore, they reduce the likelihood of wrongful convictions or acquittals based on procedural ambush, thus enhancing substantive justice.

From a doctrinal perspective, preliminary hearings also play an important role in harmonizing the criminal procedure framework in Tanzania with evolving notions of restorative justice and participatory adjudication. By encouraging early engagement between the prosecution and defence, they create a forum for dialogue, admissions, and agreements on facts that do not require judicial scrutiny. This, in turn, allows the judiciary to allocate scarce resources more judiciously, concentrating efforts on genuinely contested issues. The mechanism thus embodies a progressive approach to criminal justice administration, balancing the rights of the accused with the broader interests of society in efficient and credible judicial processes.

The Need for Conducting Preliminary Hearing in Tanzania's Criminal Justice System

The necessity of preliminary hearings in Tanzania emerges from the structural and procedural challenges that have historically undermined the effectiveness of the criminal justice system. Among the most pressing of these challenges are trial delays, case backlogs, and persistent violations of the constitutional right to a fair trial. Article 13(6)(a) of the Constitution of the United Republic of Tanzania,^{vi} guarantees accused persons the right to a fair hearing before an independent and impartial tribunal. However, judicial reports and empirical studies reveal that criminal cases in Tanzania often take years before reaching determination, with many languishing in subordinate courts due to procedural inefficiencies.^{vii} It is in this context that preliminary hearings serve as a critical mechanism for safeguarding constitutional rights, ensuring that trials are conducted within a reasonable time frame, and strengthening the overall legitimacy of the judicial system.

One of the primary justifications for preliminary hearings is their ability to promote speedy trials by reducing unnecessary evidentiary disputes. Section 198 of the Criminal Procedure Act^{viii} obliges the prosecution and the defence to meet before the commencement of trial in order to agree on facts not in dispute. This eliminates the need for calling witnesses or tendering evidence on uncontested issues, thereby shortening the length of trials. The principle resonates with international standards under Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR),^{ix} which mandates that accused persons be tried "without undue delay." By streamlining proceedings, preliminary hearings thus directly advance the right to a speedy trial, an essential safeguard against prolonged pre-trial.

Closely connected to the right to a speedy trial is the problem of case backlog, which continues to plague Tanzanian courts. Criminal cases constitute a significant proportion of the backlog, with thousands pending across subordinate and higher courts.^x Preliminary hearings provide a structural solution by narrowing the scope of contested issues and allowing courts to concentrate their limited resources on cases that truly require judicial determination. By filtering out undisputed matters, they reduce the volume of evidence to be examined at trial and enable judges and magistrates to dispose of cases more expeditiously.

The protection of fair trial rights represents another fundamental rationale for conducting preliminary hearings. Beyond ensuring timeliness, these hearings enhance procedural fairness by ensuring that both the prosecution and the defence are fully aware of the case to be tried. This prevents trial by ambush, where one party seeks to gain an unfair advantage by withholding evidence until late in the proceedings. The doctrine of equality of arms an established principle under international human rights law requires that both parties have a reasonable opportunity to present their case under conditions that do not place one at a substantial disadvantage (European Court of Human Rights, *Dombo Beheer B.V. v. The Netherlands*).^{xi} Preliminary hearings operationalize this principle in Tanzania by mandating early disclosure and clarification of

contested issues, thereby protecting accused persons against unfair surprise and ensuring transparency in the adversarial process.

