

# EFFECTIVE ADMINISTRATION OF THE POLICE AND PROSECUTION IN CRIMINAL JUSTICE: THE PRACTICE AND EXPERIENCE OF THE UNITED REPUBLIC OF TANZANIA

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## I. INTRODUCTION

The goal and principal objective of any criminal justice system is the effective and efficient delivery of justice. The Administration of the Police and Prosecution, central players, in the justice delivery system must be guided by the cardinal maxim that justice must be manifestly seen to be done at all times. This principle however is more easily stated than applied to a set of facts in a given case. A supposedly just outcome of a case could be viewed with criticism or open controversy by different people. In developing countries where the principles governing the criminal justice system were modeled on the practices and principles acceptable to the former colonial rulers, the criminal justice system, the laws and principles governing it may remain an incomprehensible complexity for the majority of the rural uneducated people. In such a case it is more likely the perception of justice of such people would vary markedly from the official position. In most jurisdictions the police or equivalent institutions have the monopoly of the investigative process mainly because the bulk of crimes are reported to the police. In some jurisdictions the police in addition to investigation undertake the prosecution of suspects as in the case of Tanzania and some common law jurisdictions. Yet in other jurisdictions the functions of investigation and prosecution are carried out by different organs. In England and Wales where since the emergence of statutory police forces in 1829, the police until recent years, handled both the investigation and prosecution of suspects; a constantly voiced criticism was that the police responsibility for investigation and prosecution could lead to over-vigorous and one sided preparation and conduct of prosecution (Hetherington 1989:4).

Since 1986, in England and Wales prosecution is the responsibility of an independent Crown Prosecution Agency clearly separated from the investigative role of the police.

On the other hand the very role of prosecution does raise a number of issues. What role should a public prosecutor play? Should he/she be an investigator in the sense that the prosecutor takes part in the investigation as well as the prosecution of offenders? Under the Inquisitorial System Prosecution Agencies routinely participate in investigations alongside the police, a practice which would be frowned upon in common law (Adversary System) jurisdictions. A legitimate question would be which system (Adversary/Inquisitorial) best responds to the delivery of justice? Is an objective answer possible to this question?

These are but a few of the complex issues likely to arise when considering the investigative as well as prosecution roles. We would be over-ambitious to promise to undertake a detailed examination of all of them. Though where we deem fit some of them may be broached over, this paper has a more modest objective.

It sets out to examine the practice and experience of the United Republic of Tanzania in relation to the structuring, organization as well as management of two crucial processes in the justice delivery system namely the investigative and prosecution processes. In part one we discuss the functions of the Police in Tanzania as well as its administrative structure. Since the police essentially deal with crime we also take some time off to examine the crime situation in the country generally in order to acquaint ourselves with the magnitude of the task of dealing with crime which faces the police as well as the citizens' assessment and reaction to crime. Since our examination of the police organizational and administrative structure points out some outstanding problems we address these in the final section of this part. In part two we examine the investigation machinery of the police essentially exercised through its Criminal Investigation Department. We take a detailed look at the mandate of the Criminal Investigation Department as well as its place in the administrative structure of the Tanzania Police Force. The investigation of crime gives rise to complex issues and problems. We examine these in the final section of this part.

Since the purpose of investigation is among other things to determine whether a prosecution will be instituted or not we discuss the process of prosecutions in Part three of this paper. Here we have occasion to examine the central role of

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the state in relation to criminal prosecutions, the control of public prosecutions by the Director of Public Prosecutions as well as some inherent problems in the set up and execution of the prosecution process.

In the Tanzania set up the Public Prosecutors belong to and are employed by the investigative agency – the police and are thus subject to the same disciplinary and supervisory control by their superiors like other police officers. In this context it may be said to be more of a situation of interaction between the public prosecutor and the police officer investigating a particular a case than that of co-operation between the prosecutor and the police where the assumption is that the two belong to different agencies.

This unique position notwithstanding there are issues which merit consideration within the context of the set up. We address these issues in Part Four of this paper which for want of a better term we reluctantly title co-operation between the prosecutor and the investigator. This leads us to Part five where we briefly examine the question of independence from arbitrary political and external influence or indeed the absence of it, where the process of investigation and prosecution is concerned. Finally we attempt to weigh up a number of propositions in relation to the future of the criminal justice system in Tanzania.

## II. THE POLICE: ITS FUNCTIONS AND ADMINISTRATIVE STRUCTURE

### A. Functions

The Tanzania Police Force is a national police force. The functions of the Police Force are stated thus in the Police Force Ordinance.

*“The Force shall be employed in and throughout the United Republic for the preservation of peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guarding of offenders and the protection of property, and for the performance of all such duties shall be entitled to carry arms.” (s.5 of the Police Force Ordinance Cap.322).*

The Inspector General of Police has overall command and superintendence of the Tanzania Police Force subject to general directions of the Minister for Home Affairs. In the administration of the Police Force the Inspector General is assisted by four Commissioners, heading the departments of: Administration and Finance, Operations and Training, Criminal Investigation and the fourth commanding the Police force deployed in Zanzibar. For administrative purposes Tanzania is divided into twenty five regions: twenty on Mainland Tanzania and five in Zanzibar. A Regional Police Commander is appointed by the Inspector General to command the Police Officers deployed in each region. In turn each region is divided into a number of districts and an officer is appointed by the Inspector General to command each district for which responsibility he/she is answerable to the Regional Police Commander. Though Administrative districts do not always coincide with police operational districts particularly in large urban areas like the commercial capital of Dar es Salaam, suffice to note that there are 123 Administrative districts countrywide with 113 on Mainland Tanzania and 10 in Zanzibar. Districts have a number of police stations each under their command and an officer of appropriate rank is appointed to command each police station. In urban areas as well as some police stations with extensive jurisdictional areas, police posts, which serve as initial reporting and crime processing centres have been established. Police posts usually have a strength of a few police officers under the command of an Inspector or a senior NCO, depending on size, location and frequency of crime in the area.

We noted earlier the functions of the police force. In practical terms, it may be said to be the duty of the police within the context of maintaining law and order to prevent the commission of offences, to apprehend those believed to be committing, about to commit, or to have committed offences with the object of bringing them to justice. The extent to which the police will perform their crime control function efficiently and effectively is influenced by among other factors the prevalence or extent of crime.

