



Overview of the Legal Limitations Affecting Prosecution of Core International Crimes in Tanzania

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ABSTRACT

The article examined the overview of legal limitations on prosecution of core international crimes within Tanzania criminal justice system, concentrating on legal limitations affecting prosecution of core international crimes in Tanzania. Tanzania as state party to the Rome statute but has dualist legal requirement; hence, absence of adequate domestication laws prevents Tanzania from effectively prosecuting genocide, war crimes and crime against humanity. The article finding founded that, country constitutionally established and functional criminal justice system, ineffectively equipped to deal with complexity and gravity of genocide, crimes against humanity, war crimes, and crime of aggression. The domestic legal framework designed primarily for ordinary criminal offences rather than international crimes. Lack of particular law containing core international crimes in accordance with the Rome Statute, resulting in reliance on common offenses such as murder, rape, and assault. Tanzania's dualist legal system precludes the direct application of international criminal law, which means that international treaties like the Rome Statute are not enforceable in local courts unless incorporated. This creates a considerable disparity between Tanzania's international commitments and domestic enforcement capabilities.

Key words: Core International Crimes, Prosecution of Core International Crimes and Legal Limitations

1. Introduction

This article examined the legal limitations affecting prosecution of core international crimes in Tanzania's criminal justice system. The prosecution of core international crimes including genocide, crimes against humanity, war crimes, and aggression as recognized by the International Criminal Court's Rome Statute. The creation of the International Criminal Court and the evolution of international criminal law have enhanced the worldwide commitment to bringing perpetrators of such crimes to justice. As a State Party to the International Criminal Court's Rome Statute, the United Republic of Tanzania has accepted international commitments to combat impunity and exercise jurisdiction over those accountable for international crimes in 2002. Despite its commitment to the Rome Statute, Tanzania has not completely integrated the Statute's provisions into its national legal structure, posing substantial limitations to the successful prosecution of international crimes in its domestic courts.

1.1 Understanding of key terms relating to the prosecution of core international crimes in Tanzania

1.1.1 Core International Crimes

The concept of core international crimes refers to a small group of the most serious offenses recognized by international criminal law as being of concern to the international community as a whole. These crimes are regarded so serious that they threaten world peace, security, and the fundamental principles of humanity, and hence draw individual criminal culpability under international law rather than just state liability.¹ The present legal framework for defining these crimes is principally reflected in the Rome Statute of the International Criminal Court (ICC), which provides jurisdiction over four major crimes: genocide, crimes against humanity, war crimes, and aggression.² These offenses are frequently defined as core since they form the cornerstone of international criminal law and distinguish ordinary domestic crimes from internationally condemnable behavior.

Core international crimes are broadly defined as activities that involve committed in a systematic or broad manner, with enormous seriousness and scale. Directed against protected groups or populations, Customary international law and treaty law both recognize international criminal responsibility. The legal underpinning of these crimes stems from post-World War II developments, particularly the Nuremberg and Tokyo trials, which established that people, not just states, can be held criminally accountable for atrocities under international law. This idea was further consolidated in agreements such as

¹ Cassese A, International Criminal Law (2nd edn, Oxford University Press 2008).

² Cryer R, Friman H, Robinson D and Wilmshurst E, An Introduction to International Criminal Law and Procedure (4th edn, Cambridge University Press 2019).

the 1948 Genocide Convention and the Geneva Conventions of 1949, and was eventually formalized in the Rome Statute of 1998.³ Core international crimes include genocide, which is considered the crime of crimes according to international law. It entails specific acts like as killing or causing serious harm to members of a protected group with the purpose to completely or partially destroy a national, ethnic, racial, or religious group. Genocide differs from other crimes in that it requires special intent (*dolus specialis*).⁴ The Genocide Convention defines genocide as acts committed with the aim to destroy a protected group in its entirety or in part.

Crimes against humanity consist of certain prohibited acts such as murder, enslavement, deportation, torture, and rape when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. Unlike genocide, they do not require the desire to destroy a group. Murder, enslavement, deportation, torture, and sexual abuse are examples of crimes against humanity when committed as part of a widespread or systematic attack.⁵

War crimes are serious violations of international humanitarian law committed during armed conflict. They include grave breaches of the Geneva Conventions, such as wilful killing, torture, unlawful confinement, and extensive destruction of property that is not justified by military necessity. War crimes can happen in both international and non-international armed conflicts.⁶

The crime of aggression is the planning, preparation, launch, or execution of an act of state aggression that constitutes a clear violation of the United Nations Charter.⁷ It focuses on leadership-level culpability for the unlawful use of force by one state against another.

