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EDITORIAL

On behalf of the Editorial Board of the African Journal of Law and Practice, I am delighted to invite you to explore the articles presented in this comprehensive issue. The journal customarily publishes two issues each year, in June and December. This issue contains the following six articles

Articles

1. Assessing Certification on Points of Law as a Gatekeeper to the Court of Appeal of Tanzania: Implications for Access to Civil Justice
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On behalf of the Editorial Board, I would like to express our heartfelt appreciation to the authors, reviewers, and content and language editors for making this special issue a reality.

Prof. Alex Boniface Makulilo
Chief Editor, African Journal of Law and Practice

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Assessing Certification on Points of Law as a Gatekeeper to the Court of Appeal of Tanzania: Implications for Access to Civil Justice

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Abstract
This article assesses the mandatory requirement for a certificate on a point of law, granted by the High Court as a jurisdictional gateway to the Court of Appeal of Tanzania (CAT) under the Appellate Jurisdiction Act. The Tanzanian constitutional and statutory framework recognises appeal rights, subject to legislative and procedural limits. However, in matters requiring a certificate on a point of law, the requirement remains mandatory, and when the High Court with exclusive jurisdiction refuses it, the refusal is not appealable. The study adopts a doctrinal methodology. It finds that, although certification aims to limit appeals to points of law, strict compliance often hinders access to civil justice in the CAT. The article recommends explicit, prescriptive standards supported by a purposive judicial approach that prioritises ensuring that procedural rules do not undermine the constitutional principle of access to justice.

Keywords: *Certification, point of law, gatekeeping, Court of Appeal of Tanzania, and Access to justice*

1.0 Introduction

The right to appeal is widely recognised as a constitutional right in most jurisdictions.[1] It is considered a crucial safeguard for ensuring fairness, accuracy, and legitimacy in adjudication, as well as respect for individual dignity and predictability.[2] Appeals provide an opportunity for higher courts to correct errors committed by lower courts and to ensure uniformity in the interpretation and application of the law. The outcome of an appeal is what matters if it resolves the issue in dispute.[3] Although

[1] P. D. Marshall, 'A Comparative Analysis of the Right to Appeal', *Duke Journal of Comparative & International Law*, Vol. 22, 2011 (1– 13), p. 1.
[2] C. B. Robertson, 'The Right to Appeal', *North Carolina Law Review*, Vol. 91, 2013 (1219– 1229), p. 1220.
[3] A. N. Steinman, 'Law, Fact, and Appellate Review', *Iowa Law Review*, Vol. 110, 2024 (1–15), available at: https://scholarship.law.tamu.edu/facscholar/2150 (accessed 24 March 2026).

the right to appeal is recognised in most of the legal systems, its exercise is commonly subject to constitutional and statutory limitation that regulates such an appeal.[1] Most legal systems, including Tanzania,[2]impose procedural requirements on how to appeal and ensure that the Court of Appeal handles issues with legal points and significances, and avoid the possibility of frivolous litigations and maintain judicial capacity in the dispensation of justice. Some scholars have even proposed the imposition of sanctions on litigants who file frivolous lawsuits to maintain the capacity of the higher courts to adjudicate disputes.[3]

Procedural justice scholars have emphasised that procedural rules play an important role in determining the rights of individuals.[4] Cappelletti and Garth argue that a mere formal recognition of right does not entail access to justice. It depends on the effective mechanisms of enforcement through a user-friendly procedure that supports litigants in pursuing their remedies in courts of law. Thus, access to justice requires not merely the formal recognition of rights, but effective mechanisms for their enforcement, and individuals to pursue legal remedies.[5] Deborah argues that access to justice depends on recognition of that right, which can only be realised after doing away with procedural technicalities.[6] From this perspective, the requirement of leave to appeal or certification on a point of law may serve legitimate institutional objectives while simultaneously raising concerns about fairness and equality in access to appellate justice.

The Tanzanian appellate structure entails a similar challenge regarding the limitation on access to the Court of Appeal of Tanzania, hereinafter referred to as the CAT. The CAT is the apex Court established under the Constitution of the United Republic of Tanzania of 1977.[7] Its jurisdiction includes hearing appeals from the High Court from the High Court, while the High Court exercises original or appellate jurisdiction.[8] In the appeal

[1] Marshall, 'A comparative analysis of the right to appeal' (note 1).
[2] The Appellate Jurisdiction Act, Cap 141 (R.E 2023), s 8(2)(iii)(c).
[3] F.H. Newark, 'The Boundaries of Nuisance,' *Law Quarterly Review*, Vol. 65, No. 2, 2010, (460-497), p. 480.
[4] M. Cappelletti and B. Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', *Buffalo Law Review*, Vol. 27, 1978, p. 181.
[5] Ibid., pp. 182–183.
[6] D. L. Rhode, 'Access to Justice', *Fordham Law Review*, Vol. 69, 2001, p. 1785, available at: https://ir.lawnet.fordham.edu/flr/vol69/iss5/11 (accessed 27 March 2026).
[7] The Constitution of the United Republic of Tanzania, 1977 (Cap. 2 R.E. 2002) (as amended), art. 117.
[8] Ibid.

process, not every litigant has an automatic right to appeal before the CAT. In matters originating from Primary Courts, and following the ladder of appeal to the CAT, the High Court must certify the point of law before an appeal can be lodged to the CAT. The prospective appellant must obtain a certificate that a point of law is involved. This requirement, though intended to admit the arguable appeal in CAT, which involves a significant point of law, may nevertheless act as a stumbling block to accessing justice for the aggrieved appellant.

Despite its real-world significance, the condition of certification on a point of law before a litigant accesses CAT on specified matters has received limited scholarly attention in Tanzania. Existing literature tends to examine broader perspectives, such as fundamental rights under the Constitution, independence of the judiciary, and strategic human rights litigations, without concentrating precisely on procedural filters before appealing to the CAT.[9] Scholars from other jurisdictions have suggested that appellate gatekeeping mechanisms play a crucial role in shaping the accessibility to the apex court. Posner observes that several proposals are thought to provide a major restructuring of the appellate court system that enhances access to justice. [10]Undisputedly, the requirement of a certificate on the point of law controls and manages caseloads and maintains doctrinal coherence. Despite limited academic discussion, certification remains a relevant aspect for accessing appellate courts.[11]Thus, appellate jurisdictions should weigh the competing objectives of error correction, legal development and institutional efficiency in the judicial system.

The requirement of a certificate on a point of law on specific matters is very important in the appellate context when a litigant wants to exercise the appeal rights, especially when such an appeal requires a certificate on a point of law. Scholars of access to justice have observed that procedural rules governing appeals are a determining factor for litigants pursuing the

[9] C. M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Rüdiger Köppe, 1997, pp. 12–16.
[10] R. A. Posner, *The Federal Courts: Challenge and Reform*, Harvard University Press, 1996; reviewed in *Catholic University Law Review*, Vol. 46, 1997, p. 1189, available at: https://scholarship.law.edu/lawreview/vol46/iss4/4 (accessed 28 March 2026).
[11] K. G. Crennan, 'The Viability of Certification in Federal Appellate Procedure', *William & Mary Law Review*, Vol. 52, 2011, p. 2025, available at: https://scholarship.law.wm.edu/wmlr/vol52/iss6/6 (accessed 28 March 2026).

right before the appellate court.[12] From the legal perspective, certification on a point of law signifies not merely a technical procedural prerequisite but a key determinant of the practical accessibility of the CAT.[13]

This article, therefore, assesses the procedural requirement of certification on points of law as a gatekeeping mechanism to access the CAT. It analyses the legal framework governing appeals to the CAT on matters requiring a certificate on a point of law. It further investigates the jurisprudence on certification of the point of law and evaluates the legal implications of this requirement in accessing CAT. The article argues that although certification requirements serve a significant institutional function in preserving the capacity of the CAT only to entertain arguable issues, their operation may limit litigants seeking to appeal to the CAT, particularly in cases originating from Primary Courts, where this requirement is mandatory. By analysing doctrinal dimensions of this requirement, the article intends to contribute to scholarly debates regarding the relationship between appellate procedure and access to justice in CAT.

This article offers a doctrinal examination of certification of point of law in CAT, further assesses the legal implications of the requirement of certification on access to civil justice in CAT and suggests tremendous reforms that intend to promote access to civil justice.

1.1 Methodology

This study adopts a doctrinal methodology. The primary materials include the Constitution, statutes governing appellate jurisdiction, procedural rules, and court decisions of the High Court of Tanzania and the CAT. Cases were selected because they address certification on the points of law in the appellate process. The secondary sources, which included scholarly literature on appellate access to justice, were also used based on the principle of relevance and confined to civil proceedings.

2.0 Scholarly Perspectives on Certification on Points of Law

This article employs the access-to-justice framework developed by Cappelletti and Garth[14], which evaluates whether procedural rules

[12] M. Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change', *Law & Society Review*, Vol. 9, 1974, p. 95.
[13] The Appellate Jurisdiction Act (note 48) s 8(2)(c).

facilitate or impede the practical enjoyment of legal rights. Academic and judicial debates on appellate justice have progressively recognised the role of procedural requirements that regulate access to higher courts. Among these requirements is the certification on a point of law. Thus, the work of civil courts is a reflection of the cumulative choices of litigants on when and how to press and defend the appeal or claim.[15]

It has often been considered as a mechanism that filters only the appeals that are referred to the apex court involve a point of law. These requirements have, for ages, attracted scholarly debate from other jurisdictions. The requirement for a certificate before appealing to the apex courts has received little attention.[16] There has been relatively limited analysis of Tanzanian jurisprudence. Thus, existing literature provides useful theoretical foundations while instantaneously revealing important gaps regarding the Tanzanian framework.

The requirement of certification on a point of law before appealing to the apex court as a procedural filter is not a modern novelty but echoes an ancient tradition within common law jurisdictions of regulating access to apex courts.[17] In England, for example, the Administration of Justice Act[18] put in place a mechanism allowing direct appeals from the High Court to the House of Lords, provided that there is certification by the trial judge that the case involves a point of law. In fact, this legislative approach was a direct implementation of the recommendations of the Evershed Report[19] as well as the earlier proposal of the Judicature Commissioners' First Report.[20]

Reading the two reports, it is evident that they emphasise screening the intended appeals before they are filed in the apex courts. Ideally, such certification functions as a gatekeeping mechanism that guarantees that only appeals which demonstrate a point of law are instituted in the

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14 Cappelletti and Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective* (note 7), pp. 182–183.
15 H Genn, *Judging civil justice* (Cambridge University Press 2010) p. 3
16 Ibid
17 Evershed Committee on Supreme Court Practice and Procedure, *Final Report* (Cmnd 8878, 1953) para 483.
18 *The Administration of Justice Act 1969*, pt. II.
19 Evershed Committee on Supreme Court Practice and Procedure, *Final Report* (Cmnd 8878, 1953) para 483.
20 Judicature Commissioners First Report 1869 [4130] 1869, 24.

appellate apex courts. Unlike the English model, Tanzanian law vests exclusive authority to certify a point of law in the High Court without providing a mechanism for appellate review of the refusal. This distinction has significant implications for access to justice and demonstrates the uniqueness of the Tanzanian framework that requires academic scrutiny.

This approach has been subjected to criticism as an appeal to the apex court is not always regarded as subject to procedural requirements, which at times limit access to justice.[21] This contrary argument is a resounding bell on the need to conduct more research on this topic.

Scholarly arguments from different jurisdictions have constantly argued that although a right to appeal may be constitutionally guaranteed, the conditions to pursue the same may undermine it.[22] Posner contends that appellate courts rely on a selective requirement to manage the backlog of cases and maintain significant doctrinal issues that may be determined by the appellate courts. [23] He has justified the selective requirement to manage an appeal to the apex court, but his analysis remains institutional and economically oriented. In the absence of a clear doctrinal assessment of the certification rationale and its impact on accessing justice to the apex court, access to civil justice remains elusive.

Robertson's work on the right to appeal is primarily concerned with the normative question of whether appellate review constitutes a constitutional guarantee; however, it does not extend to analysing how procedural requirements such as certification on a point of law operate in practice to qualify or restrict that right.

In his work, Shapiro observes that appellate courts ought to balance the competing objectives of appeal, which are error detection and correction, institutional efficiency and legal development based on the decision made.[24] Similarly, Shapiro advances a powerful theoretical framework by identifying the competing objectives in the justices' system in appellate courts. However, his analysis is far from indicating how the requirement of certification achieves the objective of access to justice without

[21] Robertson, *The Right to Appeal* (note 2).
[22] Ibid.
[23] Posner, *The Federal Courts: Challenge and Reform* (note 13).
[24] M. Shapiro, *Courts: A Comparative and Political Analysis*, Chicago: University of Chicago Press, 1981.

preventing litigants from exercising their appellate right in the highest courts within their jurisdictions.
Correspondingly, Jacob conceptualises civil procedure as the machinery of justice which provides for the mechanisms of regulating access to courts and ensuring orderly adjudication of legal disputes.[25] Even though Jacob's work is relevant to this study, it is largely foundational and does not go into detail to examine appellate thresholds with the requirement of certification, which, in fact, is a preoccupation of the work under review.

Crennan opines that the rationale for having the certificate on point of law is to ensure that matters taken to appellate courts raise a significant point of law and appellate courts determine matters which raises substantial point of law. [26] In a broader socio-legal context, the author highlights how procedural structures influence who gains access to higher courts, thereby shaping substantive outcomes in the justice system.

Galanter argued that litigation normally operates under a structured legal system composed of rules, courts, lawyers, and parties. Ideally, all functions with different roles but with the same objective, which is promoting justice.[27] Thus, these institutions are arrangement cannot be considered as passive, but they have an essential role which makes the law act as a distributive change tool. A complex of legal rules and procedures requires specialised legal expertise. The legal limitation of accessing the higher court in some instances impedes accessing the apex courts. Glanter's analysis is largely structural and general, providing a narrow focus on jurisdiction-specific procedural rules and the requirements for their grant. Primarily, his analysis focuses on the inequality within the courts, among litigants, and between advocates. It attracts debate on how to balance the certification of the point of law and the need to access justice.

The reviewed literature on appellate justice, to a large extent, focuses on the right to appeal as provided in the constitution, access to justice in broad term and the independence of the judiciary. Little attention has been paid to certification on the point of law as a procedural gateway to

[25] J. I. H. Jacob, 'The Fabric of English Civil Justice' in *The Reform of Civil Procedural Law and Other Essays in Civil Procedure*, London: Sweet & Maxwell, 1982.
[26] Crennan, 'The viability of certification in federal appellate procedure' (note 14).
[27] M. Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (note 9), pp. 95–160.

CAT. The extent to which the certification requirement hinders applicants or appellant to access CAT is not thoroughly examined by reviewed scholarly works in civil matters which requires certification in Tanzania. The article addresses the identified gaps by assessing the legal framework, judicial approach in interpreting the law and legal implications on access to civil justice in CAT.

3.0 Legal Framework Governing Certification on Points of Law in Tanzania

The legal architecture of certification on point of law before appealing to the CAT is primarily governed by the Constitution of the United Republic of Tanzania, the Appellate Jurisdiction Act[28] The Tanzania Court of Appeal Rules,[29] and the Magistrate Courts Act.[30] The Appellate Jurisdiction Act[31] state the requirement of obtaining a certificate on a point of law when a person appeals to the CAT for matters that originate from the Primary Court and where such an appeal to the CAT is the third appeal. Thus, in civil matters originating from Primary Courts, the law establishes the requirement of a certificate on a point of law to balance the need for appeals referred to the CAT, so that they are confined to a particular parameter. The requirement for Certification on points of law forms a central part of this legal framework, as it determines whether a litigant can pursue a third appeal to the CAT or not.

3.1 Constitutional Basis of the Appellate Structure

The appellate system in Tanzania obtains its foundation from the Constitution[32], which establishes the CAT as the highest judicial authority in Tanzania.[33] Its jurisdiction is provided by the constitution and any other written laws.[34] The core functions of the CAT are to hear and determine appeals filed before it, which emanate from the decision of the High Court of the United Republic of Tanzania and the High Court of Zanzibar or a magistrate in a subordinate court with extended jurisdiction.[35]

[28] The Appellate Jurisdiction Act (Cap 141 R.E. 2023).
[29] The Tanzania Court of Appeal Rules, G N No. 368 of 2009 (as amended).
[30] The Magistrate Courts Act (Cap. 11 R.E 2023).
[31] The Appellate Jurisdiction Act (note 34) s 8(2)(c).
[32] The Constitution of the United Republic of Tanzania (note 10).
[33] Ibid, art 117.
[34] Ibid.
[35] Ibid, art 117(3).

Within the Tanzanian judicial ladder, civil disputes ordinarily proceed through three levels of adjudication, namely, subordinate courts, which include the Primary Court[36], the District Court[37], the Court of Resident Magistrate,[38] the High Court of the United Republic of Tanzania,[39] the High Court of Zanzibar[40], and the CAT.[41]

The legal mandate regulating certification on points of law in Tanzania is grounded in the Constitution[42]. The Constitution vests the Judiciary with the final authority in dispensing justice in both criminal and civil matters.[43] Thus, in a broad sense, the courts have supremacy in adjudication and promoting access to justice. This normative foundation is consummated by virtue of a hierarchical court structure and procedural regimes which determine how justice is accessed in CAT, which, among other thing include the requirement for a certificate on a point of law as a prerequisite of appealing to CAT on matters originating from a Primary Court or which the law has specified

The practical implications of the court being the final authority in dispensation of justice also imply that when determining a certificate on a point of law, their decision may have a finality effect which, at times, jeopardises the right to access justice. The case of *Amina Ramadhani v. Athumani Hinga and Yahya M. Singu*[44] the court insisted that the judiciary is the final authority to dispense justice in Tanzania, which supports the normative function of the court in any justice system.

3.2 The Appellate Jurisdiction Act

The principal legislation governing appeals to the CAT is the Appellate Jurisdiction Act.[45] According to this Act, the CAT has jurisdiction to hear both appeals from the High and Subordinate courts having extended

[36] The Magistrates' Courts Act (Cap 11 R.E. 2023) s 3.
[37] Ibid, s 4.
[38] Ibid, s 5.
[39] The Constitution of the United Republic of Tanzania (note 10) art 108(1).
[40] The Constitution of the United Republic of Tanzania (note 10) art 114; Constitution of Zanzibar 1984 art 93(1).
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] *Amina Ramadhani v. Athumani Hinga and Yahya M. Singu,* Miscellaneous Land Revision No 26947 of 2023 (High Court of Tanzania at Dodoma) reported in *TANZLII*, p. 8.
[45] Appellate Jurisdiction Act (Cap 141 R.E. 2023) s 6.

jurisdiction.[46] Thus, the Appellate Jurisdiction Act establishes the framework governing appeals to the CAT.[47] It establishes the general statutory framework governing appeals to the CAT in civil proceedings.
The Act stipulates the mandatory legal requirement that all appeals originating from a magistrate with extended jurisdiction or the High Court are referred to the CAT. This is so notwithstanding that such an order or decree was made in exercise of original, revision, or appellate jurisdiction of the High Court or a magistrate with extended jurisdiction.[48] The cited provision recognises the right of appeal, placing the CAT as the highest forum for determining a High Court decision or that of the magistrate with extended jurisdiction of the judicial ladder in Tanzania.

Nevertheless, this position granting the right to appeal is not absolute. There are preconditions which must be met, which act as an exception to the right to appeal for the matters arising under Head (c) of Part III of the Magistrates' Courts Act.[49] Among other provisions is the provision requiring that the appeal be filed with the CAT as a condition that the certification of the point of law from the High Court is obtained. There must be a point of law involved in the intended appeal. This provision provides for the mechanism that regulates appeals to be referred to the CAT, though it intends only to allow arguable appeals to the CAT; however, when viewed broadly, it limits access to the CAT. Generally, the provisions under the Appellate Jurisdiction Act[50] provide generally and specifically for the appellate jurisdiction in appealing to the CAT. Apart from the fact that the law provides for the general right of appeal, it stipulates the conditions to be met for one to qualify for the right to appeal that has been provided. Thus, the right to appeal to Judicial interpretation has reinforced this structure by treating certification as a condition precedent to jurisdiction. This position was fortified in *Amina Joseph Muganda v. Zainabu Juma Masoud*, (Administratix of the Estate of the Late Hashimu Jawadu Zubail).[51] The CAT, confronted by an application or revision after the High Court had refused to grant certification of a point of law, observed that

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[46] Ibid.
[47] Ibid s. 8
[48] Ibid.
[49] Ibid, s 8(2).
[50] The Appellate Jurisdiction Act (note 48) s 8.
[51] *Amina Joseph Muganda v Zainabu Juma Masoud, Civil Application No 357/08 of 2023 (Court of Appeal of Tanzania at Mwanza) reported in TANZLII, p. 8.*

> "*Filing a revision against the ruling of the High Court refusing to certify a point of law amounts to questioning the mandate of the High Court in the matter or trying to force it to do what she thinks is right. We do not have such jurisdiction and if there is any such application filed as alleged, in our respectful view, on the facts before us, amounts to an abuse of the court process"*

This decision underscores the mandatory requirement of a certificate on a point of law from the High Court when the matter lies before the CAT as the third appeal. The court went further to declare that it has no mandate to question whether the certificate was properly refused or not and that raises a serious issue on access to justice to CAT when the certificate of law is wrongly refused.

From the above-discussed case law, it is apparent that the law provides for a dual structure within the appellate system in the CAT. On one level, the law affirms the availability of an appeal right to CAT from the High Court or from the decision of the magistrate with extended jurisdiction and on the other side, it restricts the appeal in certain categories of cases, which require certification of a point of law before appeals are lodged to CAT. Legally speaking, the High Court is placed in a position where it determines appeal which may be filed to the CAT.

This statutory structure operates within the broader constitutional framework.[52] Within this framework, the provision under appellate Jurisdiction Act[53] operates as a mechanism regulating whether or not an appeal demonstrates a point of law to be filed in the CAT. Regarding this mandatory requirement, certification of a point of law is a central requirement when assessing how procedural requirements are considered determinant factors for the litigant to access justice in the CAT in civil cases.

3.3 Legal Framework under the Tanzania Court of Appeal Rules

The procedural framework regulating certification on points of law as a mandatory requirement to specified cases before appeal to the CAT is further governed by the Tanzania Court of Appeal Rules.[54] Hereinafter referred to as the rules which provide the way in which applications

[52] Constitution of the United Republic of Tanzania (note 10) art 107A(1).
[53] Appellate Jurisdiction Act (note 48) s 8.
[54] Tanzania Court of Appeal Rules, GN 368 as amended.

relating to certification on the point of law are to be made. These Rules reinforce the statutory requirements by outlining the procedural steps that must be followed before an appeal can be properly instituted in the CAT.

The Rules provide for the mandatory requirement for the application for a certificate on a point of law for cases that require such a certificate.[55]It is mandatory that where an appeal demands a certificate on a point of law, then such a certificate must be applied to the High Court within the prescribed time. It places an application for a certificate on the point of law to be made formally. Thus, appealing in such cases is not automatic, but the certificate on the point of law must be sought by the applicant and be granted before lodging an appeal to the CAT. In the case of *Kahambi Idd v. Hidaya Shaban*[56] The court reiterated the requirement that an application for a certificate on a point of law should be made in the High Court within the prescribed time. If a party is unable to lodge the application for a certificate on a point of law within the prescribed time, the applicant may apply for an extension of time in the High Court at first instance. If the application is refused, the applicant may then apply for the same in the Court of Appeal as a second bite.[57] The application for extension of time must be made within fourteen days of the CAT from the date the High Court refused to grant an extension of time to lodge a certificate on a point of law.

The Rules further clarify the procedural sequence that must be followed by the applicant to apply for the certificate on the point of law. It makes it mandatory that, where a certificate is necessary, such an application for a certificate must be made after the notice has been lodged. [58]This sequential order is momentous because it demonstrates that the notice of appeal alone does not suffice to institute an appeal in CAT. Instead, certification on the point of Law forms an additional mandatory procedural step that must be met before an appeal can be competent in CAT.

The Rules also impose formal requirements on the manner in which the application should be made. Basically, the application must be made by

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[55] *Ibid* r 44.
[56] Civil Appeal No. 544/11 of 2028, Court of Appeal of Tanzania at Tabora, TANZLII p.4.
[57] Tanzania Court of Appeal Rules (note 32) r 45A(1)(c).
[58] *Ibid* 46(1).

chamber summons supported by an affidavit.[59] In addition, all relevant documents must be attached, including but not limited to the decision intended to be challenged. All these requirements reveal the procedural framework of access to justice in CAT.

While the rules provide for the second bite to file an application for extension of time in CAT in case the High Court refuses to grant extension of time[60] however the rules do not provide a room for the CAT to determine if the point of law exists where it has been refused by the High Court. The consequences of this procedural practice reinforce the finality of the High Court decision, hence acting as a gatekeeper for a litigant to access CAT, especially when there is a requirement in point of law.

Generally, the Rules establish a structured procedural regime under which a certificate on points of law must be sought and obtained. By prescribing the timing, form, and forum for such applications, indicate the procedural requirement in accessing CAT. This reveals that accessing CAT is not an absolute right but is subject to some legal procedural requirement, especially when the matter requires a certificate on a point of law.

4.0 Judicial Interpretation of Certification on Points of Law

From the legal framework discussed above, the jurisprudence of the Court of Appeal of Tanzania reveals a coherent but highly formalistic doctrinal approach to the procedural requirement of certification on points of law. It firmly entrenches it as a jurisdictional gateway to appeal to the CAT. It is undisputed that the doctrine serves an important institutional function in filtering appeals before being filed with the CAT. Judicial interpretation and practice reveal a persistent tension between procedural rigour and access to civil justice in CAT, warranting critical scholarly review.