### B. The Crime Situation

For the past five years (1996-2000) an average of about half a million crimes are reported to the Police in Tanzania. Figure one illustrates the crimes reported to police over the past eleven years and it is clear that over that period there has been a steady rise of crimes reported to police every year albeit with slight fluctuations in certain years. The increase in the number of crimes reported to police may not be a bad thing in itself. The fluctuation in the statistics of crime reported to police may be a function of the adoption of a particular policing style by the police at a given time. If the police remain in their station houses (reactive style) and wait for victims to report crimes, they may well record fewer crimes as citizens (victims) may for one reason or another neglect to report to police crimes they have been victims of

particularly if they consider the crimes to be minor and thus not worth reporting. On the other hand if the police get out of their station houses onto the street or thoroughfare (proactive style) they may end up viewing more crimes and booking more offenders. While the former (reactive style) may have the effect of reducing the statistical figures, the latter (proactive style) may have the opposite effect.

While we consider the statistics of crimes reported to police to be the best illustration of the crime situation when compared to records held by other organs e.g. the Judiciary or the Prisons Departments for that matter, we are not unaware of their vulnerability to non reporting, which contributes to be the 'dark figure' of crime. Studies carried out in the USA have put the dark figure as high as 35% of recorded crime in relation to specified offences (Ennis 1967). Another study carried out in three London boroughs concluded that only 10% of crime that had occurred was reported to police (Sparks, Genn and Dodd 1977). Closer to home a recent victim survey carried out in the City of Dar es Salaam (Robertshaw, Louw and Mtani 2001) concluded that there was low reportability rates for particular crimes and high reportability rates for others. Thus while 83% of victims of car theft filed a report with the police, the reporting rates for violent crimes were relatively low with only 47% of victims of robbery and 45% of victims of assault reporting to police, respectively. The researchers further found that other crimes like crop theft and simple theft were unlikely to be reported to police. Among the factors identified to be at the core of non reporting are: the distance to be covered to reach the police reporting facility, the perceived seriousness of the crime by the victim, a perception that the police would not be interested or would not treat the crime as worth their effort to solve, fear of reprisals where the perpetrator of the crime and the victim were known to each other or were in an intimate relationship and a perception that the police are too corrupt and may require the victim to pay for the assistance they will give him/her.

The Police function of dealing with crime involves the making of choices. The police have to decide when, how and where to enforce which law and to what extent. We shall for convenience call the making of such choices the exercise of discretion. The discretion to enforce the law is separable into two categories: administrative and functional discretion.

#### 1. Administrative Discretion

The territory of the United Republic of Tanzania covers an area of 945,037sq.km (equivalent to 364,881sq.mi.). It has a population of 32 million as estimated in 1998. Within that context, at the present police strength a police officer is responsible for an area equivalent to 45sq km. and the ratio of police to population is presently 1:1200 persons. Because of the paucity of police officers compared to the area of the country the police have to be stationed in various places in varying degrees of numerical strength. The power to decide on the number of police officers to be posted in any area of the country and that of deciding who to post where is what we call the administrative discretion. This has effect on the work of the police. More police officers deployed to one area may result in booking more criminals and thus higher crime statistics while the converse has the opposite effect.

#### 2. Functional Discretion

While administrative discretion is exercised by the police leadership: the Inspector General, his immediate assistants and heads of units at various levels, functional discretion is exercisable by every police officer of whatever rank. Faced with various criminal incidents for example a police officer attending a road accident has to decide whether to continue to deal with the accident or pursue a pick pocket who is getting away with loot from the accident victims. In a similar dilemma an officer has to decide whether to go after remandees escaping in a stolen motor vehicle or to respond to a call from a night guard at a shop where a burglary has taken place. These are instances of the exercise of functional discretion. Whichever way functional discretion is exercised, it has an effect on the work of the police and its outcome.

### **C. Public Reaction to Crime**

Our purpose for examining the crime situation and crime rates in particular in relation to the police organizational structure and administration is twofold. Increasing crime rates have a negative impact on the quality of life. The prevalence of particular incidences of crime give rise to fear of victimisation among members of the public.

In a study on robbery in London, Sir Leon Radzinowicz made the following succinct observation:

*“In the general increase in crime over recent years there are certain offences which have given rise to more public alarm than others and of these robbery is one.” (Radzinowicz 1961).*

In another study carried out in the United States of America Hunt (1973) was led to the following conclusion: “Ask virtually any American city dweller today what crime he (she) is most apt to be a victim of some day. In all likelihood he (she) would answer “mugging”.

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A more recent crime victimization survey carried out in Dar Es Salaam (Robertshaw *et.al* 2001:95) found that there was a general feeling among the respondents that crime had increased generally and nearly two thirds of those interviewed (61%) felt unsafe in their areas after dark. The survey further reveals that women, young people between 15-25 years, those with the least education and those living in new and established suburbs felt unsafe after dark in their areas of residence.

Fear of crime may lead members of the public to take extraordinary measures in self-protection. More importantly however prevalence of crime leads the citizens to question the efficiency and effectiveness of crime control strategies adopted by the police. This is our second reason for examining crime rates.

The administration of the police has to be structured in such a way as to be able to control crime. Crime is perhaps the stock in trade and *raison d'etre* of police organizations. Which police organizational structure and administrative set up best responds to the crime control mission will definitely be determined by the prevailing conditions in an area, the political set up, the culture and customs of the people etc. Nevertheless the top leadership as well as middle management of police organizations must constantly keep in focus the principal mission of the organizations they lead. We shall have occasion to return to this aspect later on in this paper.

#### **D. Functions of the Police: Problems and Future Prospects**

The problems faced by the police are many. Problems related to the investigative function shall be dealt with in the next part following. We shall for the purpose of this section address problems related to the management and administration of the police, which in turn militate against its effectiveness.

##### 1. Budgetary Problems

The Police Force has serious budgetary constraints. These problems affect the efficiency and effectiveness of the police in terms of its management, administration and above all its ability to discharge its mission i.e controlling crime. In particular budgetary constraints have brought about persistent shortages of personnel, inadequate skills and mobility problems.

##### *(i) Failure to Recruit New Personnel*

With the ratio of police to population standing at 1 to more than 1200 population and one police officer being responsible for more than 45 sq km, the need to recruit new police officers in order to reduce the high ratio is obvious. It is only when there is an adequate number of police officers patrolling the streets that the deterrent effect to crime can be seen and felt by members of the public. Consequently the fear of crime may be reduced and the quality of life enhanced. To this effect the failure to recruit sufficient personnel due to budgetary constraints has affected the effectiveness and efficiency of the police negatively.