Core international crimes include several distinguishing characteristics: Universality they are relevant to all states, not simply the one where they occur. Individual criminal responsibility perpetrators are held personally accountable under international law. There is no statute of limitation for these crimes; therefore, prosecution is not limited by time.⁸ Complementarity principle under the ICC system, national courts are primarily responsible for prosecuting, with the ICC intervening only when nations are unwilling or unable to do so. Gravity threshold only the most serious types of conduct fall within this category. Importance of Core International Crimes includes but not limited to recognizing key international crimes serves multiple purposes, ensuring accountability for mass atrocities and deterring future violations.⁹ Furthermore, promoting world peace and justice, strengthening native legal systems by incorporating international principles and protecting human dignity on a global scale.¹⁰

Essentially international crimes form the foundation of international criminal law. It demonstrates the international community's agreement that certain offenses are too serious to be entrusted to domestic jurisdictions alone. They require a coordinated international reaction to secure responsibility and justice. Understanding this idea is critical for analysing domestic implementation on prosecution of core international crimes in Tanzania and those experienced by Tanzania in pursuing foreign crimes.

1.1.2 Prosecution of Core international Crime

This as legal process of investigating, charging, and trying individuals suspected of committing the most heinous offenses under international law, notably genocide, crimes against humanity, war crimes, and aggression, is known as core international crime prosecution.¹¹ These crimes are classified as violations of international criminal law due to their intensity, scope, and influence on humanity as a whole. The prosecution of these crimes fundamentally predicated on the notion of individual criminal responsibility, which holds individuals rather than states accountable for international atrocities.¹² This principle was firmly established after World War II through the Nuremberg and Tokyo Tribunals, and has since been reinforced by international treaties and organizations, particularly the Rome Statute of the International Criminal Court (ICC).¹³ Prosecution can occur at the international level example the ICC, hybrid or mixed tribunals, or domestic courts, which are primarily responsible under the concept of complementarity.

Thus, the prosecution of key international crimes serves as both a legal requirement and a method for enforcing international criminal justice within national and international frameworks. The prosecution of core international crimes serves a number of interconnected legal, moral, and political goals: Ensuring accountability, ending impunity, deterring future crimes, promoting justice and reconciliation, protecting human rights and dignity, and maintaining international peace and security, strengthening domestic legal systems.¹⁴ The prosecution of core international crimes is a critical component of international criminal justice that ensures accountability for the most egregious abuses of human rights and humanitarian law. Its goals go beyond punishment to include deterrence, victim acknowledgment, peacebuilding, and advancing the global rule of law.

³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

⁴ Prosecutor v Tadić (Jurisdiction Decision) IT-94-1-AR72 (2 October 1995).

⁵ Schabas WA, *An Introduction to the International Criminal Court* (6th edn, Cambridge University Press 2020).

⁶ Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1950).

⁷ United Nations, 'What is Genocide?' (UN Office on Genocide Prevention and the Responsibility to Protect) <https://www.un.org/en/genocide-prevention/definition> accessed 19 June 2026.

⁸ Bassiouni MC, *International Criminal Law* (Brill 2016).

⁹ Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (4th edn, CUP 2019) 1–7

¹⁰ Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (4th edn, CUP 2019) 1–7

¹¹ Antonio Cassese, Paola Gaeta and others, *Cassese's International Criminal Law* (4th edn, OUP 2022) 3–15.

¹² Bassiouni MC, *International Criminal Law* (Brill 2016).

¹³ Adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

¹⁴ Cryer R, Friman H, Robinson D and Wilmschurst E, *An Introduction to International Criminal Law and Procedure* (4th edn, Cambridge University Press 2019).

1.1.3 Legal Limitations

The term legal limitations refer to the restrictions, barriers or constraints imposed by law on the exercise of a particular legal power, right, procedure or remedy. Legal limitations may be understood as constitutional, statutory, procedural, jurisdictional and international law constraints that determine whether, when, where and under what conditions a person suspected of genocide, crimes against humanity, war crimes or aggression may be investigated, prosecuted and punished. Although international law places a strong obligation on States to combat impunity, prosecution must still comply with principles such as legality, jurisdiction, fair trial, due process, non-retroactivity, ne bis in idem and applicable procedural requirements. The United Nations Office of the High Commissioner for Human Rights identifies statutes of limitation, immunities, double jeopardy and legality requirements among legal obstacles that may affect prosecution of international crimes.¹⁵

In criminal justice, such limitations may regulate the commencement of proceedings, jurisdiction of courts, admissibility of evidence, applicable offences, time within which proceedings may be instituted, and the procedural rights of accused persons. Tanzania's Criminal Procedure Act¹⁶ contains time restrictions for certain summary proceedings. Section 241 provides that, unless a longer period is specially authorised by law, an offence punishable by not more than six months' imprisonment or a fine of five thousand shillings cannot be tried by a subordinate court unless the charge or complaint is laid within twelve months from the occurrence of the matter.¹⁷ Thus, a legal limitation does not necessarily mean that prosecution is prohibited altogether. Rather, it may mean that prosecution is subject to specific legal conditions or procedural boundaries.

