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Original Article

# The Application of ICT in Safeguarding the Rights of Suspects during the Police Interview in Tanzania; Law and Practice

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This Article examines on law and practice of the application of ICT in protecting the rights of suspects during the police interview. The study is conducted with the assumption that the legal framework in Tanzania does not effectively accommodate the application of ICT during police interviews with suspects and thus the police officers do not apply ICT in conducting interviews with suspects. This study makes an in-depth analysis of the role of ICT devices during the police interview in protecting the rights of suspects. The study makes a critical analysis of the existing legal framework, identifies gaps or shortcomings in the said laws and analyses how the same contribute to the problem. The researcher applied doctrinal research methodology and the same was complemented by an empirical research methodology. The researcher collected primary data through a review of various laws, the same was complemented by interviews from sampled respondents. Secondary data were also collected through documentary reviews of books, articles, journal papers, and reports from both physical and online sources.

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## INTRODUCTION

For a very long time in Tanzania, it has been established practice of conducting police interviews with suspects in a secret environment involving a police officer and a suspect only with a paper-based mode of recording. This circumstance creates room for unethical police officers to be involved in violation of the rights of suspects guaranteed by the constitution, laws and international instruments. There have been complaints about subjecting the suspects to torture, threat, inhuman, degrading treatment and even death.

With the said traditional secret and paper-based mode of interview, there have been complaints for a very long time from suspects restrained by the police force and the public at large on violation of rights of criminal suspects during an interview with police officers; some criminal suspects are subjected to torture inhuman and degrading treatment in order to procure confession to offences they are suspected for, in some circumstances suspects are tortured to death.

The risk of violation of criminal suspect's rights under the traditional secret, paper-oriented mode of recording interviews with suspects makes it necessary to adopt changes in Science and Technology by accommodating a mode which can ensure transparency, authenticity of the suspect's statement and protection of the rights of the suspect. With the advancement of ICT, this goal could only be achieved through the accommodation of the application of ICT devices during police interviews with suspects.

The application of ICT devices in police interviews with suspects was statutorily introduced in Tanzania in 2018. Section 57 of The Criminal Procedure Act (CPA)<sup>1</sup> was amended by Act No. 7 of 2018<sup>2</sup> by adding section 57(5)-(7), which, for the first time, clearly introduced the application of audio and video recording devices

during interviews with suspects. Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules<sup>3</sup>

Considering the foregoing background, there is a pressing need for an empirical study to examine the intersection of ICT device utilization and the protection of suspects' rights in police interviews. By investigating the implementation, impact, and implications of the CPA amendment and the Rules thereto, this study examines challenges and opportunities inherent in the digitalization of police interview practices and how the same can assist in the protection of the rights of suspects. Through such insights, lawmakers, government, legal practitioners, and law enforcement agencies can develop informed strategies to uphold the principles of fairness, justice and human rights in criminal investigation.

## Hypothesis

The study was conducted on the assumption that the law and practice in Tanzania do not effectively accommodate the application of ICT during the interview.

## Objectives of the Study

- To examine the existing legal framework on the application of ICT devices in police interviews with suspects.
- To examine the role of ICT devices in police interviews with suspects.

## RESEARCH METHODOLOGY

The study employed doctrinal research methodology, which was complemented by empirical research methodology. The study being legal research made it necessary to apply doctrinal research methodology as the main research methodology for conducting the study so as to enable the researcher to review various laws, court decisions, books, journals, articles and papers

<sup>1</sup> Cap 20 RE 2022

<sup>2</sup>Section 9 of The Written Laws Miscellaneous Amendment Act, No.7 of 2018

<sup>3</sup>GN No. 792; published on 3<sup>rd</sup> November 2023

from both physical and online sources relevant to the study.

## METHODS OF COLLECTION OF DATA

The Researcher collected both Primary and Secondary data by using various methods as follows;

### Collection of Primary Data

This method involved the collection of information through a review of various laws. The researcher reviewed domestic laws, regional and international instruments. In domestic laws, the researcher reviewed various principal legislations, subsidiary legislations and case laws. Under the regional and international instruments, the researcher reviewed treaties, conventions, charters, protocols and guidelines.