Equally important, preliminary hearings facilitate judicial efficiency by conserving resources for all stakeholders within the criminal justice system. For the courts, they mean shorter trials and reduced strain on judicial officers, allowing for the more effective allocation of scarce time and resources. For prosecutors and defence lawyers, they reduce the need to prepare for extensive evidentiary battles over uncontested matters. For accused persons many of whom lack legal representation they minimize the burden of prolonged litigation and the financial and emotional costs associated with extended proceedings. Finally, preliminary hearings are indispensable in preventing miscarriages of justice. The adversarial system of criminal adjudication is susceptible to abuses such as surprise evidence, tactical delays, and the manipulation of procedural loopholes. Without an early-stage mechanism to clarify undisputed facts and narrow contested issues, trials risk being derailed by procedural ambush, undermining substantive justice. As noted by the African Commission on Human and Peoples' Rights in *Law Office of Ghazi Suleiman v. Sudan* (2003)^{xii}, prolonged or unfair proceedings can amount to a violation of the right to a fair trial under Article 7 of the African Charter.^{xiii} Preliminary hearings mitigate such risks by compelling early disclosure, ensuring judicial oversight, and narrowing disputes before trial. In this way, they function as a safeguard not only for efficiency but also for justice, protecting accused persons from wrongful convictions or undue disadvantage, while ensuring that the prosecution's case is tested on its merits.

In sum, the need for conducting preliminary hearings in Tanzania arises from their unique role in reconciling efficiency with fairness. They address chronic challenges of trial delays, backlog, and procedural abuse while simultaneously upholding constitutional guarantees and international human rights obligations. By promoting speedy trials, reducing backlog, protecting fair trial rights, enhancing judicial efficiency, and preventing miscarriages of justice, preliminary hearings embody a crucial reform measure within Tanzania's criminal justice system. Their effective implementation remains central to strengthening the rule of law and ensuring that justice is not only done but also seen to be done.

Analysis of the Legal Framework Governing Preliminary Hearing in Tanzania's Criminal Justice System

The preliminary hearing in Tanzania represents a procedural innovation intended to align criminal proceedings with the constitutional imperative of fair and expeditious justice. Its legal foundation rests principally in the Criminal Procedure Act,^{xiv} complemented by constitutional guarantees, judicial interpretation, and international fair trial norms. However, the adequacy, coherence, and enforcement of this framework remain contested, raising concerns about its practical efficacy.

Constitutional Foundation

The constitutional foundation of preliminary hearings in Tanzania's criminal justice system rests upon broad principles that are enshrined in the Constitution of the United Republic of Tanzania, 1977. Although the Constitution does not expressly provide for the mechanism of preliminary hearings, several provisions form the normative basis upon which the statutory framework under the Criminal Procedure Act^{xv} is built. Article 13(6)(a) of the Constitution^{xvi} guarantees every person the right to a fair hearing by an independent and impartial tribunal. This provision is central to criminal justice, as it requires that accused persons be afforded adequate facilities to prepare their defence, have access to the evidence against them, and be tried on clear and defined issues. Preliminary hearings operationalize this constitutional guarantee by compelling early disclosure of evidence, narrowing down the matters in dispute, and preventing "trial by ambush." In this sense, the statutory mechanism directly gives effect to the fair trial principle, making it an indispensable tool for constitutional compliance.

In addition, Article 107A(2)(b)^{xvii} mandates courts to dispense justice "without undue delay." The inclusion of this provision reflects the constitutional recognition that justice delayed can amount to justice denied. Preliminary hearings are designed precisely to fulfill this obligation: by clarifying agreed facts, identifying contested issues, and recording admissions, they eliminate the need to litigate matters unnecessarily, thereby shortening trials and reducing case backlogs. Judicial interpretation, such as in *DPP v. Shida Manyama*^{xviii}, has emphasized that preliminary hearings are substantive steps in advancing the constitutional requirement of timely justice, not mere procedural formalities.

Moreover, Article 107B (1)^{xix} vests the judicial authority of the United Republic in the courts, placing upon them the responsibility to manage criminal proceedings efficiently. The conduct of preliminary hearings is a clear demonstration of this judicial management function, as it empowers courts to regulate the trial process proactively. By requiring judges and magistrates to ensure disclosure, record agreements, and control the issues that proceed to trial, the judiciary exercises its constitutional mandate to uphold justice and safeguard procedural fairness.