In relation to international core crimes, the concept assumes international criminal law seeks to reconcile two competing considerations: the suppression of impunity for exceptionally serious crimes and the protection of fundamental rights of accused persons. The Rome Statute establishes the jurisdiction of the International Criminal Court (ICC) over these crimes.¹⁸ Tanzania ratified the Rome Statute on 20 August 2002, thereby becoming a State Party to the Statute.¹⁹ However, ratification does not mean that every prosecution of an international crime is automatically permissible. Prosecution remains subject to jurisdictional and procedural requirements established by applicable national and international law.

2. The Legal Limitations Affecting Prosecution of Core International Crimes in Tanzania

2.1 Inadequacy of Direct Legal Procedure

Inadequacy of direct legal procedure refers to the absence of a clear, comprehensive and specifically designed domestic procedural framework through which offences such as genocide, crimes against humanity and war crimes can be investigated, charged, tried and punished as international crimes before Tanzanian courts. Tanzania largely relies on its ordinary criminal-law and criminal-procedure framework rather than a dedicated international-crimes procedure. Although some conduct constituting international crimes may be prosecuted through ordinary offences, the existing framework is not sufficiently equipped to prosecute the Rome Statute core crimes effectively.²⁰

The lack of a dedicated statute criminalizing core international crimes in accordance with international criteria outlined in the International Criminal Court's Rome Statute. This gap has various procedural and institutional implications: Courts use fractured offenses like murder, rape, and assault from the Penal Code. The contextual aspects of international crimes are not recognised,²¹ therefore prosecutors are unable to charge suspects with genocide or crimes against humanity as separate offences.²² Domestic courts are unable to completely reflect the gravity and social nature of mass atrocities, limiting accountability to ordinary criminal liability. The inadequacy of direct legal procedure is a legal limitation because Tanzania lacks a comprehensive, expressly codified domestic procedural mechanism specifically designed for the investigation and prosecution of core international crimes. The resulting legal uncertainty can make prosecution dependent upon ordinary criminal-law provisions and judicial interpretation rather than a clear and specialised international-crimes framework.²³

2.1.1 Dualist Legal System and Non-Direct Application of International Law

The dualist legal system and non-direct application of international law constitute a significant legal limitation to the prosecution of core international crimes in Tanzania because the existence of an international legal obligation does not, by itself, necessarily provide a complete domestic legal basis for prosecuting an individual before a Tanzanian court. Tanzania's constitution gives Parliament legislative authority over Union matters and Mainland Tanzania, while the National Assembly has the power to ratify treaties and agreements whose provisions require ratification.²⁴ This constitutional structure

¹⁵ Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives* (United Nations 2006) 16–17.

¹⁶ Cap 20 [R.E. 2022].

¹⁷ Criminal Procedure Act [Cap 20 R.E. 2022] (Tanzania), s 241.

¹⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 5–8 bis.

¹⁹ United Nations Treaty Collection, *Rome Statute of the International Criminal Court: United Republic of Tanzania—Ratification*, deposited 20 August 2002.

²⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 5–8.

²¹ Criminal Procedure Act, Cap 20 RE 2023, s 282.

²² Jally Willy Mongo, 'Domestication of the Rome Statute in the United Republic of Tanzania' (2023) IJFMR.

²³ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105.

²⁴ Constitution of the United Republic of Tanzania 1977 (as amended), arts 63(3)(e) and 64.

means that international obligations and domestic enforceable law operate through distinct legal processes. Tanzania takes a dualist approach, which means that international treaties do not automatically become part of domestic law unless they are explicitly incorporated into legislation.²⁵ This legal system imposes considerable procedural limitations. The Rome Statute is not directly enforceable in Tanzanian courts.²⁶ Judges cannot apply international criminal definitions unless they are domesticated and prosecutors are limited to domestic statute offences.²⁷ This creates a normative vacuum between international duties and domestic enforcement capacity.