### Collection of Secondary Data

Secondary data involves the collection of information through documentary review complemented by field research. The researcher reviewed various books, journals, articles, reports, and papers relevant to the study from both physical and online sources.

The researcher collected data from online sources, various websites and online sources relevant to the study were searched. The online sources enriched the researcher with current writings relevant to the study.

The documentary review was complemented by a collection of data from the research field. Since the study involved examination of practice on the application of ICT devices in the police interrogation with suspects, the researcher found it necessary to collect data from the field, the researcher used interview methods in collecting data from various stakeholders of criminal justice.

The interview involved face-to-face interrogation with respondents where the researcher gathered relevant information for the study from the

sampled respondents. The researcher used both structured and unstructured interviews. In a structured interview similar questions were asked to different respondents so as to obtain their responses on a particular question, the structured interview was supplemented by an unstructured interview where different questions were asked to different categories of respondents to obtain their responses. The study involved 26 interviewees including 7 police officers, 6 state Attorneys, 3 Magistrates, 6 Advocates, and 4 Suspects.

### Data Analysis

The study involved qualitative data analysis whereby data were organised, interpreted, analysed, and discussed in line with the research hypothesis and the objectives of the study.

Analysis of the documents was done through content analysis. After gathering the relevant documents, the researcher examined the content of the obtained documents to identify words and phrases relevant to the objectives of the study. Data were analysed in subtitles based on the research hypothesis and objective of the study. Literal and purposive rules of statutory interpretation were used in interpreting the provisions of laws, and international instruments.

## CONCEPTUAL FRAMEWORK

### Definition of a Suspect

A suspect is a person who is alleged to have committed a crime but has not yet been found guilty.<sup>4</sup> The term suspect is sometimes misconstrued as accused in some instances, but the same substantially differ. A suspect refers to a person facing an allegation of committing a crime before formal charges, while an "accused" is someone formally charged with a crime.<sup>5</sup> Both terms highlight different stages in criminal proceedings.<sup>6</sup> A suspect is an individual believed to be involved in a crime based on initial

<sup>4</sup><https://www.law.cornell.edu/wex/suspect#:~:text=A%20suspect%20is%20a%20person,would%20be%20called%20an%20offender>. Accessed on 25/09/2024

<sup>5</sup> Ibid

<sup>6</sup> Ibid page 3

evidence.<sup>7</sup> A suspect is a person suspected of committing an offence, presumed innocent yet also presumed guilty. This ambivalence highlights their rights to defence and the necessity of evidence to uphold the presumption of innocence, reflecting both deontological and teleological aspects.<sup>8</sup>

### Rights of the Suspects

Suspects are entitled to various rights from the initial stage of arrest to the other stages of investigation. It is well settled position that for an arrest to be legal, specific requirements contained in National Constitutions, Criminal Procedure Laws, and Regional and International Treaties, must be met such as meeting the requirements of proportionality, legality and necessity, in making the arrest, the officer should not use greater force than is reasonable to apprehend a suspect, person arrested must be informed of the reason for the arrest at the time of, or as soon as practicable after, the arrest; informing the person to be arrested of the right to remain silent, and be warned of the consequences of making any statement, the arrested person must be brought before a court within a reasonable time and usually within 48 hours, not to be compelled a person arrested to make a confession or admission which could be used in evidence against him or her, an arrested person should be given the right to be segregated from convicted persons; and an arrested person has the right to be released from detention, with or without bail unless the interests of justice require otherwise.<sup>9</sup> During a police interview, a suspect is entitled to the following rights.