Despite these connections, the Constitution does not explicitly mention preliminary hearings, leaving their existence and scope to statutory elaboration under sections 192–194 of the CPA.^{xx} This creates an interpretive challenge. On one hand, since preliminary hearings are grounded in statutory law, failure to conduct them may be viewed as a statutory irregularity rather than a constitutional violation. On the other hand, given that their primary purpose is to enforce constitutional guarantees of fairness and timely justice, one could argue that non-compliance undermines these constitutional rights and thus rises beyond mere procedural irregularity. Tanzanian jurisprudence has not settled this tension conclusively, as courts have sometimes treated failure to conduct a preliminary hearing as a curable defect if no miscarriage of justice

occurs. Nevertheless, from a constitutional theory perspective, preliminary hearings should be understood as mechanisms that concretize fundamental rights, making their proper conduct essential to the realization of the right to a fair hearing under Article 13(6)(a).^{xxi}

Therefore, the constitutional foundation of preliminary hearings, while indirect, is both significant and indispensable. Their existence bridges the gap between abstract constitutional guarantees and practical trial management. Strengthening the statutory and judicial enforcement of preliminary hearings would ensure that the constitutional promises of fairness, timely justice, and effective judicial authority are not rendered illusory but are realized in practice through the daily workings of the criminal justice system.

Statutory Provisions under the Criminal Procedure Act

The Criminal Procedure Act^{xxii}, remains the principal statute governing preliminary hearings in Tanzania, providing the substantive and procedural backbone for their conduct. The relevant provisions sections 198^{xxiii} was introduced through procedural reforms aimed at addressing systemic inefficiencies in criminal trials, reducing backlog, and enhancing fairness through early disclosure and clarification of issues. However, while the framework is progressive in intent, it remains incomplete in design, leaving gaps that undermine its full effectiveness.

Section 198(1) of the criminal procedure Act^{xxiv} establishes the mandatory nature of preliminary hearings. It provides that “when the accused person pleads not guilty, the court shall hold a preliminary hearing of the case.” This wording imposes a mandatory duty on the court, stripping it of discretion in determining whether to convene such a hearing. The legislative intent is to ensure uniformity and prevent selective application. However, judicial practice has revealed significant inconsistencies, particularly in subordinate courts, where resource constraints, lack of training, and heavy caseloads often lead to bypassing preliminary hearings altogether. The Court of Appeal in *DPP v. Shida Manyama*^{xxv} emphasized that preliminary hearings are integral to achieving expeditious justice and should not be treated as optional, yet compliance at the grassroots level remains uneven.

Rule 4(1) of the Judicature and Application of Laws (Defence Entitlement to Prosecution Evidence) Rules, 2025 imposes on the prosecution a statutory duty of disclosure, requiring that before the preliminary hearing, the prosecutor shall furnish the defence with copies of witness statements, lists of exhibits, and other materials intended to be relied upon at trial. This reflects a progressive move towards prosecutorial transparency, aligning domestic law with the fair trial guarantees under Article 13(6)(a) of the Constitution^{xxvi} and Article 14 of the ICCPR^{xxviii}.

Section 198(3) of the criminal procedure Act^{xxix} introduces the requirement of a memorandum of matters agreed upon, which must be signed by both parties and endorsed by the presiding magistrate or judge. The memorandum carries evidentiary weight, as the

agreed facts are treated as proven at trial without the need for further proof. This mechanism narrows down disputes and conserves judicial resources. However, concerns have been raised regarding the voluntariness and informed nature of admissions, particularly in cases where accused persons lack legal representation or sufficient understanding of the implications of signing such a memorandum. Tanzanian jurisprudence has occasionally questioned whether admissions secured without legal advice comply with constitutional standards of fairness, highlighting the delicate balance between efficiency and protection of rights.