##### *(ii) Training*

In the present century when crime is becoming more and more sophisticated the police need new skills in order to meet the challenges of crime. New skills may be transmitted to police officers through training. Budgetary constraints however have made it difficult for the police force to put in place the requisite training to transmit the necessary skills to its officers particularly when the required training is only available in an overseas country. The level of skills of police officers therefore leaves a lot to be desired. Unfortunately a low level of professional skills makes it difficult to sustain high ethical standards which creates fertile grounds for corruption.

##### *(iii) Inadequate Mobility*

Budgetary constraints also restrict the police force's ability to acquire mobility resources like vehicles, motor-cycles, etc. Lack of mobility cripples the police forces ability to respond timely to calls for assistance by the public thus eroding the confidence of the people in the police force, exacerbates the fear of crime thus lowering the quality of life and the public rating of the effectiveness of the police.

##### 2. Conceivable Measures and Prospects for the Future

Budgetary problems may take time to resolve as they depend on the economic ability of the country. The following are however the various measures taken and to be taken in particular to resolve the manpower constraints by tapping on available resources i.e the citizens.

(i) *Auxiliary Police Units*

Assisted by the police declared areas with special policing needs for their areas of undertaking e.g. agricultural, mining concerns or local governments are being encouraged to establish Auxiliary Police Units. Such units are under the command and supervision of the Inspector General of Police although they remain employees of the concerns in question. An application for declaration as a special area has to be submitted to the President of the United Republic through the Inspector General by the management of the concerns involved.

(ii) *Community Policing*

This is a policing strategy aiming at involving the community actively in being responsible for the security of their neighborhood. Initiated on experimental basis a few years ago it is expected to be inaugurated officially on Police Day in July this year.

(iii) *Special Constabulary*

The Special Constabulary system which had been allowed to lapse some years ago will be revived. Negotiations are under way with the Government to fix a rate of allowance to be paid to these citizen volunteers who will assist the police when called upon to do so.

(iv) *Private Security Companies*

Some 200 private security companies have been licensed to provide security to willing customers. However there is at present no law regulating private security companies. In the meantime the Inspector General has issued some guidelines to regulate their activities. Some problems have began to emerge in the form of breach of trust by some employees of some of the private security companies.

### III. THE INVESTIGATION MACHINERY

#### A. The Criminal Investigation Department and its Mandate

We noted earlier that one of the four principal assistants to the Inspector General of Police is the Commissioner of Police in charge of the Criminal Investigation Department. More commonly known as the Director of Criminal Investigation (DCI), he/she is answerable to the Inspector General of Police for the proper administration of, and the control of personnel in the Criminal Investigation Department. The Police General Orders (subsidiary legislation issued by the Inspector General to provide for administration and control of the Police Force) sets out the general responsibilities of the Criminal Investigation Department (CID) as follows in order No. 3:

- a) The prevention of crime.
- b) The efficient investigation and detection of serious crime and incidents.
- c) The collection and collation of all information regarding crime in the country so that the Inspector General and the Government may be kept informed in all matters of criminal interest.
- d) The maintenance of close and effective liaison with all branches of the Force and, in particular with the General Duties Branch.
- e) The maintenance of criminal records and statistics.
- f) The provision of advice and assistance in all investigations giving rise to difficulty or doubt and the seeking of legal advice as may be necessary.

#### B. Serious Crimes

The Criminal Investigation Department is the organ most concerned with the investigation of crime in the United Republic of Tanzania. It may be instructive to note however as we have just seen that the Criminal Investigation Department is mostly concerned with the investigation of serious crime and incidents. The Criminal Investigation Department may thus be said to be a specialised organ for the investigation of serious crimes and incidents. Its personnel must thus possess specialist investigative skills. This also means that the investigation into minor offences – not meriting the classification ‘serious’ is left to the General Duties Branch of the police.

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The table below is a statistical comparison between serious and minor offences reported to police between 1996 and 2000.

**Table 1 Statistical comparison between total crime and serious crime/incidents reported to the police 1996 - 2000**

Year	Annual Total Crime Reported	Annual Serious Crime/Incidents	Statistical Comparison
1996	507,507	97,065	19.1%
1997	528,710	110,026	20.8%
1998	517,078	105,738	20.4%
1999	531,202	113,147	21.3%
2000	510,875	101,984	19.9%

Source: *Police Annual Crime Statistics*.

Statistically, serious crimes/incidents in any one year are likely to form a small percentage of total crime reported and recorded by Police. This is not however to understate the magnitude of work at the hands of the Criminal Investigation Department. Serious crimes/incidents are not only complex but also are likely to be the ones that provoke the outcry of citizens for police action and are the likeliest to give rise to fear of crime.

An overview of the nature of serious crime/incidents will illustrate this point. Serious crimes reported to the Police in Tanzania are broadly classified into three types or categories. These categories or types are crimes against the person, crimes related to property and crimes against social order. Accidents involving rail, air and all forms of marine transport are also classified as serious incidents.

- Crimes against the person are those which injure or affect the person of an individual. They include homicide, rape, sodomy, infanticide and crimes against children or infants e.g. child stealing etc..
- Property crimes are those committed for economic or property gain. They include robbery with violence (mugging) and armed robbery, theft of motor vehicles, frauds against the government, public corporations and private commercial or financial institutions, counterfeiting offences, burglary and stealing involving high value property, theft/illegal possession of firearms and cattle theft.
- Crimes against social order is a rather broad category taking account of the so called victimless crimes like illicit drug abuse, illicit drug trafficking, possession of illicit drugs like cocaine, heroin, cannabis etc... smuggling, possession of illicit liquor, illegal possession of government trophies. Corruption and offences related to the gemstone and precious stones industry also fall under this broad category.
- Accidents involving rail, air and all forms of marine transport viz. ships, steamers, boats, dhows etc.. are also classified as serious incidents because of their potential impact in terms of loss of or injury to life. Road traffic accidents are not included in this category.

Our purpose for examining the categories of serious crimes is threefold. First to illustrate the magnitude of the responsibility of the Criminal Investigation Department. It handles the bulk of investigation into the crimes/incidents at the core of the perception by society as to the effectiveness and efficiency of the police force. The CID is therefore a crucial department for that purpose. Secondly the nature of crimes which are dealt with by the Criminal Investigation Department points to the quality of skills the personnel of the department possess or must possess. We will return to this point elsewhere in this paper. Thirdly by examining these categories of serious crimes/incidents we hope to put in perspective some of the problems we will identify later in relation to the investigative process.

