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Assessment of the Laws in Promoting Reconciliation in Criminal Matters in Tanzania

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ABSTRACT

In Tanzania, the right to speedy a trial is guaranteed under Article 107A (2)(b) of the Constitution of the United Republic of Tanzania. However, because of undue delay the right to speedy trial is not made accessible to the citizens of Tanzania, therefore speedy trial should be of essence in the administration of criminal justice in Tanzania. The traditional mechanisms of dealing with matters of a criminal nature do not at any stage of the process incorporate ADR as it is done in civil matters, though there are laws in place for the implementation of ADR in criminal matters as well. These laws encourage Courts to promote reconciliation and facilitate the settlement of criminal matters in an amicable way, particularly in cases of common assault of a personal or private nature. It is the reluctance by courts to apply ADR in criminal matters of a less serious nature that has compelled the observations enriched in this paper. The paper aims to assess the effectiveness of the laws in fostering reconciliation in criminal cases in Tanzania. Lastly, the paper examines the challenges to the applicability of ADR in criminal matters

Keywords: *Assessment, Recommendations, Criminal Matters, Tanzania.*

I. INTRODUCTION

Disputes or conflicts are unavoidable in any society since in the development process, human beings interact with one another, then disagreements or conflicts are necessary and must be amicably resolved for friendly relationships to be maintained to enhance development.² By nature, disputes are by-products and an integral part of human interactions that affect life and our relationship with each other both individually and in groups, then it is important therefore to seek effective ways of resolving them.³ Conflicts have been recorded from the early days of humankind starting from the Bible, Qur'an, and similar religious historical documents in different cultures, the said conflicts from early days were resolved by various processes

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² Hamis, T. H, Court Annexed Mediation In Tanzania: Successes, Challenges And Prospects, available at International Journal of Innovative Research and Advanced Studies (IJIRAS) Volume 9 Issue 11, November 2022, at page 5.

³ Ibid.

including but not limited to negotiation, conciliation, reconciliation, mediation-arbitration, and litigation.

Criminal matters, on the other hand, are those offenses that are created by statutes and they attract punishments to the individuals who violate the established laws. No person can be punished for violating a non-existing law. Criminal matters can either be of personal or private nature, or of public nature. Whereas an example of criminal matters of private nature include those offences that affects the rights and interest of an individual such as offences for common assault, obtaining something by false pretense, desertion of children, the fraudulent pretense of marriage, and unlawful compulsory labor, to mention but a few.

The foundation of justice administration in Tanzania is based on formal justice system that is through litigation. Litigation is generally the process of resolving right based disputes through the court system, from filing a law suit through arguments on legal motions, a discovery phase involving formal exchange of information, courtroom trial and appeal. Litigation also encompasses administrative or regulatory processes for establishing legal rights and resolving disputes. The main purpose of litigation is to listen to disputing parties and be able to discover the truth based on the evidence and arguments submitted by the parties. In litigation, the parties come as real adversaries. Here the court concentrates on hearing the parties so as to know who is right and who is wrong in the eyes of the law and pronounce a judgment. However, litigation as the formal process of dispute resolution, sometimes takes so long hence can cost and damage the relationship of the parties. Due to this, the shifting to Alternative Dispute Resolution is of utmost importance.

In Tanzania, there is an immense backlog of criminal cases that are pending at courts of law, caused by several factors including but not limited to; a low number of adjudicators, hardship of procuring witnesses in time, investigation takes so long time to be completed. Thus, in order to manage this backlog, there is a need to encourage the application of reconciliation as one of the forms of alternative Dispute Resolution in resolving criminal cases especially those of a personal or private nature.

II. LEGAL FRAMEWORK REGULATING ADR IN CRIMINAL MATTERS

There are a number of laws that premise the usage of ADR in criminal matters. The framework encompasses both international and domestic laws and they are;

(A) International Framework

a. UN ECOSOC, Basic Principles on the Use of Restorative Justice

Programmes in Criminal Matters, E/RES/2002/12.