The criminal procedure Act^{xxx} does not address the consequences of failing to hold a preliminary hearing. While it acknowledges the mandatory nature of section 198^{xxxi}, it does not prescribe stringent sanctions against non-compliance. Courts retain broad discretion to proceed with trial even if a preliminary hearing has not been conducted, provided that no miscarriage of justice is demonstrated. This has led to judicial tolerance of lapses, effectively diluting the compulsory language of section 198(1).^{xxxii} In *Republic v. Mohamed Omary*^{xxxiii}, the High Court recognized that failure to conduct a preliminary hearing could amount to an irregularity but treated such failure as curable if the overall fairness of the trial was preserved. This jurisprudential leniency weakens enforcement, allowing prosecutorial and judicial actors to sidestep statutory obligations without facing significant consequences.

Taken together, these provisions reflect a progressive legislative scheme designed to improve efficiency and fairness in criminal justice. However, the CPA suffers from notable gaps. It does not provide detailed procedural guidance on how preliminary hearings should be sequenced, recorded, or monitored. Nor does it create robust enforcement mechanisms to ensure prosecutorial compliance with disclosure obligations or judicial accountability for convening hearings. This leaves significant room for discretion and inconsistency, particularly in lower courts, where the majority of criminal cases are heard. The absence of detailed subsidiary legislation or binding practice directions exacerbates this problem, undermining the transformative potential of sections 198.^{xxxiv}

Case Law Interpretation

Tanzanian courts have played a pivotal role in interpreting the legal and practical significance of preliminary hearings, thereby shaping how sections 198 of the Criminal Procedure Act^{xxxv} is applied in practice. In *DPP v. Shida Manyama*^{xxxvi}, the Court of Appeal emphasized that preliminary hearings are substantive tools designed to advance justice without undue delay rather than mere procedural formalities. The court recognized that the hearings serve critical purposes: clarifying issues in dispute, narrowing the scope of trial, and facilitating the accused’s preparation of defence. This landmark decision effectively elevated preliminary hearings from a procedural ritual to an essential stage of criminal proceedings, highlighting their centrality to both fairness and efficiency.

Similarly, in *Republic v. Mohamed*^{xxxvii}, the High Court held that failure to adhere strictly to statutory requirements for preliminary hearings could render subsequent proceedings irregular. This

judgment underscored the seriousness of compliance, signaling to both prosecutors and judges that preliminary hearings are not optional, and that non-compliance could attract remedial measures or, in certain cases, invalidate trial proceedings. The decision reinforced the view that preliminary hearings are not merely managerial devices but substantive safeguards of the accused's constitutional rights under Article 13(6)(a)^{xxxviii} and procedural fairness under section 198 of the Criminal Procedure Act^{xxxix}.

However, more recent jurisprudence reflects a pragmatic shift, wherein courts have shown a willingness to treat lapses in preliminary hearings as curable defects. Under this flexible approach, non-compliance does not automatically vitiate trial proceedings, provided the accused's right to a fair trial is not materially compromised. While this approach may enhance efficiency and reduce unnecessary adjournments, it introduces a degree of judicial discretion that is not clearly defined in the Criminal Procedure Act^{xl}. Consequently, there is tension within the judiciary over whether preliminary hearings should be considered indispensable constitutional guarantees or discretionary procedural conveniences.

This divergence between strict and flexible approaches has significant implications. It undermines uniformity and predictability, as accused persons and legal practitioners cannot be certain whether failure to conduct a preliminary hearing will attract remedial action or be treated as a curable irregularity. Moreover, the inconsistent treatment across courts, particularly between the High Court and subordinate courts, risks eroding public confidence in the procedural safeguards designed to protect fair trial rights. The judicial ambivalence thus illustrates a broader structural challenge within Tanzania's criminal justice system: the need to reconcile statutory obligations, constitutional guarantees, and practical considerations in a manner that preserves both fairness and efficiency.