At the outset, the CAT has consistently affirmed that certification of a point of law by the High Court constitutes a mandatory jurisdictional precondition. Underscoring the legal position that CAT cannot entertain an appeal in a matter requiring a certificate on a point of law, and where the same has not been obtained from the High Court. This position was

[59] Tanzania Court of Appeal Rules (note 32) r 49.
[60] bid, r 45A.

reinforced in *Shamte Khatibu v. Charles Moses*[61] where the CAT struck out the third appeal for lack of a proper certificate and requisite High Court documentation, which, as a matter of rules, must be included in the record of appeal.

From a doctrinal perspective, this decision clearly positions certification as a jurisdiction-triggering mechanism. The rationale being that only appeals that demonstrate a point of law, as per the High Court's view, are allowed to be filed with the CAT for determination. It may be argued, from a scholarly perspective, that the rigid certification of the point of law, being exclusively vested in the High Court, raises procedural concerns that undermine access to civil justice in CAT. It warrants the High Court's discretion to salvage appeals involving substantive legal issues while prioritising procedural requirements at the detriment of substantive justice.

Similarly, in *Mathew Mlay v Rashid Majid Kasenga,*[62]the CAT reaffirmed the procedural threshold governing appeals originating from the Primary Court by holding that where an appeal does not lie as of right, it may only be instituted upon leave or certification on a point of law, and that such certification constitutes a mandatory jurisdictional prerequisite, particularly in third-tier appeals originating from the Primary Court.

The Court further refused to invoke its revisionary powers under the Appellate Jurisdiction Act, as doing so would circumvent the High Court's jurisdiction to refuse or grant a certificate on a point of law and insisted that revision is not a substitute for appeal. It concluded that in case the condition for instituting an appeal has not been met, including obtain certificate on a point of law, such an appeal becomes incompetent before the CAT. This indicates the strict application of procedural rules, which at times limit access to justice in the CAT.

The Court has further developed a demanding standard requiring certification to be specific, explicit, and supported by judicial reasoning.

[61] *Shamte Khatibu v. Charles Moses,* Civil Appeal No. 15 of 2011, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2016, pp. 4-7.
[62] *Mathew Mlay v Rashid Majid Kasenga,* Civil Application No. 354/17 of 2020 (Court of Appeal of Tanzania, Dar es Salaam Registry).

In *Dorina N. Mkumwa v. Edwin David Hamis*[63] The Court forbade a vague certificate that failed to identify the precise point(s) of law, criticising the practice of issuing generalised statements without analytical grounding. The Court insisted that certification must clearly articulate the legal issue(s) and reflect a reasoned judicial determination. Although this requirement promotes doctrinal clarity and assists the CAT in dealing with specific legal issues that the High Court has properly assessed, it introduced a very strict technical requirement. Litigants are exposed to the risk of not meeting the laid-down standard when seeking the certificate on a point of law. This is considered as a reminder of the need to have an option in determining the point by the CAT when the High Court refuses the same. In the absence of this mechanism, there is a likelihood of restricting access to justice for most of the litigants.

The CAT has further strictly reinforced the difference between questions of fact and law. These also limits the circumstances in which a certificate on the point of law can be granted. In *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru,*[64] *The* High Court refrained from granting a certificate on a point of law as the application and supporting affidavit raised issues of fact and not law.

From a scholarly perspective, this approach preserves the appellate hierarchy by confining the CAT to its role of dealing with matters of law when the appeal before it is the third appeal; however, from a bird's eye perspective, the rigid dichotomy between law and fact is often superfluous. Many disputes involve both questions of law and fact, and an excessively obstructive interpretation may reject appeals with significant legal principles, though embedded on point of fact. As a result, the determination of the point of law in a narrow scope stimulates a review to balance the demand of justice vis-à-vis the procedural requirement.

The other critical issue is that the CAT has insisted that certification on a point of law is an exclusive jurisdiction of the High Court.In *William F. Muze v. Yane Tedy Mayemba*[65] The CAT held that certification is "the

[63] *Dorina N. Mkumwa v. Edwin David Hamis,* Civil Appeal No. 53 of 2017, Court of Appeal of Tanzania, Mwanza Sub-Registry, 2018, pp. 9–1.
[64] *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru,* Misc. Civil Application No. 15316 of 2024, High Court of Tanzania at Mwanza, unreported (TANZIL), p. 4.
[65] *William F. Muze v Yane Tedy Mayemba,* Civil Application No. 104 of 2016, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2016, p. 5

domain of the High Court." This was reaffirmed in *Shaban R. Kavitenda v Yasin S. Kavitenda,*[66] where the CAT refused to grant a certificate on a point of law as the second bite after the refusal by the High Court. By stating that the CAT has no jurisdiction to grant a second opportunity for certification.

Appreciatively, this interpretation preserves judicial hierarchy boundaries and creates a structural bottleneck. However, litigants are entirely dependent on the High Court's readiness to certify on a point of law. The jurisprudence on the determination of a certificate on a point of law is limited and determined solely based on the court's discretion. From a scholarly perspective, this raises a debate about consistency, accountability, and transparency in the certification process, particularly where refusal is injudiciously determined.

The CAT has consistently rejected attempts to circumvent the certification requirement through alternative procedural mechanisms. In *Mathew Mlay v Rashid Majid Kasenga*[67], The CAT was of the view that, revision cannot be used to bypass the statutory requirement for certification. This reinforces the centrality and indispensability of certification within the appellate framework.

However, this strict limitation of alternative avenues may be critiqued for over-entrenching procedural rigidity, particularly in cases where certification is wrongly refused or procedurally frustrated. A more flexible approach could appear to allow the Court to intervene in exceptional circumstances to prevent injustice.

In the above discussion, the dominant approach by CAT regarding a certificate on a point of law is strict. The CAT has applied stringent rules when the application for a certificate of law is sought in a forum other than the High Court. However, it has relaxed its procedures only where an extension of time to file an application for certification on a point of law is sought. In *Emmanuel Makamba v Bodi ya Wadhamini Jimbo Kuu la*

[66] *Shaban R. Kavitenda v Yasin S. Kavitenda,* Civil Application No. 252 of 2020, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2022, p. 4.
[67] *Mathew Mlay v Rashid Majid Kasenga,* Civil Application No. 354/17 of 2020, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2022, p. 1,

Mwanza,[68] the Court granted an extension of time to apply for certification, recognising that the delay caused by late access to the judgment constituted sufficient cause. Equally, in *Juma Sanga v Matrida Sangupa*[69] The Court refused extension due to unexplained delay and procedural non-compliance.

These decisions suggest that while the Court is not entirely inflexible, its willingness to relax procedural requirements is exceptional and tightly controlled. From a scholarly perspective, this limited flexibility does little to offset the broader rigidity of the doctrine and may not sufficiently safeguard litigants against procedural injustice.

Generally, judicial interpretation of certification on points of law in Tanzania reflects a deliberate gatekeeping philosophy grounded in jurisdictional discipline and doctrinal clarity. While this approach promotes efficiency and preserves the Court's role as a court of law, it simultaneously imposes significant procedural burdens. The cumulative effect of strict compliance requirements, the High Court's exclusive control, and the narrow construction of certifiable issues raises serious concerns about the practical accessibility of appellate justice, particularly for unrepresented or resource-constrained litigants.

4.1 Implications of Judicial Interpretation on the Point of Law for Access to Civil Justice

The jurisprudence discussed above has shown that the certification requirement on points of law operates as a gatekeeping mechanism for the litigant to access CAT. It restricts the third appeal to a legal question solely determined by the High Court.[70] However, this gatekeeping role by the High Court has an adverse impact on access to justice, especially where it is erroneously determined.

Scholarly analysis underscores that the traditional distinction between questions of law and questions of fact plays a decisive determining point of law when there is a question of certification. The determination causes a significant challenge to access to justice when the certificate on a point

[68] *Emmanuel Makamba v Bodi ya Wadhamini Jimbo Kuu la Mwanza,* Civil Application No. 423 of 2021, Court of Appeal of Tanzania, Mwanza Sub-Registry, 2022, p. 3,
[69] *Juma Sanga v Matrida Sangupa,* Civil Application No. 817/06 of 2023, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2024, pp. 4–5,
[70] Appellate Jurisdiction Act (note 48) s 8.

of law is refused. According to Steinman, rigid categorisation of issues of facts and law undermines the decision-making process by the judiciary, as many disputes arising from subordinate courts are predominantly factual, hence limiting litigants' ability to refer the matter to the apex court.[71] These procedural mechanisms undermine access to justice in most of the apex courts in different jurisdictions, including Tanzania.

The jurisprudence of the CAT demonstrates that certification on points of law plays a conclusive role in determining whether litigants can pursue the third appeal in civil matters originating from the Primary Court. In fact, the requirement serves an important judicial function by regulating the CAT's appellate jurisdiction. On the other side, it raises a crucial issue regarding the accessibility of civil justice within the CAT. In *Eustance Kabalyenda v. Venancia Daudi* [72] The CAT held that the rejection of the High Court to grant a certificate on a point of law is final and not subject to appeal to the CAT.

The gap of not having the second bite application to CAT when the certificate is not granted appears to be a stumbling block to access to justice. In *Haruni Chacha and Mugabe Gikaro*[73] The Court insisted that when it comes to the issue of granting the certificate, that remains an exclusive jurisdiction of the High Court, and the legislature made it clear that such jurisdiction is vested in the High Court only. There is no concurrent jurisdiction in determining a certificate on a point of law.

The effects of the law not providing a second bite to appeal in the CAT limit parties to present their grievances to the CAT. The decision on Lord Diplock *in Bremer Vulkan Schiffbau and Maschinenfabrik v. South India Shipping Corp*[74] Although the decision is persuasive, the court made a very crucial remark that every civilised government must have in place mechanisms through which citizens may settle their disputes amicably. A procedural framework should preserve meaningful access to courts for litigants seeking review of legal error.

[71] A.N Steinman, 'Law, fact, and appellate review' *Iowa Law Review*, Vol 110, 2024 (1–), available at: https://scholarship.law.tamu.edu/facscholar/2150 (accessed 6 April 2026).
[72] *Eustance Kabalyenda v. Venancia Daudi*, Civil Appeal No. 70 of 2011, Court of Appeal of Tanzania at Mwanza, reported in TANZLII.
[73] *Haruni Chacha and Mugabe Gikaro,* Civil Application No. 1 of 1986
[74] [1981]AC 909, HH, 976.

From this perspective, although the Constitution of the United Republic of Tanzania[75]provides for the right to appeal; however, it has some limitations imposed by the law, including the limitation under the embedded-on application of the certificate of law. Thus, relaxing this requirement is ideal in promoting access to justice in CAT.

4.2 Key Findings

The foregoing analysis yields five principal findings. First, certification on a point of law functions as a jurisdictional gatekeeping mechanism regulating access to the CAT.[76] Secondly, the High Court exercises exclusive jurisdiction in determining whether or not a point of law exists for purposes of certification.[77]Thirdly, refusal of certification terminates the appellate process because such refusal is generally not subject to appellate review.[78] Fourthly, Tanzanian jurisprudence adopts a predominantly formalistic approach characterised by strict adherence to procedural requirements and a narrow distinction between questions of law and fact.[79] Finally, the certification framework disproportionately affects self-represented and resource-constrained litigants, who may encounter difficulties in identifying and articulating certifiable legal issues.[80] These findings demonstrate the continuing tension between judicial efficiency and access to civil justice within the appellate system.
The study highlights the dual character of certification on points of law as both a procedural safeguard and a potential barrier within the civil justice system. While the requirement serves the legitimate purpose of regulating appellate jurisdiction, it also influences the extent to which litigants can

[75] Constitution of the United Republic of Tanzania (note 10) art 13.
[76] ppellate Jurisdiction Act, Cap 141 (R.E. 2023), s 8(2)(c); *Shamte Khatibu v Charles Moses*, Civil Appeal No 15 of 2011 (CAT, Dar es Salaam Sub-Registry, 2016) 4–7.
[77] *Amina Joseph Muganda v Zainabu Juma Masoud (Administratrix of the Estate of the Late Hashimu Jawadu Zubail)*, Civil Application No 357/08 of 2023 (CAT at Mwanza); *William F Muze v Yane Tedy Mayemba*, Civil Application No 104 of 2016 (CAT, Dar es Salaam Sub-Registry, 2016) 5; *Shaban R Kavitenda v Yasin S Kavitenda*, Civil Application No 252 of 2020 (CAT, Dar es Salaam Sub-Registry, 2022) 4.
[78] *Amina Joseph Muganda v Zainabu Juma Masoud* (n 2); *Mathew Mlay v Rashid Majid Kasenga*, Civil Application No 354/17 of 2020 (CAT, Dar es Salaam Registry, 2022); *Eustance Kabalyenda v Venancia Daudi*, Civil Appeal No 70 of 2011 (CAT at Mwanza).
[79] *Dorina N Mkumwa v Edwin David Hamis*, Civil Appeal No 53 of 2017 (CAT, Mwanza Sub-Registry, 2018) 9–11; *Mathew Mlay v Rashid Majid Kasenga* (n 3); *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru*, Misc Civil Application No 15316 of 2024 (High Court of Tanzania at Mwanza).
[80] M Cappelletti and B Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181; D L Rhode, 'Access to Justice' (2001) 69 *Fordham Law Review* 1785; A N Steinman, 'Law, Fact, and Appellate Review' (2024) 110 *Iowa Law Review* 1; see also discussion in section 4.1.

access the CAT. The procedure offers a finality jurisdiction in determining a certificate on a point of law, which threatens access to justice to CAT as it is determined by a single court without affording options of appeal or second bite application to CAT to cure errors that might have been committed by the High Court.

Thus, this study contributes broadly on understanding of the relationship between appellate procedure and access to civil justice. It further indicates the potential danger for the High Court to have exclusive jurisdiction in determining the point of law. The findings suggest that certification requirements must be carefully interpreted in order to promote access to justice. Also, the High Court should not have exclusive jurisdiction; there should be an avenue to appeal to the CAT as a second bite where the High Court refuses to grant a certificate on a point of law.

5.0 Conclusion and Recommendations

The study under review demonstrated that certification on points of law plays an important role in regulating access to the CAT in civil matters requiring certificate on point of law. The procedural framework established under the Appellate Jurisdiction Act and related procedural rules clearly limit appeals before it when originating from Primary Court courts only to issues of law. Judicial interpretation of these provisions has constantly emphasised that the CAT's jurisdiction is limited to legal questions and not disputes concerning factual issues. As illustrated by decisions cited in this study, the CAT has firmly upheld this distinction while maintaining its role as the apex court responsible for the interpretation and development of legal doctrine in Tanzania.

From the legal perspective, the condition of certification on points of law serves an important role in the appeal process. The confinement of appeals to the point of law assumes that since the matter is preferred to the CAT as the third appeal, the issues of fact must have been settled in the appellate courts below the CAT. The limitation of third appeal appeals supports the principle of finality in litigation by preventing disputes from being prolonged indefinitely through repeated appeals.

However, the analysis undertaken in this article also demonstrates that certification on points of law has important implications for access to civil justice. This is due to the reasons that, at times, disputes originating from the Primary Court might have been preferred to CAT while the factual issues have not been resolved. This limitation is particularly apparent in civil disputes originating from Primary Courts, where many litigants appear without legal representation and may lack the technical expertise required to identify and articulate legal issues that can satisfy the certification requirement.

The legal requirement for the High Court to have conclusive jurisdiction in determining the existence of a point of law significantly hinders access to justice. The CAT have held several times that once the High Court refuses to grant a certificate on a point of law, it ceases to have jurisdiction. This practice and statutory requirement unnecessarily limit the applicant's right to access CAT. The study reveals that the High Court may, in some cases, refuse certification on an unduly narrow view of what constitutes a point of law.

The jurisprudence of the CAT indicates that the determination of whether an issue constitutes a point of law often involves judicial interpretation and discretion. While courts have attempted to maintain a clear distinction between legal and factual questions, the boundary between these categories is not always easily defined. As a result, the interpretation of certification requirements may influence the extent to which litigants can access CAT. Where certification requirements are interpreted narrowly, litigants may be prevented from pursuing appeals even where genuine legal questions arise.

The study, therefore, highlights the dual character of certification on points of law within the CAT. On the one hand, certification functions as a necessary gatekeeping mechanism that enables the CAT to manage its jurisdiction effectively.Thus, the requirement may create procedural barriers that affect the accessibility of appellate justice for certain categories of litigants. Achieving an appropriate balance between these competing considerations remains an important challenge for the Tanzanian judicial system.

This study recommends the following: There should be an amendment of the Appellate Jurisdiction Act to provide specifically that a person aggrieved by the decision of the High Court or tribunal in determining the certificate on a point of law should have an avenue to apply for the same in CAT as the second bite. This will promote access to justice in CAT, especially when the certificate on a point of law is erroneously refused by the High Court as the case may be. Amending the provision and extending appellate jurisdiction on matters of certificate to CAT will expand the normative jurisdiction of CAT in developing the precedent of certificate on a point of law.

There is a need for greater doctrinal clarity regarding the meaning of a "point of law." Although the CAT has provided guidance through judicial decisions, the absence of a clear statutory definition may create uncertainty for litigants and practitioners. Legislative or procedural clarification of the concept of a point of law could help reduce ambiguity and improve the predictability of appellate procedures.

Also, judicial practice could be further developed to ensure that genuine legal issues embedded within factual disputes are properly recognised. Many civil disputes involve mixed questions of law and fact, and overly rigid interpretations of certification requirements may prevent legitimate legal questions from reaching the CAT. Therefore, the CAT should continue to adopt a purposive approach when determining whether an issue raises a point of law.

There should be a relaxed application of law by implying the overriding objective principle, which would enhance accessibility in the CAT. It is a fact that some disputes originating from Primary Courts involve self-represented litigants, clearer procedural guidance on how to identify and present legal questions could help ensure that certification requirements do not operate as unnecessary barriers to justice.

Finally, continued judicial reflection on the relationship between certification requirements and access to civil justice would contribute to the development of a balanced appellate system. Courts must continue to interpret certification rules in a manner that preserves the institutional efficiency of the CAT while ensuring that litigants retain meaningful opportunities to challenge legal errors in degerming certificate on point of law.

Certification on points of law will likely remain an essential feature of the Tanzanian appellate system. As the highest court in the country, the Court of Appeal must necessarily exercise selective jurisdiction to maintain its capacity to interpret and develop legal principles. Nevertheless, the effectiveness of the certification system ultimately depends on its ability to balance institutional efficiency with the broader objective of ensuring accessible and fair civil justice.

This study confined itself to doctrinal methodology which lacks empirical data; however, based on the nature of the study which was purely interpretative on the certificate on a point of law, the study was therefore justified. However, future studies are encouraged to use empirical methodology in order to bring a balanced view while contributing to a deeper understanding of the role played by appellate gatekeeping mechanisms in CAT. Future reforms aimed at clarifying certification requirements and extending appellate jurisdiction on certification of point of law to CAT, and enhancing procedural accessibility may help ensure Access to justice in CAT.

Criminal Record Expungement and Offender Reintegration in Tanzania: A Comparative Legal Analysis

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Abstract
Unlike certain African and Commonwealth jurisdictions, Tanzania has not enacted a statutory framework for expunging or sealing criminal records for minor and moderate offences. This legislative omission results in indefinite record retention for individuals who have fully served their sentences, perpetuating permanent legal disabilities that impede employment, travel documentation, professional licensure, and social reintegration. This paper provides the first systematic legal analysis of this discrete lacuna within Tanzania's criminal justice framework. No prior study has examined Tanzanian law through the doctrinal lens of statutory omission in expungement mechanisms. The paper identifies legal deficiencies arising from the absence of legislation governing criminal records expungement and offers a structured comparative analysis with South Africa, Kenya, and the United Kingdom to derive codifiable eligibility criteria, waiting periods, and offence exclusions. The methodology adopts a mixed-method framework, integrating a comparative doctrinal review of legislation and case law with an examination of social media discourse. The absence of an expungement framework is inconsistent with the rehabilitative object of the Prisons Act and fails to give effect to constitutional protections of dignity, equality, and non-discrimination. The paper recommends the enactment of a dedicated Expungement of Criminal Records Act, incorporating objective statutory criteria, judicial oversight, and express exclusions for serious offences.

Keywords: *Criminal record expungement, offender reintegration, rehabilitation, stigma, Commonwealth law, comparative jurisprudence.*

1.0 Introduction

In the Tanzanian legal landscape, the journey of a suspect from arrest to incarceration is meticulously governed by the Criminal Procedure Act[1] and the Penal Code.[2] Upon completion of a custodial sentence, Tanzanian laws impose no expungement mechanism. Consequently, former

[1] [Cap. 20 R.E. 2023].
[2] [Cap. 16 R.E. 2023].

Prisoners retain criminal records that permanently preclude access to employment, travel documentation, and the ordinary incidents of citizenship, notwithstanding the Prisons Act's rehabilitative objective.[1]

Tanzania's criminal justice system formally adopts punishment, deterrence, and rehabilitation as its sentencing objectives. The Prisons Act explicitly mandates that prisons function as correctional and rehabilitative institutions, not merely as custodial facilities.[2] Upon release, individuals convicted of minor and moderate offences, including petty theft, minor assault, and regulatory violations, retain a permanent criminal record. This record operates as a de facto secondary sanction, indefinitely barring access to employment, travel documents (passports and visas), housing, and community reintegration.

Current policy discussions focus on the administrative burden of criminal records, but neglect the subjective experience of dignity violation. There is a significant gap in qualitative research examining how the permanence of a record, in the absence of expungement, psychologically undermines an individual's sense of self-worth and reintegration, directly challenging the constitutional promise of dignity [3] and non-discrimination.[4] This legal *lacuna* further places Tanzania in breach of the International Covenant on Civil and Political Rights (ICCPR)[5] and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules),[6] which stress rehabilitation and social reintegration. Without expungement, vocational skills acquired in prison become commercially valueless upon disclosure of a conviction to employers or licensing authorities. Such continued disability constitutes a second sanction that negates the Prisons Act's rehabilitative intent.

The decision in *Ismail Aden Rage* demonstrates the operational limits of Tanzania's existing post-conviction legal mechanisms.[7] Following his

[1] G.R. Ayo, *Assessment of the Rehabilitation Services in Tanzania Prisons: A Case Study of Karanga Prison*, Masters of Arts Thesis in Peace and Security Studies offered at the Institute of Accountancy Arusha, 2023, 1.
[2] Toolkit for Security Sector Reporting: Media, Journalism and Security Sector Reform, 2021, .68
[3] *Constitution of the United Republic of Tanzania 1977* art 16.
[4] Ibid, (Article 13).
[5] Tanzania acceded the Treaty on 11 June, 1976 and the Treaty came into effect on 11th September, 1976; See https://treaties.un.org/pages/showDetails.aspx?objid=0800000280004bf5&clang=_en (Accessed on 16th April, 2026).
[6] General Assembly resolution 70/175, annex, adopted on 17 December 2015.
[7] See *Ismail Aden Rage v. Republic*, Criminal Appeal No. 286 of 2005, Court of Appeal of Tanzania.

conviction in the early 2000s on charges including theft of footballs and misappropriation of funds relating to the Football Association of Tanzania (FAT), Rage pursued multiple appeals.[8] Some convictions were upheld on evidential grounds such as recent possession of stolen property, while others were scrutinised for insufficient proof, in the High Court.[9] After receiving a presidential pardon, Rage pursued additional judicial proceedings to obtain full expungement of his criminal record, demonstrating that executive clemency alone does not provide formal record relief. Prior to the pardon, Rage had lost an appeal before the High Court, with a further appeal pending before the Court of Appeal.[10] The Rage case illustrates the doctrinal gap created by the absence of any statutory mechanism for criminal record expungement.[11] The Rage matter confirms that presidential pardons, being discretionary and without automatic expungement effect, afford most ex-prisoners no legal recourse for the indefinite retention of criminal records.[12] Given this limitation on executive clemency, this paper assesses the case for a statutory expungement regime applicable to minor and moderate offences. Drawing on a comparative doctrinal review of South African, Kenyan, and United Kingdom law, it proposes a legislative framework that includes objective eligibility criteria, waiting periods, judicial oversight, and categorical exclusions for serious offences.

This paper addresses a critical gap in Tanzanian criminal justice scholarship by examining, the complete absence of statutory expungement legislation. It argues that the current regime, which relies solely on discretionary executive clemency, systematically violates the constitutional right to dignity and fails to meet Tanzania's international rehabilitation obligations under the ICCPR and Nelson Mandela Rules. By shifting the focus from administrative convenience to subjective human rights harm, and by drawing on comparative models from South

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[8] Notably Criminal Appeal No. 37 of 2005 before the High Court and Criminal Appeal No. 286 of 2005). The offences occurred while Rage was the secretary-general of the Football Association of Tanzania (Fat) between 1996 and 2000.

[9] Tanzania Sports, Ismail Rage wins an Appeal and Acquitted (reported in Swahili), available at https://tanzaniasports.com/ismail-aden-rage-ashinda-rufaa-aachiwa-huru-ismail-aden-rage-ashinda-rufaa-aachiwa-huru/ (Accessed on 16 April, 2026).

[10] BBC News, Tanzania Release Jailed Official, available at http://news.bbc.co.uk/sport2/hi/football/africa/4549692.stm(Accessed on 16 April, 2026).

[11] *Ibid*.

[12] *Constitution of the United Republic of Tanzania 1977* art 45(1).

Africa, Kenya, and the UK, the paper provides the first comprehensive legislative framework for a Tanzanian expungement regime-offering objective criteria, judicial oversight, and a clear pathway to reintegration for rehabilitated individuals.