#### ***Right to remain silent.***

Suspects have the right to remain silent during police interviews.<sup>10</sup> The principle of "*nemo*

*tenetur se ipsum accusare*" underscores the right to silence, emphasizing that individuals should not be compelled to provide self-incriminating evidence.<sup>11</sup> The right to remain silent is recognized in various jurisdictions, but its scope can be limited depending on the nature of cases. In accordance with the Criminal Procedure Act,<sup>12</sup> during a police interview, a suspect has the right to remain silent and not to be required to make any statement without his consent, which could later be used as evidence before the court.<sup>13</sup>

#### ***Right to Legal representation***

Suspects have the right to consult an advocate before and during questioning and to obtain legal counsel. The right to legal representation extends from the investigation stage to the trial stage. The Constitution of the United Republic of Tanzania guarantees the right to legal representation, and the Constitution guarantees that a person who is charged with a criminal offence is eligible for a fair trial, which includes access to legal representation.<sup>14</sup>

In the case **Leonard Satu Mashabara Vs Republic & 4 Others**<sup>15</sup> the court speaking through Mwalusanya, J (as he then was) pronounced itself in the following terms:

*"The legal representation for an accused is a right which is almost universally recognized. In some jurisdictions the right is a constitution right. In Tanzania the right is provided for in section 190 of the CPC (now section 310 of the CPA). That right is so jealously guarded by the law that if an accused is deprived of it, through no fault of his own and through no fault of his advocate and he is in the end convicted, that conviction*

<sup>7</sup> Legal protection of the suspects to not experience violence in the investigation process. "International journal of advanced research, undefined (2023).

<sup>8</sup> Nathalie, Laurent. "5. La notion de suspect en matière pénale." undefined (2001).

<sup>9</sup> Beltida Bengesi & 2 Others vs The Attorney General (Misc. Civil Cause No. 16 of 2022) [2023] TZHC 23997 (16 June 2023)

<sup>10</sup> Aafke, Diepeveen., Jan, Svennevig., Pawel, Kazimierz, Urbanik. "2. Suspects' opportunities to claim their legal

rights in police investigative interviews." International Journal of Speech Language and The Law, undefined (2022).

<sup>11</sup> Ashlee, Beazley., Anna, Pivaty. "3. The right to silence in pre-trial investigations:" THE NEW JOURNAL OF EUROPEAN CRIMINAL LAW, undefined (2021).

<sup>12</sup> Section 52(1)

<sup>13</sup> ibid

<sup>14</sup> Article 13(6)

<sup>15</sup> (Criminal Revision No. 24889 of 2024) [2024] TZHC 8024 (17 September 2024)

*cannot be allowed to stand on appeal. It must be quashed."*

***Right to be brought before a court within a reasonable time.***

It is the trite principle of the law that the suspect must be brought to the court within a reasonable time. Also, in any criminal procedure, it is well-known that justice delayed is justice denied (*justitia Dilata Est Justitia Negata*)<sup>16</sup> However, there must be a balance between expeditiousness and justice to parties in a case."<sup>17</sup> When determining a matter to provide justice to the parties, expeditiousness is an important principle to adhere to in our criminal justice system and one of the rights of suspects during the interrogation process in Tanzania, as provided in the case of *Beltida Bengesi & 2 Others vs The Attorney General*<sup>18</sup>

*"...the arrested person must be brought before a court within a reasonable time and usually within 48 hours, not to be compelled a person arrested to make a confession or admission which could be used in evidence against him or her, an arrested person be given the right to be segregated from convicted persons; and an arrested person has the right to be released from detention, with or without bail unless the interests of justice require otherwise."*

***Right to be informed about the Charge.***

During the arrest, a suspect has a right to be informed by the arresting police officer about the charges he is facing, including the kind of offence alleged to have been committed and all other necessary information. Before a police officer starts an interview with a suspect, he must inform the suspect about his rights and the consequences of his statement. The aim is to ensure that a

suspect does not incriminate himself during police interviews. In the case of *Beltida Bengesi & 2 Others vs The Attorney General*,<sup>19</sup> the Court emphasized this right and stated as follows.

*The person arrested must be informed of the reason for the arrest at the time of, or as soon as practicable after, the arrest; informing the person to be arrested of the right to remain silent, and be warned of the consequences of making any statement..."*

**Police interview**

A police interview is a formal questioning process where law enforcement seeks to gather evidence regarding a suspected criminal offence. A police interview refers to a formal interrogative procedure conducted by the police officer with a suspect, witness, or victim in connection with a criminal investigation. A police interview refers to the process where law enforcement questions individuals, particularly suspects or witnesses, to gather evidence.<sup>20</sup> The rive of the interview is to accumulate information, obtain statements (caution statement and confession), and obtain particulars related to the crime. It takes place when a person is suspected to have involvement in the commission of a crime or when one is a victim or a witness to an alleged crime. The interview is conducted formally, that are electronically recorded and conducted. The main purpose is to assist in gathering evidence about the alleged offence. A police interview is a broad term used whenever the Police question the suspect about a crime.