The resolution sets forth an elaborative process from prior to the initiation of the restorative processes to the last stage. It stipulates are requirement prior to invoking the process there must be sufficient evidence to tie the offender to the crime in question and both the victim and the offender must voluntarily consent to the use of the process,⁴ that is it is trite that the procedure need only be initiated by the parties and not a third party. It further provides that although the same is consented by parties but they are at liberty at anytime /stage to withdraw their consent and it shall mark as the failure of the process. The Resolution is clear to the effect that any agreement reached by parties in the course of the process have to be voluntary and they should contain only reasonable and proportionate obligations. Further the participation of the offender ought not be used as evidence of guilt in an ensuing legal process.⁵

b. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration was adopted by UNGA resolution 40/34 of 29 November 1985. The Declaration deals with two types of victims; victims of crime and victims of abuse of power. It recognises that criminal disputes are not only resolved through formal mechanisms but they can also be through Informal mechanisms for the resolution of disputes, such informal mechanisms include, mediation, arbitration and customary justice or indigenous practices, thus they should be utilized where appropriate to facilitate reconciliation and redress for victims.⁶

c. Recommendation No. R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters

The Recommendation was adopted by the Committee of Ministers of the Council of Europe on 15th September 1999. The Recommendation states that mediation should be used in penal matters as a flexible, comprehensive, problem-solving, and participatory option complementary or alternative to traditional criminal proceedings and that it enhances active personal participation in criminal proceedings of the victim, offender, and the affected community.⁷ The general principles contained in the Recommendation is that Mediation in penal matters should

⁴ Principle 7 UN ECOSOC, Basic principles on the use of restorative justice programmes in criminal matters, E/RES/2002/12.

⁵ Principle 8 UN ECOSOC, Basic principles on the use of restorative justice programmes in criminal matters, E/RES/2002/12.

⁶ Principle 5 of the UNGA, Declaration of basic principles of justice for victims of crime and abuse of power, UN A/Res/40/34 (29 November 1985).

⁷ The preamble of the Council of Europe: Committee of Ministers, Recommendation No R (99) 19.

only take place if the parties freely consent and should be able to withdraw such consent at any time during the mediation.⁸ It emphasizes that Mediation services should be given sufficient autonomy within the criminal justice⁹ and that Fundamental procedural safeguards should be applied to mediation, in particular, the parties should have the right to legal assistance and, where necessary, to translation/interpretation.¹⁰

(B) Domestic Framework

a. Constitution of the United Republic of Tanzania.

The Constitution is imbedded with both the fundamental objectives and directive principles of state policy whereas the same are non-justiciable, the Constitution obliges the state and all its organs to take cognizance and apply them when exercising their functions. The results of which Article 107A (2)¹¹ provides for the principles that the courts have to comply with when dispensing justice. These principles are important in the administration of both criminal and civil justice in the country. Whereas the basis for ADR although not expressly stated within the constitution is imbedded in the said principles specifically under Article 107A (2) (d)¹² which provides that *to promote and enhance dispute resolution among persons involved in the disputes*. Further, Article 13(6) (a)¹³ recognises the use of courts and any other agency in the determination of rights and duties of the persons. However, it is important to point out that the authority of dispensing justice with accordance to the constitution is vested on the courts¹⁴ and thus it is the primary duty of the court is to promote and enhance dispute resolution between the parties. It is gainsaying that the courts must encourage the parties to end their disputes because it is in the interest of the public that disputes ought to come to an end. But also, the wordings of Article 13(6) (a) recognises the use of other agencies thus therefore, any other agency can be said to constitutes the dispute resolution without litigation, for non-litigation settlement in most if not all circumstances employ the use of alternative dispute resolution.

b. The Criminal Procedure Act¹⁵

It primarily provides for criminal procedural issues and matters ancillary thereto. It is the law that puts in place the mechanisms, institutions, ways and procedures to follow when dealing with criminal matters. The applicability of the law is limited in certain key areas including that it is not applicable in the primary court but applicable in the district court, court of resident

⁸ Council of Europe: Committee of Ministers, Recommendation No R (99) 19, part II.

⁹ Council of Europe: Committee of Ministers, Recommendation No R (99) 19, part II.

¹⁰ Council of Europe: Committee of Ministers, Recommendation No R (99) 19, part III.

¹¹ The Constitution of the United Republic of Tanzania, 1977.

¹² Ibid

¹³ Ibid

¹⁴ Article 107A of the Constitution of the United Republic of Tanzania, 1977.