Practice Directions and Institutional Guidance

The Tanzanian judiciary has, on several occasions, issued circulars and practice directions aimed at reinforcing the procedural requirements of preliminary hearings, particularly within the High Court. These measures are intended to guide judges and magistrates in actively managing case flow, ensuring timely disclosure, and promoting compliance with sections 194 of the Criminal Procedure Act^{xli}. Despite these efforts, there remains no comprehensive Judicial Practice Manual specifically dedicated to standardizing the conduct of preliminary hearings. The absence of a codified, binding set of procedural rules limits consistency in judicial practice and leaves much discretion to individual judicial officers.

This institutional gap contrasts sharply with practices in other common law jurisdictions. For example, in Kenya, the Criminal Procedure Code is supplemented by detailed pre-trial conference rules and judicial guidelines that prescribe timelines, procedures for disclosure, and sanctions for non-compliance. Such instruments not only enhance uniformity but also improve predictability and safeguard the rights of the accused. The lack of equivalent

guidance in Tanzania has led to uneven application of preliminary hearings across courts and among judicial officers, often resulting in significant disparities in access to justice. Lower courts, in particular, exhibit wide variation in how preliminary hearings are conducted, with some failing to convene them altogether or implementing them inconsistently.

The practical consequence of this lacuna is twofold. First, accused persons in different jurisdictions may experience divergent procedural treatment, undermining the principle of equality before the law as guaranteed under Article 13(6)(a) of the Constitution.^{xlii} Second, the lack of standardized procedures diminishes the efficiency gains that preliminary hearings are designed to achieve, as courts may inadvertently duplicate proceedings or overlook critical disclosure obligations. The situation underscores the need for the Tanzanian judiciary to adopt a comprehensive and enforceable practice manual, harmonizing the conduct of preliminary hearings across all levels of the criminal justice system and aligning domestic practice with both constitutional mandates and international fair trial standards.

International and Comparative Standards

Preliminary hearings in Tanzania also resonate with international human rights obligations, particularly in the context of fair trial guarantees. Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR)^{xliii} mandates that every accused person be provided with adequate time and facilities to prepare a defence, which encompasses access to evidence, witness statements, and sufficient opportunity to challenge the prosecution's case. Preliminary hearings operationalize these guarantees by requiring early disclosure of evidence and clarifying disputed issues before trial, thereby enabling the accused to effectively prepare a defence. Similarly, Article 7 of the African Charter on Human and Peoples' Rights reinforces the principle of a fair trial, including access to legal counsel, timely proceedings, and the right to be informed of the charges. By promoting early case management and facilitating disclosure, preliminary hearings serve as a domestic mechanism to implement these international standards.

Comparative experiences further highlight the value of robust procedural frameworks for preliminary hearings. In England, Pre-Trial Reviews (PTRs) are governed by the Criminal Procedure Rules, which impose strict disclosure obligations on the Crown Prosecution Service and require the timely exchange of witness statements and exhibits. The PTR system ensures that trials are not delayed due to late disclosure and that accused persons can participate meaningfully in their defence. Similarly, in Kenya, the Criminal Procedure (Plea Bargaining and Pre-Trial Conference) Rules, 2016, operationalize pre-trial hearings with detailed procedures, timelines, and sanctions for non-compliance, thereby institutionalizing consistency and accountability in the conduct of preliminary hearings.

By contrast, Tanzania's statutory provisions under sections 198 of the Criminal Procedure Act^{xliv} remain skeletal, lacking detailed guidance on sequencing, documentation, timelines, or enforceable

sanctions. This lacuna creates wide judicial and prosecutorial discretion, resulting in significant variability in practice across courts. The absence of a comprehensive procedural framework limits the ability of preliminary hearings to fully protect the accused's rights and undermines the efficiency and predictability of criminal trials. Consequently, comparative and international experiences demonstrate the importance of complementing statutory provisions with detailed procedural rules and enforcement mechanisms to ensure that preliminary hearings are meaningful, consistent, and aligned with international fair trial obligations.