The rationale of a police interview of a suspect is specifically to ascertain whether the suspect committed the alleged offence or not. Also, is crucial to gather evidence in criminal

<sup>16</sup> *Gurmit Singh V. Meet Singh & Another*, Civil Appeal 256 of 2018 [2022].

<sup>17</sup> *Nyanza Road Works Ltd V. Giovanni Guidon*, Civil Appeal no. 75 of 2021 [2021].

<sup>18</sup> (Misc. Civil Cause No. 16 of 2022) [2023] TZHC 23997 (16 June 2023)

<sup>19</sup> (Misc. Civil Cause No. 16 of 2022) [2023] TZHC 23997 (16 June 2023)

<sup>20</sup> Aafke, Diepeveen., Jan, Svennevig., Pawel, Kazimierz, Urbanik. "2. Suspects' opportunities to claim their legal rights in police investigative interviews." *International Journal of Speech Language and The Law*, undefined (2022).



investigations, together with identification of the suspect and building a prosecution case.

### **Legal Framework on the Application of ICT During the Police Interview in Tanzania**

#### **Criminal Procedure Act.<sup>21</sup>**

The Act provides due to be shadowed in the investigation of crimes, treatment of the suspects, the conduct of criminal trials and for other related purposes. The Act is a roadmap for dealing with handling criminal trials in Tanzania. The Act provide for the things which has to be considered during interviewing the suspect whereby the Act provide for the requirement whereby the Act give mandates to a police officer to ask questions to the suspect.<sup>22</sup> The police officer is required to \inform the suspect about his rights, that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address and he may communicate with a lawyer, relative or friend.<sup>23</sup> However, the police may refuse the right to communicate with the lawyer upon sufficient cause.<sup>24</sup> Also, the police officer must introduce himself and his rank in a language understood by the suspect(s).<sup>25</sup>

Moreover, the Act provide for the requirement of recording the interview of the suspect by the police officer, the Act provide that a police officer who interviews the suspect with the intention of discovering whether the person has committed an offence or not shall cause the interview to be recorded, unless if it is impossible to do so.<sup>26</sup> It has been provided by the law that;

*“(2) Where a person who is being interviewed by a police officer for the purpose of ascertaining whether he has committed an offence makes, during the interview, either orally or in writing, a confession relating to an offence, the police officer shall make, or*

*cause to be made, while the interview is being held or as soon as practicable after the interview is completed, a record in writing, setting out- (a) so far as it is practicable to do so, the questions asked of the person during the interview and the answers given by the person to those questions; (b) particulars of any statement made by the person orally during the interview otherwise than in answer to a question; (c) whether the person wrote out any statement during the interview and, if so, the times when he commenced to write out the statement; (d) whether a caution was given to the person before he made the confession and, if so, the terms in which the caution was given, the time when it was given and any response made by the person to the caution; (e) the times when the interview was commenced and completed; and (f) if the interview was interrupted, the time when it was interrupted and recommenced.”<sup>27</sup>*

The Act further provide that an interview of a person by a police officer may be undertaken by using an audio or video recording device,<sup>28</sup> whereby the person interviewed shall be informed of the use of the recording device,<sup>29</sup> furthermore, the Act provides that upon completion of the interview the copy of the recording shall be made available to the person interviewed or his legal representative.<sup>30</sup> Moreover, the Act provide the requirement for a police officer to provide a certificate of completion of the interview<sup>31</sup> and the person interviewed shall sign the certificate supplied with a copy of that certificate<sup>32</sup>, save that, the requirement to read each page of the record and sign the certificate at the end of the record shall not apply.<sup>33</sup>

The Act provide for the requirement that the recording shall be used as evidence of the content and conduct of the interview without the