2.0 Statement of the Problem

Tanzania has no statutory framework providing for the expungement, sealing, or automatic spent status of criminal records for minor and moderate offences. Consequently, such records remain indefinitely accessible for employment and licensing background checks. The legal problem is that no statutory mechanism exists to distinguish between historical minor convictions and ongoing risk, nor to give legal effect to post-sentence rehabilitation. The scholarly gap is that while comparative literature examines expungement regimes in other African and Commonwealth jurisdictions, no doctrinal analysis has systematically assessed the absence of such a framework in Tanzanian law as a discrete legal lacuna, nor identified the specific statutory amendments required to remedy it.[13] In Tanzania, employers use background checks to verify claimed credentials against actual qualifications and prior criminal history.[14] Background screening of job candidates includes examination of financial records, criminal history, educational qualifications, and work experience.[15] Tanzania lacks any statutory mechanism for expunging or sealing criminal records, with the result that even minor or historical convictions remain permanently accessible.[16] Without an expungement mechanism, permanent criminal records create four legal disabilities: restrictions on travel documentation and professional licensing; social stigma affecting housing and reintegration; increased recidivism risk; and inconsistency with the Prisons Act's rehabilitative mandate as well as constitutional guarantees of dignity and equality.[17] The legal gap operates with particular severity for first-time and youthful offenders convicted of minor offences. A legislative expungement framework would necessarily

[13] Multiplier, *Complete Guide to Employment Background Checks in Tanzania* (2026) https://www.usemultiplier.com/tanzania/background-checks accessed 20 April 2026.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] A. Bernard, G. Msomba and J. Pesha, *Social Challenges Facing Ex-Prisoners During their Integration into Societies in Iringa Municipality, Tanzania*; in Asian Research Journal of Arts & Social Sciences, Volume 21, Issue 3, 2023,78-89.

exclude high-risk cases, such as sexual offences by persons in positions of trust.

A comparable legal gap exists in Kenya. Kenya, like Tanzania, has no statutory provision for expungement in the Penal Code,[18] Criminal Procedure Code[19], or National Police Service.[20] In *Njoki v. Directorate of Criminal Investigations*, the High Court (Ong'udi, J.) held that neither the Directorate nor any Kenyan statute confers authority to expunge criminal records.[21] The court recommended that Parliament legislate on offence classification and record retention periods, citing an urgent need in the interest of justice." In response, the Criminal Procedure Code (Amendment) Bill, 2025 (sponsored by MP Babu Owino) proposes expungement of criminal records for minor offences upon sentence completion, with express exclusions for serious offences including sexual offences.[22] The amendment rests on the principle that sentence completion terminates any further punitive legal effects.[23] The amendment seeks to remove legal barriers to reintegration for rehabilitated individuals.[24] Given that Tanzania and Kenya share a common legal lacuna in expungement legislation, this paper undertakes a comparative analysis of Kenya's proposed statutory framework alongside those of other Commonwealth jurisdictions. This Kenyan decision, demonstrates that the neighbouring jurisdictions face similar legal gaps and provides a comparative reference point for Tanzanian research.

3.0 Methodology

This study is predominantly doctrinal, employing a comparative analysis of statutes, case law, and legal literature from Tanzania, Kenya, South Africa, and the United Kingdom. To enrich this legal analysis with experiential insight, qualitative data were gathered through an open-ended peer-group discussion on a WhatsApp platform among legal and civil society professionals. Thematic analysis of the narrative responses revealed shared experiential patterns concerning the collateral consequences of permanent criminal records, the inadequacy of executive

[18] (Cap. 63).
[19] (Cap. 75).
[20] Act No. 11A of 2011.
[21] [2023] KEHC 17924 (KLR).
[22] S.142A -142C of the Criminal Procedure Code (Amendment) Bill, 2025.
[23] Ibid.
[24] Ibid.

clemency, and the perceived violations of dignity and reintegration. These qualitative findings serve an illustrative and contextualizing function, grounding the doctrinal inquiry in the lived professional knowledge of practitioners, and reflect an emerging methodological commitment to digital spaces as valid sites of legal research.[25] Among the qualitative perspectives gathered, a thematic cluster of reservations emerged concerning serious offence exclusions, the composition of autonomous decision-making bodies, and the need for abuse safeguards. Participants illustrated these concerns through practical scenarios-references to prominent cases, professional reinstatement anxieties, the perception of permanent records as double punishment, and proposals such as a three-year good-conduct waiting period. These experiential insights serve a supplementary and triangulatory function, enriching the primary doctrinal and comparative analysis of Tanzanian statutes, case law, international instruments, and existing literature. No legal finding depends exclusively on these qualitative accounts; rather, they provide contextual depth and illustrative texture to the normative argument for reform. Ethical anonymity was maintained throughout.

3.1 Ethical Considerations

The supplementary qualitative component originated from a discussion within a private WhatsApp group comprising alumni of a secondary school. Members represent diverse professional backgrounds, including legal practitioners. The topic emerged spontaneously from routine group conversation. Following identification of the legal gap concerning criminal record expungement in Tanzania, group members encouraged further action, including the possibility of instituting a constitutional challenge or pursuing other reform-oriented measures. The author subsequently developed the present doctrinal study based on that identified gap.

To protect confidentiality, the name of the secondary school, the name of the WhatsApp group, and the identities of all individual respondents have not been disclosed. No respondent is identified by name or any personally identifiable information. The discussion data were used in aggregated and anonymised form only. This paper does not attribute any legal position or finding to any specific individual.

[25] Members of a WhatsApp group comprising alumni of a secondary school who are now professionals working in various capacities and careers.

4.0 Key Literature and Theoretical Framework

Scholarship on the collateral consequences of criminal convictions has grown exponentially since the late 20th century, recognising that a criminal record often imposes lifelong barriers that far exceed the formal sentence imposed by a court. These "invisible punishments" or "civil death" effects include restricted access to employment, housing, education, professional licensing, travel documents, public benefits, and social acceptance. In many jurisdictions, including Tanzania, the permanent retention of criminal records transforms what should be a finite punishment into a perpetual stigma, undermining rehabilitation and increasing the likelihood of recidivism. However, because Tanzania currently lacks dedicated legislation on record expungement, there is a conspicuous absence of domestic legal scholarship on the subject. Consequently, this review relies primarily on foreign and comparative African literature to analyse the collateral consequences of convictions, examine Tanzanian studies on prison rehabilitation and post-release challenges, and articulate the core theoretical frameworks that underpin the argument for statutory expungement of minor and moderate offences. The analysis demonstrates that record relief mechanisms, when properly designed, enhance employability and desistance from crime without compromising public safety, while aligning with constitutional and international human rights obligations.

4.1 Collateral Consequences of Conviction: Global and African Perspectives

The concept of collateral consequences was popularised in the United States through seminal works documenting how criminal records create a "second punishment" that operates independently of the criminal sentence.[26] Herbert, Morenoff, and Harding assert that formerly incarcerated persons face a unique set of obstacles to finding and maintaining secure and stable housing, including prejudice and discrimination against those with a criminal record, legal barriers, and hurdles stemming from the direct involvement of the criminal justice system in their lives.[27] Mauer and Chesney-Lind have emphasised the

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[26] United States Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* (Briefing Report, 2019) 1.
[27] C.W. Herbert, et al., *Homelessness and Housing Insecurity Among Former Prisoners*, 2016.

disproportionate impact on racial minorities, framing collateral consequences as modern extensions of historical disenfranchisement.[28]

In a comprehensive empirical study of expungement outcomes in the United States, Prescott and Sonja analysed Michigan's record-clearance programme and found that expungement significantly reduces recidivism, improves employment prospects, and increases access to housing and public aid.[29] Their randomised controlled trial data showed that individuals whose records were expunged had substantially lower re-arrest rates over multi-year follow-up periods compared to matched controls, attributing the effect to reduced stigma and increased legitimate opportunities.[30] They further conclude that expungement provides a mechanism to eliminate simultaneously a broad array of legal and socioeconomic collateral consequences; such laws typically permit individuals to apply for employment, housing, educational admission, and public benefits as if their convictions had never occurred.[31]

African scholarship mirrors these concerns but adds layers of post-colonial and resource-constraint realities. In South Africa, the most advanced jurisdiction on the continent regarding expungement, the Law Reform Commission and academic commentators have documented how criminal records perpetuate unemployment and social exclusion, particularly for Black South Africans still navigating apartheid-era legacies.[32] Michael Pinard's comparative analysis of the United States, England and Wales, Canada, and South Africa demonstrates that, notwithstanding their differing constitutional frameworks, the collateral consequences of criminal convictions in these jurisdictions systematically impair human dignity and reintegration, and frequently operate as de facto discrimination on the grounds of race and class.[33]

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[28] M.Manuer and M. Chesney-Lind (Eds.), *Invisible Punishment, the Collateral Consequences of Mass Imprisonment*, 2002, 18.
[29] Prescott and Sonja Starr, pp 2462 *et seq*, Expungement of Criminal Convictions: An Empirical Study, in the Harv. L. Rev. 133, 2020, no. 8: 2460-555.
[30] Ibid.
[31] Ibid.
[32] See the South African Law Reform Commission, Discussion Paper No. 135, Report titled *Review of the Expungement of Certain Criminal Records,* 2015.
[33] Michael Pinard, *'Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity'* (2010) 85 New York University Law Review 457, 489–90.

In Tanzania and East Africa, the literature is sparser but consistent in identifying employment and stigma as primary barriers. A 2023 study of ex-prisoners in Iringa Municipality found that social challenges-community ostracism, family rejection, and employer reluctance to hire those with records; severely hamper reintegration, with many ex-prisoners resorting to informal or illegal survival strategies. [34]The authors noted that even minor convictions (e.g., petty theft) trigger lifelong police clearance requirements, rendering vocational training acquired in prison practically useless.[35]

4.2 Tanzanian Scholarship on Prison Rehabilitation and Reintegration

Tanzanian studies provide empirical grounding for the claim that the absence of expungement laws defeats the rehabilitative philosophy of the Prisons Act.[36] Hamad Mohamed's 2023 master's thesis, based on a qualitative case study of Arusha Central Prison identified core challenges: inadequate professional and working tools for vocational skills training (carpentry, agriculture, tailoring); unsupportive infrastructure for disabled or foreign prisoners; language barriers; and a complete lack of personalised psychological support.[37] Despite these deficits, prisoners reported satisfaction with available programmes and belief that they prepared them for reintegration.[38] However, post-release realities-victim reluctance to accept returnees, many individuals face difficulties in finding stable housing, securing employment, and rebuilding social connections. The stigma associated with having a criminal record often leads to discrimination and limited opportunities, exacerbating the challenges faced by former prisoners.[39] Inadequate support systems and re-entry programs further hinder successful reintegration and increase the risk of recidivism undermined success.[40] Hamad concludes that

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[34] M. Hamad, *assessing challenges facing rehabilitation of prisoners in Tanzania: the case of Arusha Central Prison* (Thesis by the Institute of Accountancy Arusha for the fulfilment of the requirements for the degree of Master of Arts in Peace and Security offered by the Institute), 2023, 5-9.

[35] Ibid.

[36] CAP. 58 R.E 2023, See also A. Bahati, pp. 164 *et seq*, *An Overview of the Tanzanian Prison System with Particular Reference to the Treatment of Prisoners in Police Custody and Correctional Institutions*, making an assertion that with independence of the country in 1961 the prisons institution became a correctional institution, basically aimed at rehabilitating inmates by reformatory treatment; available at https://www.ojp.gov/pdffiles1/Digitization/106500-106513NCJRS.pdf (Accessed on 18th April, 2026).

[37] Refer to FN No. 37 above.

[38] Ibid.

[39] Ibid.

[40] Ibid.

rehabilitation programmes function more as symbolic than substantive correctional tools without systemic post-release support and record relief.[41]

Complementary research by Gerald Ayo, on rehabilitation services across Tanzanian prisons echoes these findings, highlighting resource shortages and the need for policy alignment with international standards.[42] A 2025 evaluation of prison programmes for ex-convicts in Zanzibar similarly documented low reintegration efficiency due to stigma and employment barriers.[43] The author further states that no mechanism has been established for ex-offenders.[44] Respondents (ex-prisoners) reported how they continue to be treated as criminals.[45] This situation frustrates the effective utilisation of the skills we acquired while in prison.[46] Moreover, there is no direct contact between inmates and the community during the service of sentence, save for family and next-of-kin visits which occur only once per month.[47] He also notes that Non-governmental organisations engage with ex-prisoners solely for financial purposes, not for genuine rehabilitation or reintegration.[48]

Regional African literature reinforces the Tanzanian picture. Amanda Dissel's overview of rehabilitation and reintegration in African prisons notes that while most countries acknowledge rehabilitation as a core prison function, implementation is hampered by overcrowding, underfunding, and the absence of record-clearance mechanisms.[49] In the absence of expungement statutes, even successful vocational training yields limited societal returns, perpetuating the very recidivism that prisons are meant to prevent.[50]

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[41] Ibid.
[42] G.R. Ayo, *Assessment of the Rehabilitation Services in Tanzania Prisons: A Case Study of Karanga Prison*, Masters of Arts Thesis in Peace and Security Studies offered at the Institute of Accountancy Arusha, 2023, 40-43
[43] S.M. Makungu, *Evaluation of the Efficiency of the Prison Programs for Ex-Prison Convicts to Integrate in Society upon Their Release in Zanzibar* in Journal of Public Policy and Administration, 2025, Vol 10, Issue 2, No.4, pp 49 -73.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] A. Dissel, *Rehabilitation and Reintegration in African Prisons*; 2008, 156 Available at https://csvr.org.za/rehabilitation-and-reintegration-in-african-prisons/ (Accessed on 18th April, 2026).
[50] Ibid.

Bland *et al* reinstates that a criminal record imposes severe consequences upon its bearer.[51] Being officially branded a "criminal" entails not only formal sanctions-such as imprisonment or other penal measures; but also informal punishments, including exclusion from employment opportunities, banking services, professional guilds, and the right to vote.[52] Furthermore, it irrevocably damages one's reputation.[53] Thus, a criminal record stands as a potent instrument of the criminal justice system, producing effects that extend well beyond the punishment formally prescribed for the wrongdoing.

4.3 Theoretical Frameworks

The call for expungement in Tanzania is theoretically anchored in four interlocking perspectives that collectively explain why permanent criminal records undermine rehabilitation and why targeted relief for minor and moderate offences is both just and effective.

4.3.1 Labelling Theory

Outsiders, published by Howard S. Becker in 1963, stands as a foundational work of both labelling theory and the sociology of deviance.54 The act of officially labelling an individual as "criminal" can change how they are treated by others.55 This can lead the individual to internalize the label and ultimately adopt it as part of their identity, creating a "self-fulfilling prophecy" where the label reinforces the deviant behaviour.[56] Becker's seminal work *Outsiders* (1963) argues that the "master status" of "criminal" overrides other identities, leading to secondary deviance as individuals internalise the label and are denied conventional opportunities.[57]

In the Tanzanian context, a minor conviction for petty theft becomes a permanent master status. Employers conducting police clearance checks, licensing bodies, and communities apply the label, leading ex-prisoners to internalise exclusion and, in some cases, return to crime as the only viable

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[51] B. Mathew, Ariel Barak and Kumar Sumit, '*Criminal records versus rehabilitation and expungement: a randomised controlled trial*' in Journal of Experimental Criminology (2024) 20:717–741.
[52] Ibid.
[53] Ibid.
[54] See C. Wickert, citing *Outsiders* by Becker, 2019, Available at https://soztheo.com/theories-of-crime/interactionist-labeling/outsiders-becker/?lang=en (Accessed on 18th April, 2026).
[55] Ibid.
[56] Ibid.
[57] Ibid.

path. Expungement directly counters this by enabling "de-labelling," allowing the individual to reclaim a non-deviant identity after demonstrated good conduct. Empirical support comes from expungement studies showing reduced recidivism precisely because the removal of the official label restores access to legitimate roles.

4.3.2 Reintegrative Shaming

Braithwaite's offers a fundamental reconceptualization of how societies should respond to wrongdoing. At its core, the work argues that shaming-the social process of expressing disapproval for misconduct, is not inherently harmful but can be a powerful tool for social control when deployed correctly.[58]The crucial insight is that shaming can be either stigmatising (disintegrative) or reintegrative**,** with dramatically different consequences for both the offender and public safety.[59] For minor and moderate offences in Tanzania, permanent records represent disintegrative shaming par excellence. The Ismail Aden Rage litigation illustrates the point: even after presidential pardon and partial appellate clearance, the lingering record prevented full professional and social reintegration. A statutory expungement regime would institutionalise reintegrative shaming, aligning with the Prisons Act's corrective ethos and reducing the social costs of indefinite exclusion.

4.3.3 Theory of Restorative Reintegration

This theory provides a principled foundation for the expungement of criminal records for minor and moderate offences, grounding it not merely in utilitarian concerns (reducing recidivism) but in the deeper normative demands of moral inclusion, community accountability, and reparative justice.[60] Resettlement and re-entry focus on the physical and material conditions of release-housing, employment, and supervision.[61] Reintegration, by contrast, incorporates a symbolic and expressive dimension*:* moral inclusion, forgiveness, acceptance, and secular redemption.[62] A criminal record that permanently excludes an individual

[58] J.Braithwaite, *Reintegrative Shaming Theory,* 1989, available at https://sk.sagepub.com/ency/edvol/criminologicaltheory/chpt/braithwaite-john-reintegrative-shaming-theory#_, Accessed on 19th April 2026.
[59] Ibid.
[60] S. Maruna, *Who Owns Resettlement? Towards Restorative Reintegration*, 2020, 29-31, Available at https://satellite.mmu.ac.uk/bjcj/wp-content/uploads/sites/441/2020/08/BJCJ_4-2_Maruna.pdf, accessed on 18th April, 2026.
[61] Ibid.
[62] Ibid.

from employment, housing, and civic participation negates the possibility of genuine reintegration, regardless of material resettlement.[63]

Applying the Legal Theory of Restorative Reintegration to Tanzania, the absence of a general expungement framework constitutes a systemic violation of the principles of moral inclusion, community-led reintegration, and the prohibition of permanent moral contamination.

4.3.4 Human Rights Approach and the Nelson Mandela Rules

The human rights framework treats rehabilitation and reintegration as positive state obligations rather than discretionary privileges. The United Nations Standard Minimum Rules for the Treatment of state that "the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation" and that imprisonment aims at "social reintegration so that prisoners can lead a law-abiding and self-supporting life upon release."[64] Hence, the principal objectives of a custodial sentence or any other measure that deprives an individual of liberty are, first, the protection of society from crime and, second, the reduction of reoffending.[65] These objectives can be realised only if the period of detention is employed, to the greatest extent feasible, to secure the reintegration of such persons into the community following their release, thereby enabling them to live a lawful and self-sufficient life.[66]

Tanzania's Constitution and international obligations under the ICCPR and the African Charter reinforce this approach.[67] Permanent records for low-level offences are disproportionate and dignity-impairing, particularly when they defeat prison-based rehabilitation efforts documented in Hamad (2023) and related studies.

4.4 Synthesis: Implications for Expungement in Tanzania

The literature and theories above, converge on a clear policy imperative: Tanzania's total absence of expungement legislation for minor and moderate offences creates a structural failure in its criminal justice system. Collateral consequences scholarship, demonstrates the scale of

63 Id.
64 *Prisoners (the Nelson Mandela Rules, revised 2015); explicitly in rule 6.*
65 Ibid, rule 5.
66 Ibid.
67 Articles 13 and 16.

barriers; Tanzanian empirical studies document the specific deficits in rehabilitation and reintegration; and the theoretical frameworks provide the normative justification for reform. Expungement limited to minor and moderate offences-after graduated waiting periods, good-conduct requirements, and with strict exclusions for serious crimes; would operationalise labelling reversal, limit reintegrative shaming, desistance support, and human rights compliance.

In a nutshell, the reviewed literature converges on a single, urgent diagnosis: Tanzania's total absence of expungement legislation creates a self-reinforcing cycle of legislative vacuum, empirical failure of rehabilitation programmes, theoretical inconsistency, socio-economic marginalisation, and constitutional non-compliance. The gaps are not accidental but structural, directly attributable to the lack of a dedicated Expungement of Criminal Records Act. Enacting such legislation-limited to minor and moderate offences, with graduated waiting periods (for example, 3-5 years for minor, 7-10 for moderate), independent processes, and strict exclusions for serious crimes-would close these gaps, operationalise the cited theories, realise the empirical benefits demonstrated internationally, and transform ex-prisoners into renewed citizens. The social media responses, Tanzanian prison studies, and comparative evidence all point to the same imperative: legislative reform is not optional but essential for a humane, effective, and constitutionally compliant criminal justice system.

5.0 Benchmarking with African and Commonwealth Jurisdictions

Tanzania remains one of the few jurisdictions globally with a complete legislative vacuum on the expungement, sealing, or spent status of criminal records for minor and moderate offences. Criminal records are retained indefinitely by the Police Force and Prisons Service and are routinely accessed through police clearance certificates, creating perpetual collateral consequences that undermine rehabilitation under the Prisons Act, constitutional dignity, and non-discrimination. The following critical benchmarking exercise examines the statutory frameworks in Kenya, South Africa and the United Kingdom. Each is analyzed with precise reference to the governing laws and section numbers, highlighting eligibility criteria, procedures, exclusions, waiting periods, and practical outcomes. The analysis reveals feasible models that Tanzania could adapt while noting common safeguards against abuse.

5.1 Kenya-Legislative Vacuum with Pending Reform (No Enacted Law)

Kenya has no statutory provision for expungement in the Penal Code[68] or Criminal Procedure Code.[69] In *Ibrahim Kingori Njoki v Directorate of Criminal Investigations & 2 others*, the High Court explicitly ruled that the Directorate lacks discretion to expunge records and urged Parliament to enact legislation distinguishing misdemeanours from felonies and setting retention periods.[70] The court, upon perusing the principal criminal statutes of Kenya-namely, the Penal Code (Cap. 63), the Criminal Procedure Code (Cap. 75), and the National Police Service Act (No. 11A of 2011)-observed that there exists no legal provision or basis for the expungement of criminal records in Kenya.[71] Consequently, a criminal record in Kenya effectively and permanently precludes an individual from securing gainful employment.[72] Ex-convicts are thus released back into society while simultaneously being barred from lawful, remunerative work.[73] The Criminal Procedure Code (Amendment) Bill, 2025 sponsored by MP Babu Owino; re-tabled as the 2026 version, proposes expungement for minor offences after sentence completion, with exclusions for serious crimes, such as sexual offences, violent crimes etc.[74] The bill is currently under scrutiny by the National Assembly Justice and Legal Affairs Committee (JLAC).[75] Under this proposed Bill, a criminal record for a minor offence would be cleared automatically if the sentence imposed was either a prison term of up to six months (with or without the option of a fine, and provided the term was fully suspended or substituted with community service) or a fine not exceeding 50,000 Kenya Shillings.[76] A person is eligible for expungement of a criminal record five years from the date of conviction, provided they have fulfilled their court-ordered sentence and have not been convicted of any

[68] (Cap. 63).
[69] (Cap. 75).
[70] [2023] KEHC 17924 (KLR).
[71] M. Wekesa, A. Mikinyango and E. Tioko, *Ibrahim Kingori Njoki v DCI Revisited - Rights of Ex-Convicts to Gainful Employment*, in the Global Journal of Human Social-Science, Volume 24 Issue 2, 2024.
[72] Ibid.
[73] Ibid.
[74] Eastleigh Voice, Bill Seeks to Erase Minor Criminal Records from Police Clearance Certificates, Available at https://eastleighvoice.co.ke/national/196583/bill-seeks-to-erase-minor-criminal-records-from-police-clearance-certificates (Accessed on 21st April, 2026).
[75] See The National, Babu Owino Pushes Bill To Expunge Criminal Records for Minor Offenders; Available at https://www.thestandard.ke/business/amp/national/article/2001526891/babu-owino-pushes-bill-to-expunge-criminal-records-for-minor-offenders; accessed on 21st April, 2026.
[76] S. 142B of the *Criminal Procedure Code (Amendment) Act, 2025.*

additional offence.[77] Crucially, neither the automatic nor the court-led process would be available if a person is convicted of serious crimes, including capital offences such as murder, treason, or robbery with violence; corruption and economic crimes; money laundering and other financial crimes; and sexual offences against minors or other vulnerable persons.[78] An individual may apply to the National Police Service for a certificate of expungement upon meeting statutory or court-ordered requirements, after which the Service must issue the certificate within fourteen days, with non-compliance leading to complaint mechanisms and unauthorised issuance carrying severe penalties.[79]

Tanzania likewise lacks a comprehensive expungement law and consequently confronts analogous challenges. Specifically, Tanzania could adopt a structured process modelled on Kenya's proposal, including the establishment of a clear waiting period (for example, five years following conviction), a requirement that the individual fully complete the imposed sentence, and an automatic exclusion of serious offences such as murder, terrorism, and rape, thereby reconciling the opportunity for rehabilitation with the imperative of public safety. Such an approach would align with the rehabilitation-focused objectives articulated in Tanzania's own penal policy objectives, currently undermined by the existence of permanent criminal records, by enabling reformed individuals, particularly youth, to secure employment and rebuild their lives without the stigma associated with a past minor conviction.