Key Legal and Practical Challenges in Conducting Preliminary Hearing in Tanzania's Criminal Justice System

While the statutory framework under the Criminal Procedure Act^{xlv} provides for the conduct of preliminary hearings, the practical implementation of this mechanism in Tanzania has been marred by significant challenges. These challenges cut across legal, institutional, and socio-economic dimensions, undermining the effectiveness of preliminary hearings as tools for safeguarding constitutional rights and ensuring efficiency in criminal trials. The following sub-sections highlight the key obstacles impeding the process.

Non-Compliance by Legal Practitioners

One of the most persistent challenges is the widespread non-compliance by legal practitioners, particularly state attorneys and defence counsel. In many cases, preliminary hearings are treated as a mere procedural formality, with parties failing to meaningfully engage in identifying and recording undisputed facts.^{xlvi} This undermines the very purpose of the hearing, which is to streamline the trial by clarifying issues beforehand. Some prosecutors, constrained by limited preparation time, often enter hearings without fully analyzing their case files, leading to superficial or incomplete agreements. Defence counsel, on the other hand, may adopt obstructionist tactics to delay proceedings. Such practices contradict the spirit of sections 192–194 of the Criminal Procedure Act^{xlvii} and weaken the efficiency gains that preliminary hearings are intended to achieve.

Limited Judicial Supervision

The effectiveness of preliminary hearings also depends heavily on the role of judicial officers in actively guiding the process. However, in practice, judicial supervision has been inconsistent and often inadequate. Magistrates and judges sometimes allow parties to conduct preliminary hearings with minimal oversight, resulting in weak enforcement of agreed facts and incomplete records (Mtasiwa, 2021). In *Director of Public Prosecutions v. Ally Juma*^{xlviii} the court observed that poorly managed preliminary hearings had contributed to unnecessary delays, as issues purportedly settled during the hearings were later re-litigated during trial. The lack of structured judicial monitoring mechanisms has created room for non-uniform practices, reducing the reliability and credibility of preliminary hearings across different courts.

Lack of Awareness Among Accused Persons

Another major obstacle lies in the limited awareness of preliminary hearings among accused persons, particularly those who are unrepresented. A large proportion of criminal defendants in Tanzania appear in court without legal representation, often due to poverty and limited access to legal aid.^{xlix} Many of these accused persons lack the legal literacy necessary to understand the purpose and implications of preliminary hearings. As a result, they are unable to make informed decisions about agreeing to undisputed facts or raising objections. This undermines the fairness of the process and creates an imbalance between the prosecution, which is often legally represented, and the unrepresented accused. The problem is compounded by the absence of robust legal aid structures to assist indigent accused persons, despite the recognition of legal aid as a constitutional requirement under Article 13(6)(a) of the Constitution^l.

Resource and Logistical Constraints

Resource and logistical constraints pose yet another significant barrier to the effective conduct of preliminary hearings. Many courts in Tanzania, particularly those in rural districts, lack adequate recording facilities, technological support, and clerical manpower necessary to document and preserve the outcomes of preliminary hearings^{li}. This leads to incomplete or inaccurate records of undisputed facts, which can create confusion at the trial stage. Furthermore, the shortage of trained prosecutors, coupled with heavy caseloads for judicial officers, exacerbates delays and undermines the efficiency of the process.

Inconsistent Application Across Jurisdictions

Finally, preliminary hearings suffer from inconsistent application across different courts and regions in Tanzania. While some magistrates and judges strictly adhere to the provisions of the Criminal Procedure Act, others exercise wide discretion in applying the rules, leading to disparities in justice delivery. For instance, in urban centers such as Dar es Salaam, preliminary hearings are more commonly and effectively conducted, whereas in rural areas, their implementation is irregular and often superficial. This inconsistency undermines the principle of equality before the law, enshrined under Article 13(1) of the Constitution^{lii}, and weakens public confidence in the judiciary.