<sup>21</sup> Cap 20 RE 202

<sup>22</sup> Section 52

<sup>23</sup> Section 53(c)(i)(ii)

<sup>24</sup> Section 54 (i)(ii)

<sup>25</sup> Section 53(a)(b)

<sup>26</sup> Section 57(1)

<sup>27</sup> Section 57(2)

<sup>28</sup> Section 57(5)

<sup>29</sup> Section 57(5)(b)

<sup>30</sup> Section 57(5)(c)

<sup>31</sup> Section 57(5)(d)

<sup>32</sup> Section 57(5)(d)

ection 57(5)(d)

requirement for a written record.<sup>34</sup> Although the Act provides for the aspect of video and audio recording of suspect interviews the Act does not unambiguously outline acceptability standards for recorded interviews. The Act gives law enforcement officers the discretion power to conduct interviews as they deem fit, which can lead to varying practices regarding the recording of suspect interviews. The Act does not provide for the requirement for a police officer to give the reason as to why he refrains from the audio and video recording of the police interview.

### **Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules.**

In November 2023, the Chief Justice of Tanzania issued the Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules<sup>35</sup>. The Rules were issued so as to enhance the protection of the rights of suspects, and increase the exactitude of statements made by the suspect during police interviews, it also helps to ensure that suspects' rights are fully protected and that suspects are not coerced or mistreated during the police interview. Furthermore, the recordings of the police interview can help to prevent miscarriages of justice by conserving what is said during suspect interviews. Moreover, the records of the interview can be used as a reference during training, feedback, and research as well as it helps to motivate police to improve their interviewing skills.

The rule provides for the requirement to record the police interview either via audio or video records, though the requirement is at the discretion of the police officer responsible for conducting the interview, the rule provides as follows;

*“An interview of a suspect by the police officer may be recorded in form of video or audio.”<sup>36</sup>*

The Act provides that the video and audio record of the police interview must be clear that is both picture and audio of the interview.<sup>37</sup> The position of the camera in case of the video recording of the interview must be clear and must show the wide coverage of the room where the interview is conducted.<sup>38</sup> The rule provides for the requirement of informing the suspect about the recording of the interview and how it operates during the interview.<sup>39</sup> After that, the police officer must ask the suspect to introduce himself, inform the suspect about his rights, must state where the interview is conducted (where), the time of the interview and the date.<sup>40</sup>

After the commencement of the recorded police interview, no one is allowed to enter the interview room, if it is necessary that he/she has to be there then the police officer conducting the interview must request his identity and purpose for entry.<sup>41</sup> In case of malfunctioning of the recorder the interview must be postponed, the interview shall start de novo in such manner as may be specified in that behalf.<sup>42</sup> The manner through which the interview can be continued is at the discretion of the police officer responsible for the suspect interview. In case of changes of the medium recorder has to be changed due to running out of capacity then the police officer must inform the suspect about the same, that in case the interview is recorded in more than one device each must be identified by numbers.<sup>43</sup> The rule provides for the requirement of an interpreter during a police interview.<sup>44</sup> In case of a break during the interview, the break must be recorded as to the time and duration of the break, during the break the suspect may vacate the room or remain in the interview room.<sup>45</sup>

While audio and video recordings of police interviews serve to enhance transparency and accountability, these shortcomings highlight help in addressing these limitations is essential to

<sup>34</sup> Section 57(6)

<sup>35</sup> GN No. 792; published on 3<sup>rd</sup> November 2023

<sup>36</sup> Rule 4(1)

<sup>37</sup> Rule 4(2)

<sup>38</sup> Rule 5(1)

<sup>39</sup> Rule 6(a)(b)(c)

<sup>40</sup> Rule 7 (1)(a)(b)(c)(d)(e)(f)(g)

<sup>41</sup> Rule 8(1)(2)

<sup>42</sup> Rule 9

<sup>43</sup> Rule 11(1)(2)