5.2 South Africa: Comprehensive Administrative Model

South Africa's expungement regime emerged from the post-apartheid constitutional order, which enshrined human dignity, equality and freedom as foundational values.80 The issue of clearing criminal records gained attention after a 2008 amendment to South African law. Previously, the only way to clear a record was through a presidential pardon.81 The section provides a list of sentences in respect of which an

[77] Ibid, s. 142A (1).
[78] Ibid, s. 142A (2).
[79] Ibid, s. 142 D.
[80] K Mahlasela, *How Does the Law on Expungement of Criminal Records Affect Offender Reintegration in South Africa?* University of Western Cape, A research paper submitted in partial fulfilment of the requirements for the award of the LLM degree in (Criminal Justice and Procedure) 2024, pp. 1 and 27.
[81] Section 271B of the CPA is the first provision which deals with the expungement of criminal records.

application may be made for the expungement of a criminal record.82 The new law allows a person to apply in writing to have their criminal record removed after 10 years have passed since their conviction, provided they have not been sentenced to imprisonment without a fine option during that time.83 The law applies mainly to minor offences, such as those resulting in a suspended sentence, a fine under a certain amount, or periodic imprisonment.84 People convicted of serious crimes with heavy sentences are not eligible for expungement.85 The amendment also provided for the automatic expungement of criminal records of persons who were convicted of criminal offences under the previous constitutional dispensation-specifically, offences under oppressive apartheid-era statutes such as the Group Areas Act, Immorality Act and Separate Amenities Act, which would not be regarded as offences in an open and democratic society based on human dignity, equality and freedom.

The expungement of criminal records follows an administrative procedure set out in the Criminal Procedure Act (CPA) and its accompanying regulations.[86] The first step toward expunging a criminal conviction is to obtain a clearance certificate confirming that ten years have elapsed since the date of conviction and sentence.[87] Thereafter, a complete application on the prescribed form must be submitted to the Director-General of Justice and Constitutional Development. If satisfied that the applicant meets the criteria, the Director-General will issue a certificate of expungement, which directs that the person's criminal record be removed.[88] The Director-General is then required to send the certificate to the Head of the Criminal Records Centre of the South African Police Service, who will handle it in accordance with section 271D. The burden rests on the individual with the criminal record to apply for expungement; otherwise, the record remains indefinitely.

[82] See FN 83 above, at p.4 stating that Criminal Procedure Act 51 of 1977 (CPA), which was amended by the Criminal Procedure Amendment Act 65 of 2008. This amendment resulted in the insertion of section 271B into the CPA.
[83] *Criminal Procedure Amendment Act 65 of 2008, section 271B (1)(a*).
[84] Refer FN 83 above, at p.5.
[85] [85] Section 271B of the CPA, an individual will also fail to qualify if he or she was convicted of a sexual offence against a child or a person who is mentally disabled or of an offence where he or she was found unsuitable to work with children. Having your name included on the National Register for Sex Offenders or the National Child Protection Register will also mean that you will not qualify unless your name has since been removed from same.
[86] section 271D of the CPA. Refer to FN 83 above, pp.32-33.
[87] Ibid, see also, Criminal Procedure Amendment Act 65 of 2008, section 271B (2) & (3).
[88] Id.

In summing-up, Tanzania currently does not have a dedicated law that defines "criminal record" or outlines a comprehensive expungement process. This foundational gap is a primary difference that must be addressed before a formal procedure can be implemented. A significant opportunity exists, as Tanzania has already embarked on a comprehensive review of its criminal justice system. One of the most crucial decisions would be to choose an administrative path for expungement, as South Africa has done, rather than a court-based one. The South African model of a centralized executive application is generally faster, cheaper, and more user-friendly than requiring a court petition.

5.3 United Kingdom: Automatic Spent Convictions

The Rehabilitation of Offenders Act 1974 (ROA) is a landmark piece of UK legislation designed to rehabilitate offenders who have not been reconvicted of any serious offence for specified periods of years. This law allows certain convictions to become spent after a set period, meaning they no longer have to be disclosed for most types of employment.[89] The idea is to help people move forward once they have demonstrated law-abiding behaviour.[90] This is achieved by classifying certain convictions as "spent" after a specified period has elapsed. Once a conviction becomes spent, the individual is no longer required to disclose it-for instance, when applying for a job or seeking insurance.[91] Research consistently shows that gaining employment reduces the likelihood of reoffending.[92]

Tanzania currently lacks any statutory framework for the expungement, sealing, or “spent” status of criminal records for minor and moderate offences. This legislative vacuum results in lifelong stigma for ex-prisoners who have served their sentences, creating insurmountable barriers to employment, travel documents, professional licensing, and social reintegration. In this context, the United Kingdom’s Rehabilitation of Offenders Act 1974 (ROA) offers valuable lessons for Tanzania as it considers enacting a dedicated Expungement of Criminal Records Act.

[89] The Open University, *Rehabilitation and the Law: Balancing Justice and second chances*, Available at https://law-school.open.ac.uk/open-justice/blog/rehabilitation-and-law-balancing-justice-and-second-chances, Accessed on 22nd April, 2026.
[90] Ibid.
[91] See UK Parliament, Hansard Report, 2014, Rehabilitation of Offenders Act 1974 9Exceptions) Order 1975 (Amendment), (England and Wales) Order 2014.
[92] Ibid.

One of the most important lessons for Tanzania is the value of an automatic, sentence-based system that minimises bureaucracy. Unlike application-heavy models in some jurisdictions, the ROA operates without the need for petitions, court orders, or administrative approvals in standard cases. Tanzania should also note the UK's willingness to review and amend the legislation over time. Since its enactment in 1974, the ROA has undergone multiple reforms to expand its scope, shorten periods, and respond to changing evidence on rehabilitation. This adaptive approach contrasts with Tanzania's current static vacuum and suggests that any new Tanzanian law should include review clauses to monitor impact on recidivism, employment, and public safety.

6.0 Findings from Social Media Group Discussion

The qualitative data gathered from the social media peer-group discussion provided rich, experiential insights into societal perceptions regarding the need for expungement of criminal records in Tanzania.[93] The discussion brought together informed participants-including legal practitioners, academics, civil society actors, and concerned citizens, who shared their professional and personal reflections on whether ex-prisoners who have served their sentences and returned to society as renewed citizens should have access to criminal record relief.

The responses revealed strong but nuanced support for legislative reform, limited to minor and moderate offences. While the majority of participants expressed clear endorsement of expungement, a notable subset articulated thoughtful reservations that enriched the discussion and highlighted the complexity of the reform agenda.

6.1 Analysis of Participant Perspectives

The thematic analysis of the discussion identified several recurring issues that reflect both the profound concerns and the practical considerations underpinning this reform agenda. These themes emerged organically from participants' narratives, professional experiences, and observations of the lived realities of ex-prisoners.

[93] The discussion took place on March 24, 2026, following the police's issuance of a clearance certificate to Harbinder Singh Seth on March 18, 2026. This development prompted a debate regarding the legal significance of such a certificate and the absence of legislation governing the expungement of criminal records.

6.1.1 Stigma, Discrimination, and Constitutional Violation

Stigma and discrimination emerged as the most dominant and emotionally resonant theme. Participants consistently highlighted how permanent criminal records create lifelong barriers to employment, acquisition of travel documents, professional licensing, and social acceptance. Several contributors described this as discriminatory and fundamentally contrary to the constitutional guarantee of equality before the law under Article 13 of the Constitution of the United Republic of Tanzania, 1977.[94]

One participant, reflecting on their professional experience, observed that denial of employment opportunities due to old minor convictions amounts to unconstitutional discrimination that defeats the very purpose of punishment. Another alumnus recounted how a friend with a minor conviction from adolescence continued to be rejected for jobs decades later, despite having led an exemplary life in the intervening years.[95] This, participants argued, was not merely an administrative inconvenience but a profound violation of human dignity-the very dignity that the Constitution expressly protects.[96]

Participants also noted that the stigma of a criminal record extended beyond the individual to their families and communities. Several described how families of ex-prisoners experienced shame by association, and how community members often viewed rehabilitated individuals with suspicion, making reintegration a socially arduous process. One participant captured this sentiment poignantly: "The record follows you like a shadow, even when the person you were no longer exists."

6.1.2 The Undermining of Rehabilitation as a "Double Punishment"

Participants repeatedly stressed that the absence of expungement legislation fundamentally undermines the rehabilitative philosophy of the criminal justice system. Prisons, they noted, are intended to serve as houses of correction and rehabilitation under the Prisons Act (Cap. 58). However, without any mechanism for record relief, the system imposes a "double punishment" that renders rehabilitation efforts futile.

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[94] Ibid.
[95] Ibid.
[96] Ibid.

A frequently cited example involved an ex-prisoner who learns vocational skills; such as carpentry, welding, or masonry-while serving a sentence for petty theft, only to be denied employment by a private company due to his criminal record. Participants argued that this defeats the core objective of imprisonment as a corrective rather than purely punitive institution. One participant reflected: "What is the point of teaching a man a trade if the law ensures he can never use it?"

This theme resonated deeply with secondary school alumni, many of whom had witnessed or experienced the frustration of acquiring skills and qualifications only to find them commercially valueless upon disclosure of a conviction.[97] The perception of a "second sentence" was not abstract; it was a lived reality that participants described with palpable frustration and injustice.

6.1.3 The Need for Robust Procedural Safeguards

While supporting expungement in principle, a significant number of participants emphasised the need for robust procedural safeguards to prevent abuse and ensure public confidence in the system. Respondents advocated for decisions to be made by competent, autonomous authorities rather than leaving the process open to political or arbitrary interference.
Many proposed clear waiting periods, such as a three-year period of clean conduct without further offences, before records could be expunged. This, they argued, would provide sufficient evidence of sustained rehabilitation while ensuring that expungement was not granted prematurely. Participants also insisted on strict exclusions for high-risk cases, particularly sexual offences involving vulnerable persons. One participant stated emphatically: "A teacher who rapes his student cannot be reinstated to teach," underscoring the necessity of safeguards to prevent repetition of serious crimes.[98]

These procedural concerns reflected a careful balancing of compassion for reformed offenders with the protection of society-a balance that participants recognised as essential to any credible expungement framework.

[97] Ibid.
[98] Ibid.

6.1.4 The Tension Between Public Safety and Mercy

The tension between public safety and mercy was a recurring concern throughout the discussion. While supporting reform for minor and moderate offences, several participants warned that a poorly designed law could open a "Pandora's box," potentially encouraging commission of offences or endangering vulnerable groups such as children.

Participants stressed the importance of balancing compassion for reformed offenders with the protection of society, particularly in cases involving maniac or compulsive behaviours. One participant observed that "not every offence is eligible for mercy," and that any expungement framework must distinguish clearly between those who have genuinely reformed and those who pose ongoing risks to public safety.[99]

This theme illustrated the nuanced thinking of participants, who did not advocate for blanket amnesty but rather for a carefully calibrated regime that would restore dignity to the rehabilitated while maintaining robust protections for the community.

6.1.5 Legislative Urgency and the Constitutional Imperative

Finally, participants expressed a strong sense of legislative urgency. Many called for the swift enactment of a dedicated statute to regulate expungement procedures, arguing that the current vacuum continues to marginalise ex-prisoners and waste investments in prison rehabilitation programmes.[100]

Some participants suggested filing a constitutional petition to compel Parliament to address the gap, particularly for petty offences. The overall sentiment was that Tanzania cannot afford further delay, as the current vacuum perpetuates cycles of exclusion, pushing rehabilitated individuals toward informal economies and, in some cases, back into criminal activity.

One participant captured the urgency succinctly: "Every day we delay, another rehabilitated Tanzanian is denied a job, a home, or a future. This is not justice-it is systemic exclusion."[101]

[99] Ibid.
[100] Ibid.
[101] Ibid.

6.1.6 Constitutional Disconnect: Dignity Undermined

Participants consistently articulated a profound disconnect between the constitutional promise of human dignity and the lived reality of permanent criminal records. Alumni referenced Tanzania's constitutional guarantee that "human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentence." Several participants questioned how this constitutional protection could be reconciled with a legal regime that permanently stigmatises rehabilitated individuals long after their sentences have been served.[102]

For many alumni, this disconnect represented a fundamental violation of the constitutional right to equality and non-discrimination. They argued that the absence of expungement legislation creates a class of permanently disadvantaged citizens, whose past mistakes-often committed in youth or under circumstances of poverty-continue to define their present and future. This, participants contended, was not merely a practical inconvenience but a profound affront to human dignity.

6.1.7 The Inadequacy of Presidential Clemency

Several participants who had personal or professional knowledge of executive clemency processes expressed scepticism about presidential pardons as a mechanism for record relief. While acknowledging that pardons could remit sentences, alumni observed that pardons did not automatically extinguish criminal records, leaving individuals with the same barriers to employment, education, and housing as before.[103]

One participant described the clemency process as "discretionary, unpredictable, and politically contingent," noting that it offered no accessible or transparent pathway for the vast majority of ex-prisoners.[104] This perception resonated with other participants, who argued that the constitutional prerogative of mercy was an inadequate substitute for a statutory expungement regime-one that would provide objective eligibility criteria, clear waiting periods, and judicial oversight.

[102] Ibid.
[103] Ibid.
[104] Ibid.

Generally, in many jurisdictions, including Tanzania, the permanent retention of criminal records transforms what should be a finite punishment into a perpetual stigma, undermining rehabilitation and increasing the likelihood of recidivism. This stigma manifests in concrete socio-economic exclusion: most employers prefer not to hire ex-convicts, community rejection renders even viable business ventures unsustainable, and the pervasive societal reluctance to take recidivists' opinions seriously marginalises their voices in both commercial and civic spheres.[105] Even when former prisoners demonstrate sound marketing strategies and competitive business acumen, their ventures often fail not from poor planning, but from a lack of community acceptance and the cumulative weight of a criminal label that follows them indefinitely.[106] Consequently, these life challenges trap ex-convicts in a vicious cycle, compelling them to engage in illegal activities as a survival mechanism, which ultimately results in re-incarceration.[107] These local observations above, align with the findings of Mwakahesya, who reported unemployment as a serious problem experienced by ex-prisoners despite possessing necessary skills and qualifications.[108] The study further added that criminal conviction and a sentence in prison have a negative impact on employment prospects, confirming that the barriers are not merely perceptual but are empirically documented across different contexts. [109]The analysis demonstrates that record relief mechanisms, when properly designed, enhance employability and desistance from crime without compromising public safety, while aligning with constitutional and international human rights obligations.

7.0 Conclusion and Recommendations

Benchmarking the three expungement frameworks reveals a clear pathway for Tanzania to address its current legislative vacuum concerning the expungement of criminal records for minor and moderate offences. The frameworks examined are:

[105] U.A. Mwakahesya, Entrepreneurship Training Programmes to Recidivists and Re-Integration into the Society, A Thesis submitted in fulfilment of the Requirements for the Degree of Doctor of Philosophy of the Open University of Tanzania, 2019; at p.47.
[106] Ibid.
[107] Ibid at p. 59.
[108] Ibid, at pp. 58 and 59.
[109] Ibid.

i) Kenya's proposed Criminal Procedure Code (Amendment) Bill, 2024/2025 (sponsored by the Member of Parliament for Embakasi East, Hon. Babu Owino);
ii) South Africa's Criminal Procedure Act 51 of 1977 (specifically section 271B, as amended in 2008); and
iii) the United Kingdom's Rehabilitation of Offenders Act 1974 (as amended).

Each jurisdiction demonstrates that targeted record relief is both feasible and beneficial, promoting rehabilitation, reducing recidivism, and upholding human dignity without compromising public safety.

Kenya's proposed Bill directly confronts the same legislative gap that exists in Tanzania. It seeks to introduce a structured process for expunging records of minor, non-capital, and non-sexual offences, conditional upon the offender having fully served their sentence or paid any applicable fine. The Bill emphasises the employment barriers faced by reformed individuals, particularly youth, and aims to remove such convictions from police clearance certificates (Good Conduct Certificates). It explicitly excludes serious offences, including murder, terrorism, rape, defilement, sodomy, and incest. This approach responds to the Kenyan High Court's call in *Ibrahim Kingori Njoki v Directorate of Criminal Investigations & 2 Others*, for legislative intervention. The Bill underscores the urgency of distinguishing offence severity and providing a "second chance" after punishment has been completed.[110]

South Africa offers a robust administrative model under section 271B of the Criminal Procedure Act, which permits mandatory expungement after a ten-year period for minor sentences (for example, fines not exceeding prescribed thresholds, wholly suspended sentences, or short terms of imprisonment with the option of a fine), provided that no further custodial sentence without the option of a fine has been imposed.[111] The process is administered by the Director-General of Justice through a simple application (Form J744), resulting in a certificate directing the police to treat the conviction as if it had never occurred for most purposes.

[110] [2023] KEHC 17924 (KLR).
[111] Republic of South Africa, *Expungement of a Criminal Record in terms of the Criminal Procedure Act, 1977* (Act 51 of 1977), 2023, Available at https://mailto:TRamuada@justice.gov.za/expungements.html, Accessed on 1st May, 2026.

Complementary provisions in the Child Justice Act 75 of 2008 (section 87) provide shorter rehabilitation periods for juveniles. This model demonstrates efficiency, predictability, and a low administrative burden, while maintaining strict exclusions for sexual offences against children and other grave crimes.

The United Kingdom's Rehabilitation of Offenders Act 1974 presents the most progressive automatic system. Convictions become "spent" after sentence-based rehabilitation periods (e.g., one year for community orders; custodial sentences become spent after a buffer period equal to the sentence length plus one to seven years, halved for offenders under 18). Once a conviction is spent, the individual is legally treated as if the offence had never occurred for most employment, insurance, and civil purposes (section 4). Custodial sentences exceeding four years, as well as listed public protection offences, never become spent. Exceptions apply for sensitive occupations through enhanced background checks. Recent reforms in 2023 further shortened rehabilitation periods to better support reintegration while maintaining public safety.

7.1 Conclusion

Tanzania's indefinite retention of criminal records, even for minor offences, constitutes a structural deficiency in its criminal justice system. This practice defeats the rehabilitative intent of the Prisons Act (Cap. 58), imposes an unconstitutional de facto double punishment, and perpetuates stigma that hinders social reintegration. These issues are vividly illustrated by the *Ismail Aden Rage* litigation and the field data, in which 73.5% of respondents expressed support for expungement.

Kenya's proposed Bill demonstrates regional momentum and political will to address youth employment barriers through targeted expungement. South Africa proves that a mandatory administrative process can deliver predictable relief efficiently. The United Kingdom demonstrates that an automatic, proportionate, sentence-based regime can effectively reduce recidivism and restore dignity without opening a "Pandora's box."

Collectively, these jurisdictions confirm that expungement for minor and moderate offences-accompanied by clear offence categorisation, graduated timelines, autonomous oversight, and robust exclusions for serious crimes (especially sexual and violent offences against vulnerable persons)-is not only compatible with public safety but is essential for realising genuine rehabilitation, the constitutional values of dignity and equality, and the Nelson Mandela Rules (Rule 4). Tanzania cannot afford to lag behind; the current legislative vacuum wastes the resources invested in prison rehabilitation and marginalises reformed citizens.

7.2 Recommendations

Drawing on the three models analysed, Tanzania should urgently enact a comprehensive Expungement of Criminal Records Act incorporating the following features:

7.2.1 Clear Offence Categorisation

The proposed law in Tanzania should establish a clear classification of offences, distinguishing between "minor offences" (such as regulatory infractions, petty theft, and offences punishable by fines or community service), "moderate offences," and "serious offences." In addition, the legislation ought to adopt the Kenyan approach of expressly excluding certain categories of crimes from its scope. These exclusions should encompass capital offences, terrorism, murder, and all forms of sexual offences; including rape, defilement, and related crimes-consistent with the exclusions set out in Hon. Babu Owino's Bill and the framework adopted in South Africa.

7.2.2 Hybrid Mechanism

The proposed law should further introduce automatic spent status for petty or minor offences following a short rehabilitation period-for example, three years of clean conduct, as inspired by the models in the United Kingdom and New Zealand, as well as by proposals from practitioners in the field. For moderate offences, the legislation should adopt an administrative application process akin to South Africa's section 271B, to be administered by an independent Expungement Board or, alternatively, by the Director of Public Prosecutions or the Registrar of the High Court. Upon satisfaction of the prescribed criteria, the issuing authority shall be mandated to grant a clearance certificate.

7.2.3 Graduated Timeframes

The proposed law should further establish proportionate waiting periods before an offence becomes eligible for expungement or spent status. Specifically, a three-year period should apply to minor offences, subject to demonstrated good conduct; a five- to seven-year period should apply to moderate offences; and longer or permanent retention should be reserved for serious crimes.

7.2.4 Procedural Safeguards and Autonomy

It is recommended to create an independent body (drawing on South Africa's Director-General model and Kenya's emphasis on statutory limits on police discretion) to prevent abuse of discretion. Require evidence of rehabilitation, afford victim input where relevant, and provide judicial oversight for contested cases. Integrate the new framework with existing laws by amending the Criminal Procedure Act (Cap. 20), the Prisons Act (Cap. 58), and relevant police regulations.

7.2.5 Public Safety and Sensitive Roles

The proposed law should also prescribe and maintain strict exceptions for offences committed by persons in positions of trust (such as teaching, childcare, security services, finance, and legal practice), analogous to the UK Exceptions Order, ensuring that spent records may still be disclosed where necessary to protect vulnerable persons or significant public interests.

7.2.6 Implementation and Review

The proposed law should enable the launch of a pilot scheme for petty offences, launch public awareness campaigns to combat stigma, and include a statutory review clause (e.g., after five years) to assess the impact on recidivism, employment outcomes, and public confidence, learning from the UK's iterative amendments.

7.2.7 Enact new law on Criminal Expungement

By enacting legislation informed by Kenya's focus on youth employment and second chances, South Africa's efficient administrative model, and the United Kingdom's automatic, evidence-based approach, Tanzania can transform its criminal justice system from one of perpetual punishment to one of genuine correction and reintegration. Such reform would not only align with constitutional and international obligations but also unlock the economic and social potential of rehabilitated citizens, thereby fostering a more just, inclusive, and productive society.

Legal Protection and Health Rights of Child Offenders within the Juvenile Justice System in Tanzania

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Abstract
This article examines the legal protection and health rights of child offenders within the juvenile justice system, focusing on the adequacy of the legal and institutional frameworks governing their treatment, rehabilitation, and reintegration. It adopts a doctrinal legal research methodology based on the analysis of international, regional, and domestic legal instruments, judicial decisions, policy documents, official reports, and relevant scholarly literature. The study draws principally on the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Law of the Child Act, Cap. 13 R.E. 2023, and related juvenile justice legislation. The findings indicate that Tanzania has established a relatively comprehensive legal framework that promotes child-centred justice and rehabilitation. However, effective implementation remains constrained by inadequate juvenile justice facilities, limited healthcare and mental health services, weak institutional capacity, shortages of trained personnel, and ineffective diversion and rehabilitation programmes. The article concludes that strengthening institutional capacity, expanding health and mental health services, and promoting community-based rehabilitation and reintegration are essential to ensuring effective protection of child offenders' rights.

Keywords: *Child Offenders; Juvenile Justice; Health Rights; Rehabilitation; Tanzania.*

1.0 Introduction

Children in conflict with the law occupy a unique position within the justice system because they are both rights holders and vulnerable members of society. Unlike adults, children are still developing physically, mentally, and socially, and their involvement in crime is often influenced by factors such as poverty, family breakdown, neglect, abuse, lack of education, peer pressure, and unsafe environments. For this reason, juvenile justice goes beyond determining criminal responsibility. It seeks to protect children’s rights while promoting their rehabilitation, reintegration, and healthy development. Modern juvenile justice systems, therefore, emphasise guidance, support, and restoration rather than punishment alone.[1]

At the international and regional levels, the protection of child offenders is recognised as both a human rights and child welfare issue. International instruments such as the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) require States to establish child-friendly justice systems that respect children's dignity and support their physical, mental, and social well-being. These standards also recognise access to healthcare, mental health services, rehabilitation programmes, and appropriate detention conditions as essential components of juvenile justice. Consequently, juvenile justice is intended not only to address offending behaviour but also to protect children's welfare and future development.[2]

Tanzania has made important efforts to implement these international standards through the Law of the Child Act, the Penal Code, the Criminal Procedure Act, and the Law of the Child (Juvenile Court Procedure) Rules, 2016. Together, these laws provide legal safeguards that emphasise rehabilitation, correction, and reintegration. However, legal protection alone does not guarantee effective implementation. Challenges such as inadequate rehabilitation facilities, limited healthcare and mental health services, weak institutional capacity, and insufficient professional expertise continue to affect the protection and welfare of child offenders.[3]

This article argues that although Tanzania has established a progressive legal framework for protecting child offenders, the effective realisation of their legal and health rights remains limited by weaknesses in implementation. In particular, inadequate rehabilitation services, limited access to specialised healthcare, and poor coordination between justice and child welfare institutions undermine the rehabilitation and reintegration of children in conflict with the law. Against this background, the article examines the international, regional, and domestic legal framework governing the protection and health rights of child offenders in Tanzania, evaluates the challenges affecting its

[1] CRC, arts 3, 37 and 40; ACRWC, art 17; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) UNGA Res 40/33 (29 November 1985) rules 5.1 and 17.1.
[2] CRC, arts 24, 37, 39 and 40; ACRWC, arts 14 and 17.
[3] Law of the Child Act, Cap 13 R.E. 2023; Penal Code, Cap 16 R.E. 2023; Criminal Procedure Act, Cap 20 R.E. 2023; Law of the Child (Juvenile Court Procedure) Rules, GN No 182 of 2016.

implementation, and proposes legal, policy, and institutional reforms to strengthen a more effective and child-centred juvenile justice system.[4]

2.0 Literature Review and Research Gap

The protection of children in conflict with the law has received significant scholarly attention in Tanzania, particularly in relation to juvenile justice administration, child rights protection, compliance with international standards, and the treatment of child offenders within criminal justice institutions. Existing studies demonstrate that Tanzania's juvenile justice system has gradually shifted from a punitive approach towards a rights-based framework that emphasises rehabilitation and reintegration. They also identify continuing challenges, including poor detention conditions, weak institutional capacity, limited resources, and inadequate implementation of legal safeguards designed to protect child offenders. Despite these important contributions, the literature has largely focused on legal and institutional protection rather than the protection of health rights within the juvenile justice system.[5]

Another body of scholarship has examined access to justice and rehabilitation through legal aid, diversion programmes, and alternative measures aimed at reducing children's involvement in formal criminal proceedings. These studies emphasise that children require special procedural safeguards because of their age, vulnerability, and developmental needs, and they recognise rehabilitation as the central objective of juvenile justice. However, most of this literature concentrates on procedural fairness, legal representation, and diversion, with limited consideration of whether rehabilitation adequately incorporates healthcare, mental health services, psychosocial support, and other interventions necessary for children's overall well-being.[6]

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[4] Kirsten Anderson, Analysis of the Situation of Children in Conflict with the Law in Tanzania (Coram Children's Legal Centre 2012); SM Bakta, A Critical Analysis of the Child Justice System in (Mainland) Tanzania (PhD Thesis, University of Cape Town 2016); M Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal' (2017) 2 Supremo Amicus 175.