The dualist legal system and non-direct application of international law therefore limit the prosecution of core crimes in Tanzania because international commitments, including those arising from the Rome Statute, do not by themselves provide a comprehensive domestic criminal framework for prosecuting individuals before Tanzanian courts. The absence of comprehensive domestication creates gaps concerning the definition of core crimes, their contextual elements, modes of liability, jurisdiction, procedural mechanisms, international cooperation and applicable penalties.²⁸ Tanzania may prosecute some conduct associated with core crimes through ordinary offences or potentially through applicable customary international law, but this is different from having a clear domestic framework enabling the prosecution of genocide, crimes against humanity and war crimes as distinct international crimes. Domestication or substantial amendment of domestic legislation as necessary to strengthen the country's capacity to prosecute international crimes effectively.²⁹

2.1.2 Limited Incorporation of International Criminal Law Principles

Limited incorporation of international criminal law principles refers to the incomplete incorporation of substantive and procedural rules of international criminal law particularly those relating to genocide, crimes against humanity and war crimes into Tanzania's domestic criminal justice framework. This constitutes a legal limitation because Tanzania is a State Party to the Rome Statute, but the principles and definitions contained in the Statute have not been comprehensively incorporated into domestic legislation. The existing framework provides only limited avenues for prosecution through ordinary offences and is insufficient for effective prosecution of the Rome Statute's core crimes.³⁰

Limited incorporation of international criminal law principles is therefore a significant legal limitation to the prosecution of core crimes in Tanzania because it creates a gap between Tanzania's international obligations and the legal rules available to its domestic courts. Tanzania's existing framework can provide avenues for prosecuting some conduct through ordinary offences and customary international law, but it does not comprehensively incorporate the definitions, contextual elements, modes of responsibility and other principles necessary for prosecuting genocide, crimes against humanity and war crimes as distinct international crimes.³¹ The limitation could be addressed through comprehensive legislation incorporating the Rome Statute's core crimes into Tanzanian law, together with appropriate provisions on individual and command responsibility, jurisdiction, investigation, prosecution, evidence, international cooperation and penalties. Such incorporation would provide a clearer domestic legal basis for Tanzania to exercise its primary responsibility for prosecuting core international crimes.³²

2.1.3 Limited Legislative Harmonisation with International Standards

Limited legislative harmonisation with international standards refers to the situation where Tanzania's domestic criminal legislation does not sufficiently correspond with the substantive and procedural standards developed under international criminal law. This legal limitation to the prosecution of genocide, crimes against humanity and war crimes, the existing domestic framework is incapable of effectively prosecuting the Rome Statute's core crimes without domestication or substantial amendments to relevant legislation.³³ Domestic criminal laws do not comply with international criminal law norms. The key contradictions are narrow when compared to international standards.³⁴ The absence of contextual factors essential for international crimes, as well as a lack of congruence with ICC doctrine.³⁵ This inadequate harmonization restricts Tanzania's capacity to properly satisfy its complementarity requirements. The article found that Tanzania's legal system has a considerable structural gap between domestic criminal law and international criminal justice standards.

Limited legislative harmonisation with international standards is therefore a legal limitation to the prosecution of core crimes in Tanzania as there is a significant gap between Tanzania's international commitments and the content of its domestic criminal legislation. Tanzania's ratification of the Rome Statute demonstrates an international commitment to combating genocide, crimes against humanity and war crimes, but the absence of comprehensive legislative harmonisation means that these crimes are not fully reflected in domestic law.³⁶ Tanzanian prosecutors may be able to prosecute particular acts through ordinary criminal offences, but the domestic framework is less capable of prosecuting the conduct as a core international crime in its complete

²⁵ Respondent: anonymous prosecutors in DPP office in Dodoma City on July 2026.

²⁶ Respondent: anonymous police officers in Dodoma City on July 2026.

²⁷ Respondent: anonymous human rights lawyer in Dodoma City on July 2026.

²⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 6–8.

²⁹ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105.

³⁰ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105, 136.

³¹ Tanzania Human Rights Defenders Coalition (n 15) 52.

³² Tanzania Human Rights Defenders Coalition, *Criminal Justice Recommendations* (2023) 52.

³³ Kahimba, Ngaiza and Mabula (n 1).

³⁴ International Criminal Court, 'Review Conference: ICC President and Prosecutor participate in panels on complementarity and co-operation' (3 June 2010).

³⁵ Respondent: anonymous human rights lawyers in Dodoma City on July 2026.