The Criminal Investigation Department is structured in the same way as the rest of the police force it forms part of. At Regional and District levels the CID units are headed by Regional Crime Officers and District Officers in charge of Criminal Investigation respectively. Regional Crime Officers are answerable to Regional Police Commanders and similarly District officers in charge of Criminal Investigation are answerable to District Police Commanders.

### **C. The Machinery of Investigation: Problems and Future Prospects**

We noted earlier the problems affecting the Police Force in their generality. The Criminal Investigation Department as part of the police force is also vulnerable to the problems we examined. In this section we shall concentrate on problems considered unique to the Criminal Investigation Department.

The Judicial Review Commission in its report published in 1977 identified the following major problems in relation to the Criminal Investigation Department. Unfortunately more than two decades later, today, the findings of the Judicial Review Commission still ring true.

The Commission found that:

- a) The system for training investigators was inadequate.
- b) The Police use a chemical/pathological laboratory owned and controlled by the Ministry of Health which is too pre-occupied with matters other than those which relate to criminal investigation to be able to render speedy and prompt services to police cases.
- c) The present ballistic laboratory is inadequate.
- d) The police are not adequately provided with law books, copies of Acts and other material necessary for their work.
- e) The standard and methods of selection and recruitment of trainee police investigators is too haphazard and unlikely to provide the force in general and the Criminal Investigation Department in particular with persons of a high integrity and acumen.

Some of the above problems have good prospects for resolution in future. The selection and training of investigators in specified fields like the investigation of terrorism and related acts has been undertaken. Similarly there are on going negotiations with friendly countries which may result in a lasting solution to the problem of the Forensic Laboratory for the police.

## **IV. THE PROCESS OF PROSECUTION**

### **A. The Role of the State**

*“Every act which the law constitutes to be a crime is, as such, an offence not against the individual who may have been injured by it, but against the community or the State. Where, therefore, an offence has been committed, it ought not be left to the will or the ability of an individual to institute a prosecution, but such a prosecution should be instituted by, and on behalf of the State through (an) appointed officer.”*  
*per Lord Chief Justice Lockburn (Hetherington 1989:9)*

The quotation above now in essence of historical importance only, serves to illustrate the central role of the State in the prosecution of offenders. The prosecution of persons suspected of having violated the law is part of the measures which the government undertakes to ensure on behalf of the State the preservation of peace and order. Indeed the prosecution of suspects forms part of the criminal justice process. The general aim of that process is to punish the guilty and protect the innocent or those whose guilt is not proved beyond reasonable doubt.

### **B. The Control of Criminal Prosecutions**

In Tanzania, except in the Primary Court the task of prosecuting persons suspected of having violated the law is almost entirely undertaken by specific organs of government on behalf of the State. All criminal prosecutions are the direct concern of the Director of Public Prosecutions (DPP). He/she is appointed by the President of the United Republic from among persons qualified to practice as advocates of the High Court of the United Republic and have been so qualified for not less than five years prior to appointment (s. 89 Criminal Procedure Act No. 9/1985, henceforth cited CPA).

The Director of Public Prosecutions has powers in any case in which he/she considers it desirable so to do: (s.90 CPA)

- a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed by that person.

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- b) to take over and continue any such criminal proceedings, that have been instituted or undertaken by any other person or authority, and
- c) to discontinue any such criminal proceedings instituted or undertaken by him (her) or any other authority or person.

The power of the Director of Public Prosecutions to institute or take over criminal proceedings begun by any other person is exercisable by the holder of that office alone or persons acting under his/her direction or authority. However a person or authority that has instituted criminal proceedings may with leave of the court withdraw the proceedings (s.90(3)CPA). Further the Director of Public Prosecutions enjoys full independence and discretion in the exercise of his/her powers. The DPP may not receive any directions from any other person except the President of the United Republic (s.90(5)CPA).

The Director of Public Prosecutions is assisted in the discharge of his/her functions by lawyers (State Attorneys) based at the Chambers in Dar Es Salaam as well as in the zones, of whom however there are too few. We shall revert to this aspect later on.

### **C. Appointment of Public Prosecutors**

In order for the process of prosecution of suspects to function effectively and because of the paucity of state attorneys the Director of Public Prosecutions has been vested with powers to appoint public prosecutors for Tanzania generally or for any specified area of Tanzania or for any specified category of cases (s.95 CPA). It is in the exercise of these powers that the Director of Public Prosecutions has appointed every police officer not below the rank of Assistant Inspector of Police to be a Public Prosecutor. (Criminal Procedure (Public Prosecutors) Order. Government Notice No. 382 of 1943).

In exercise of the same powers referred to above the Director of Public Prosecutions has appointed various other public officers to be Public Prosecutors. As such Labour Officers, Health Inspectors, Postal officials and other public officers prosecute cases related to their occupations. Public Prosecutors so appointed however remain subject to the directions of the Director of Public Prosecutions in the conduct of the prosecution. In Tanzania there is room for a private person to conduct a private prosecution provided he/she seeks and obtains leave from the magistrate inquiring into the case. The private prosecutor may after obtaining such leave conduct the prosecution in person or by an advocate. A private prosecutor may also withdraw from the conduct of prosecution so begun. It must be noted however that a private prosecution so instituted may be taken over or discontinued by the Director of Public Prosecutions as we saw earlier. It is clear therefore that the right of a private person to maintain the conduct of a prosecution is not absolute.

### **D. Supervision of Prosecution by the Director of Public Prosecutions**

It may be argued that all the prosecutions in Tanzania are the business of the Director of Public Prosecutions. In theory, this may be true at least for two reasons. First because the law as we saw it gives power to the Director of Public Prosecutions to initiate prosecutions or criminal proceedings against any person, take over any criminal proceedings begun by any person or authority whatsoever and to discontinue any criminal proceedings whether initiated by his/her office or any other person or authority. The second reason for the theoretical truth of the argument is that all public prosecutors are appointed by the Director of Public Prosecutions and thus subject to his/her control and supervision.