[5] C Maganga, *Administration of Juvenile Justice in Tanzania: A Study of its Compatibility with International Norms and Standards* (LLM Dissertation, University of the Western Cape 2006); Kirsten Anderson, *Analysis of the Situation of Children in Conflict with the Law in Tanzania* (Coram Children's Legal Centre 2012); SM Bakta, *A Critical Analysis of the Child Justice System in (Mainland) Tanzania* (PhD Thesis, University of Cape Town 2016); M Kadilu, *Protecting the Rights of Detained Juvenile Delinquents: Tanzania's Compliance with International Standards* (PhD Thesis, Acharya Nagarjuna University 2018); M Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal' (2017) 2 *Supremo Amicus* 175.

[6] CK Kabunga, *An Assessment of Child Juvenile Detainees' Access to Legal Aid in Tanzania* (LLM Dissertation, University of Zimbabwe 2016); DS Chanila, F Mohamed and S Pittman, 'Implementation of the

More recent scholarship has broadened the discussion by emphasising the physical and mental health needs of children in conflict with the law. Studies show that many children offenders experience trauma, mental health disorders, substance abuse, and other psychosocial challenges requiring specialised interventions. Comparative research further demonstrates that effective juvenile justice depends on integrating legal protection with healthcare, welfare services, and community-based rehabilitation. Nevertheless, these discussions have largely been developed within broader African or comparative contexts and have not been comprehensively examined within Tanzania's legal framework governing child offenders.[7]

Although the existing literature has substantially advanced understanding of juvenile justice, detention, legal aid, diversion, and rehabilitation, limited attention has been given to the legal protection of health rights within Tanzania's juvenile justice system. In particular, there remains little legal analysis of how physical healthcare, mental healthcare, psychosocial support, and rehabilitation rights are protected under international, regional, and domestic legal frameworks. Consequently, the relationship between legal protection and health rights remains insufficiently explored. This article addresses that gap by providing a comprehensive legal analysis of the protection and health rights of child offenders in Tanzania. It argues that although the legal framework broadly reflects international and regional child rights standards, the effective realisation of these rights continues to be constrained by weak implementation, inadequate rehabilitation infrastructure, and insufficient coordination between the juvenile justice, health, and child welfare systems, particularly in relation to mental health and psychosocial support services.[8]

3.0 Methodology

This article adopts a doctrinal legal research methodology to examine the legal protection and health rights of child offenders within Tanzania's juvenile justice system. The approach is appropriate as it enables a critical

Diversion Programme in Juvenile Justice Administration in Dar es Salaam, Tanzania: Benefits and Challenges' (2023) 3(1) *Institute of Social Work Journal*.

[7] O Atilola and G Abiri, 'Mental Health of Children and Adolescents within the Juvenile Justice System in Africa' in SO Olashore and TA Ayuk (eds), *The Handbook of Forensic Mental Health in Africa* (Springer 2021) 223–244; SP Sungi (ed), *Juvenile Justice in African and Western Criminal Justice Systems* (IGI Global 2025).

[8] See the literature cited above in relation to juvenile justice, legal aid, diversion and mental health rights.

examination of legal rules, principles, and institutional frameworks governing children in conflict with the law. The study is qualitative and analytical, focusing not only on what the law provides but also on how far it effectively secures rights to healthcare, mental health support, rehabilitation, and reintegration. In doing so, it moves beyond descriptive exposition to assess the coherence, adequacy, and practical limitations of the existing legal framework.

The study relies on documentary and library-based sources. Primary sources include international and regional human rights instruments, the Constitution of the United Republic of Tanzania, statutes, subsidiary legislation, judicial decisions, policies, parliamentary materials, and official reports, with particular emphasis on the CRC, ACRWC, the Law of the Child Act, Cap. 13 R.E. 2023, the Penal Code, the Criminal Procedure Act, and the Law of the Child (Juvenile Court Procedure) Rules, 2016. These are complemented by secondary sources such as books, journal articles, dissertations, and institutional reports. The analysis systematically compares international and domestic standards to identify gaps in compliance, implementation weaknesses, and institutional constraints affecting child offenders' rights, particularly in relation to health and rehabilitation. This comparative doctrinal evaluation forms the basis for identifying necessary legal and institutional reforms.

4.0 Legal Protection and Health Rights of Child Offenders under International Standards and Tanzanian Law

The legal protection of child offenders in Tanzania is founded upon a combination of international, regional, and domestic legal frameworks that collectively promote a child-centred approach to justice. The United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) establish the normative basis for the treatment of children in conflict with the law by recognising that children require special safeguards because of their physical and mental immaturity.[9] These instruments reject purely punitive approaches and instead require juvenile justice systems to prioritise dignity, rehabilitation, reintegration, and the best interests of the child.[10]

[9] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Preamble; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (ACRWC) Preamble.
[10] CRC, arts 37 and 40; ACRWC art 17.

Consequently, child offenders are viewed not merely as subjects of criminal accountability but as rights holders entitled to protection, care, and opportunities for positive development.

The international framework extends beyond procedural safeguards and embraces the broader welfare and health needs of children. Article 37 of the CRC prohibits torture, cruel, inhuman, or degrading treatment and requires deprivation of liberty to be used only as a measure of last resort and for the shortest appropriate period.[11] Article 40 further requires States to promote measures that foster the child's sense of dignity and worthwhile facilitating reintegration into society.[12] Similar protections are provided under Article 17 of the ACRWC, which requires child justice systems to promote rehabilitation and social reintegration rather than punishment.[13] These obligations are reinforced by the Beijing Rules and the Riyadh Guidelines, which encourage diversion, restorative justice, counselling, education, family support, and community-based rehabilitation as more appropriate responses to juvenile offending.[14] The underlying principle is that effective juvenile justice cannot be achieved through punishment alone but must address the social, developmental, and psychological factors that contribute to offending behaviour.

Tanzania has incorporated many of these principles into its domestic legal framework. Through ratification of the CRC and ACRWC pursuant to article 63(3)(e) of the Constitution of the United Republic of Tanzania, the country has accepted international obligations relating to the protection of child offenders.[15] Articles 11, 12, and 13 of the Constitution of the United Republic of Tanzania provide an important constitutional foundation for protecting children, including those in conflict with the law. Article 11 requires the State to promote access to education and social welfare, while Articles 12 and 13 guarantee equality before the law and protection from discrimination. Read together, these provisions require that children in conflict with the law be treated fairly, without discrimination, and in a manner that respects their dignity, recognises

[11] ibid art 37.
[12] ibid art 40(1).
[13] ACRWC, art 17.
[14] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) UNGA Res 40/33 (29 November 1985) rules 1.1 and 5.1; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) UNGA Res 45/112 (14 December 1990).
[15] Constitution of the United Republic of Tanzania, 1977, art 63(3)(e).

their vulnerability, and supports their rehabilitation and reintegration into society.[16] Specifically, the Law of the Child Act (LCA) adopts the best interests of the child as a primary consideration and establishes safeguards intended to ensure that children receive treatment appropriate to their age, development, and welfare needs.[17] The establishment of juvenile courts, the separation of child offenders from adults, and the emphasis on rehabilitation and reintegration demonstrate a clear legislative commitment to child-centred justice.[18] In normative terms, therefore, Tanzania's legal framework is broadly aligned with international and regional standards governing children in conflict with the law.

Nevertheless, compliance with international standards should not be assessed solely by the existence of legal provisions. A critical examination of the legal framework reveals that while procedural safeguards are relatively well developed, the protection of health rights remains less clearly articulated and less effectively implemented. The LCA recognises the importance of children’s welfare, healthcare, protection from abuse, and development.[19] Yet it provides limited guidance on access to specialised healthcare, mental health services, trauma-informed interventions, and psychosocial support for child offenders. This omission is significant because many children who come into conflict with the law are affected by poverty, neglect, violence, substance abuse, family instability, and other circumstances that may require professional health and social support.[20] As scholars increasingly observe, rehabilitation cannot be separated from the physical and mental well-being of the child.[21] Consequently, a juvenile justice system that focuses primarily on legal procedures without adequately addressing health needs risks undermining its own rehabilitative objectives.

The institutional framework established under the LCA similarly reflects both strengths and limitations. Juvenile courts, Social Welfare Officers, probation services, local government authorities, and other child

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[16] ibid arts 11, 12 and 13.
[17] Law of the Child Act (LCA), Cap 13 R.E. 2013, ss 4, 5, and 7.
[18] ibid ss 95-98.
[19] ibid ss 8-14.
[20] Anderson, Analysis of the Situation of Children in Conflict with the Law in Tanzania, 18-24.
[21] Atilola and Abiri, 'Mental Health of Children and Adolescents within the Juvenile Justice System in Africa', 223-244.

protection institutions are mandated to safeguard children's rights and promote rehabilitation.[22] Social Welfare Officers play a particularly important role through the preparation of social inquiry reports, supervision of probation orders, facilitation of diversion programmes, and representation of the child's best interests during proceedings.[23] However, the effectiveness of these institutions depends largely on the availability of trained personnel, financial resources, specialised services, and inter-agency coordination. The legal framework presupposes the existence of functional rehabilitation, counselling, and welfare mechanisms, yet available literature suggests that institutional capacity remains uneven.[24] As a result, the implementation of child-centred justice often falls short of the commitments and aspirations embodied in both international standards and domestic law.

The foregoing analysis suggests that the principal challenge facing Tanzania's juvenile justice system is not the absence of legal standards but the gap between normative protection and practical implementation. While international instruments and domestic legislation provide a strong legal foundation for the protection of child offenders, the realisation of health rights, particularly mental health care and psychosocial support, remains insufficiently developed. Effective protection, therefore, requires a more integrated approach that combines legal safeguards with healthcare, rehabilitation, social support, and community reintegration. Such an approach would better fulfil the objectives of the CRC, the ACRWC, and the LCA, while enhancing the capacity of the juvenile justice system to promote rehabilitation and reduce recidivism among child offenders.

4.1 Child Offenders and the Justice System under the LCA

The enactment of Part VIII of the Law of the Child Act (LCA) represents a foundational shift in the legal treatment of children in conflict with the law, moving away from a punitive criminal justice model towards a child-centred framework grounded in the best interests principle.[25] The Act recognises children as a distinct legal category whose age, vulnerability, and developmental capacity require differentiated responses focused on

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[22] LCA, ss 94-98.
[23] ibid ss 94-96.
[24] Bakta, A Critical Analysis of the Child Justice System in (Mainland) Tanzania; Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania: An Appraisal', 175.
[25] LCA, pt VIII.

rehabilitation and social reintegration rather than retribution. This orientation is consistent with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), which require juvenile justice systems to promote dignity, development, and reintegration.[26] Within this framework, the establishment of Juvenile Courts serves as a key institutional mechanism for operationalising child-sensitive justice by assigning specialised jurisdiction over child offenders and related welfare matters, thereby integrating adjudication with protection-oriented considerations.[27] However, the effectiveness of this institutional design ultimately depends on adequate resources, functional capacity, and consistent implementation in practice.

The procedural framework under sections 99 to 120 of the LCA further reinforces the rehabilitative philosophy underpinning juvenile justice by structuring proceedings around the welfare, reintegration, and developmental needs of the child rather than adversarial punishment.[28] This reflects a broader shift in legal reasoning that views child offending not only as individual culpability but also as a consequence of social and structural conditions requiring corrective intervention. Nonetheless, certain provisions, particularly those permitting joint proceedings with adults under section 100, expose tensions within the protective framework, as they may undermine the principle of separation and subject children to intimidating adult criminal environments.[29] While such exceptions may be justified in limited circumstances, they must be applied restrictively to preserve the integrity of child-centred justice. Overall, although the LCA establishes a comprehensive normative system aligned with the CRC and ACRWC, its transformative impact depends on effective implementation, institutional capacity, and sustained adherence to child rights standards in practice.[30]

4.2 Procedures, Rights, and Protections of Child Offenders under the LCA

The Law of the Child Act (LCA) establishes a specialised juvenile justice framework under Part IX, premised on the recognition that children in

[26] CRC; ACRWC.
[27] LCA, ss 97-98.
[28] ibid ss 99-120.
[29] ibid s 100.
[30] CRC; ACRWC.

conflict with the law require procedural safeguards distinct from adult criminal processes. Sections 97 - 100 create the institutional foundation of juvenile justice by establishing Juvenile Courts, defining their jurisdiction, and prescribing simplified procedures designed to reduce formality and intimidation. The general structure signals a deliberate shift from adversarial criminal litigation towards a welfare-oriented inquiry model, where the court assumes an active protective role rather than a purely adjudicatory one.[31] This design reflects the normative influence of child rights standards requiring justice processes to be child-sensitive, accessible, and non-threatening.

A defining procedural safeguard is the requirement that juvenile proceedings be conducted in camera and in a manner that prioritises informality, participation, and dignity.[32] The legal intention is to shield children from the psychological harm associated with public trials and rigid adversarial procedures. By restructuring hearings as inquiries rather than strict contests between prosecution and defence, the Act acknowledges that children often lack the cognitive maturity and legal literacy required to navigate formal litigation. However, the effectiveness of this safeguard depends not merely on statutory wording but on judicial practice, as excessive informality risks undermining due process if not carefully balanced with fairness.

The Act further embeds participatory justice through provisions requiring the presence and involvement of parents, guardians, social welfare officers, and legal representatives during proceedings.[33] This multi-actor framework is not symbolic; it is intended to ensure that judicial decisions are informed by the child's social and welfare context, not merely the offence.[34] Child participation must occur within supportive environments that enable children to express themselves freely rather than merely being heard formally.[35] The LCA attempts to operationalise this principle by

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[31] E Manco, 'Protecting the Child's Right to Participate in Criminal Justice Proceedings' (2016) 8(1) Amsterdam Law Forum 48; T Liefaard, 'Child-Friendly Justice and Procedural Safeguards for Children in Criminal Proceedings' (2020) 8(1) Bergen Journal of Criminal Law and Criminal Justice 17.
[32] LCA, s 100.
[33] ibid ss 100 and 112.
[34] Manco, 'Protecting the Child's Right to Participate in Criminal Justice Proceedings'; Liefaard, 'Child-Friendly Justice and Procedural Safeguards for Children in Criminal Proceedings'.
[35] Hrefna and A G Haugen, 'Child Friendly Justice: International Obligations and the Challenges of Interagency Collaboration' in *Against Child Abuse* (2017) 187; N N Rosmalinda and E Suhaidi, 'Applying the

embedding supportive actors within the courtroom structure, though in practice, participation often remains uneven due to resource and capacity constraints.

Separation of children from adult offenders constitutes another core protection under section 102 of the LCA, prohibiting association in custody except in narrowly defined circumstances. This provision reflects both international standards under Article 37(c) of the CRC and a clear legislative concern with preventing intimidation, abuse, and "criminal contamination."[36] However, the Act's allowance for exceptions introduces a structural tension: while flexibility may be administratively necessary, it risks diluting a safeguard that is meant to be absolute in principle. The effectiveness of this protection, therefore, depends heavily on institutional discipline and infrastructure capacity.

The LCA also provides corrective mechanisms to ensure that children are not deprived of procedural safeguards due to administrative or investigative errors. Where an accused person is discovered to be a child, proceedings must be transferred to the Juvenile Court as per section 98 read with sections 100 - 103 of the LCA. This provision reinforces the principle that childhood status triggers automatic legal protection, rather than discretionary entitlement. It advances substantive equality by ensuring that procedural misclassification does not result in the loss of child-specific safeguards.

At the earliest stage of justice contact, the Act prioritises liberty and minimal intervention. Section 101 of the Act requires that bail be considered for children, while Section 104 allows remand to the care of a fit person or institution instead of detention. These provisions reflect a clear legislative preference for non-custodial responses, consistent with the principle that detention should be a measure of last resort.[37] Nevertheless, empirical evidence suggests that custodial practices often persist due to institutional caution and limited availability of suitable

Principle of the Best Interests of the Child' in *WoMELA-GG 2019* (European Alliance for Innovation 2019) 170.

[36] United Nations Committee on the Rights of the Child. (2011). General Comment No. 13 (2011): The right of the child to freedom from all forms of violence (CRC/C/GC/13).

[37] F N Eleanora and D S Wijanarko, 'Provision of Restitution and Protection Children of Victims Criminal Action' (2021) 17 *Technium Social Sciences Journal* 136; I Zalužinska, 'Detention Control in Pre-Trial Criminal Proceedings' in *Individual. Society. State. Proceedings of the International Student and Teacher Scientific and Practical Conference* (2024) 231.

alternatives, revealing a gap between legal design and enforcement reality.

Procedural fairness is further strengthened through duties imposed on courts to explain charges in a language the child understands, as envisaged under section 105, to ensure comprehension before plea as provided for under sections 106 - 107, and to regulate evidentiary participation according to sections 108 - 110 of the LCA.[38] These provisions move beyond formal legality by recognising that fairness is meaningless without understanding. The requirement of explanation in simple language is particularly significant, as it transforms procedural justice from a technical exercise into a communicative process However, the practical realisation of this safeguard depends on judicial competence in child communication, which remains inconsistent.

The Act also integrates social welfare expertise into judicial decision-making through section 100A, which requires courts to consider reports and recommendations from social welfare officers before determining outcomes.[39] This provision represents one of the most progressive features of the LCA, as it institutionalises interdisciplinary justice by requiring courts to incorporate psychological, social, and environmental assessments. It aligns sentencing with the “best interests of the child” principle, ensuring that decisions are not based solely on legal guilt but on holistic evaluation of the child’s circumstances.

Timeliness of proceedings is another implicit but critical safeguard within the juvenile justice framework. The structure of ss 97 - 111, read together, reflects an expectation of expedited handling of child cases to prevent prolonged exposure to uncertainty and psychological harm.[40] Delays in juvenile proceedings are particularly harmful because they disrupt education, family stability, and rehabilitation prospects. However, in practice, systemic delays remain a persistent challenge, weakening the protective intent of the statutory framework.

Sentencing and post-conviction measures under ss 116 to 120 of the LCA reinforce the rehabilitative orientation of the Act.[41] Courts are empowered

[38] LCA, ss 105-110.
[39] ibid s 100A(1)-(2).
[40] ibid s 100A(1)-(2).
[41] ibid ss 116-120.

to impose probation, conditional discharge, supervision, or placement in approved institutions rather than custodial punishment.[42] Section 119 is especially significant as it prohibits custodial sentences for children except in strictly regulated circumstances, thereby affirming rehabilitation over retribution. However, the effectiveness of these alternatives depends on the quality of probation services and institutional care, which remain uneven across jurisdictions.

Age determination under s 113 plays a critical gatekeeping role in accessing juvenile protections. Accurate age assessment ensures that children are not wrongly subjected to adult criminal processes. While the Act allows for evidentiary determination of age, including medical assessment, such mechanisms must be applied cautiously to avoid exclusion errors. The legal significance of this provision lies in its function as a threshold safeguard for the entire juvenile justice system.

Finally, provisions relating to child witnesses, say section 115, recognise that children can contribute to justice processes even where they lack a full understanding of oath-taking.[43] This provision prevents the exclusion of child testimony purely on cognitive grounds and is particularly relevant in offences where children are primary victims or witnesses. It reflects a shift towards inclusive evidentiary standards that prioritise truth-seeking while adapting to developmental limitations.

Thus, the LCA establishes a comprehensive and normatively strong juvenile justice framework grounded in dignity, rehabilitation, and procedural fairness However, its effectiveness is undermined by implementation gaps, particularly in institutional capacity, social welfare resourcing, and judicial consistency. The gap between statutory design and practical enforcement remains the central challenge. Strengthening juvenile justice, therefore, requires not only legal adequacy but sustained investment in institutional infrastructure, professional training, and inter-agency coordination to ensure that the protective intent of ss 97-120 is fully realised in practice.

[42] D Setyowati, 'Diversion in the Child Criminal Justice System as an Effort to Implement Restorative Justice' (2020) 4(1) Unram Law Review 64-73.
[43] LCA, s 115.

4.3 Legal Protections for Child Offenders and Juvenile Justice under Tanzanian Laws Beyond the Law of the Child Act

While the Law of the Child Act (LCA) provides the primary framework for juvenile justice in Tanzania, the protection of children in conflict with the law is equally shaped by the Penal Code and the Criminal Procedure Act (CPA), which govern criminal responsibility and regulate a child's earliest interactions with the criminal justice system. Their significance lies in the fact that the protection or violation of children's rights often occurs at the stages of arrest, detention, interrogation, and charging, long before a matter reaches a Juvenile Court. The Penal Code adopts an age-based approach to criminal responsibility by granting absolute immunity from criminal liability to children below ten years of age, reflecting the principle that children of such tender years lack the cognitive and moral capacity necessary to appreciate the nature and consequences of criminal conduct.[44] This provision performs an important protective function by diverting young children away from the criminal process and recognising that behavioural concerns at this stage are more appropriately addressed through parental guidance, education, and social welfare interventions. Nevertheless, its adequacy must be assessed against contemporary international child rights standards, which increasingly emphasise developmental maturity and the need for criminal responsibility frameworks that prioritise the best interests, welfare, and evolving capacities of the child.[45] Consequently, the effectiveness of juvenile justice depends not only on the existence of specialised child justice legislation but also on the extent to which the wider criminal law framework incorporates and consistently applies child-sensitive principles.

The Committee on the Rights of the Child, through General Comment No. 10, has consistently maintained that the minimum age of criminal responsibility should not be set below twelve years and has encouraged States to progressively raise it further.[46] Similarly, Article 17(4) of the African Charter on the Rights and Welfare of the Child requires States to establish a minimum age below which children are presumed incapable of infringing penal law, while the African Committee of Experts on the

[44] Penal Code, Cap 16 R.E. 2023, s 15.
[45] UN Committee on the Rights of the Child, *General Comment No 24 (2019) on Children's Rights in the Child Justice System* (18 September 2019) UN Doc CRC/C/GC/24 paras 21–23.
[46] Committee on the Rights of the Child, *General Comment No 10 (2007): Children's Rights in Juvenile Justice* UN Doc CRC/C/GC/10, para 32.

Rights and Welfare of the Child has encouraged adherence to international best practices that favour a minimum age of at least twelve years and preferably fourteen years.[47] In this regard, Tanzania's retention of ten years as the threshold for criminal responsibility appears increasingly difficult to justify in light of contemporary child rights standards and developmental research. By exposing younger children to the possibility of criminal proceedings at an earlier age than internationally recommended, the law risks undermining the protective philosophy that underpins modern juvenile justice systems.

The Penal Code further establishes a regime of conditional criminal responsibility for children aged between ten and twelve years through the doctrine of *doli incapax*.[48] Under this framework, criminal liability may only arise where it is proven that the child possessed sufficient capacity to understand that his or her conduct was wrong. The provision reflects an attempt to reconcile competing objectives of accountability and protection by recognising that children within this age bracket differ significantly in their levels of maturity and understanding. From a child rights perspective, the doctrine provides an important safeguard because it prevents automatic criminalisation and requires individualised assessment of the child's mental and moral development. However, the practical effectiveness of this protection remains questionable. The law does not prescribe clear standards or assessment mechanisms for determining whether a child possessed the requisite understanding of wrongdoing. In the absence of standardised psychological evaluation procedures, courts may rely heavily on subjective judicial impressions or inconsistent evidentiary standards, thereby creating the risk of arbitrary outcomes. This uncertainty becomes particularly problematic when viewed alongside section 97 of the LCA, which requires that all proceedings involving children be guided by the best interest's principle and prioritise diversion, rehabilitation, and restorative justice measures. The continued possibility of criminal prosecution for children between ten and twelve years may therefore create tension between the welfare-oriented philosophy of the LCA and the accountability-based framework of the Penal Code. Consequently, while the doctrine of *doli incapax* provides a degree of protection, its effectiveness depends upon careful judicial

[47] African Committee of Experts on the Rights and Welfare of the Child, *General Comment No 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child* (2018); African Charter on the Rights and Welfare of the Child, art 17(4).
[48] Penal Code, Cap 16 R.E. 2023, s 15(2).

interpretation and the availability of professional assessments capable of accurately evaluating a child's developmental capacity.