³⁶ Kahimba, Ngaiza and Mabula (n 1).

legal context. The principal legal response would therefore be comprehensive legislative reform incorporating the relevant Rome Statute principles and other applicable international criminal-law standards into Tanzanian domestic law.¹⁹

2.1.4 Procedural Limitations under Existing Criminal Laws

Procedural limitations under existing criminal laws refer to the difficulties arising from the fact that Tanzania's ordinary criminal-procedure framework was not specifically designed to investigate, charge and prosecute genocide, crimes against humanity and war crimes. The principal procedural statute is the Criminal Procedure Act, which establishes the general framework for criminal investigation, institution and conduct of criminal proceedings.³⁷ However, Tanzania has not comprehensively domesticated the Rome Statute, and existing domestic law does not provide a specialised procedural regime for core international crimes. Some international crimes may be prosecuted through ordinary offences or customary international law, the existing framework is inadequate for effective prosecution of the Rome Statute's core crimes.³⁸

The Criminal Procedure Act (Cap 20) is intended for ordinary criminal proceedings and does not address the complications of transnational offenses.³⁹ There are no procedures for victim participation or compensation systems, as well as weak standards for dealing with international or cross-border evidence.⁴⁰ These limits make it difficult for courts to deal with situations involving large-scale violence or organized criminal activities. The Criminal Procedure Act provides a general criminal-procedure framework but does not establish a specialised procedural regime for genocide, crimes against humanity and war crimes.⁴¹

Tanzania can prosecute some underlying conduct through ordinary criminal offences, but the existing procedure does not comprehensively accommodate the distinctive legal and evidentiary characteristics of core international crimes.⁴² There is no structure for mass atrocity prosecutions with high numbers of victims. Insufficient measures for witness protection in high-risk instances.⁴³ There are no processes for dealing with international or cross-border evidence, and there, no victim participation or compensation mechanisms that are typical of international criminal cases.⁴⁴ These procedural deficiencies impair the effectiveness of prosecutions involving organized or mass violence.

2.1.5 Evidentiary Limitations under Domestic Law

Evidentiary limitations or challenges under domestic law constitute a significant legal limitation to the effective prosecution of core international crimes in Tanzania. The prosecution of genocide, crimes against humanity and war crimes differs substantially from the prosecution of ordinary domestic offences because the prosecution is generally required to establish not only the commission of particular criminal acts but also the broader contextual circumstances in which those acts occurred, the mental elements of the accused, and, depending on the crime and mode of liability, the relationship between the individual accused and a wider pattern of criminal conduct. The International Criminal Court's Elements of Crimes expressly identify the material and mental elements that must be established in relation to crimes under articles 6–8 of the Rome Statute.⁴⁵

In Tanzania, evidentiary matters are principally governed by the Evidence Act,⁴⁶ together with the general criminal procedure laws. The Evidence Act contains important provisions governing the burden of proof, documentary evidence and electronic evidence. However, these provisions are not specifically designed to address the distinctive evidentiary problems associated with mass atrocities and international criminality.⁴⁷ The difficulty is therefore not necessarily that Tanzanian law contains no rules of evidence, but rather that the existing rules do not comprehensively respond to the nature, scale and complexity of evidence required in core international crime prosecutions. The Evidence Act⁴⁸ does not adequately address the evidence requirements of foreign crimes. However, Tanzania's evidentiary law, lacks standards for dealing with contextual foreign evidence, has inadequate witness protection provisions.⁴⁹ Does not address the obstacles to evidence from mass atrocities. This hinders the prosecution of difficult cases that involve organized violence.

The Criminal Procedure Act (Cap 20) is designed for standard criminal proceedings and does not address the complexities of transnational crimes. Inadequate witness protection measures. There are no mechanisms in place for victim participation or compensation, and the standards for dealing with international or cross-border evidence are insufficient. Evidentiary challenges under domestic law therefore constitute a legal limitation to the prosecution of core international crimes in Tanzania because the existing evidentiary framework is principally general in character and does not comprehensively accommodate the distinctive nature of international-crime evidence. The difficulties include proving contextual elements, establishing individual criminal

³⁷ Criminal Procedure Act, Cap 20 RE 2019

³⁸ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105

³⁹ Respondent: anonymous human rights lawyer in Dodoma City on July 2026.

⁴⁰ Respondent: anonymous prosecutors from DPP office in Dodoma City on July 2026.

⁴¹ Kahimba, Ngaiza and Mabula (n 2).

⁴² Criminal Procedure Act, Cap 20 RE 2019 (Tanzania).

⁴³ Respondent: anonymous police officers in Dodoma City on July 2026.

⁴⁴ Respondent: anonymous prosecutors from DPP office in Dodoma City on July 2026.

⁴⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 6–8; International Criminal Court, *Elements of Crimes* (ICC 2011).

⁴⁶ Cap 6 R.E. 2022

⁴⁷ Evidence Act, Cap 6 R.E. 2022 (Tanzania); Criminal Procedure Act, Cap 20 R.E. 2022 (Tanzania).