¹⁵ CAP 20 R.E 2022.

magistrate and the High court in the exercise of their original jurisdictions. Further the Act does not whatsoever apply in Zanzibar but only in Mainland Tanzania.

The provision of section 163¹⁶ is the basis for the use of ADR in criminal matters. This provisions of section 163 has been in the Criminal procedure Act¹⁷ since 1985 when the Act was enacted to repeal the Criminal Procedure Code. Though this provision is limited in scope, it provides for the applicability of reconciliation which is a form of ADR in certain cases. The provision under section 163(1) provides that;

In the case of proceedings for common assault or for any other offence of a personal or private nature the court may, if it is of the opinion that the public interest does not demand the infliction of the penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings or on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed....

Whereas the law under the provision of section 163(2) puts forth a requirement that the same can only be effected by the court where with the consent of the complainant, reconcile the parties or otherwise advise the parties to seek the service of a reconciliator. And the same shall be so after the satisfaction of the court that it is in the interests of the complainant to proceed in such a manner.¹⁸

c. The Criminal Procedure (Plea Bargaining) Rules¹⁹

The Rules are made under the provision of section 194H of the Criminal Procedure Act.²⁰The basic purpose of the rules is for better carrying out of the provisions of plea-bargaining in the Criminal Procedure Act.

The Rules put forth a requirement that the parties to a criminal offence to engage the Court from the beginning by notifying it orally or in writing of the intention to negotiate a plea agreement and such avenue shall not be for such offences provided under section 194F,^{21 22} whereas this current requirement is contrary to the previous practise of the court. The Court as of current has the power to fix a time within to conclude a plea agreement. The maximum time that the court

¹⁶ The Criminal Procedure Act Cap 20 R.E 2022.

¹⁷ Act No.9 of 1985

¹⁸ section 163(4) of the Criminal Procedure Act Cap 20 R.E 2019.

¹⁹ GOVERNMENT NOTICE NO.180 of 2021.

²⁰ Cap 20 R.E 2019

²¹ The Criminal Procedure Act Cap 20 R.E 2022.

²² Rule 3 ibid

may grant is 30 days and the court shall not participate in plea negotiations between the parties,²³ thus this reflects one of the key principles of ADR which is party autonomy.

The Rules also set out the requirement that the prosecution during the negotiations shall at all times take into consideration the interests of the victim and the community,²⁴ and gives the victims the right to be involved in the plea-bargaining process especially to protect their right to compensation²⁵ or restitution.²⁶ The victim can even initiate a proposal to include compensation to him in the agreement.

d. The Magistrates Courts (Primary Court Criminal Procedure) Code²⁷

The code is set out in the Third schedule to the Magistrates Court Act.²⁸ It stipulates the procedural aspects in criminal cases specifically in the primary court. As it was previously stated that the Criminal procedure Act²⁹ is the principle legislation that primarily provides for criminal procedural issues and matters ancillary thereto and that it puts in place the mechanisms, institutions, ways and procedures to follow when dealing with criminal matters, however the same is not applicable in the primary court hence the applicability of the Primary Court Criminal Procedure Code.

The law under the provisions of rule 4 (2) promotes among others the use of amicable ways in resolving disputes among parties. The provision states that;

(2) In the case of proceedings for common assault or for any other offence of a personal or private nature, the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings or terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

The above provision is somewhat in coloration to what is stipulated under the provision of section 163 of the criminal procedure Act,³⁰ it is gainsaying that it is worthy of taking into account the colorations because they may affect in one way or another the applicability of the alternative dispute resolution in criminal proceedings in Tanzania that is because the same is not applicable in all disputes but in rather a specific category of disputes such as assault etc.

²³ Rule 8 *ibid*

²⁴ Rule 7 *ibid*

²⁵ Rule 10 of The Criminal Procedure (Plea Bargaining) Rules, GOVERNMENT NOTICE NO.180 of 2021.

²⁶ Rule 14(f) *ibid*

²⁷ CAP 11 R.E 2019

²⁸ *ibid*

²⁹ CAP 20 R.E 2022.

³⁰ *Ibid*

but also it can be invoked where the dispute is of a private nature, the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty.