Recommendations on Conducting Preliminary Hearings in Tanzania's Criminal Justice System

The effectiveness of preliminary hearings in Tanzania's criminal justice system depends not only on statutory recognition but also on robust institutional frameworks, sufficient resources, and consistent application across jurisdictions. To address the identified challenges, a multi-stakeholder approach involving the government, legislature, judiciary, and legal institutions is required. The following recommendations outline targeted reforms necessary to strengthen the role of preliminary hearings in promoting fair trial rights and judicial efficiency.

Recommendations to the Government

The government plays a central role in ensuring that criminal justice institutions operate effectively. First, there is a need to increase budgetary allocation to the judiciary, prosecution services, and legal aid providers to strengthen the infrastructure and logistics required for preliminary hearings. Adequate funding would help provide modern case management systems, reliable recording facilities, and training programs for court staff, prosecutors, and defence lawyers^{liii}. Second, the government should implement capacity-building initiatives for police, prosecutors, and paralegal officers on the significance of preliminary hearings, focusing on case preparation, evidence disclosure, and respect for the accused's fair trial rights. These initiatives align with Tanzania's obligations under Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR),^{liv} which guarantees the right to be tried without undue delay. Strengthening institutional capacity would ensure that preliminary hearings are not treated as procedural formalities but as substantive mechanisms for justice delivery.

Recommendations to the Legislature

The legislature should consider amending the Criminal Procedure Act^{lv} to introduce stricter enforcement mechanisms for non-compliance with preliminary hearing requirements. Currently, the Act lacks robust sanctions for prosecutors or defence counsel who fail to meaningfully engage in the process, which has led to widespread disregard in practice.^{lvi} Amendments should introduce timelines for conducting preliminary hearings for example, within 30 days of the accused's first appearance before the High Court or subordinate courts. Failure to comply should attract judicially enforceable sanctions, such as cost orders or administrative penalties against negligent practitioners.

Recommendations to Legal Institutions

Legal institutions, including the Tanganyika Law Society, Legal Aid Providers, and civil society organizations, must strengthen legal aid services to ensure that unrepresented accused persons are assisted during preliminary hearings. Given that a majority of defendants in Tanzania face trial without legal representation targeted interventions are critical for upholding the right to equality before the law under Article 13(1) of the Constitution.^{lvii} This may include expanding the Legal Aid Act, 2017 framework to cover representation at the preliminary hearing stage. Furthermore, legal institutions should undertake **public awareness campaigns** through community outreach, radio programs, and legal literacy workshops to educate citizens about the significance of preliminary hearings.

Recommendations to the Judiciary

The judiciary has a direct responsibility to ensure that preliminary hearings achieve their intended objectives. First, there is a need for **continuous judicial training** focusing on case management, enforcement of undisputed facts, and the use of modern recording technologies. Training programs, possibly in collaboration with the Judicial Training Institute (JTI), would enhance judicial officers' ability to exercise proactive supervision during. Second, the

judiciary should establish **monitoring and evaluation mechanisms** to track the conduct of preliminary hearings across courts and ensure uniformity in application. This may involve regular audits, practice directions, or the establishment of specialized case management committees. Drawing lessons from Uganda's Judiciary Performance Enhancement Project, which introduced structured monitoring of pre-trial procedures, Tanzania could adopt a similar model to ensure consistency and compliance. Such measures would reduce disparities between urban and rural courts while restoring public confidence in the criminal justice system.

Conclusion

Preliminary hearings constitute a cornerstone of Tanzania's criminal justice system, providing a structured mechanism to streamline trials, clarify disputed issues, and safeguard the rights of accused persons. As established under sections 198 of the Criminal Procedure Act^{lviii}, these hearings are designed to ensure that trials focus on substantive matters rather than procedural disputes, thereby promoting judicial efficiency and procedural fairness. Empirical evidence and scholarly analyses indicate that, when effectively conducted, preliminary hearings reduce case backlogs, minimize trial delays, and prevent procedural ambush, which collectively enhance the quality of justice delivered.^{lix}