⁴⁸ Cap 6 R.E. 2023

⁴⁹ International Criminal Court, 'ICC President Statement on the occasion of 17 July 2016, Day of International Criminal Justice' (17 July 2016).

responsibility, obtaining witnesses and evidence from abroad, authenticating documentary and electronic evidence, managing large volumes of material, and establishing every constituent element of an international crime beyond reasonable doubt.⁵⁰ Tanzania's existing domestic framework requires domestication of relevant international criminal law or serious amendments to existing legislation if the country is to prosecute core international crimes effectively.⁵¹

2.2 Institutional Capacity Constraints

Institutional capacity constraints constitute a significant legal limitation to the prosecution of core international crimes in Tanzania because the effective enforcement of laws on genocide, crimes against humanity and war crimes depends not only on the existence of substantive offences, but also on capable institutions to investigate, prosecute, adjudicate and enforce them. In Tanzania, the institutional problem in existing domestic framework has not comprehensively incorporated the Rome Statute and has not established a specialised institutional structure for international crimes. International crimes may be prosecuted through ordinary offences and customary international law, the existing framework is not adequately equipped to prosecute Rome Statute crimes effectively without significant legal reform. Institutional capacity constraints constitutes legal limitation to the prosecution of core international crimes in Tanzania. Core crimes, particularly genocide, crimes against humanity and war crimes. Their prosecution therefore requires institutions capable of undertaking specialised investigations, collecting and preserving complex evidence, protecting witnesses, analysing command and organisational structures, conducting international cooperation, and presenting complicated cases before competent courts. The Rome Statute's system itself recognises the importance of national capacity within the principle of complementarity, under which national jurisdictions are expected to investigate and prosecute international crimes genuinely.⁵² In Tanzania, however, the institutional framework for prosecution of international crimes remains largely integrated into the ordinary criminal justice system rather than being supported by a specialised international-crimes mechanism. The Constitution vests the power to institute, prosecute and supervise criminal prosecutions in the Director of Public Prosecutions (DPP), while the ordinary criminal justice institutions perform their respective investigative, prosecutorial and adjudicative functions.⁵³

The institutions in charge of prosecution, particularly the Police Force, DPP, Judiciary, and CHRAGG, lack international criminal justice expertise. This leads to Limited investigative capacity for mass atrocities and command structures, lack of specialized prosecutors versed in international criminal law.⁵⁴ Insufficient judicial experience in international criminal law, as well as poor cooperation when dealing with large-scale or politically sensitive cases.⁵⁵ The absence of specialised units undermines the effectiveness of prosecuting core international crimes. Institutional capacity constraints constitute a legal limitation to the prosecution of core international crimes in Tanzania because the effectiveness of substantive criminal prohibitions depends upon institutions possessing the legal mandates, expertise, resources and coordination mechanisms necessary to enforce them.⁵⁶ The limitation is not that Tanzania lacks criminal justice institutions altogether. Rather, the existing institutions are not supported by a sufficiently specialised and comprehensive legal-institutional framework tailored to the investigation and prosecution of core international crimes. Strengthening the prosecution of such crimes therefore requires not only substantive legislative reform but also specialised institutional mandates, training, resources, investigative capacity, judicial expertise, witness-protection mechanisms and clearly defined procedures for international cooperation.⁵⁷

2.2.1 Weak Integration of Complementarity Obligations

The weak integration of complementarity obligations into Tanzania's domestic legal framework constitutes a significant legal limitation to the prosecution of core international crimes. The principle of complementarity is central to the Rome Statute system; the International Criminal Court (ICC) is intended to complement, rather than replace, national criminal jurisdictions. Article 1 of the Rome Statute establishes this relationship, while article 17 provides that a case is generally inadmissible before the ICC where a state with jurisdiction is genuinely investigating or prosecuting the same matter, subject to the conditions stipulated by the Statute.⁵⁸

The Tanzania's domestic prosecution of international crimes found that Tanzania had not domesticated the Rome Statute and that the procedural framework for implementing cooperation with the ICC had also not been established. Tanzania is a State Party to the Rome Statute, although its complementarity provisions are not being fully implemented domestically.⁵⁹ These yields relying on ICC intervention in circumstances of incompetence, Lack of proactive domestic prosecution of international crimes, Weak legislative congruence with ICC criteria.⁶⁰ This contradicts the premise that national courts are the primary venues for prosecuting core international crimes. Weak integration of complementarity obligations is therefore a legal limitation to the prosecution of core international crimes in Tanzania because the principle requires functioning domestic legal and institutional mechanisms through which national authorities can genuinely investigate and prosecute genocide, crimes against humanity and war crimes.

⁵⁰ *Prosecutor v Germain Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute (7 March 2014).

⁵¹ Kahimba, Ngaiza and Mabula (n 4) 136.

⁵² Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 1 and 17.