Theoretical truth however sometimes belies the practical truth on the ground. In Tanzania except for those cases where his/her explicit consent is required by law before a criminal proceeding is instituted and prosecution undertaken, the Director of Public Prosecutions may never see or know anything about a case. In cases where the consent of the Director of Public Prosecutions is required before the institution of criminal proceedings not only would he/she demand to see the investigation file and thus evaluate the evidence, but also he/she may give guidance to the investigative agencies. Cases requiring the consent of the Director of Public Prosecutions in Tanzania are in our submission few and far between. The reason is that they comprise offences like raising discontent and ill will among the inhabitants (s.63B of the Penal Code), incest by males or females (s. 158 and 160 of the Penal Code), abuse of office by public officials (s. 96 of the Penal Code) and a handful of other offences, which in reality are not the most common offences.

It is also worth of note in this context that the powers of appointment of Public Prosecutors by the Director of Public Prosecutions are exercised more in generic terms than in specificity. Except in rare cases where specific named persons are appointed Public Prosecutors such appointment is more likely than not to take the form of holders of named offices, or ranks as is the case of appointment of all Police officers holding the rank of Assistant Inspector and above to be Public Prosecutors. While the Director of Public Prosecutions may possibly insist on the basis of law that only Police officers of the appropriate rank act as Public Prosecutors, the decision as to who becomes promoted to that rank is clearly not



that of the Director of Public Prosecutions but that of the Police Force – the agency which employs the public prosecutor. This is not a position unique to the Police agency, it is also true for other government departments where the appointment of Prosecutors is done in generic terms rather than specific named persons. Need we point out here, however, that generic appointment has the convenience of perpetuity when compared to appointment of named individuals. A balance may have to be struck between the perceived advantage and certainty.

In spite of the above limitations the Director of Public Prosecutions does exercise a limited screening in at least three instances: serious cases of particular legal difficulty in the course of investigation of which the Director of Criminal Investigation has found it necessary to seek his opinion, cases in which the consent of the DPP is required before a prosecution may be instituted and cases triable on indictment by the High Court. In all three instances the DPP would be able to scrutinise the case file and guide the investigation where there was a need and finally make the decision to prosecute. In up-country stations the screening would be done by State Attorneys in the Zonal Chambers of which there are nine in conformity with the High Court Registries.

#### **E. The Prosecution Process: Problems and Prospects for the Future**

We have somewhat at length noted some inherent problems associated with the process of prosecution. In this section we shall examine problems related to the control and supervision role of the Director of Public Prosecutions while those related to prosecution by the Police are examined in the next part.

##### 1. Inadequate Personnel

The Chambers of the Director of Public Prosecutions has a serious problem of shortage of personnel at the Headquarters in Dar Es Salaam and at Zonal Chambers up country. This problem was identified as early as 1977 by the Judicial Review Commission. It has not been satisfactorily resolved to day. Shortage of personnel may affect the ability of the DPP to exercise his supervisory powers over Public Prosecutions.

##### 2. Budgetary Constraints

The office of the DPP is under the Ministry of Justice. For a long time this Ministry has had budgetary problems which have threatened to cripple the justice delivery system. The Judicial Review Commission in 1977 pointed out the shortage of law books and law journals at the DPP's Chambers, possibly the outcome of budgetary constraints. Without sufficient materials for reference the very quality and reliability of the decision or opinion of the DPP may be in jeopardy.

##### 3. Conceivable Measures to Resolve the Problems

###### (i) *An Independent Prosecution Service*

The establishment of an independent Public Prosecution Service under the office of the DPP was one of the recommendations of the Judicial Review Commission in 1977. It has not been established to date. In our view its establishment would go a certain extent some of the problems related to the DPP's supervisory role over public prosecutions.

###### (ii) *The Legal Sector Reform Programme*

A reform programme in the legal sector was launched in 1993. Among its terms of reference was an examination of the terms and conditions of service of personnel in the Legal Sector. We are in no doubt it has more work ahead since the terms and conditions of service in the Legal Sector to day do not seem to attract sufficient personnel to be able to resolve the endemic shortages of personnel.

###### (iii) *The Commission on Human Rights and Good Governance*

The establishment of a Commission on Human Rights and Good Governance is an important contribution to the criminal justice system of Tanzania as it will play an important role in educating people as to their rights in addition to listening to their grievances.

###### (iv) *Private Prosecution*

As part of the recommendations of the Judicial Review Commission in 1977 the right to private prosecution was retained. Under s. 99 CPA a private citizen may with leave of the Magistrate institute a prosecution in person or through an advocate. It is an important right provided it does not amount to an abuse of court process, a possible defect curable by the DPP's power to take over and discontinue proceedings.

## V. CO-OPERATION BETWEEN THE POLICE AND PROSECUTORS OR CO-ORDINATION BETWEEN THE INVESTIGATORS AND PROSECUTORS

### A. A Preliminary Issue

It may sound somewhat enigmatic in the case of Tanzania to talk of co-operation between the police and the prosecutor. In our view the term co-operation in this sense assumes that the police and the prosecutor act for or are employed by separate or different agencies. In Tanzania where the bulk of prosecutions are conducted by police officers of the rank of Assistant Inspector and above, who are employees of the Police Force, the same agency which undertakes investigation; the optimum approach would be to discuss coordination rather than co-operation. For this reason and for avoidance of doubt we felt we needed to dispose of this as a preliminary issue; hence our phrasing of the sub-theme in this part in the alternative. In this part therefore we discuss the question of co-ordination of the functions of the public prosecutor and the functions of the investigator as well as other issues incidental thereto. In particular we examine how the work of the public prosecutor is supervised and co-ordinated with that of the investigator, the capacity or preparation of public prosecutors and the inputs into the making of the decision to prosecute.

### B. Supervision and Co-ordination

We saw earlier the structure of the Criminal Investigation Department, and noted that at regional and district levels a Regional Crime Officer and District officer in charge of Criminal Investigation respectively, supervise the criminal investigation units, answerable of course to the Regional Police Commander. Public Prosecutors in the police force fall under the general supervision of Regional Crime Officers, the principal supervisors of crime investigation at regional level. They are however expected to co-ordinate their work with other officers such as officers in charge of Police Stations where the cases submitted to them for prosecution originate directly from police stations as in the case of offences triable in summary proceedings by Subordinate Courts.