<sup>44</sup> Rule 10

<sup>45</sup> Rule 12(1)(2)(3)(4)(5)

ensuring that recorded evidence remains a reliable component of the investigative process, issues related to discretionary power the rule gives law enforcement the discretion to conduct audio or video recording of the police interviews as they see fit, which can lead to varying practices regarding the recording of those interviews, malfunctions of the recording devices can lead to incomplete or unusable evidence. The recording of interviews raises momentous privacy issues, predominantly if delicate personal information is disclosed. There are no clear and adequate legal implications regarding the storage, handling, and distribution of recorded materials, particularly regarding amenableness with data protection laws. The audio record of the police interview may not capture the gradations of verbal communication, such as tone, modulation, and body language. These essentials are critical in understanding the context of statements made by the suspect, which can lead to misinterpretations when merely relying on audio.

Notwithstanding a remarkable step made for the protection of the rights of suspects during police interviews with suspects by accommodating the application of ICT in recording police interviews with suspects through the 2018 amendment of **The Criminal Procedure Act (CPA)**<sup>46</sup> vide The amendment introduced by Act No. 7 of 2018<sup>47</sup> which amended section 57 of the Act by adding section 57(5)-(7) introducing the application of audio and video recording devices during the recording of the police interview with suspects, followed by the rules made thereunder in 2023 by the Chief Justice, **Criminal Procedure (Audio and Video Recording of Interviews with suspects) Rules**<sup>48</sup> still the intention has not been fully realized.

The said amendment of the law to accommodate the application of ICT in police interviews with suspects, interviews of police with suspects are still conducted without the use of ICT devices. There are still complaints of violation of the rights

of suspects during police interviews with suspects. The amendment to the CPA and the Rules confers wide discretion to the police officer<sup>49</sup> to decide whether to use a Video/Audio device or rather to use the conventional secret paper-based mode. The discretion being conferred to police officers who are mostly complained for violation of suspects' rights is likely for them to discourage the application of ICT, therefore this discretion becomes a base of justification for the non-application of ICT devices by police officers.

## FINDINGS AND DISCUSSIONS

The ultimate purpose of this paper is to analyze the role of the application of ICT devices during the recording of the police interview in the protection of the suspect's rights. The researcher presents laws and practices in line with the data collected and obtained in conducting the research to achieve the main objectives of this research and test the hypothesis. The part is broken down into subtitles relevant to the objectives and the hypothesis of the study,

### ROLE OF ICT IN POLICE INTERVIEW WITH SUSPECT

Police investigation interview is a significant constituent of the criminal justice system. It allows law enforcement officers to pucker information about the crime victims, witnesses, and offenders. This information can be used to recognize suspects, ripen leads, and shape cases for prosecution. Police interviews can help to ensure that innocent people are not mistakenly accused of crimes. By interviewing witnesses and suspects, investigators can understand better what transpired and who is accountable. This helps to thwart breakdowns of justice. The use of ICT in police interviews brings new attention to criminal justice, it comes with a number of benefits and cures a lot of miscarriage of justice that occurs prior to its application. The following are the role of ICT in protecting suspects' rights.

<sup>46</sup> Cap 20 RE 2022

<sup>47</sup>Section 9 of The Written Laws Miscellaneous Amendment Act, No.7 of 2018

<sup>48</sup>GN No. 792; published on 3<sup>rd</sup> November 2023

<sup>49</sup> Section 57 of The CPA and Rule 4 of No. 79 of 2023



***Protection of the suspect's rights***

The use of ICT during Police interviews plays an indispensable character in the preservation, maintenance, and protection of the rights of suspects during the police interview. The law requires the suspects to be informed of their rights earlier being interrogated. These rights include the right to remain silent and the right to have an attorney present. Once the interview is recorded, police officers will make sure that they inform the suspects about their rights, but once the interview is not recorded there is a high chance of the police officer informing the police officer. The use of ICT especially audio and video recording of the police interview helps in ensuring that law enforcement officers inform the suspects of their rights prior to interrogation.