III. THE EFFECTIVENESS OF THE LAWS IN PROMOTING ADR IN CRIMINAL MATTERS IN TANZANIA

In order that the rule of law and justice can be administered properly, certain basic steps are to be taken by the state.³¹ As far as the picture of pendency is concerned in the civil cases, that can be tackled by the alternatives available such as the ADR mechanisms. However, there is some doubt upon the application of ADR in criminal justice. In criminal justice, the term ADR encompasses a number of practices that are not considered part of traditional criminal justice such as victim/offender mediation; victim assistance programs; community crime prevention programs; sentencing circles; community service; plea bargaining; and others to name few.

The use of ADR processes in the criminal justice systems depicts a shift from the traditional criminal justice and introduces a whole new movement of restorative justice. It has always been a custom in laws that in criminal cases the rights and liabilities of parties thereto are exclusively determined by the courts of law because such courts are aided with special mechanisms put in place so as they are able to try criminal offences. Therefore, the position has always been that criminal disputes are whatsoever in the abilities regardless of the nature of the offence to be triable under the umbrella of ADR.

The question has but always been what if the nature of the dispute is private in nature and the same does not whatsoever affect public interest nor demand the infliction of a penalty? Thus, answering the question in affirmative led the rise of the restorative justice movement, where specifically in our Laws it led to the amendment of its criminal laws in order to encompass restorative justice.

Though they differ in form, the Criminal ADR Programs put more focus giving a dominant role to the victim throughout the entire process and they remove legal conflicts from the courts with the goal of benefiting all parties to mean that the outcome is based on the autonomy of the parties and not the courts its thus a win situation, it also reduces the costs of litigation and delays, and prevent subsequent legal disputes. It is therefore a process of compromise and agreement away from the courts.

With the foregoing, there is a comprehensive legal framework for the applicability of ADR

³¹ Anoop Kumar and Aarushi Batra “*Interface of ADR and Criminal Law*”, Turkish Online Journal of Qualitative Inquiry (TOJQI) Vol 12, issue 7 July 2021, Retrieved 18th April 2024.

mechanisms in criminal matters in Tanzania imbedded in its core legislations on procedural and ancillary matters thereto in criminal matters. The provisions of section 163³² and rule 4(2)³³ are a corner stone for the applicability of ADR in Tanzania. The provisions among other things introduces the notion of restorative justice, they provide the opportunity as to the possibility of attaining justice in criminal matters without the involvement of the court, a practise which is not common in Tanzania. The European Court of Human Rights held that one could scarcely conceive of the rule of law without there being a possibility of having access to the courts.³⁴ This holding shows the implied recognition of dispensation of justice without accessing the courts which is the employment of the alternative dispute resolution.

(A) The Reasons for not Actively Using Reconciliation in Resolving Criminal Matters in Tanzania

There are legal limitations that are embedded in the scope of the applicability of alternative dispute resolution mechanisms in criminal matters. ³⁵Despite the good side of the laws on imposition of the amicable settlement of criminal proceedings, thus the legal limitations hinder the applicability of alternative dispute resolution mechanisms in criminal matters.

The said limitations are on matters which are specifically provided by the said laws whereby they provide that:

Section 163.-(1)³⁶ In the case of proceedings for common assault or for any other offence of a personal or private nature the court may, if it thinks that the public interest does not demand the infliction of the penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings or on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

Rule 4(2)³⁷ In the case of proceedings for common assault or for any other offence of a personal or private nature, the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings or terms of payment of compensation or other terms approved by the court, and may thereupon order the

³² The Criminal Procedure Act Cap 20 R.E 2022.

³³ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

³⁴ ECtHR, *Golder v. the United Kingdom*, Appl. no. 4451/70, Judgment of 21 February 1975, para. 34.

³⁵ Salihu, H.A., 2020. Possibilities for the incorporation of African indigenous procedures and mechanisms of dispute resolution in the administration of criminal justice in Nigeria. *Contemporary Justice Review*, 23(4), pp.354-372.

³⁶ The Criminal Procedure Act Cap 20 R.E 2022.

³⁷ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

proceedings to be stayed.