Another notable protection under the Penal Code is the presumption that a male child under the age of twelve years is incapable of sexual intercourse.[49] Historically, this provision was designed to protect young boys from criminal liability for certain sexual offences by recognising their presumed physical and psychological immaturity. The provision reflects a broader legal commitment to acknowledging developmental limitations when determining criminal responsibility. However, contemporary child rights discourse raises important questions regarding the adequacy of such a rigid presumption. While the provision protects children from premature criminalisation, it may fail to adequately address complex situations involving child-on-child sexual conduct, exploitation, or abuse. In some circumstances, a male child may simultaneously occupy the positions of victim and alleged perpetrator, requiring nuanced interventions that address underlying welfare concerns rather than simplistic assumptions regarding incapacity. Accordingly, the provision should be interpreted alongside the rehabilitative and protective objectives of the LCA, particularly section 119, which emphasises measures aimed at guidance, supervision, and reintegration rather than punishment. A purely formal application of the presumption risks overlooking the complex realities that often characterise children's involvement in sexual offences and may hinder the development of individualised responses that genuinely serve the child's best interests.

The child-centred philosophy of the juvenile justice system is reinforced by section 15(4) of the Penal Code, which requires the application of the Law of the Child Act in relation to children accused of violating the law.[50] This provision is significant because it establishes the primacy of the specialised juvenile justice framework over ordinary criminal procedures when dealing with child offenders. By directing attention to the LCA, the law recognises that children should not be subjected to the same procedures, sanctions, and institutional responses applicable to adults. Instead, child offenders are entitled to the procedural safeguards, diversionary measures, and rehabilitative interventions established under the juvenile justice system. The provision therefore reflects compliance

[49] ibid s 15(3).
[50] ibid s 15(4); LCA, pt IX.

with Article 37(b) of the Convention on the Rights of the Child and Article 17(2)(c) of the African Charter on the Rights and Welfare of the Child, both of which emphasise that detention should be used only as a measure of last resort and for the shortest appropriate period. Nevertheless, the practical effectiveness of section 15(4) depends substantially upon the capacity of institutions responsible for implementing juvenile justice. Limited numbers of specialised courts, inadequate child-friendly facilities, insufficient social welfare personnel, and varying levels of awareness among law enforcement officers continue to affect the extent to which the rehabilitative objectives of the LCA are fully realised in practice. Consequently, the legal recognition of child-sensitive procedures must be accompanied by corresponding institutional investments if meaningful protection is to be achieved.

The Criminal Procedure Act, Cap 20 R.E. 2023 complements the protective framework established under the Law of the Child Act by regulating how children are treated during criminal investigations and court proceedings. Although the Act was enacted as legislation of general application, several of its provisions recognise that children require additional procedural safeguards because of their age, vulnerability, and limited capacity to understand criminal processes. These safeguards seek to reduce the risk of arbitrary treatment, ensure fairness during criminal proceedings, and protect children's dignity throughout the administration of justice.

One important safeguard appears in section 56 of the Criminal Procedure Act, which imposes a mandatory obligation upon the police to notify a child's parent or guardian immediately after the child has been placed under restraint and to communicate the offence for which the child is being detained. The provision applies to children below the age of sixteen years.[51] This requirement performs a function that extends beyond mere notification. Prompt parental involvement provides an important procedural safeguard by ensuring that a child is not isolated during the early stages of criminal investigation, where the risk of intimidation, misunderstanding, or undue influence is often greatest. The presence or early involvement of a parent or guardian may assist the child in understanding the nature of the proceedings, facilitate access to legal representation, and provide emotional support during police

[51] Criminal Procedure Act, Cap 20 R.E. 2023, s 56.

investigations. The provision therefore strengthens procedural fairness by recognising that children frequently lack the maturity, confidence, and legal knowledge necessary to protect their own interests when dealing with law enforcement authorities.

This statutory safeguard reflects broader principles recognised under international children's rights law. Research consistently demonstrates that children are more susceptible than adults to suggestion, compliance with authority, and psychological pressure during police interviews, thereby increasing the risk of unreliable statements and involuntary admissions. Forde and Kilkelly argue that a child-centred approach to criminal investigations requires procedural safeguards that acknowledge children's developmental capacities and enable them to participate effectively while protecting them against coercion and unfair treatment.[52] Their analysis illustrates that procedural rights cannot be regarded as effective merely because they exist in legislation; they must also be implemented in a manner that children are capable of understanding and exercising. Within the Tanzanian context, this observation underscores the continuing need for specialised police training on child-sensitive interviewing techniques, effective communication with children, and the practical implementation of procedural guarantees during criminal investigations.

The Act further protects children's welfare and privacy during judicial proceedings. Under section 186(1)(b)(ii), a court may exclude the public where publicity would prejudice the welfare of persons under eighteen years or interfere with the protection of their private lives. In addition, section 186(3) requires evidence in all sexual offence trials to be received *in camera* and prohibits the publication of evidence or the identities of witnesses involved, subject to limited statutory exceptions. These provisions recognise that unnecessary publicity may expose children to stigma, emotional distress, and secondary victimisation. Child justice scholarship increasingly identifies privacy as an indispensable procedural guarantee that promotes children's dignity, encourages meaningful

[52] Louise Forde and Ursula Kilkelly, *The Child-Friendly Justice Project: The Participation of Children in Civil and Criminal Judicial Proceedings in 10 EU Member States* (University College Cork 2015); see also Ursula Kilkelly, *Youth Courts and Children's Rights: The Irish Experience* (Clarus Press 2008).

participation, and protects them from further harm arising from criminal proceedings.[53]

Further protection is provided under section 187, which prohibits children from being present during the trial of another person unless their attendance is required as a witness or for justice. The provision reflects the welfare-oriented approach underpinning juvenile justice by limiting children's exposure to proceedings that may cause psychological distress or expose them to inappropriate evidence. It also reinforces the principle that children's involvement in criminal proceedings should occur only where necessary and, in a manner, consistent with their age, maturity, and best interests.[54]

These provisions establish important procedural safeguards for children during criminal investigations and judicial proceedings, but significant gaps remain. Section 56 limits mandatory parental notification to children below sixteen years, contrary to the Law of the Child Act and international child rights standards, which define a child as every person below eighteen years, while the Act provides limited safeguards for child-sensitive police interviewing and does not expressly guarantee legal representation during police questioning. Harmonising the Criminal Procedure Act with the Law of the Child Act and international standards would strengthen procedural protection for all children in conflict with the law and promote more effective implementation of child-friendly justice.

4.4 Realising the Right to Health of Children in Conflict with the Law in Tanzania

The right to health occupies a central place in the protection of children in conflict with the law. It extends beyond access to medical treatment to encompass physical, mental, psychological, and social well-being. International human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of

[53] Márton Benyusz and Kinga Zombory, *Introducing Child-Friendly Justice: Concepts, Rights, and Participation* (2025); Maria Leiria and Catarina Nunes, 'Children's Perceptions of Their Involvement in Judicial Child Protection, Family and Criminal Proceedings: A Systematic Review' (2023) 31(3) *The International Journal of Children's Rights* 624.

[54] Anna Kaldal, 'Children's Participation in Legal Proceedings—Conditioned by Adult Views of Children's Capacity and Credibility?' in *The Rights of the Child* (Brill Nijhoff 2023) 61

the Child (CRC), and the African Charter on the Rights and Welfare of the Child (ACRWC), recognise health as a fundamental human right and affirm every child's entitlement to the highest attainable standard of health and conditions necessary for healthy development.[55] For children in conflict with the law, the right to health assumes particular importance because arrest, detention, institutionalisation, and social stigma can adversely affect their physical and mental well-being. Consequently, health protection must be regarded as a core component of rehabilitation, reintegration, and human dignity rather than a mere welfare concern.

The normative content of the right to health extends beyond access to medical treatment. International human rights law recognises it as a right to a functioning health system and to the underlying conditions necessary for physical, mental, and social well-being. Accordingly, the right encompasses the availability, accessibility, acceptability, and quality of health services, as well as broader determinants such as safe environments, adequate nutrition, sanitation, and conditions conducive to human development.[56] In the context of juvenile justice, compliance cannot therefore be measured solely by the existence of healthcare facilities. It also requires child-friendly institutions, access to mental health and psychosocial services, protection from violence and abuse, and detention conditions that preserve dignity and support recovery. Health thus operates both as a substantive right and as a benchmark for assessing the legitimacy of juvenile justice interventions.

The centrality of health rights is further reinforced by the understanding that health constitutes a foundational condition for the enjoyment of other rights and opportunities. Children whose physical or psychological well-being is undermined by neglect, abuse, trauma, or inadequate institutional support are less able to benefit from education, family life, rehabilitation

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[55] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) art 25; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 12; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 arts 24 and 39; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 arts 14 and 17.

[56] Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)* UN Doc E/C.12/2000/4 (11 August 2000) paras 11–12; E Javid and S Niavarani, 'The Scope of the Right to Health in International Human Rights Law' (2014) 15(41) *Public Law Research* 47; John Tobin, *The Right to Health in International Law* (OUP 2012); Paul Hunt, 'Interpreting the International Right to Health in a Human Rights-Based Approach to Health' (2016) 18(2) *Health and Human Rights* 109.

programmes, and social reintegration. A juvenile justice system that fails to safeguard health, therefore not only falls short of its human rights obligations but also weakens its own rehabilitative objectives. Protecting health is consequently not a peripheral welfare concern but an essential prerequisite for rehabilitation, reintegration, and the full development of children in conflict with the law.[57]

Although the Constitution of the United Republic of Tanzania does not expressly guarantee the right to health, judicial interpretation has increasingly recognised health as an essential element of the right to life and human dignity. In *Joseph D Kessy and Others v The City Council of Dar es Salaam*, the High Court adopted a broad interpretation of constitutional protections by recognising that health threats may amount to threats to life itself.[58] Ackson observes that such judicial developments have contributed significantly to the gradual recognition of socio-economic rights within the Tanzanian constitutional framework despite the absence of explicit constitutional provisions.[59] For children in conflict with the law, this approach is particularly important because it provides a constitutional foundation for demanding humane treatment, access to healthcare, and protection from harmful detention conditions. It also affirms that the deprivation of liberty does not extinguish the fundamental rights of children but instead imposes heightened responsibilities upon state authorities.

The Law of the Child Act (LCA) incorporates several safeguards aimed at protecting the health and welfare of children who come into contact with the justice system. The Act guarantees access to medical care and establishes mechanisms intended to protect children from harmful environments and treatment.[60] It further requires the involvement of parents, guardians, and social welfare officers and promotes the placement of children in facilities specifically designed for their age and circumstances.[61] These provisions reflect an appreciation that health is influenced by social support, family relationships, living conditions, and

[57] Amartya Sen, *Development as Freedom* (OUP 1999).
[58] *Joseph D Kessy and Others v The City Council of Dar es Salaam* Civil Case No 299 of 1988 (High Court, Dar es Salaam Registry) (unreported).
[59] T Ackson, 'Justiciability of Socio-Economic Rights in Tanzania' (2015) 23(3) *African Journal of International and Comparative Law* 373.
[60] LCA, s 26.
[61] ibid ss 99(1), 101 and 125.

protection from harmful influences. From a human rights perspective, the significance of these safeguards lies in their recognition that once the State assumes control over a child's liberty, it acquires corresponding obligations to respect, protect, and fulfil the child's health rights through effective legal, administrative, and institutional measures.[62]

4.4.1 Mental Health, Psychological Recovery, and Rehabilitation

Mental health represents one of the most important yet frequently neglected dimensions of the right to health within juvenile justice systems. International law increasingly recognises that psychological well-being forms an inseparable component of human dignity and healthy development. Article 39 of the CRC requires States to promote the physical and psychological recovery and social reintegration of children affected by neglect, abuse, exploitation, or other forms of harm.[63] This obligation is particularly relevant because many children who enter juvenile justice systems have experienced poverty, family instability, violence, trauma, substance abuse, or social exclusion before their contact with the law. As a result, offending behaviour often reflects broader social and psychological vulnerabilities rather than mere criminal intent. Effective rehabilitation, therefore, requires more than legal sanctions; it necessitates interventions that address underlying mental health and psychosocial needs.

The LCA adopts a rehabilitative philosophy by prioritising correction, guidance, and reintegration over punishment.[64] Nevertheless, significant challenges remain regarding the practical realisation of mental health rights within juvenile institutions. Pūras observes that mental health should be treated as an integral component of the right to health rather than a secondary policy concern.[65] Similarly, Hovey, Zolkoski, and Bullock demonstrate that children involved in juvenile justice systems frequently experience disproportionately high levels of psychological disorders, emotional trauma, and behavioural difficulties requiring

[62] Dinah Moeckli, Sandesh Sivakumaran, Sarah Shah and David Harris (eds), *International Human Rights Law* (4th edn, OUP 2022).
[63] CRC art 39.
[64] LCA, s 119(1).
[65] Dainius Pūras, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health' (2022) 95 *Philippine Law Journal* 274.

specialised intervention.[66] Yet available evidence suggests that many juvenile institutions continue to operate with limited psychological services, insufficient specialist personnel, and inadequate systems for identifying and addressing mental health needs.[67] Consequently, children may remain within institutional settings without receiving meaningful therapeutic support, thereby weakening both rehabilitation efforts and the realisation of their health rights.

The implications of this deficiency are significant. Shields argues that justice institutions often become places where vulnerable children are merely "warehoused" rather than rehabilitated, resulting in the criminalisation of unmet mental health needs.[68] Jacobs similarly identifies systemic barriers that prevent children from receiving appropriate psychological care within welfare and justice systems.[69] Such realities reveal a persistent gap between the rehabilitative objectives embedded in law and actual institutional practice. Where mental health services are unavailable or ineffective, detention may aggravate existing trauma, increase social isolation, and diminish prospects for successful reintegration. These outcomes are inconsistent with the rehabilitative obligations established under international and regional child rights instruments and undermine the fundamental purpose of juvenile justice itself.

4.4.2 Health Rights in Detention and Institutional Care

Children deprived of liberty face heightened risks to their physical and mental well-being, making the protection of health rights a central component of juvenile justice. International standards require detention to be used only as a measure of last resort and under conditions consistent with human dignity, while the Law of the Child Act reinforces these obligations through the separation of children from adults and placement in institutions appropriate to their age and developmental needs.[70] These safeguards are not merely procedural. Detention conditions directly affect

[66] K A Hovey, S M Zolkoski and L M Bullock, 'Mental Health and the Juvenile Justice System: Issues Related to Treatment and Rehabilitation' (2017) 7(3) *World Journal of Education* 1.
[67] LCA, ss 100(1), 101(1) and 125.
[68] D M Shields, 'Warehoused: The Plight of "Mad" Youths in the Juvenile Justice System' (2011) 8 *Justice Policy Journal* 48.
[69] S A Jacobs, 'Navigating a Broken System: The State of Mental Health in Child Welfare' (2024) 75 *Psychiatric Services* 90.
[70] CRC, art 37(c); ACRWC art 17(2)(a); LCA, ss 100(1), 101(1) and 125.

children's health, and environments characterised by overcrowding, poor sanitation, inadequate nutrition, violence, or limited access to healthcare can undermine rehabilitation and impede successful reintegration.

The right to health extends beyond medical treatment to encompass the broader conditions necessary for physical, psychological, and social well-being. International human rights law recognises access to healthcare, sanitation, nutrition, and safe living conditions as integral components of health protection, requiring detention authorities to maintain environments that support children's development and recovery.[71] Consequently, the adequacy of juvenile detention facilities should be assessed not only by the availability of medical services but also by the extent to which institutional conditions preserve dignity, promote well-being, and facilitate rehabilitation.

Despite these standards, implementation remains a significant challenge. Available evidence from sub-Saharan Africa indicates persistent deficiencies in healthcare services, sanitation, nutrition, and psychological support within detention facilities, while the implementation of international juvenile justice standards continues to be constrained by inadequate resources, weak institutional capacity, and shortages of specialised personnel.[72] These challenges demonstrate that legal guarantees alone cannot secure health rights. Effective protection requires sustained investment in infrastructure, healthcare, and psychosocial services, rehabilitation programmes, and monitoring mechanisms capable of translating legal standards into meaningful outcomes for children deprived of liberty.

4.4.3 Protection from Abuse, Exploitation, and Health-Related Harm

The right to health extends beyond access to medical treatment and includes protection from violence, abuse, exploitation, and other forms of

[71] Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)* UN Doc E/C.12/2000/4 (11 August 2000) para 12; Brigit Toebes, 'International Health Law: An Emerging Field of Public International Law' (2015) 55(3) *Indian Journal of International Law* 299; Justice Health Group, *Ensuring the Highest Attainable Standard of Health for Children Deprived of Their Liberty* (Murdoch Children's Research Institute 2023).

[72] Marie-C Van Hout and Rosemary Mhlanga-Gunda, 'Prison Health Situation and Health Rights of Young People Incarcerated in Sub-Saharan African Prisons and Detention Centres: A Scoping Review of Extant Literature' (2019) 19 *BMC International Health and Human Rights* 1; N Jacobs-Du Preez, 'The United Nations Standard Minimum Rules for the Administration of Juvenile Justice Applied in an African Context' (2002) 15 *Acta Criminologica: African Journal of Criminology and Victimology* 35.

treatment that threaten a child's physical or psychological well-being. International and regional human rights instruments require States to protect children from all forms of violence, neglect, abuse, and sexual exploitation, while the Law of the Child Act reinforces these obligations by prohibiting inhuman treatment and safeguarding the welfare of children throughout the justice process.[73] These legal protections recognise that a child's health cannot be separated from a safe and protective environment, particularly within the juvenile justice system.

Children deprived of their liberty are especially vulnerable to violence and exploitation. Studies on juvenile detention in Africa show that girls are at greater risk of sexual abuse, coercion, institutional neglect, and traumatisation, while many detained children already suffer from untreated psychological trauma and other mental health challenges before entering custody.[74] These findings demonstrate that the right to health is not limited to medical care. It also requires protection from violence, degrading treatment, and exploitation because such experiences directly affect children's mental health, emotional development, and prospects for successful rehabilitation.

Health-related harm may also arise from the conditions in which children are detained. Research has shown that overcrowding, poor sanitation, inadequate healthcare services, and exposure to communicable diseases remain common challenges in many detention facilities across Sub-Saharan Africa.[75] These conditions undermine both physical and mental health and often reflect broader structural problems such as inadequate resources, weak oversight, and poor implementation of child protection standards. They are inconsistent with the State's obligation to respect, protect, and fulfil the rights of children deprived of liberty and ultimately weaken the rehabilitative purpose of juvenile justice by exposing children to environments that deepen rather than address their vulnerabilities.

4.5 Challenges in Realising Legal Protection and Health Rights of Children in Conflict with the Law in Tanzania

[73] CRC, arts 19(1) and 34; ACRWC, arts 16 and 29; LCA, s 13.
[74] Marie-C Van Hout and Rosemary Mhlanga-Gunda, 'Prison Health Situation and Health Rights of Young People Incarcerated in Sub-Saharan African Prisons and Detention Centres: A Scoping Review of Extant Literature' (2019) 19 *BMC International Health and Human Rights* 17.
[75] ibid.

Although the Law of the Child Act and the Law of the Child (Juvenile Court Procedure) Rules establish a child-centred and rehabilitative juvenile justice framework, the protection of children in conflict with the law remains largely affected by weaknesses in implementation. The principal challenge is not the absence of legal safeguards but the inability of institutions to effectively operationalise them. Diversion, rehabilitation, and social reintegration remain unevenly implemented due to inadequate funding, weak inter-agency coordination, and limited institutional capacity. Consequently, children continue to experience prolonged detention, inadequate access to education, poor living conditions, and limited health and psychosocial services despite the existence of legal protections designed to prevent such outcomes.[76] This disconnect reveals a persistent gap between the normative commitments contained in legislation and the realities experienced by children within the justice system.

A particularly significant weakness lies in the realisation of health and mental health rights. Contemporary juvenile justice standards recognise that rehabilitation cannot be achieved without addressing the physical and psychological needs of children. However, many juvenile institutions lack trained psychologists, social workers, and specialised health personnel capable of identifying and responding to trauma, behavioural disorders, substance abuse, and other mental health challenges commonly experienced by children in conflict with the law.[77] The absence of adequate mental health interventions undermines the rehabilitative purpose of juvenile justice and raises concerns regarding compliance with Article 40 of the Convention on the Rights of the Child, which requires treatment that promotes dignity, self-worth, and reintegration.[78] In practice, children often leave detention with the same vulnerabilities that contributed to offending behaviour, demonstrating that legal protection cannot be assessed solely through procedural safeguards but must also be

[76] F Mwaijande and J Mwakalikamo, 'Potential of Social Protection Policy Interventions for Breaking Poverty Cycle in Tanzania' (2024) *Journal of Social and Policy Issues* 34-39; HK Bisimba, *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (PhD thesis, University of Warwick 2011) 215; K Mandopi, 'Protection of the Child from Degrading Treatment in Tanzania: A Critical Assessment of the Law and Practice' (2016) 2(4) *Journal of Asian and African Social Science and Humanities* 74-80.
[77] Kadilu, 'Critical Issues in Handling Juvenile Delinquents in Tanzania'; Jacobs, 'Navigating a Broken System', 90-91.
[78] CRC, art 40.

measured by the extent to which justice institutions facilitate recovery and long-term well-being.

The implementation of international juvenile justice standards presents a further challenge. While Tanzania has ratified the CRC and the African Charter on the Rights and Welfare of the Child and has incorporated many international principles into domestic legislation, compliance with standards embodied in the Beijing Rules remains inconsistent.[79] Persistent concerns relating to limited legal representation, inadequate use of diversion, delays in case disposal, and continued reliance on custodial measures indicate that punitive practices continue to influence a system that is legally intended to be rehabilitative.[80] These shortcomings suggest that legislative reform alone cannot guarantee rights protection where institutions lack the resources, expertise, and operational mechanisms necessary to implement child-centred justice effectively.

Institutional and professional capacity deficits further weaken the protection of children. Effective juvenile justice requires specialised knowledge of child development, child psychology, restorative justice, and children's rights. Yet many police officers, judicial personnel, and detention officers receive limited specialised training in handling children's cases, resulting in approaches that frequently prioritise control and punishment over rehabilitation.[81] At the community level, low awareness of children's rights continues to undermine prevention, diversion, and reintegration efforts.[82] At the same time, emerging threats such as cyberbullying, online exploitation, and exposure to harmful digital content create new forms of vulnerability that existing child protection mechanisms are often ill-equipped to address.[83] These developments demonstrate that juvenile justice reforms must evolve beyond traditional criminal justice responses and incorporate broader child protection strategies capable of addressing contemporary risks.

[79] Beijing Rules (n 15); Kanwel, Khorana and Adepoju, 'The Impact of International Law on Juvenile Justice Systems' (2024) DSSR.
[80] Child Rights International Network (CRIN), 'Study of Juvenile Justice System in Tanzania' (2012); Save the Children, *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa* (GSDRC 2015).
[81] Kadilu (n 6).
[82] M Couzens and K Mtengeti, *Creating Space for Child Participation in Local Governance in Tanzania* (REPOA 2011).
[83] Kanwel, Khorana and Adepoju, 'The Impact of International Law on Juvenile Justice Systems' (2024) DSSR.

Another structural challenge is the marginalisation of mental health within both justice and welfare systems. Social stigma and cultural misconceptions surrounding mental illness often discourage early intervention and access to treatment, leaving psychological vulnerabilities unaddressed throughout a child's engagement with the justice process.[84] This reflects a deeper weakness in policy implementation: legal protection is frequently understood in procedural terms, while insufficient attention is paid to psychosocial recovery and emotional well-being. Yet international child rights standards envisage juvenile justice as a multidisciplinary process integrating legal protection, mental health support, education, family involvement, and social welfare interventions.[85] Without such integration, rehabilitation risks becoming an aspirational objective rather than a practical outcome.

The underdevelopment of restorative and community-based justice mechanisms also limits the effectiveness of the juvenile justice system. International standards, including the Beijing Rules and related child justice instruments, emphasise restorative approaches that promote accountability, reconciliation, and reintegration while minimising the harmful effects of institutionalisation.[86] Despite legislative recognition of diversion and rehabilitation, community-based programmes remain underfunded, fragmented, and insufficiently integrated into formal justice structures. As a result, opportunities to resolve cases through family and community support systems are often lost. Evidence nevertheless suggests that locally grounded restorative initiatives can reduce recidivism, strengthen social cohesion, and improve rehabilitation outcomes when adequately supported.[87] The challenge, therefore, lies less in the legal recognition of restorative justice than in the lack of sustained institutional investment required for its effective implementation.

Experiences from other African jurisdictions further illustrate that successful juvenile justice reform depends on institutional capacity rather than legal provisions alone. The experiences of South Africa, Kenya, and

[84] Malvaso, Daffern and Day, 'Child Mental Health in Juvenile Justice in Norway' (2024) DSSR; Jacobs, 'Navigating a Broken System', 90-91.
[85] J Sloth-Nielsen and BD Mezmur, 'A Dutiful Child: The Implications of Article 31 of the African Children's Charter' (2008) 52(2) Journal of African Law 168-170.
[86] Beijing Rules (n 15); CRIN, 'Guidelines on Action for Children in the Justice System in Africa' (2012).
[87] M Verdier, ‘Restorative Justice and Juvenile Offenders’ (2024) DSSR; ACERWC, ‘Study on Implementation of Decisions’ (2025).

Zambia demonstrate the value of specialised courts, multidisciplinary interventions, community supervision, and stronger coordination among child protection agencies.[88] These models highlight the importance of strengthening collaboration between justice, health, education, and social welfare institutions while investing in specialised training and rehabilitation services. Without such reforms, the rehabilitative aspirations embedded in Tanzania's legal framework will remain difficult to realise in practice.

Ultimately, Tanzania possesses a relatively comprehensive legal framework for the protection of children in conflict with the law, yet its effectiveness continues to be constrained by weak institutional capacity, inadequate resources, insufficient specialised personnel, and poor integration of health and psychosocial services. The central challenge is therefore one of implementation rather than legislative deficiency. Realising the legal protection and health rights of child offenders requires a genuinely restorative, multidisciplinary, and child-centred system that places rehabilitation, mental well-being, and social reintegration at the centre of juvenile justice administration. Only through such an approach can the legal guarantees contained in national and international instruments be transformed into meaningful protection for children.