***Maintain transparency and accountability.***

There are some controversial issues that exist during police interviews despite it being an essential part of the criminal justice system. One of the apprehensions is that coercive interrogation manoeuvres lead to false confessions and self-criminalization by the suspect. This happens when suspects undergo torture, threats, or physical abuse. By the use of ICT such as Audio and Video recorders, law enforcement officers will not use force during police interviews since everything is recorded and will be used as evidence before the court. Audio and video recording of the police interview reduces the opportunity for suspects to later misleadingly repudiate that they have made certain confessions or admissions. Audio and video recording can provide a comprehensive and dependable record of the interview process, thereby momentarily smoothing the investigation of any allegations of ill-treatment.<sup>50</sup> This is in the interest both of persons who have been ill-treated during the police interview and of police officers confronted with unsubstantiated allegations that

they have betrothed in ill-treatment or psychological pressure toward the suspects during the interview.

***Training and Improvement***

Recorded interviews can be used for training law enforcement personnel on appropriate interviewing procedures and the prominence of respecting and protecting suspect rights during the police interview. It's through records of interviews that law enforcement can learn as to areas that need improvement whereby this will contribute to building a better practice in law enforcement.

***Public Trust and confidence***

The audio and video recordings of police interviews play a vital role in enlightening public trust and confidence in the criminal justice system by encouraging transparency, accountability, and the integrity of the police interview process. These recordings serve as objective evidence that can be reviewed and inspected, thereby nurturing a sense of fairness in law enforcement practices. Recorded interviews can capture critical details from the suspect during a police interview, while audio and video recordings significantly contribute to public trust, there are concerns regarding their interpretation and the potential for misuse.<sup>51</sup>

**EFFECTIVENESS OF THE LAWS ON THE APPLICATION OF ICT IN POLICE INTERVIEW WITH SUSPECTS**

In Tanzania, the use of ICT during police interviews has been provided by the Criminal Procedures Act<sup>52</sup> and Criminal Procedure (Audio and Video Recording of Interviews with Suspects) Rules.<sup>53</sup> Whereby these laws provide for the requirement of using ICT during police interviews, that is, the Audio or Video recording

<sup>50</sup> D. David, "A Window into the Interviewing Process?" The Audio-visual Recording of Police Interrogation in New South Wales, Australia." Policing & Society (2006).

<sup>51</sup> H. M. Wasserman. "Police Misconduct, Video Recording, and Procedural Barriers to Rights

Enforcement." Social Science Research Network, null (2017).

<sup>52</sup> Cap 20 RE 2022

<sup>53</sup> GN No. 792; published on 3<sup>rd</sup> November 2023

of police interviews, the Act provides that the police officer may record the police interview and that the law provides as to how such interviews can be conducted. From the provision of the law, it is very clear that the law provides for the requirement to record the police interview.

Rule 4(1) of the Rules<sup>54</sup> provides the requirement of Audio and video recording of the suspect interview whereby it states as follows;

*“An interview of a suspect by the police officer may be recorded in form of video or audio.”*

Also, the same has been provided in section 57(5) of the Criminal Procedure Act, whereby the provision states as follows,

*“An interview of a person by a police officer under this section may, if available, and subject to sections 53, 54 and 55, be undertaken by using an audio or video recording device and in such circumstances...”*

The use of the term **“may”** within the phrase shows directly that it’s upon the discretion of the police officer as to whether they can record the interview or not, which results in non-recording of either audio or video, of the police interview within Tanzania. It has been observed by the author that out of 100 police interviews only 1 or none of the interviews is recorded either audio or video. As shown in the case **The Republic vs. Ahmad Malaysia Madi & 3 Others**<sup>55</sup> whereby the court stated as follows;

*“As for using audio/video recording under section 57(5) of CAP 20 RE 2019, the same may be done by the police if it is available. Hence, it is an option availed to the officer recording the statement.”*

It is clear that since there is no mandatory requirement for recording police interviews police officers opted for traditional methods of recording

police interviews (paper secret recording) of recording police interview. Whereby most of these interviews are being challenged before the court, and even suspects end up repudiating or retracting from confession and admission made before the court, this is because suspects know directly that the court will never convict based on a repudiated or retracted a confession that is why most of the suspect tends to reject statements that they made during police station because no one knows as to whether they made them or not. Therefore, to avoid suspects retracting their evidence there is a need for recording the police interview as stated in the case of **Republic vs Mwita Koroso Mwita Johanes and Others**<sup>56</sup> whereby the court stated that;