There is no gainsaying that the wordings of the above provisions of the law are somewhat similar. The provisions depict that amicable settlement of the disputes applies to only proceedings for common assault or for any other offence of a personal or private nature. The concept of the offence of the private or personal nature is too wide to be as it is.³⁸ Further, there is no definition as to what the term offence of personal or private nature is. Thus, a loophole is created for its applicability in a real situation scenario because of the failure to define the offence of personal or private nature.³⁹

In the case of *Republic v Muhidin Twalibu*,⁴⁰ the court observed that before applying section 163 of the Criminal Procedure Act⁴¹ the court has to consider whether the offence is one of common assault or of personal or private nature. The court adds that the offence of burglary and stealing is not one of common assault or of a personal or private nature. Therefore, does not fall within the powers of the court to promote reconciliation.

Thus, the alternative dispute resolution in criminal matters is limited only for use in only petty criminal offences such as common assault, domestic violence, battery and others that falls within the provision of sections 163⁴² and 4(2)⁴³.

Further, the core principle of alternative dispute resolution is that of autonomy of parties. However, both the provision of sections 163⁴⁴ and 4(2)⁴⁵ stipulates that the discretion to embark on the use of alternative dispute resolution in criminal matters is not on the parties but rather the discretion of the court. The laws stipulate that;

.....the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way.....

This creates a loophole, that is the determination of as under what circumstances or situations will it not be in the public interest to demand infliction of a penalty but also the law does not put forth criteria that may act as a guide to the court for the same. Hence this creates an

³⁸ Ngilangwa, A.M. (2023), Exploring the Suitability of Alternative Dispute Resolution Mechanisms in Tanzania, Criminal Cases, Journal of Legal Studies and Research, Vol.9 Issue 3- May-June,2023.

³⁹ Ometo, B.O., 2020. The Place of Alternative Dispute Resolution (ADR) in Recovering Assets of 'White Collar Crimes' in Kenya.SSRN 3705974.

⁴⁰ [1989] TLR 8 (HC).

⁴¹ The Criminal Procedure Act Cap 20 R.E 2022.

⁴² Ibid

⁴³ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

⁴⁴ The Criminal Procedure Act Cap 20 R.E 2022.

⁴⁵ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

impairment in the exercise of such discretionary powers, there is no gainsaying that the same may merely rely on just the mere logic of the presiding trial magistrate. This however in itself is a bar in itself for the lack of active usage of alternative dispute resolution criminal matters in Tanzania.

In the case of *Republic v Sempeto Vincent*,⁴⁶ the court had this to say the offence of doing grievous harm contrary to section 225 of the Penal Code⁴⁷ is a felony and therefore it is outside the scope of those offences in respect of which the court may promote reconciliation in lieu of a penalty. Moreover, the court further stated that the court had no power to promote reconciliation in this case and therefore the trial court magistrate, his good intentions notwithstanding, acted in excess of jurisdiction.

Furthermore, section 163(7)⁴⁸ requires the Minister in consultation with the Chief justice to make such rules which will better implement the provisions of section 163. However, such rules to date are yet to be made, thus hindering the implementation of the section properly. The section in itself has a lot of loopholes and thus requiring rules be made so as to complement the applicability of alternative dispute resolution in criminal matters.

Lastly, the law stipulates that the effects of the amicable settlement of the dispute is a stay of the criminal proceedings for specified period of time or dismissal of the criminal proceedings⁴⁹. It however does not prescribe the manner of which the stay shall be accorded that is whether it shall be permanent or temporary, and how can it be dismissed that it upon the accused after complying with the term imposed during the process of reconciliation or even before. The issue of stay of proceedings, creates a procedural gap as to how such stay shall be resumed or the stay shall dispose of the criminal matter in its entirety where amicable settlement is preferred. The question arises what happens were parties to the matter do not prefer the use of the said reconciliation to what shall be the procedure thereof to accord the rights of the parties.

(B) The Conditions for the Outcome of Reconciliation:

The provisions of sections 163(1)⁵⁰ and 4(2)⁵¹ stipulates that the discretion to embark on the use of alternative dispute resolution in criminal matters is not on the parties but rather the discretion of the court. It provides that the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty, promote reconciliation and encourage and facilitate the

⁴⁶ [1985] TLR 202 (HC).

⁴⁷ CAP 16 R.E 2022.

⁴⁸ The Criminal Procedure Act Cap 20 R.E 2022.