⁵³ Constitution of the United Republic of Tanzania 1977 (as amended), art 59B.

⁵⁴ Assembly of States Parties, 'Strengthening national jurisdictions through complementarity activities' ICC-ASP/14/32, paras 21–28.

⁵⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 1 and 17.

⁵⁶ Assembly of States Parties, 'Assembly of States Parties holds plenary on complementarity' (2012),

⁵⁷ Assembly of States Parties, 'Strengthening national jurisdictions through complementarity activities' ICC-ASP/14/32, paras 21–28.

⁵⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 1.

⁵⁹ *ibid* art 17.

⁶⁰ Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105, 107, 113 and 136.

The limitation manifests itself through the absence of comprehensive incorporation of Rome Statute crimes, inadequate legal mechanisms for genuine domestic prosecution, limited integration of international criminal-law principles, insufficient procedures for ICC cooperation, and uncertainty concerning the relationship between domestic proceedings and ICC admissibility. The problem is therefore the deeper legal difficulty is that the domestic legal system has not sufficiently translated complementarity from an international principle into enforceable domestic offences, procedures, institutional mandates and cooperation mechanisms. Strengthening this area would require Tanzania to develop a comprehensive domestic framework for core international crimes, clarify the relationship between domestic jurisdiction and ICC jurisdiction, establish appropriate cooperation procedures, and strengthen national investigative, prosecutorial and judicial capacity. Such measures would make complementarity operational rather than merely formal and would enhance Tanzania's ability to exercise its primary jurisdiction over core international crimes.

2.2.2 Judicial Limitations in Interpretation of International Law

Judicial limitations in the interpretation of international law constitute a legal limitation to the prosecution of core international crimes in Tanzania because Tanzanian courts may be required to interpret international criminal-law principles in circumstances where those principles have not been comprehensively incorporated into domestic legislation. The Statute has not been domesticated and that the existing domestic framework is insufficient to prosecute all Rome Statute crimes effectively.⁶¹ The prosecution of genocide, crimes against humanity and war crimes requires courts to interpret concepts derived from international criminal law, including the contextual elements of the offences, individual criminal responsibility, modes of liability, command responsibility, customary international law and the relationship between international and domestic law. Tanzanian courts may face interpretative difficulties where international criminal-law principles are invoked without a clear corresponding domestic statutory provision.⁶²

The Constitution establishes judicial independence and requires courts, in exercising their judicial functions, to observe the Constitution and the laws of the land.⁶³ The courts cannot simply substitute judicial interpretation for legislation where Parliament has not created a sufficiently clear domestic offence or procedure. Thus, although courts may consider international law and customary international law where legally permissible, judicial interpretation has limits when the matter concerns the creation or expansion of criminal liability. Tanzania's courts rarely apply international criminal law directly. International law is mostly utilized as persuasive authority. Genocide and crimes against humanity have received little attention in legal circles. Judges have inconsistent exposure to international criminal law principles. This adds to the underdevelopment of domestic international criminal law.

Generally, the article shows that Tanzania's legal framework contains a fundamental mismatch between international criminal law needs and domestic legal competence. While the country has a functioning criminal justice system, its laws and processes are primarily intended to address regular crimes rather than mass atrocities. The combined effects of lack of particular legislation, the dualist legal structure, procedural constraints, and weak institutional capability result in a system that is legally capable but practically limited in pursuing core international crimes. The legal considerations influencing procedural and institutional restrictions in Tanzania greatly impede the effective prosecution of basic international crimes in local courts. The Tanzanian criminal justice system's ability to address genocide, crimes against humanity, war crimes, and aggression is hampered by a lack of specialized legislation, limited incorporation of international legal principles, procedural inadequacies, and institutional capacity gaps. Overcoming these limits requires strengthening local law changes, increasing institutional capacity, and properly fulfilling international responsibilities under the Rome Statute.

The principal limitations include the absence of comprehensive incorporation of international criminal law, uncertainty concerning the domestic status of treaty provisions, difficulty applying customary international law, limited Tanzanian precedent on core crimes, complexity in interpreting contextual elements and modes of liability, and the inability of judicial interpretation to substitute completely for legislative reform.⁶⁴ Tanzanian courts rarely deal with international criminal law directly. International law is utilized mostly as persuasive authority. There is little jurisprudence on essential international crimes, and judges have limited exposure to international criminal law theories. This causes an underdevelopment of domestic case law on genocide, war crimes, and crimes against humanity.