There are two categories of investigators. Minor offences are normally investigated by investigators from the General Duties Branch i.e. uniformed officers. Serious offences are investigated by detectives from CID units. While the co-ordination of the investigation into minor offences where such need arises will be the responsibility of the officers in charge of stations, protracted investigations requiring the meticulous collection of evidence will be done by CID units. It is thus not uncommon for cases begun by the uniformed branch to be transferred to detectives in the CID units. Indeed one of the terms of the mandate of the Director of Criminal Investigation in exercise of his/her discretion is to take over the investigation of any crime where deemed expedient to do so. The Director of Criminal Investigation will in befitting cases instruct Regional Crime Officers to act in that regard. This perhaps ties up the equation. With the Public Prosecutor and the investigator both falling under the supervision of the Regional Crime Officer, we may conclude that it is his/her duty to co-ordinate both the process of investigation and the conduct of the prosecution.

### C. Capacity Building

We borrow this term for its convenience and currency in management jargon. We intend here to address the question of what it takes to make a Public Prosecutor in Tanzania. Mr. Justice Chipeta made this succinct observation regarding the qualities of a public prosecutor:

*"Like many occupations the job of a public prosecutor demands intelligence, training, courage, common sense, tact, patience, capacity for hard work and an interest in the job. A public prosecutor with these qualities is certain to derive pleasure and satisfaction from the work, and is an asset to the administration of criminal justice". (Chipeta 1982:xiii)*

The bulk of prosecutions in Tanzania is handled by the Police countrywide. This is a challenge to the administration of the police to ensure that persons assigned the job of public prosecutor have relevant skills. It is a policy of the Tanzania Police Force that prior to assignment to a particular job or function the candidate must undergo training to acquire the relevant skills. A police officer assigned the function of public prosecution will have undertaken at least one of the following five courses: a degree course in law which is a four year programme administered by the Faculty of Law of the University of Dar es Salaam, leading to the award of a Bachelor of Laws degree, a Certificate Course in Law also administered by the same University for at least one year whereby the candidate becomes qualified as a para legal officer, a one year course on Public Prosecution administered by the Institute of Development Management at Mzumbe under the auspices of the University of Dar es Salaam, or a three month Public Prosecution course organized at the Police College, one of the training institutions owned by the Police Force. This course is administered to Police Officers who have previously undergone a six month course covering Criminal Procedure, Criminal Law, the Law of Evidence and

handful of other disciplines. The Public Prosecution course focuses specifically on prosecution skills *viz* ethics, advocacy in general and court etiquette, hence its short duration.

In appreciation of the need for well skilled public prosecutors the Tanzania Police Force in 1972 sought and obtained leave of the Faculty of Law of the University of Dar es Salaam to organize the para legal Certificate Course in Law within the Police Force using the classroom, library and other facilities of the Police College at Dar es Salaam. This arrangement was necessitated by the fact that similar courses organized by the Faculty of Law which were also open to other government departments admitted but too few police officers. Further this Faculty of Law administered course had another disadvantage. Because it was administered on a part time basis it lasted for two years. Two years was considered too long to wait before qualifying just a few public prosecutors. After agreement was obtained to run the Certificate in Law Course at the Police College on a full time basis, now the course runs for one year on a residential basis with an average of 35 police officers participating every year. Lectures are given by qualified lawyers from the Police Force while the Faculty of Law administers the examinations in order to ascertain the quality of teaching and maintain the requisite high standards of the University. The successful candidates become qualified para legal officers ready for deployment as Public Prosecutors and investigators.

Our purpose in dealing at length with capacity building for Police Public Prosecutors in Tanzania is threefold. First to dispel any lingering doubts as to the skills possessed by them to discharge their duties. With the level of training the prospective public prosecutors receive there can be no doubt that they have the requisite skills to discharge their duties in professional style. The second reason is to commend the wisdom and foresight of the top administration of the Police Force. With the bulk of prosecutions, being undertaken by the police and the Director of Public Prosecution's Chambers being unable to offer adequate due to being understaffed, the gap left by this malfunctioning of the DPP's Chambers had to be filled and by personnel with relevant skills and competence. This is what is done by the capacity building scheme for police public prosecutors. The third reason is to lay a foundation for our examination of the integrated roles of investigation, screening of cases and decision to prosecute which we do presently.

#### **D. Police Screening of Cases and the Decision to Prosecute**

The trajectory of a case in Tanzania will normally go through four main stages: reporting by the victim of the crime, gathering of evidence by the investigators, the reading or study of the case file and the making of the decision to prosecute. Each is characterized by the number of activities. On receiving a report by the victim or any person who may be aware of the crime the police officer receiving the report will have to decide whether the report discloses any offence and if so which offence. To initiate the collection of evidence the scene of crime will have to be visited by a senior officer in order to appreciate the circumstances of the event since he/she will be the one to supervise and guide the investigation by issuing appropriate instructions to the investigator. Depending on the complexity of the case the collection of evidence will take a long or short time and at some stage the suspect will be arrested if he/she was not arrested immediately after the commission of the crime. The arrested suspect will be presented to a magistrate's court with a charge on the basis of what appears to be the offence committed after initial inquiries. In any case the suspect may not remain under police custody for more than twenty four hours without appearing before a court. Samples from the scene requiring examination by the Government Chemist will be presented for examination at some stage and the report placed on the case file. After the collection of what appears to be sufficient evidence, the investigator will present the case file to his/her immediate supervisor for preliminary scrutiny and further guidance if necessary. If the supervisor is satisfied the case file will be presented to the Regional Crime Officer who will study the case file in minute detail. This stage sometimes called 'screening' will be done meticulously weighing provisions of the law against the facts as discovered by the investigator.

Need we mention at this stage that Regional Crime Officers have the necessary skills and competence to carry out the screening function. Of the twenty five Regional Crime Officers country wide at least 25% of them are qualified lawyers, the remaining are para legal officers having attended the certificate course in law we described earlier. Their immediate assistants also have similar qualifications in the majority. In Tanzania therefore there is no shortage of legal skills where the study and evaluation of available evidence in a case file is concerned.

After evaluation by the Regional Crime Officer of the evidence on the case file and weighing it up against the law three possible courses of action may follow. The first is the decision to prosecute. It is made where the case has no complex issues requiring superior guidance. In such an instance the local Public Prosecutor is instructed by the Regional Crime Officer to proceed with the prosecution on the basis of the charge as laid earlier or an amended one where appropriate.