⁴⁹ Section 163(5) of The Criminal Procedure Act Cap 20 R.E 2022

⁵⁰ The Criminal Procedure Act Cap 20 R.E 2022

⁵¹ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

settlement, in an amicable way

Further, the law provides that such alternative dispute resolution in criminal matters upon initiation by the court, consent ought to be sought from the complainant that it reconciles the parties or otherwise advise the parties to seek the service of a reconciliator.⁵²

The law also sets out a clear analysis as to what are the “other terms approved by the court” set forth under section 163(1),⁵³ such terms are as follows;

- i. Giving of an apology in an appropriate manner;
- ii. Giving of a promise or undertaking not to reoffend, or to respect the rights and interests of any victim;
- iii. Mandatory attendance at any counselling services or other program aimed at rehabilitation;
- iv. A promise or undertaking to alter any habits or conduct, such as the consumption of alcohol or any other prohibited substance;
- v. A promise or undertaking not to associate with persons shown to be of bad habit or influence to the accused person; or
- vi. Any other term the court may deem proper to make, taking into account the circumstances of the case.⁵⁴

Furthermore, the law puts a requirement to the court that where it proceeds to alternative dispute resolution in criminal matters it ought satisfy itself that the same is in the interests of the complainant at all times and circumstance and that the same should not be sprung onto victims.⁵⁵

It is important to note that upon proceeding with alternative dispute resolution in criminal matters the law requires that the proceedings be stayed for a specified period of time upon the accused person entering into any bond to comply with the terms imposed by the law or where necessary dismiss the proceedings.⁵⁶

Where a matter is referred to a reconciliator, who is appointed by the court in accordance with the law, it is to the effect that the reconciliator ought to make proper records of every aspect of the outcome of the proceedings on the court files and in the records of the accused whose case

⁵² Section 163(2) of The Criminal Procedure Act Cap 20 R.E 2022.

⁵³ The Criminal Procedure Act Cap 20 R.E 2022.

⁵⁴ Section 163(3) of The Criminal Procedure Act Cap 20 R.E 2022.

⁵⁵ Section 163(4) *ibid*.

⁵⁶ Section 163(5) *ibid*.

has been dealt in accordance to the procedure of alternative dispute resolution.⁵⁷

Although the provision of section 163⁵⁸ is express as to the implementation of alternative dispute resolution in criminal matters, however the same it is opposite to that of rule 4(2)⁵⁹ for it does not provide for the procedures of how alternative dispute resolution in criminal matters. This is a loophole that is with due consideration of the fact that although The Criminal Procedure Act⁶⁰ provides for the said mechanisms, the applicability of the law is limited that is because it is not applicable in the primary court but applicable in the district court, court of resident magistrate and the High court in the exercise of their original jurisdictions.

Consequently, the applicability of ADR in criminal matters may be disadvantageous at certain instances that is because its applicability tends to reduce the punishment of the offender, such reduction of punishment increases the de-criminalization of violence.

IV. CONCLUSION

ADR in criminal case involves the final settlement to be pronounced in the court in various jurisprudences whereas in civil matters, the same is confidential and simply a matter between parties. The process ensures the offender's accountability and is aimed at making things right, achieving repair and reconciliation, and preventing future re-offending. It is generally a justice paradigm that advocates for redefining crime and giving voice to the affected parties in the justice process. Whereas, under restorative justice, crime is more than the violation of the laws of the country; it is, rather, a violation of relationships between individuals that creates needs and obligations. Hence the legal recognition of ADR in criminal matters in Tanzania will improve the implementation and practice of ADR in criminal matters in result to social development.

(A) Recommendations

The current legal position on the implementation of ADR in Criminal matters is not sufficient enough to ensure the proper implementation of ADR. Therefore, as a way to improve legal recognition of ADR in Criminal matters and ensure its effective implementation by promoting the shift from traditional litigation to ADR through amending the laws and making subsidiary legislation setting out clear outline as to how ADR can be practiced in criminal matters and inference may be drawn from civil matters.

⁵⁷ *ibid*

⁵⁸ The Criminal Procedure Act Cap 20 R.E 2022

⁵⁹ Third Schedule of The Magistrates' Courts Act [CAP 11 R.E. 2019].

⁶⁰ Cap 20 R.E 2022