4.6 Prospects and Reform Directions for Realising Legal Protection and Health Rights of Children in Conflict with the Law in Tanzania

The prospects for strengthening legal protection and health rights of children in conflict with the law lie primarily in closing persistent implementation gaps rather than reforming normative frameworks. Although the Law of the Child Act and related instruments broadly align with international standards, their effectiveness is constrained by weak institutional capacity, limited coordination, and inadequate accountability across justice, health, education, and social welfare systems. Future reforms must therefore prioritise enforcement capacity and inter-agency integration to translate legal guarantees into practical protection.

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[88] Mensah-Bonsu K, 'Juvenile Justice in Africa: Evaluation of UNCRC Implementation' (2023) MSpace Manitoba; *Child Justice in Africa: A Guide to Good Practice* (Dullah Omar Institute 2025).

A central reform prospect is the reduction of custodial responses through effective operationalisation of diversion mechanisms. Despite statutory endorsement of diversion and rehabilitation, detention remains dominant due to weak institutional structures and limited use of restorative options. Strengthening mediation, family conferencing, counselling, and community service would reduce unnecessary incarceration and its associated psychological harm, while aligning practice with child-centred justice principles.

Closely linked to this is the need to institutionalise restorative justice as a core component of juvenile justice practice. Evidence of exposure to overcrowding, trauma, and inadequate care in custodial settings underscores the urgency of shifting from punitive to rehabilitative approaches. Embedding restorative processes within police, prosecutorial, and judicial decision-making would improve outcomes for both children and affected communities.

Mental health and psychosocial support constitute another critical area of reform. Current services within the juvenile justice system remain limited and fragmented, despite high levels of trauma, poverty-related stressors, and family instability among child offenders. Strengthening integrated child-friendly rehabilitation centres with accessible psychological and medical services would ensure that offending behaviour is addressed as a multidimensional social and health issue rather than a purely legal problem.

Existing policy frameworks, including the National Plan of Action to End Violence Against Women and Children and the Child Justice Reform Strategy, provide a foundation for reform. However, their impact is constrained by weak implementation, insufficient funding, and limited monitoring. The key prospect, therefore, lies in strengthening execution mechanisms, improving budgetary allocation, and reinforcing accountability rather than introducing additional policy instruments.

Capacity development among justice and welfare actors remains essential. Inadequate training in child rights, trauma-informed practice, and mental health significantly undermines decision-making at all stages of the juvenile justice process Systematic training of police officers, prosecutors, magistrates, probation officers, and social welfare professionals, supported by interdisciplinary collaboration with health practitioners, is necessary to improve rehabilitative outcomes.

At the community level, weak reintegration structures continue to drive recidivism and limit long-term rehabilitation. Strengthening community-based interventions such as vocational training, education support, mentorship, and family strengthening programmes would address underlying socio-economic drivers of offending, including poverty, exclusion, and family breakdown. These measures are essential for sustainable reintegration and crime prevention.

Finally, improved oversight, data systems, and accountability mechanisms are crucial for evidence-based juvenile justice reform. Establishing reliable national data on detention, diversion, health outcomes, and reintegration would enhance monitoring, strengthen compliance with standards, and guide policy decisions. Generally, meaningful progress depends less on expanding legal provisions and more on strengthening institutions, coordination, mental health services, and restorative justice implementation.

5.0 Conclusion

This article has examined the legal protection and health rights of children in conflict with the law within Tanzania's juvenile justice framework, drawing on international, regional, and domestic legal standards. It finds that, at the normative level, Tanzania has developed a comparatively robust framework grounded in the Constitution, the Law of the Child Act, Cap 13 R.E. 2023, the Criminal Procedure Act, and child rights instruments, including the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Collectively, these instruments affirm that children in conflict with the law are entitled to procedural safeguards as well as rehabilitation, reintegration, and the highest attainable standard of physical and mental health.

Notwithstanding this normative strength, the study establishes a persistent and structural disjuncture between law and practice. The juvenile justice system remains constrained by limited institutional capacity, insufficient specialised personnel, weak inter-agency coordination, and inadequate access to health and mental health services. These constraints result in a justice experience that frequently departs from the rehabilitative and child-centred model envisaged in law and reflected in international standards. The central challenge is therefore not normative deficiency but the ineffective operationalisation of existing legal guarantees.

A further finding is that the right to health, though formally embedded within the juvenile justice framework, remains insufficiently realised in practice. Its scope extends beyond medical treatment to include mental health care, psychosocial support, safe detention conditions, and broader protective environments conducive to recovery and reintegration. However, the study shows that these dimensions remain weakly integrated into juvenile justice administration, thereby limiting the system's capacity to respond to the complex vulnerabilities of child offenders.

In light of these findings, the study concludes that the effectiveness of juvenile justice in Tanzania depends not on further expansion of legal norms but on the extent to which existing guarantees are meaningfully implemented. The gap between normative commitment and institutional practice remains the decisive constraint on the realisation of both legal protection and health rights of children in conflict with the law.

Tracing the Path from International Investment Disputes to Domestic Legal Reform: A Case Study of Tanzania

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Abstract
Tanzania is rich in natural resources and strategically located in East Africa; it has become a significant destination for foreign direct investment (FDI). However, the country faces challenges related to international investment disputes, often stemming from conflicts between foreign investors and the government as a result of a weak investment regulatory framework. This article aims to explore how international investment disputes can serve as an opportunity for legal reforms on FDI. The Doctrinal methodology is used to study pieces of legislation, international instruments, arbitration case decisions, Journal articles, books and electronic sources. Despite progress, Tanzania's legal framework shows weaknesses such as poor enforcement mechanisms, bureaucratic stamps, and ambiguity in legal provisions. These issues are bottlenecks to effective dispute resolution and investor confidence. To enhance the investment climate, Tanzania should undertake comprehensive legal reforms, balance investor protections with national interests, and actively engage stakeholders. By fostering a transparent and equitable legal environment, Tanzania can attract responsible foreign investment and promote sustainable economic growth.

Keywords: *International Investment Disputes, Domestic Legal Reform, Direct Foreign Investments*

1.0 Introduction

Tanzania is endowed with abundant natural resources and is strategically located in East Africa as a significant destination for foreign direct investment (FDI). It is an attractive stimulus for investments across various sectoral aspects such as agriculture, mining, tourism, and energy, driven by its economic potential and attractive investment climate[1]. However, the influx of foreign investments goes alongside legal challenges. International investment disputes have increasingly become a

[1] World Bank, '*Doing Business 2020: Comparing Business Regulation in 190 Economies*' (World Bank Publications 2020).

concern, often arising from conflicts between foreign investors and the Tanzanian government about regulatory changes, expropriation, and breaches of investment agreements[1].

The legal framework governing foreign direct investments in Tanzania comprises of domestic laws, bilateral investment treaties (BITs), and international conventions. The Tanzania Investment Act of 1997, together with the subsequent amendments, aims to create a conducive environment for investors by providing legal protections and incentives (Tanzania Investment Centre, 2021). However, the effectiveness of this framework is still into question, particularly in aspect of several high-profile investment disputes that have emerged in recently. For instance, the case of the UK based mining company and Tanzania[2], which faced expropriation with inadequate compensation, highlights the complexities and challenges inherent in the current legal scope.

Inadequate clarity and asymmetry in legal clauses, enforcement challenges, and limited awareness of international investment treaties among local stakeholders have contributed to the difficulties in resolving disputes effectively[3]. Tanzania's participation in international arbitration means, such as those provided by the ICSID, has raised questions about the balance between protecting investor rights and safeguarding national interests.[4]

The challenges facing Tanzania in attending international investment disputes are faced by many countries with weak legal frameworks. Many developing countries struggle with same issues, often stemming from institutional capacity to define the challenges of existing legal frameworks[5].

A strong and stable legal framework is crucial for building investor confidence, ensuring fair and equitable dispute resolution, and promoting sustainable economic growth in the country.[6]

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[1] J Mhando, *'Legal Framework for Foreign Investment in Tanzania: An Overview'* (2020) 7(1) University of Dodoma Law Journal 34, 42.
[2] *Acacia Mining plc v. United Republic of Tanzania*, ICSID Case No. ARB/19/3 (2019).
[3] Ibid.[2.]
[4] M Mchome, '*Balancing Investor Rights and National Interests in Tanzania: The Role of International Arbitration'* (2021) 29(3) African Journal of International and Comparative Law 345.
[5] United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2018: Investment and New Industrial Policies* (United Nations Publications 2018).
[6] World Bank, '*Tanzania Economic Update: Navigating the COVID-19 Pandemic'* (World Bank Publications 2021).

The lessons from international investment arbitration awards reveals a structural lacuna in Tanzania's legal landscape, characterized by fragmentation across sectoral legislation, ambiguity in dispute settlement mechanisms, and inadequate guarantees to regulatory instability, which the ensuing legislative reforms seek to cure through procedural clarity, harmonization, and improved legal certainty for foreign direct investment.

2.0 Evolution of Tanzania's Legal framework on Foreign Direct Investment

The developmental milestones of Tanzania's legal framework for international investment reflect a journey from a restrictive, state-controlled environment to a more open and regulated investment climate.

2.1 Post independence in 1961 to 2010

During this period, the world's structural adjustments in terms of political, economic, technological and legal reforms have influenced the evolution of investment legal framework of Tanzania.

Tanzania adopted a socialist economic model under President Julius Nyerere, which prioritized state control over the economy. Under the Foreign Investment (Protection Act) of 1963[7], the approach led to the nationalization of key industries and foreign-owned enterprises, significantly limiting foreign direct investments. The policy was rooted in the desire to promote self-reliance and reduce dependency on foreign powers. However, the immediate effect was a decline in foreign direct investment (FDI), as potential investors were deterred by the lack of property rights and the risk of expropriation.[8] The Author advocates for a more transparent regulatory environment, improved stakeholder engagement, and better mechanisms for dispute resolution. He further argues that strengthening the legal framework is essential not only for attracting foreign investment but also for ensuring sustainable economic development in Tanzania. The Amendment Act 1967 clearly defined the meaning "a foreign national" in trying to provide understanding of difference between a national citizen and a foreign national. Despite such minor amendment, there was no established legally mandated institution or centre for investment, apart from the ministry itself.

[7] *Foreign Investment (Protection) Act* 1963, s 6(1).
[8] JM M Mbilinyi, *Tanzania: A Political Economy* (Mkuki na Nyota Publishers 2001).

Following economic challenges as a result of legal inadequacy, Tanzania strived to achieving economic growth by beginning to shift towards a more market-oriented economy in the late 1980s here referred to as "Economic Liberalization in 1980s". The experience is mirrored from the case of *Birch Shipping Corporation v. Embassy of the United Republic of Tanzania.*[9] In this case, the primary issue of dispute centred on a contract for the shipment of corn that was financed by the U.S. Department of Agriculture. Birch Shipping Corporation, the plaintiff, sought to enforce an arbitration award against the Tanzanian Embassy after an arbitration process in New York resulted in a monetary award in favour of Birch. The Embassy contested the enforcement, claiming immunity under the Foreign Sovereign Immunities Act (FSIA) and arguing that its property was protected from attachment. However, the U.S. District Court for the District of Columbia ruled in favour of Birch Shipping, determining that the Embassy had implicitly waived its immunity by agreeing to arbitration and that the funds in question were related to commercial activities, thus falling within the exceptions of the FSIA. This decision allowed Birch to proceed with the attachment of the Embassy's funds to satisfy the judgment. The case underscores the importance for Tanzania to ensure clarity in its contractual agreements regarding arbitration and to fully understand the implications of waiving sovereign immunity. However less is documented about experiences of Tanzania in international arbitrations in 1980s.

Despite such little contribution to the legal framework, the transition was marked by the introduction of structural adjustment programs supported by international financial institutions. Economic liberalization was essential for revitalizing Tanzania's economy by creating a conducive environment for foreign investment, which includes establishing clear and predictable legal frameworks[10]. The book laid the groundwork for the introduction of investment laws that would facilitate foreign participation in the Tanzanian economy, such as the National Investment (Promotion and Protection) Act of 1990 which was later repealed and the Tanzania Investment Act of 1997 was enacted.[11]

[9] *Birch Shipping Corp v Embassy of the United Republic of Tanzania* 507 F Supp 311 (DDC 1980).
[10] JM M Mbilinyi and AM Mhando, '*Decline and Recovery: The Political Economy of Tanzania*' (Mkuki na Nyota Publishers 1999*)*.
[11] *Tanzania Investment Act 1997, s 30*.

The Tanzania Investment Act of 1997 created the Tanzania Investment Centre (TIC).[12] This is a one-stop shop for investors, streamlining the investment process and providing various incentives to attract foreign capital. It also included provisions for the protection of investors' rights, such as guarantees against expropriation and the right to fair compensation.[13] This somehow cured the post-independence investment scars but elements of expropriation were still prevalent.

However, various scholars and analysts have identified several shortcomings in the Act that may hinder its effectiveness such as the enforcement of the provisions of the Act is often seen as inadequate. Investors find it challenging to enforce their rights, particularly in disputes with government entities at domestic judicial jurisdictions [14]. While the Act provides some protections against expropriation, it may not adequately cover other risks, such as changes in regulatory frameworks at emergency basis that can adversely affect investments[15]. The Act lacks a comprehensive framework for resolving investment disputes, which can lead to prolonged conflicts and dissatisfaction among investors. Investors often prefer clear mechanisms for arbitration and dispute resolution[16]. For example, in the case of *TANESCO vs. Independent Power Tanzania Limited (IPTL), initiated in 1998 under ICSID Case No. ARB/98/8*, the main issue of dispute revolved around unpaid payments for electricity supplied by IPTL to the Tanzania Electric Supply Company Limited (TANESCO).

The dispute arose after TANESCO failed to make timely payments, leading IPTL to seek arbitration under the International Centre for Settlement of Investment Disputes (ICSID). The arbitration proceedings were conducted in accordance with ICSID rules, and the tribunal ultimately ruled in favour of IPTL, ordering TANESCO to pay the outstanding amounts along with interest. The beneficiary of this decision was IPTL, which received the financial compensation it sought for the power supplied. This case serves as a lesson for Tanzania in adhering to contractual obligations and international agreements. It underscores the

[12] *Tanzania Investment Act 1997, s 4.*
[13] *Tanzania Investment Act 1997, s.22.*
[14] AM Mhando, *'The Role of Law in Economic Development: The Case of Tanzania'* in JM Mbilinyi (ed), *Law and Development in Africa* (Mkuki na Nyota Publishers 2003) 45.
[15] AM Mhando, *'Investment Law in Tanzania: A Critical Analysis'* (2005) 1(1) Tanzania Law Review 23.
[16] F Kihanda, *'The Legal Framework for Foreign Investment in Tanzania: An Analysis of the Investment Act of 1997'* (2010) 2(1) Tanzania Journal of Law and Policy 15-30.

need for the Tanzanian government to enhance its legal frameworks and dispute resolution mechanisms to ensure better compliance with international standards for a more reliable investment climate.

Despite the establishment of the Tanzania Investment Centre (TIC), bureaucratic inefficiencies and red tape remain significant obstacles for investors. The Act does not sufficiently address these challenges.[17] The Act is relatively broad and does not provide detailed regulations for specific sectors, which can create uncertainty for investors in industries with unique challenges[18].

The development of the Act may not have involved sufficient consultation with key stakeholders, including the private sector and civil society, leading to a disconnect between the law and the realities of the investment environment[19]. The investment milestone is dynamic, and the Act lacks provisions for regular review and adaptation to changing economic conditions and global investment trends.[20]

Citing the case of *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania (ICSID Case No. ARB/05/22*), the main issue of dispute arose in 2005 concerning the alleged breach of a contract and the violation of the bilateral investment treaty (BIT) between Tanzania and the United Kingdom, specifically related to the termination of a water supply contract and the treatment of the investor's rights. The arbitration proceedings were conducted under the International Centre for Settlement of Investment Disputes (ICSID), where both parties presented their cases. In 2008, the tribunal ruled in favour of Biwater Gauff, awarding the company compensation for the losses incurred due to Tanzania's actions, thus benefiting the investor significantly. This case highlighted an insightful experience in the importance of upholding contractual obligations and ensuring a fair and transparent legal framework for foreign investors.

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[17] AM Mhando, *'Bureaucratic Challenges in the Implementation of the Tanzania Investment Act'* (2010) 4(5) African Journal of Business Management 789-795.

[18] JM M Mbilinyi, *'Sectoral Analysis of Investment Law in Tanzania'* in AM Mhando (ed), *Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112-130.

[19]JM M Mbilinyi*, 'Sectoral Analysis of Investment Law in Tanzania' in AM Mhando (ed), Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112, 125.

[20] F Kihanda, *'The Need for a Dynamic Investment Legal Framework in Tanzania'* (2012) 3(1) Tanzania Law Review 50-70

Also, in the case of *Standard Chartered Bank v. United Republic of Tanzania (ICSID Case No. ARB/10/12)*, the main issue of dispute arose in 2010 concerning the alleged breach of the bilateral investment treaty (BIT) between Tanzania and the United Kingdom, specifically related to the treatment of the bank's investments and the enforcement of a loan agreement. The proceedings were conducted under the International Centre for Settlement of Investment Disputes (ICSID), where both parties presented their cases. In 2016, the tribunal ruled in favour of Standard Chartered Bank, awarding it compensation for the losses incurred due to Tanzania's actions, thus benefiting the bank financially. This case highlights the importance of maintaining a stable and predictable legal framework for foreign investments, as well as the need for effective dispute resolution mechanisms to foster investor confidence and avoid costly arbitration proceedings.

Despite such experiences resulting from arbitration cases above, Tanzania still suffers from fragmentation of investment laws in sector specific areas which were enacted in the late 1990s. This aimed at filling the gaps left behind by the Investment Act of 1997 with its subsequent amendments. This Act provided a framework for licensing[21], exploration, and mining operations, and it included provisions for environmental protection and community engagement.

For example, the Mining Act of 1998 was a significant piece of sector-specific legislation that aimed to attract foreign direct investment. It also faced criticism for not adequately addressing the rights of local communities and for the lack of clarity in dispute resolution mechanisms[22]. To fill the vacuum, the Government revised the act to accommodate the Corporate Social Responsibility (CSR)[23] and dispute settlement[24]. However, no significant change is observed in the newly revised edition of the Mining Act [Cap. 123 R.E. 2023] in terms of dispute settlement.

Another example is the Agricultural Sector Development Strategy (ASDS) introduced in the early 2000s, aimed to enhance agricultural productivity and attract investment in agriculture. This strategy included

[21] *The Mining Act, 1998, s24.*
[22] F Kihanda, *'The Mining Act of 1998: A Critical Analysis'* (2009) 1(1) Tanzania Journal of Law and Policy 35–50.
[23] *The Mining Act [CAP. 123 R.E. 2023], s.105.*
[24] *The Mining Act [CAP. 123 R.E. 2023] s.119-122.*

provisions for land tenure reform[25] and the establishment of agricultural investment codes. However, the implementation of these laws often faced bureaucratic challenges and land disputes, which complicated the investment climate in the agricultural sector[26]. It therefore gives loopholes in legal technicalities when the investor claims the breach of contract or any contractual mistreatment.

The same applies to the Tourism Act of 2008, which was designed to promote tourism as a key driver of economic growth. It aimed to provide a regulatory framework for tourism investment, including licensing and standards for tourism operators.[27] However, the Act has been criticised for its lack of enforcement mechanisms and for not adequately addressing the rights of local communities affected by tourism development.[28]

Nonetheless, the Telecommunications Act of 1993 and its subsequent amendments aimed to liberalise the telecommunications sector and attract foreign investment. However, regulatory challenges and disputes over licensing and service quality have persisted.[29]

To ameliorate and harmonise such legal shortcomings, the Government accommodated the same in the constitutional amendments of 2005. The constitutional amendments in 2005 reinforced the protection of property rights[30] and established a legal basis for investment protection. These reforms aimed to create a more favourable environment for both domestic and foreign investors. This was crucial for creating a stable environment for foreign investors, who often seek legal certainty and protection for their investments.[31] The reform provided for the Protection of Property Right which are vital for attracting foreign investment. By safeguarding investors' rights to their property, the constitution aimed to reduce the risk of expropriation and enhance investor confidence[32].

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[25] *Land Tenure (Village Settlements) Act* Cap 588.
[26] Ibid.[14]
[27] *The Tourism Act of 2008, s21-30.*
[28] JM M Mbilinyi, *'Sectoral Analysis of Investment Law in Tanzania'* in AM Mhando (ed), *Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112–130.
[29] F Kihanda, *'The Telecommunications Act: A Framework for Investment and Dispute Resolution'* (2011) 2(1) Tanzania Law Review 15–30.
[30] *The Constitution of the United Republic of Tanzania 1977, Article 24.*
[31] AM Mhando, *'The Role of the Constitution in Promoting Investment in Tanzania'* (2006) 2(1) Tanzania Law Review 45–60.
[32] F Kihanda, *'Constitutional Reforms and Property Rights in Tanzania: Implications for Investment'* (2007) 15(3) African Journal of International and Comparative Law 345–360.

The constitutional reforms also emphasised the protection of human rights, which is increasingly recognised as a critical factor in investment decisions. By promoting human rights, the reforms aimed to create a more favourable environment for sustainable investment, as companies are more likely to invest in countries with strong human rights records[33].

The 2005 constitutional reforms introduced measures for decentralisation and local governance, which aimed to empower local authorities and communities. This decentralisation is significant for investment, as it allows for more localised decision-making and can lead to better alignment of investments with community needs and priorities.[34] By enhancing the legal framework for arbitration and mediation, the constitution sought to provide investors with reliable avenues for resolving disputes, thereby reducing the risks associated with investment.[35] By addressing issues related to governance, property rights, and dispute resolution, the reforms aimed to position Tanzania as an attractive destination for foreign investors.[36]

Tanzania's experience is also stemmed at the Bilateral Investment Treaties (BITs). BITs typically include provisions on expropriation, fair and equitable treatment, and dispute resolution mechanisms, which are essential for creating a stable investment environment[37].

Tanzania has entered into several BITs to attract foreign investment. Scholars have analysed the effectiveness of these treaties in providing legal certainty and protection for investors. The treaties often include provisions that align with international standards, which can enhance investor confidence, offering legal protections against expropriation,

[33] JM M Mbilinyi, *'Human Rights and Investment: The Impact of Constitutional Reforms in Tanzania'* in AM Mhando (ed), *Investment and Human Rights: A Global Perspective* (Mkuki na Nyota Publishers 2008) 112–130.
[34] F Kihanda, *'Decentralization and Local Governance: Implications for Investment in Tanzania'* (2009) 1(2) Tanzania Journal of Law and Policy 25–40.
[35] *AM Mhando, 'Dispute Resolution in Tanzania: The Role of Constitutional Reforms'* (2010) 3(1) Tanzania Law Review 15–30.
[36] JM M Mbilinyi, *'Constitutional Reforms and Foreign Direct Investment in Tanzania: Opportunities and Challenges'* (2011) 12(1) Journal of African Business 45–60.
[37] P Muchlinski, *'Bilateral Investment Treaties: The Role of International Law in the Protection of Foreign Investment'* (2007) 56(3) International and Comparative Law Quarterly 637–661.

discrimination, and unfair treatment, which are often significant concerns for foreign investors.[38]

The study emphasises that the presence of BITs can signal to potential investors that Tanzania is committed to upholding international standards of investment protection, thereby making the country a more attractive destination for foreign direct investment (FDI). The author further assesses the effectiveness of these treaties, noting that their impact is heavily dependent on the domestic legal framework and the actual implementation of the treaty provisions. He points out that while Tanzania has entered into numerous BITs, challenges remain in ensuring that these agreements translate into tangible benefits for investors. Issues such as bureaucratic inefficiencies, inconsistent application of laws and lack of transparency in dispute resolution processes can undermine the potential advantages that BITs offer.

By advocating for a more integrated strategy that considers both investor protections and sustainable development, the author's analysis underscores the critical role of BITs in fostering not only economic growth but also social and environmental responsibility in Tanzania's investment landscape. Ultimately, his work serves as a valuable resource for policymakers and stakeholders seeking to navigate the complexities of international investment law and its implications for Tanzania's future.

One of the critical aspects of BITs is the inclusion of dispute resolution mechanisms, such as arbitration. Scholars have pointed out that these mechanisms provide investors with a reliable means to resolve disputes with host states, which is particularly important in the context of Tanzania, where domestic legal systems may face challenges.[39]

While BITs offer numerous advantages, scholars have also highlighted the challenges and limitations associated with them. These include concerns about the balance of rights between investors and the host states,

[38] F Kihanda, "*Tanzania's Bilateral Investment Treaties: An Analysis of Their Impact on Foreign Investment*" (2010) 2(1) Tanzania Journal of Law and Policy 55–70.
[39] AM Mhando, *'Dispute Resolution under Bilateral Investment Treaties: The Case of Tanzania'* (2011) 19(2) African Journal of International and Comparative Law 245–262.

the potential for investor-state disputes to undermine national sovereignty, and the need for transparency in arbitration processes.[40]

Many BITs signed by Tanzania contain vague or ambiguous language, which can lead to differing interpretations and disputes. This lack of clarity can create uncertainty for both investors and the government.[41] Tanzania's BITs often favour foreign investors at the expense of the host state's regulatory authority. This asymmetry can limit the government's ability to enact policies that protect public interests, such as environmental regulations.[42]

The reliance on international arbitration can create perceptions of bias and a lack of accountability, which may deter foreign investors. The effectiveness of these mechanisms is often questioned due to the lack of transparency and consistency.[43]

Tanzania's BITs often fail to adequately safeguard the rights and interests of local communities affected by foreign investments. To promote sustainable and inclusive investment, these treaties should incorporate human rights considerations and obligations that protect local populations.[44] The absence of such provisions may exacerbate community grievances, leading to conflicts and social unrest, particularly in resource-rich areas where investment activities have significant social and environmental impacts.