Where the Regional Crime Officer is of the view that further evidence ought to be collected the case file is returned to the supervisor of the investigating officer with detailed instructions as to what further action need to be taken and the

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specific pieces of evidence which need to be collected. The third course of action relates to cases with complex issues, cases requiring the consent of the Director of Public Prosecutions, and cases triable on indictment by the High Court. Cases with complex issues are referred to the Director of Criminal Investigation for perusal and guidance. In turn the DCI may seek the guidance of the Director of Public Prosecutions where he/she sees it necessary or give the guidance himself/herself. Cases requiring the consent of the DPP prior to prosecution are also submitted to the Director of Criminal Investigations for perusal. On satisfaction that all the necessary evidence has been collected, the DCI submits the case file to the Director of Public Prosecutions with views and opinion regarding the merits of the case.

All cases triable on indictment by the High Court are submitted to the Director of Public Prosecutions for perusal as well as guidance. More importantly however is that Police Public Prosecutors have no *locus standi* to appear before the High Court. Appearance for prosecution before the High Court is the preserve of the State Attorneys. After perusal of such cases where the Director of Public Prosecutions is satisfied that all the relevant evidence has been collected he/she will instruct a State Attorney to appear before the High Court and prosecute the case. Where the DPP or a Zonal State Attorney is of the view that further evidence ought to be gathered the case file will be returned to the Director of Criminal Investigation or the Regional Crime Officer, as the case may be, with such instructions.

#### **E. The Investigation and Prosecution Roles: Problems and Future Prospects**

The system where the police investigate and prosecute suspects was possibly a result of expediency. It has not been without critics at home and abroad. Critics for example point to the importance of objectivity in deciding whether or not to prosecute. They argue that where the same agency which investigates crimes also makes the decision to prosecute objectivity may be compromised. The Criminal Justice Committee for England and Wales thus observed:

*“The honest, zealous and conscientious police officer who has satisfied himself that the suspect is guilty becomes psychologically committed to prosecution and thus to successful prosecution. He wants to prosecute and wants to win. (Criminal Law Review” (1970:668)*

Among the critics of the set up in Tanzania for almost the same reasons was the Judicial Commission Review Report published in 1977. The Commission wondered whether the appearance of impartiality by the court does not suffer considerably where the officer who conducts prosecution before the court is a member of the organ which investigated the case. In somewhat dramatic conclusion the Commission opined that an accused person brought before the court where the prosecutor, the dock officer and the court orderly are dressed in police uniform may have reason to think that the courts are run by the police. “Am I before a police court?” the accused may well wonder. (Judicial Commission 1977:95).

The Judicial Commission recommended the abolition of the system whereby the decision whether to prosecute or not is made by the same organ – the police which also investigates crimes. Twenty four years later today the system set up almost six decades ago has not been changed.

It is worth of note however here that the administration of the police in Tanzania remains wide awake to the need for objectivity on the part of the police prosecutor while in court. Police General Orders No. 243 directs thus in paragraph 4 (c):

*“Prosecutors **may** and if the accused is not represented **must** bring out any facts and make any objective comment which the facts justify which may tend to mitigate the seriousness of the offence. If the accused is represented, they will ensure that all the facts which may assist the defense advocate in mitigation are known to him” (PGO No. 243 para 4(c) (emphasis supplied)*

With those lucid directives to Police Prosecutors it is clear that the police force's policy is to ensure impartiality and objectivity. Two other problems associated with the integrated system are the apparent delays between first appearance and eventual disposal of the case. In part the delay may be a function of the integrated system and also the irregularity of High Court sessions due to budgetary constraints of the Judiciary. As a result of the delays remand prisoners suffer considerable congestion. In some cases suspects awaiting trial by the High Court have remained in remand prison for up to five years.

1. Conceivable Measures to Resolve the Problems

(i) *An Independent Public Prosecution Service*

The establishment of an Independent Public Prosecution Service as recommended by the Judicial Review Commission in 1977 would go a great extent in relieving the police of the triple role of investigating, deciding to prosecute and actively prosecute. It will also render the impartiality of the court more apparent in our criminal justice system.

(ii) *The Sixty Day Rule*

In order to minimize delays a rule requiring the final disposal of a case within sixty days from the date of its inception was incorporated in the Criminal Procedure Act s.225(4) being part of the recommendations of the Judicial Review Commission in 1977

(iii) *Case Flow Management Committees*

Case Flow Management Committees have been established at Regional and District level to oversee and speed up the trial of cases. Though it has had limited success for budgetary constraints it has the potential for minimizing delays in trials and should have all the support it requires.

(iv) *Parole*

A Parole Law was enacted a few years ago. The concept of parole is however still new in the Tanzania Criminal Justice system. With time and experience the parole system should go some way in reducing overcrowding in the prisons which is considerably serious.

(v) *Checks and Balances*

An important check on the monopoly of functions inherent in the integrated system is the residual power of the Director of Public Prosecutions to take over and withdraw criminal proceedings instituted by any person or authority. It is an important potential balance of the powers exercised by other organs usually without the DPP's knowledge particularly in the decision to prosecute.

## VI. INDEPENDENCE FROM ARBITRARY INFLUENCE

### A. The Setting

We chose to address this sub-theme at this stage of our paper in order to place it in a proper setting after examining the role of police in the investigation and prosecution of crimes. We take independence in this context to mean the absence of external or political formal control or influence brought to bear on the police functions of investigation and prosecution. Independence for this purpose takes two forms: organic independence and structural independence. Organic independence is said to exist where the agency in question is separate from political institutions and thus not subject to their control or influence. We shall take structural independence to be seen to be present where matters before the police for action or decision are attended to on the basis of law alone without any extraneous consideration or influence. This may also be called functional independence.

### B. Absence of Political Influence

In a multi-party democracy it is imperative that police agencies remain separate from politics. It is the only way to ensure that the decisions of such agencies are based on law and law alone. In Tanzania Article 147 (3) of the Constitution of the United Republic prohibits any member of the armed forces including the Police Force to subscribe to or be a member of any political party. It is contended that by this provision of the Constitution members of the police force are unlikely to be influenced by any political considerations and neither may they be dictated to by any political functionary in the discharge of their investigative or prosecution function.

### C. Organizational and Structural Independence

The policing of the United Republic of Tanzania including Zanzibar falls squarely on the shoulders of the Tanzania Police which as we saw is a national Police Force. The Inspector General has overall command of the Police Force. Though the Police Force falls under this Ministry of Home Affairs, it is contended that this is essentially for political accountability only. The Minister for Home Affairs is the parliamentary spokes person for the Police Force and other departments falling under this Ministry of Home Affairs. Further the Minister where need arises may issue general directions to the Inspector General. However, the operational command and superintendence of the Police Force is the responsibility of the Inspector General of Police.