3.0 Conclusion and Recommendation

Tanzania's legal constraints on the prosecution of key international crimes greatly undermine the local criminal justice system's efficiency in dealing with atrocity crimes. The lack of specialized legislation, combined with procedural and evidentiary constraints, and the limited incorporation of international criminal law principles, results in a system that is not fully prepared to prosecute genocide, crimes against humanity, war crimes, and aggression in their proper legal form. Addressing these constraints needs extensive legislative change, harmonization with international norms, and boosting judicial and prosecutorial ability to achieve full compliance with Tanzania's international responsibilities. The study conclusion based on the analysis of legal limitations affecting prosecution of core international crimes such as genocide, crimes against humanity, war crimes, and the crime of aggression.

The article reveals that, while the country has a constitutionally established and functional criminal justice system, it is inadequately equipped to deal with the complexity and gravity of genocide, crimes against humanity, war crimes, and the crime of aggression. The domestic legal framework is primarily based on the Constitution of the United Republic of Tanzania, 1977, the Penal Code Cap 16, the Criminal Procedure Act Cap 20, and the Evidence Act

⁶¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 6 and 7; International Criminal Court, *Elements of Crimes* (2011).

⁶² Nicksoni Filbert Kahimba, Cecilia Edward Ngaiza and Boaz John Mabula, 'Domestic Prosecution of International Crimes in Tanzania: The State of the Law' (2020) 47(2) *Eastern Africa Law Review* 105, 107, 126 and 136.

⁶³ Constitution of the United Republic of Tanzania 1977 (as amended), art 107B.

⁶⁴ Kahimba, Ngaiza and Mabula (n 1) 124–26.

Cap 6, all of which are designed primarily for ordinary criminal offences rather than international crimes. A significant constraint is the lack of particular law containing core international crimes in accordance with the Rome Statute, resulting in reliance on common offenses like as murder, rape, and assault. This method fails to account for the contextual features of international crimes, such as their widespread or systematic nature, as well as the involvement of organizations or states in policy. Furthermore, Tanzania's dualist legal system precludes the direct application of international criminal law, which means that international treaties like the Rome Statute are not enforceable in local courts unless incorporated. This creates a considerable disparity between Tanzania's international commitments and domestic enforcement capabilities. Further shortcomings include the absence of theories such

as command responsibility, limited procedural frameworks for complex atrocity crimes, and insufficient evidentiary procedures for managing mass crime cases. Finally, improving Tanzania's legal framework for prosecuting key international crimes necessitates extensive legislative change, institutional capacity building, and better integration of international criminal law into domestic practice. These reforms would guarantee that Tanzania not only meets its international commitments under the Rome Statute, but also strengthens its criminal justice system to effectively address atrocity crimes and promote accountability, justice, and the rule of law.

Recommendations

- The Government to enact Comprehensive International Crimes Legislation, to the extent that Tanzania should pass a special International Crimes Act that fully incorporates the definitions of genocide, crimes against humanity, war crimes, and aggression as defined by the Rome Statute. Establishes clear jurisdictional standards for domestic courts and imposes suitable penalties that reflect the nature of the crimes. This would eliminate the reliance on regular criminal offenses and close the current legal gap.
- The Government is recommended to reform evidence law for International Crimes; The Evidence Act should be modified to Allow the admissibility of transnational forensic and documentary evidence. Provide safeguards for vulnerable and protected witnesses as well as to recognize contextual evidence related to systematic crimes.
- The Government is recommended that the Rome Statute should be formally incorporated into domestic law by implementing legislation. This would make the ICC crimes directly relevant in Tanzanian courts. Strengthen compliance with international duties and improve complementarity between domestic courts and the ICC.
- The Government is recommended to introduce command responsibility and superior liability. Legal reform should contain clauses that recognize military and civilian supervisors bear responsibility for crimes committed by their subordinates, as well as liability for failing to prevent or punish international crimes. This is critical for holding high-level leaders responsible.
- The Legislature is recommended to strengthen Procedural Law for Mass Atrocity Crimes. The Criminal Procedure Act should be amended to include Procedures for handling complex multi-victim trials, Special rules for international or cross-border evidence, Enhanced witness protection mechanisms and Victim participation and reparations frameworks.
- The Government is recommended to provide special trainings to judges, prosecutors (DPP officers), and police investigators who should all receive better training. The focus areas should include International criminal law principles, investigation of mass atrocities and using ICC jurisprudence.
- The Judiciary is recommended to enhance judicial engagement with International Law. Courts should be motivated to Interpret domestic law in accordance with international criminal law principles, and rely on the ICC and international jurisprudence for interpretive guidance.
- The DPP is recommended to establish specialised units for International Crimes. Tanzania should explore setting up a specialised international crimes prosecution unit inside the DPP's office, as well as dedicated investigative units within the Police Force. This would improve efficiency in managing difficult instances.