*“Invoking and putting to use of the provisions of the above law is timely. It is opportune because then a witness will not be able to tell the court that he was tortured while he was not because the scenes and circumstances would be recorded in a device showing his moving picture and even voice. If subsections (5) and (6) of section 57 of the CPA be put to use, repudiations and retractions will come to an end, or if they are not, deciding on them will be a lot easier than now and with less a hassle of litigation.”*

It should be noted that the audio and video recorded interview is vital evidence to ensure accuracy and fairness in criminal justice. It is clear particularly when the analysis is properly done after following all the necessary procedures from the collection of evidence via video or audio recorded, storage, transfer for analysis and method(s) of analysis employed before the results are out and tendered in court. As shown in the case of **Republic vs Mwita Koroso Mwita Johanes and Others**<sup>57</sup> whereby the court stated that;

*“The last aspect is advisory. It is advice or a reminder to those in criminal justice administration dealing with investigation of*

<sup>54</sup> *ibid*

<sup>55</sup> (Criminal Session Case No. 3 of 2022) [2024] TZHC 7939 (30 August 2024)

<sup>56</sup> (Criminal Session Case 28 of 2019) [2020] TZHC 462 (6 March 2020)

<sup>57</sup> (Criminal Session Case 28 of 2019) [2020] TZHC 462 (6 March 2020)

*crimes, particularly those whose official duties include recording of statements of criminal suspects. This Court has been constrained to give this advice because of the technical course that this case has taken. The point is that there is currently a modified and less controversial manner of recording suspects' confessions under the provisions of the CPA."*

In this case, the trial judge emphasized the necessity of recording the police interview to ensure clarity in the criminal justice system, the trial judge found it necessary for the police officers to conduct audio or video recording of the interview despite the time of the judgment no enacted law covers the aspect of audio and video recording apart of the CPA, the trial judge stated that;

*"That said, the investigation authorities, if they have not, are advised to come out of tradition and embrace this scientific and sure way of recording suspects' statements and confessions. The authorities should not wait for the rules to be made under subsection (7) of section 57 of the CPA, because subsection (5) with its paragraphs (a), (b), (c) and (d) give sufficient guidelines to record statement by using video and audial recording devices. That is so because, as far as courts are concerned, it is not mandatory that subsection (7) must be acted upon first for subsection (5) to come into force. There is no such requirement in that Act."*

The existing legal frameworks accommodate the use of ICT during police interviews, however, the aspect has not been effectively realized as the same is not a mandatory requirement.

## CONCLUDING REMARKS

The current laws directing the application of ICT devices in recording police interviews by either audio or video devices have not been effectively practised. The Criminal Procedures Act<sup>58</sup> should be amended to include audio or video recordings

of the police interview from a discretionary to a mandatory requirement during a police interview of the suspect so as to maintain the protection of suspect rights during a police interview.

## Recommendations

Based on the findings and analysis of this study, the author recommends the following:

The law should be amended to include provisions which require police officers to account for failure to use ICT devices in every case where they opt for a traditional mode of recording, and the reason for the same must be sufficient and adequate enough.

On the other hand, the laws should provide the means through which recorded interviews can be stored and managed to avoid manipulation of the record of the interview and protection of the right to privacy of the suspect.

Furthermore, the law should be amended to include the application of other ICT devices such as the use of CCTV cameras, Artificial intelligence (AI) and other computer systems depending on changes in science and technology instead of audio and video devices only.

It is recommended that the Police Force should make efforts to ensure that they are supplied with sufficient ICT infrastructures for conducting audio or video recording of the police interview and that they should be given training to get the required skills to enable them to record the audio and video of the police interview with the suspect. Training on the application of ICT devices in recording interviews with suspects should be included as mandatory training in police courses and repeated training should be conducted to adopt the rapid changes in science and technology. It is also recommended that the government should ensure that there are sufficient and efficient ICT infrastructures in police stations that can facilitate the process of recording the police interview.

<sup>58</sup> Cap 20 RE 2022

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