Despite the statutory recognition of preliminary hearings, their practical implementation in Tanzania has been constrained by a range of systemic and procedural challenges. These include non-compliance by legal practitioners, inadequate judicial supervision, limited awareness among unrepresented accused persons, resource and logistical deficits, and inconsistent application across jurisdictions.^{lx} Such obstacles not only undermine the effectiveness of preliminary hearings but also compromise the constitutional right to a fair and speedy trial under Article 13(6)(a) of the Constitution^{lxi} and international obligations under Article 14 of the ICCPR.^{lxii}

Addressing these challenges requires a multi-sectoral approach involving the government, legislature, judiciary, and legal institutions. The government must enhance funding and capacity-building for criminal justice actors, while the legislature should strengthen the legal framework to enforce compliance and introduce timelines for conducting preliminary hearings. Legal institutions are critical in providing representation for unrepresented accused persons and raising public awareness about the importance of the hearings, whereas the judiciary must ensure continuous training and implement monitoring mechanisms to maintain consistency and accountability across courts.^{lxiii}

In conclusion, strengthening the conduct of preliminary hearings is essential for enhancing the efficiency, fairness, and transparency of Tanzania's criminal justice system. By addressing the identified legal and practical challenges, preliminary hearings can fulfill their dual function as both a procedural and substantive safeguard, protecting the rights of accused persons while ensuring effective use of judicial resources. Ultimately, the robust implementation of preliminary hearings will not only improve case management and

trial outcomes but also reinforce public trust in the administration of justice, aligning Tanzania's criminal procedure with regional and international standards of fair trial and due process.

ENDNOTE

- ⁱ Constitution of the United Republic of Tanzania, 1977 (as amended),
- ⁱⁱ [Cap. 20 R.E. 2022],
- ⁱⁱⁱ [Cap. 20 R.E. 2022],
- ^{iv} International Covenant on Civil and Political Rights, 1966
- ^v African Charter on Human and Peoples' Rights, 1981
- ^{vi} Constitution of the United Republic of Tanzania, 1977 (as amended)
- ^{vii} Mtasiwa, P. (2021). *The Role of Procedural Safeguards in Criminal Justice in Tanzania*. University of Dar es Salaam Law Journal, Vol. 12.
- ^{viii} [Cap. 20 R.E. 2023]
- ^{ix} International Covenant on Civil and Political Rights, 1966,
- ^x Nshala, R. (2019). Tanzania's Criminal Procedure and Access to Justice. Dar es Salaam: LHRC.
- ^{xi} [1993] ECHR 14448/88).
- ^{xii} African Commission on Human and Peoples' Rights, *Law Office of Ghazi Suleiman v. Sudan* (2003) AHRLR 144 (ACHPR 2003).
- ^{xiii} African Charter on Human and Peoples' Rights, 1981,
- ^{xiv} [Cap. 20 R.E. 2023]
- ^{xv} [Cap. 20 R.E. 2023]
- ^{xvi} Constitution of the United Republic of Tanzania, 1977 (as amended)
- ^{xvii} Ibid
- ^{xviii} [1984] TLR 1
- ^{xix} Constitution of the United Republic of Tanzania, 1977 (as amended)
- ^{xx} [Cap. 20 R.E. 2023]
- ^{xxi} Constitution of the United Republic of Tanzania, 1977 (as amended)
- ^{xxii} [Cap. 20 R.E. 2023]
- ^{xxiii} Ibid.
- ^{xxiv} [Cap. 20 R.E. 2023]
- ^{xxvi} [1984] TLR 1
- ^{xxvii} Constitution of the United Republic of Tanzania, 1977 (as amended)
- ^{xxviii} International Covenant on Civil and Political Rights (ICCPR), 1966
- ^{xxix} Ibid
- ^{xxx} Ibid
- ^{xxxi} [Cap. 20 R.E. 2023]
- ^{xxxii} [Cap. 20 R.E. 2023]
- ^{xxxiii} [1998] TLR 127
- ^{xxxiv} [Cap. 20 R.E. 2023]
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- ^{xxxvi} [1984] TLR 1
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