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We may make one observation before leaving this part. Given the set up we briefly examined police action whether related to investigation or prosecution is unlikely to be influenced arbitrarily by politicians or other external organs. The legal setting where police officers are clearly separate from politics and political influence lays a firm foundation for their actions in relation to investigation and the decision to prosecute for that matter to be based on legal considerations alone. Perhaps the para-military command structure of the police force further buttresses this position. A uniform command structure runs from the top command: The Inspector General all the way to the lowest ranking officer: the Police Constable or Detective Constable. In this context police officers at all levels take commands and instructions from their superiors in rank alone which in our view leaves little room, if any, for any extraneous influence, political or arbitrary to be brought to bear on the actions of the police force.

**D. Independence from Arbitrary Influence: Problems and Future Prospects**

The Constitution excludes the police from politics. That may be a guarantee that their operational decisions including the decision to prosecute will not be politically influenced. Similarly the DPP may not receive directions from any other person except the President of the United Republic. That is as far as guarantees can go at law. There are likely problems however. Like other Public Servants senior police officers have no security of tenure of office. On the other hand the DPP is structurally under the Attorney General, an *ex officio* Member of Parliament. The Attorney General ceases to hold office with the dissolution of Parliament and has to be reappointed every five years by an incoming President.

In order to resolve the problem of potential arbitrary influence in the exercise of Police functions there should be certain safeguards. Such safeguards could take the form of clear provisions regarding the tenure of office of specified officers, procedures and mechanisms for their appointment and removal from office as well as their superannuation schemes.

**VII. CONCLUSION**

We have examined in some detail the administrative structure of the Tanzania Police Force in the light of its functions of investigation and prosecution of suspects. This set up where the Police exercise both functions: investigation and prosecution and hence the decision to prosecute has been in existence for more than five decades – since 1943 when the Director of Public Prosecutions appointed Police Inspectors to be Public Prosecutors. We saw the limitations of this arrangement and those of the office of the Director of Public Prosecutions in exercising the decision to prosecute in full. In part the problems we saw may be resolved by establishing an independent Public Prosecution Service under the office of the DPP as recommended since 1977 by the Judicial Review Commission. It should however be established under a law which among other matters shall stipulate its powers, relations with investigative agencies, code of conduct and tenure for its senior officers.

In the year 2000, the Government launched a Public Service Reform programme which is to last through to 2011. The programme admits the constraints under which it has been launched as its slogan runs 'In pursuit of Quality Public Services under severe Budgetary constraints.' In our humble opinion, budgetary constraints notwithstanding, the delivery of justice is an important public service. It is our hope that at an appropriate future time the delivery of criminal justice in all its ramifications will be addressed under the programme.

Finally it is our opinion that the newly established Commission on Human Rights and Good Governance is an important instrument for laying a foundation for reforms in the Criminal Justice system of Tanzania. Concerned as it will be with the education of the public as to their rights as well as listening to their complaints in relation to acts of public officials that infringe good governance principles including corruption it will provide a link to justice for the common man which even the criminal justice system could not provide.

TABLES OF STATUTES CITED

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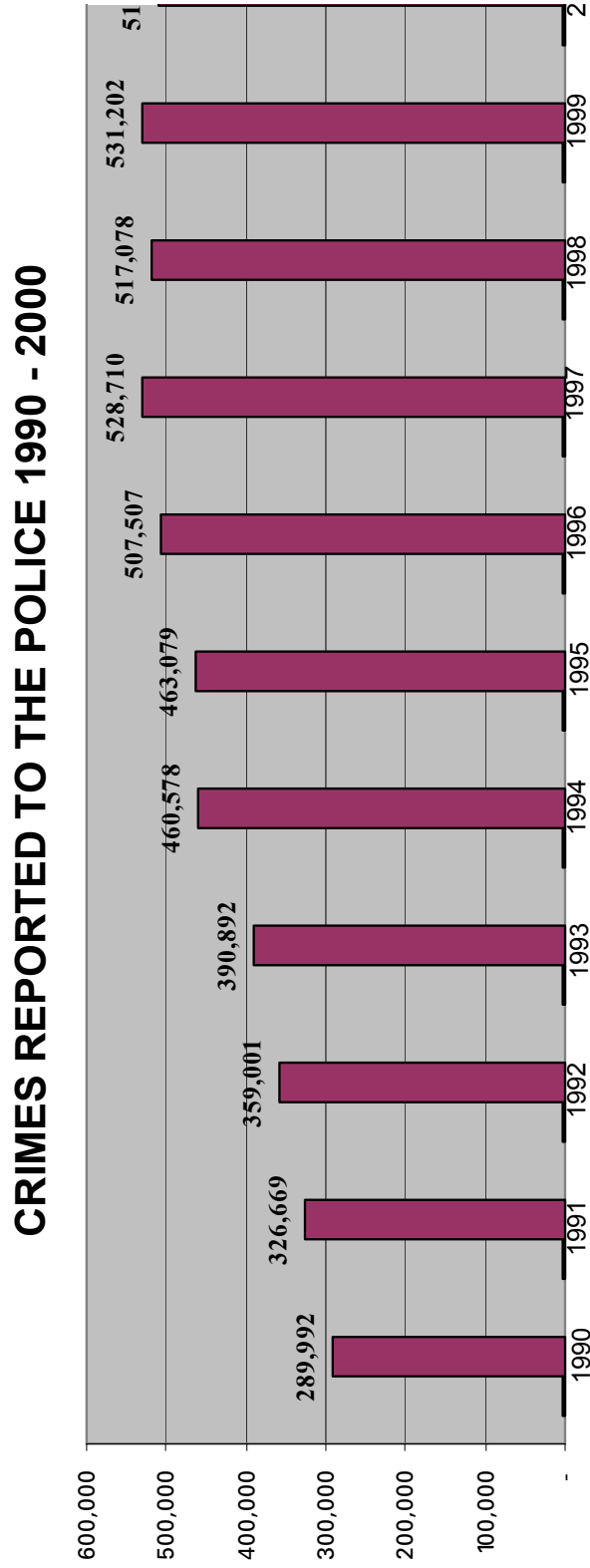
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APPENDIX 1



**FIGURE 1: CRIMES REPORTED TO THE POLICE 1990 - 2000**  
**SOURCE: *Police Annual Crime Statistics***



APPENDIX 2