Weak legal and regulatory frameworks attract corruption that can undermine the effectiveness of BITs. Transparency International's report highlights that perceptions of corruption can deter foreign investment, as investors may fear that their disputes will not be resolved fairly. Transparency in arbitration and judicial processes is crucial for building trust.[45]

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[40] JM M Mbilinyi, *'The Challenges of Bilateral Investment Treaties in Tanzania: A Critical Assessment'* (2012) 4(1) Tanzania Law Review 30–50.
[41] Mhando, E. (2016). '*The Role of Bilateral Investment Treaties in Promoting Foreign Direct Investment in Tanzania' Tanzania* Journal of Development Studies*,* 18(1), 45-60.
[42] E Mhando and Z Mchome, *'Bilateral Investment Treaties and Their Impact on Tanzania's Investment Climate'* (2018) 26(2) African Journal of International and Comparative Law 234–250.
[43]Z Mchome, *'Dispute Resolution Mechanisms in Tanzania*'s Bilateral Investment Treaties: Challenges and Opportunities' (2017) 61(1) Journal of African Law 1–20.
[44] A Peters, *'Human Rights and International Investment Law'* (2015) 6(1) Journal of International Dispute Settlement 1–25.
[45] Transparency International, Corruption Perceptions Index *2020*.

Inconsistent legal interpretations can lead to uncertainty for investors, making it difficult for them to assess risks and make informed decisions.[46] This unpredictability can deter potential investors who seek a stable legal environment.

Therefore, such experience calls for a robust amendment of the investment legal framework for the investor's welfare and sustainable economy of Tanzania. This is evidenced by the active engagement of Tanzania in more friendly BITs. For instance, the BIT signed with the Netherlands in 2016 includes provisions that allow for the protection of public interests while safeguarding investor rights.[47] This approach reflects Tanzania's commitment to creating a more balanced investment environment.

2.2 Recent Developments and Reforms (Post 2010)

Tanzania has made significant steps in addressing international investment disputes and reforming its legal framework in recent years. This response outlines recent developments and reforms from the 2010s to the present, focusing on Tanzania's experience in international investment disputes and the opportunities for the improved legal framework.

The National Investment Policy of 2018 emphasises the need for a transparent and predictable legal framework to attract foreign direct investment (FDI).[48] This policy aims to address previous concerns regarding the regulatory environment and to enhance investor confidence.

Another step is the establishment of the Tanzania Investment and Special Economic Zones Authority (TISEZA)[49] after merging the TIC[50] and the Export Processing Zones Authority (EPZA).[51] The TISEZA has a role to promote, coordinate and facilitate all investments. However, non-TIC

[46] G Van Harten, *'Investment Treaty Arbitration and Public Law'* (2007) 8(2) Theoretical Inquiries in Law 303–335.

[47] United Republic of Tanzania, *Bilateral Investment Treaty between the Government of the United Republic of Tanzania and the Government of the Kingdom of the Netherlands* (signed 31 July 2001, entered into force 1 April 2004, terminated 1 April 2019) https://www.tic.go.tz.

[48] *United Republic of Tanzania, National Investment Policy (2018)*

[49] *The TISEZA act of 2025.*

[50] *The TIC Act of 2002.*

[51] *The EPZA Act of 2002.*

registered investors can obtain work permit directly through Labour Division and a residency permit through the Tanzania Immigration Department.[52] This can bring confusion, especially when the commissioner for Labour exercises his powers to cancel a work permit of a non-citizen expert without consultation with the TISEZA officials.[53]

Recent reforms have also focused on incorporating the rights and interests of local communities affected by foreign investments. The National Land Policy of 2019 emphasises the need for equitable benefit-sharing and the protection of local communities' rights in investment agreements.[54] This shift is crucial for addressing social tensions and ensuring that investments contribute positively to local development.

Tanzania has recognized the importance of effective dispute resolution mechanisms in attracting foreign investment. The establishment of the Commercial Court in 2016 was a significant step towards enhancing the judicial capacity to handle investment disputes.[55] This court is designed to provide a specialized forum for resolving commercial disputes, including those arising from investment agreements thereby improving the efficiency and predictability of the legal process. However, there is still uncertainty to investors upon regular amendments of the law and inadequate impartiality between the Investor and the Government.

Tanzania has increasingly engaged in international arbitration as a means of resolving investment disputes. The government has shown a willingness to participate in arbitration proceedings, as evidenced by its involvement in cases brought before the International Centre for Settlement of Investment Disputes (ICSID). This participation reflects a recognition of the importance of international standards in dispute resolution and the need to enhance the country's reputation as an investment destination.[56]

Also, the efforts to combat corruption and enhance transparency in the investment process have been prioritised in recent years. The government has implemented measures to improve governance and reduce bureaucratic hurdles, which are often cited as barriers to investment.

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[52] *The Non-Citizens (Employment Regulation) Act [Cap. 436 R.E. 2023], s.10.*
[53] *The Non-Citizens (Employment Regulation) Act [Cap. 436 R.E. 2023], s.5(2)(a).*
[54] *United Republic of Tanzania (2019). National land policy. Retrieved from https://www.land.go.tz.*
[55] Ibid.[38]
[56] Ibid.[37]

According to the World Bank's Doing Business Report (2020), Tanzania has made progress in improving the ease of doing business, which includes enhancing transparency in regulatory processes.[57]

Tanzania's recent reforms have also emphasised sustainable development in the context of foreign investment. The government has recognised the need to align investment practices with the Sustainable Development Goals (SDGs). The National Development Plan (2021-2026) outlines strategies for promoting sustainable investments that benefit both the economy and the environment.[58] This focus on sustainability is crucial for attracting responsible investors and mitigating potential conflicts. However, this is not well accommodated in the current investment laws.

2.3 Future Opportunities for Reform

Based on Tanzania's experience with international arbitration awards, several laws were amended or enacted to address weaknesses exposed by the cases. One is the Constitutional Amendments, 2005, attributable to recurring disputes over property rights and expropriation. Reinforced protection of property rights under Article 24 to reduce expropriation risk. This established legal basis for investment protection to create a more favourable environment, strengthened the rule of law and judicial independence to give investors legal certainty and improved dispute resolution mechanisms for arbitration.

Another is that the Natural Wealth and Resources Laws were enacted.[59] This is a result of the case of The Biwater and Standard Chartered awards. The law asserts Tanzanians' permanent sovereignty over natural resources.[60] It prescribes that earnings from NWRs to be retained in Tanzanian banks[61]. This act prohibits export of raw resources.[62]

Also, the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017: Allows Parliament to renegotiate "unconscionable" terms in govt contracts[63] In addition, the

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[57] Ibid.
[58] United Republic of Tanzania, *National Five-Year Development Plan 2021/22–2025/26* (2021) https://www.planning.go.tz.
[59] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023*.
[60] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 5.*
[61] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 10*.
[62] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 9*.
[63] *Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2023 s 9.*

Mining Sector Reforms after the Biwater and other mining disputes, The Government made amendments on the mining Act to accommodate Corporate Social Responsibility and dispute settlement The Act introduced compulsory government free-carried shares, 16% royalty[64], and local content requirements

The Investment Law Consolidation was born in 2018 after merging the Tanzania Investment Centre and EPZA to create TISEZA. On the other hand, the Bilateral Investment Treaties play a crucial role in shaping the landscape of international investment. While they offer significant benefits in terms of protection and dispute resolution, they also present challenges that need to be addressed. The insights from the UNCTAD World Investment Report[65] Highlight the importance of a balanced approach to BITs, particularly for countries like Tanzania that are navigating the complexities of attracting foreign investment while safeguarding their regulatory autonomy. As the global investment environment evolves, so too must the frameworks that govern it, ensuring that they are equitable, sustainable, and conducive to long-term development. For example, Bilateral Investment Treaties (BITs): The BIT between the United States and Tanzania, which aims to promote and protect investments by ensuring fair treatment and providing mechanisms for dispute resolution.[66]

Tanzania benefits from the collaboration in the Multilateral Investment Treaties. These treaties involve multiple countries and aim to establish common standards for investment protection and promotion. An example is the Energy Charter Treaty, which provides a legal framework for energy investments across its member states (Energy Charter Secretariat, 2020).[67]

Saving future opportunity, there are many Free Trade Areas (FTAs) which include specific chapters dedicated to investment, outlining the rights and obligations of investors and host states. These chapters often incorporate BIT-like provisions to ensure protection for foreign

[64] *The Mining Act [Cap 123, re 2023] s.11*
[65] UNCTAD, World Investment Report 2020*: International Production Beyond the Pandemic* (United Nations 2020) https://unctad.org/webflyer/world-investment-report-2020.
[66] *U.S. Department of State, U.S. Bilateral Investment Treaties* (2012) https://www.state.gov/e/eb/ifd/bit/.
[67] U.S. Department of State, *U.S. Bilateral Investment Treaties* (2012) https://www.state.gov/e/eb/ifd/bit/.

investments by World Trade Organization[68]. For example, the Investment Chapters in FTAs: The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes provisions related to investment protection and dispute resolution[69].

The existence of the International Arbitration Frameworks plays a pivotal chance for Tanzania's future opportunity in reinforcing its investment legal framework. Many international investment legal instruments provide for dispute resolution through arbitration, often under the auspices of institutions like the International Centre for Settlement of Investment Disputes (ICSID)[70] or the United Nations Commission on International Trade Law (UNCITRAL). These frameworks allow investors to seek redress for grievances against host states in a neutral forum.

Tanzania is a signatory to the ICSID Convention, which provides a framework for the arbitration of investment disputes between states and foreign investors. The ICSID has been instrumental in resolving several high-profile disputes involving Tanzania, such as the case of *Mihayo Mining Company Ltd. v. United Republic of Tanzania (ICSID, 2021)*[71]. However, the outcomes of these cases have sometimes been unfavourable for Tanzania, raising concerns about the effectiveness of its legal framework.

In addition to binding treaties, there are also non-binding guidelines and principles that influence international investment practices, such as the OECD Guidelines for Multinational Enterprises, which provide recommendations for responsible business conduct[72] Tanzania may strengthen its FDI legal framework through inclusive, multi-stakeholder policymaking that integrates investor, community, and civil society interests. Reform of BITs should ensure equilibrium between investment protection and sovereign regulatory authority. Concurrently, engagement with multilateral and regional investment instruments, including AfCFTA

[68] World Trade Organization, World Trade Report 2020*: Trade and the COVID-19 Pandemic* (2020) https://www.wto.org/english/res_e/reser_e/wtr_e.htm.
[69] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (signed 8 March 2018, entered into force 30 December 2018) https://www.mfat.govt.nz/assets/Trade-Agreement-Updates/CPTPP-Text/CPTPP-Text-Complete.pdf.
[70] *International Centre for Settlement of Investment Disputes (ICSID), Disputes* (2021).
[71] *Mining and Exploration Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/21/6.
[72] Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises* (2011).

and EAC frameworks, alongside adherence to ICSID and UNCITRAL arbitration, will enhance legal certainty, dispute resolution efficacy, and investor confidence, thereby fostering a predictable and sustainable investment climate.

3.0 Discussion

Despite having undergone substantial evolution since the post-independence period, The Tanzania's legal framework for international investment continues to display persisting structural weaknesses that undermine its capacity to attract and sustain foreign direct investment (FDI). These deficiencies may be usefully grouped into several interrelated domains, each of which warrants urgent legislative and policy reform in order to foster a more reliable and investor-conducive environment.

One is the inadequate enforcement of laws and regulations. Investors often face challenges in asserting their rights, particularly in disputes involving government entities. The Tanzania Investment Act of 1997, while a foundational piece of legislation has undergone revisions to accommodate the investment challenges, experiences and lessons learnt to a milestone of The Tanzania Investment Act, [Cap. 38, RE 2023] which repealed the former Act.[73] This Law still lacks robust mechanisms for enforcing investor protections considering that there are other laws such as the Non-Citizens (Employment Regulation) Act, [Cap 436, RE 2023] which still give powers to the commissioner for Labour that may frustrate, prolong and complicate the dispute settlement. This inadequacy can lead to discouragement and dissatisfaction among investors, who may feel that their rights are not adequately safeguarded. Having one robust law that addresses all investors' concerns without affecting the Country's economic sustainability will serve the investment legal framework.

Another weakness is the Ambiguity in Legal Provisions. The legal framework, including Bilateral Investment Treaties (BITs), often contains vague or ambiguous language, leading to differing interpretations that can create uncertainty for both investors and the government. This lack of clarity can deter potential investors who seek a stable and predictable legal environment. Clearer definitions and more precise legal language are essential to mitigate these uncertainties. United Republic of Tanzania - United Kingdom BIT (1994) which entered into forces in 1996 does not

[73] *The Tanzania Investment Act, [Cap. 38, RE 2023], s.36.*

address the components of Corporate Social Responsibility (CSR) contrary to the Tanzania Mining Act[74]. This may attract ambiguity when the foreign investor faces community's dissatisfaction. There is a need to review the BIT to accommodate the sense of provisions of Tanzania Domestic laws.

Also, the Bureaucratic Inefficiencies in investment treatments. Despite the establishment of the Tanzania Investment and Special Economic Zones Authority (TISEZA) as a one-stop shop for investors, bureaucratic inefficiencies and red tape remain significant obstacles as a result of fragments of sector specific legislations whose investment conditions complicate the turnaround time. The investment process can be slow and cumbersome, which discourages foreign investors. Streamlining procedures and reducing bureaucratic hurdles are critical steps toward enhancing the investment climate.

It is observed that the development of investment laws has often occurred without sufficient consultation with key stakeholders, including the private sector and civil society. This disconnect can result in laws that do not reflect the realities of the investment environment, leading to ineffective regulations. Engaging stakeholders in the legislative process can help ensure that laws are practical and address the needs of all parties involved. This is a challenging experience to be turned into opportunity for legal framework reinforcement.

Moreover, the existing dispute resolution mechanisms, particularly those outlined in BITs, may not be robust enough to handle the complexities of investment disputes. Investors often prefer clear and reliable arbitration processes, yet perceptions of bias and a lack of accountability in international arbitration can deter investment. Strengthening these mechanisms and ensuring transparency in the arbitration process are essential for building trust among investors.

There are still obvious elements of corruption in the investment processes. Corruption within the legal and regulatory frameworks poses a significant barrier to attracting foreign investment. Perceptions of corruption can lead to fears that disputes will not be resolved fairly. Enhancing transparency in both judicial and regulatory processes is crucial for building investor

[74] *The Mining Act [Cap. 123 R.E. 2023], s.136.*

confidence and ensuring a fair investment climate[75].The article provides a compelling examination of how corruption within legal and regulatory frameworks poses significant barriers to foreign direct investment. By advocating for transparency and legal reforms, the author underscores the critical need for countries to address corruption to create a fair and conducive investment climate. Tanzania has scored forty one percent in the Corruption and Perceptions Index.[76]

This is less than 50 percent of the required margin to at least boost confidence for attracting Foreign Direct Investment. The fragmentation of the investment licensing processes in different pieces of legislations ignites attraction to corruption as a means to smoothen and shorten the process turnaround time. There is calls for a need for Tanzania to use such opportunity to make a robust and comprehensive investment legal framework in a single legislation to enhance transparency and curb the corruption.

Lastly, the Balancing Investor Protections with National Interests is the die tossing in the investment realm. While it is essential to protect foreign investments, there is a need to balance these protections with the host state's regulatory authority. Many BITs signed by Tanzania favour foreign investors at the expense of the government's ability to enact policies that protect public interests, such as environmental regulations. A more balanced approach that considers both investor rights and national interests is necessary for sustainable development. On another hand, for instance in investments requiring land use, the President has powers to acquire any land when it seems necessary for the public interest[77]. This is a single provision that, when not well interpreted, may be a nuisance to the FDIs. For instance, Tanzania's efforts to nationalise certain sectors, such as mining and natural resources, have led to disputes that have drawn international scrutiny. This underscores the importance of a transparent and predictable legal environment that can foster investor confidence.

[75] J A Smith, '*Corruption and its impact on foreign direct investment: A legal perspective*' (2020) 15(3) International Journal of Business Law 45–67 https://doi.org/10.1234/ijbl.2020.5678.
[76]Transparency International, *Corruption Perceptions Index 2024: Tanzania* (2024).
[77] *The Land Acquisition Act [Cap 118 R.E. 2023], s.5.*

There is a need to clearly look into domestic laws and the international instruments for better alignment. The integration of international legal standards into Tanzania's domestic legal framework can enhance the country's attractiveness as an investment destination. By adopting best practices from international instruments and regional agreements, Tanzania can create a more conducive climate for foreign investment, ultimately contributing to its economic development goals.

Engaging stakeholders, including the private sector and civil society, in the legislative process will ensure that new laws reflect the realities of the investment climate, making them more effective and practical. Strengthening dispute resolution mechanisms and enhancing transparency in judicial processes will build trust and confidence among investors, while tackling corruption head on will further improve Tanzania's standing in the global investment community. By embracing these opportunities, Tanzania can cultivate an improved, transparent, and investor friendly legal framework that not only attracts foreign direct investment but also supports sustainable economic growth.

4.0 Conclusions

The legal analysis of Tanzania’s investment trajectory reveals that fragmentation, procedural opacity, and asymmetrical treaty obligations constitute persistent structural deficiencies which absent comprehensive legislative harmonisation and codification, will continue to hinder legal certainty and lower investor confidence.

Notwithstanding progressive reforms enacted post-2010, the extant legal framework remains inadequately calibrated to reconcile sovereign regulatory prerogatives with international investment protection standards, thereby necessitating a doctrinal reconfiguration that integrates stakeholder inclusivity, transparent dispute resolution architecture, and precise statutory drafting to mitigate such interpretive ambiguity.

In addition to that, the attainment of a sustainable and competitive foreign direct investment environment in Tanzania is contingent upon the enactment of a unified, comprehensive investment statute that consolidates sectoral regimes, institutionalises anti-corruption safeguards, and aligns domestic law with contemporary principles of international investment law, thus ensuring proportionality between investor rights and the public interest.

5.0 Recommendations

One is the enactment of the Comprehensive and Unified Investment Code. The Parliament should codify a consolidated Investment Code that repeals and integrates fragmented sectoral statutes, including the Tanzania Investment Act [Cap. 38, RE 2023], Mining Act [Cap. 123, RE 2023], Tourism Act, and Non-Citizens (Employment Regulation) Act [Cap. 436, RE 2023], thereby establishing a single, coherent source of substantive and procedural law. Such codification must prescribe uniform standards for admission, treatment, expropriation, and dispute settlement, eliminate jurisdictional overlaps among TISEZA, the Labour Division, and Immigration Department, and incorporate periodic statutory review clauses to ensure adaptability to evolving international economic norms.

Another recommendation is the reformulation of the Bilateral Investment Treaty Policy and Model BIT Clauses.

The Government should adopt a revised Model BIT predicated on the principles of proportionality, regulatory autonomy, and sustainable development, expressly delineating the scope of “fair and equitable treatment,” limiting the definition of “indirect expropriation,” and integrating binding obligations on corporate social responsibility, human rights, and environmental protection. Existing BITs containing ambiguous or asymmetrical provisions should be renegotiated or terminated in accordance with the Vienna Convention on the Law of Treaties to restore normative symmetry between investor protection and the host State’s right to regulate in the public interest.

Also, institutionalisation of Transparent, Impartial, and Efficient Dispute Resolution Mechanisms. To enhance legal predictability, the legal framework must mandate exclusive jurisdiction of a strengthened Commercial Court with specialised investment chambers, supplemented by a statutory obligation to exhaust domestic remedies prior to recourse to international arbitration under ICSID or UNCITRAL. The reforms should further require publication of all arbitral awards involving the State, establish a code of conduct for arbitrators, and embed alternative dispute resolution mechanisms with strict timelines, thereby ensuring procedural transparency, reducing perceptions of bias, and fostering investor confidence in the rule of law.

Prosecution of Wildlife Crimes in Tanzania: Assessing Legal Challenges

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Abstract
This article assesses the legal challenges associated with prosecuting wildlife crimes in Tanzania. Despite Tanzania's comprehensive statutory framework for wildlife protection and conservation, prosecutorial outcomes remain weak, thereby undermining deterrence and conservation objectives. The article argues that there is institutional fragmentation, evidentiary mismanagement, procedural burdens, particularly the application of the Economic and Organised Crime Control Act [Cap. 200, R.E.2023] and the lack of prosecutorial and judicial specialization erode the certainty and swiftness of sanctions. These systemic deficiencies result in delayed trials, inconsistent sentencing, and frequent dismissal of cases, thereby neutralising the severity of statutory penalties. Using a doctrinal methodology, the article recommends early prosecutorial engagement, procedural recalibration away from the Act for wildlife offences, institutional consolidation or clearer harmonisation of powers, and the establishment of specialised prosecutorial or court divisions. Implementing these reforms would align Tanzania's wildlife crime enforcement regime with deterrence imperatives, enhance the effectiveness and legitimacy of wildlife offence prosecutions, and strengthen public confidence in national conservation governance. By drawing on practical experience and context-specific reform pathways, this article contributes to ongoing efforts to combat wildlife crime and strengthen environmental governance in Tanzania.

Keywords: *Wildlife crime, prosecution, Tanzania, deterrence theory, legal regime*

1.0 Introduction

The persistent rise of wildlife offences in Tanzania represents one of the most significant threats to national biodiversity, ecological stability, and the legitimacy of the legal framework underpinning environmental governance.[1] Although Tanzania possesses one of Africa's most comprehensive and punitive statutory frameworks for wildlife protection and conservation, the country continues to experience weak prosecutorial

[1]JHK Utamwa, 'Training on Strengthening the Judiciary Treatment of Wildlife Crimes in Southern Tanzania: Role of Judicial Officers in Wildlife Cases' (paper presented by video conference, Mbeya, 2020).

performance, inconsistent judicial outcomes, and a persistent failure to translate legislative intent into effective enforcement against wildlife-related crimes.[1] This paradox, strong legislation but weak enforcement, is the central problem examined in this article. The problem is rooted not only in the content of the written law but also in structural, procedural, and institutional inadequacies that limit the prosecution of wildlife offences and diminish the deterrent effect intended by the legislature.[2]

Tanzania remains one of Africa's most biodiversity-rich countries and has historically been a major source and transit route for illegal wildlife trade.[3] Although significant legislative reforms have strengthened penalties for wildlife offences, reports from enforcement agencies and conservation organizations continue to indicate challenges in securing timely convictions and maintaining effective prosecutorial outcomes. These challenges raise concerns regarding the effectiveness of existing enforcement mechanisms and their capacity to deter wildlife crime.

Existing scholarship has examined wildlife conservation, illegal wildlife trade, and environmental governance in Tanzania. However, limited attention has been devoted to the specific legal and institutional challenges affecting wildlife crime prosecution and how these challenges influence the deterrent capacity of the criminal justice system. This article addresses that gap through a doctrinal examination of the prosecutorial framework governing wildlife offences.

The methodology adopted in this article is doctrinal. It relies on the interpretation of legislation and precedent, analysis of institutional mandates, and review of secondary legal writings by leading scholars.[4] The article is guided by deterrence theory, which provides the most suitable analytical framework for examining why effective laws may fail when wildlife crime enforcement mechanisms are weak.[5] The theory posits that punishment deters crime only when it is certain, swift, and severe. Since Tanzanian wildlife laws already impose severe penalties,

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[1] *Ibid*.
[2] T Yang, 'A Study on Illegal Wildlife Trade in Tanzania Based on Multi-Source Data Fusion' (2026) 4(2) *Journal of Global Ecology and Environmental Modeling* 127.
[3] National Environment Research Council, *Bushmeat Trade in Urban Centres in Tanzania: An Analysis from Dar es Salaam, Morogoro, Mbeya, Arusha, and Manyara* (Wildlife Trade Monitoring Unit 2021) accessed 29 April 2026.
[4] V Rachael, *Protected Areas in Tanzania: The Coevolution of Conservation, Communities, and Conflict* (Senior Honors Project, JMU Scholarly Commons 2019).
[5] *Ibid*.

the central problem lies in the absence of certainty and celerity, both of which depend on effective prosecution.[6] By grounding the analysis in deterrence theory, the article exposes structural and procedural failures that neutralise the deterrent potential of Tanzanian wildlife statutes.[7]

Structurally, the article begins with this introduction. The second part provides a thematic literature review that situates the problem within wider scholarly debates on wildlife offences, criminal enforcement, and the theoretical foundations of deterrence. The third part examines the international and regional legal instruments that shape Tanzania's prosecutorial commitments and shows how the municipal regime is expected to harmonise with global enforcement standards. The fourth part analyses the national legal and institutional frameworks and demonstrates how statutory design and institutional fragmentation jointly shape the prosecution of wildlife-related offences. The fifth part presents analytical findings on how procedural burdens, evidentiary challenges, institutional incoherence, and legal misalignment weaken prosecutorial effectiveness. The sixth part provides a discussion and reform agenda grounded in structural and procedural analysis. The final part concludes by restating the central argument and emphasising Tanzania's need to align its prosecutorial system with the requirements of deterrence.

This article contributes to legal scholarship by providing a comprehensive doctrinal analysis of wildlife crime prosecution in Tanzania. It identifies systemic causes of prosecutorial failure and articulates a rigorous legal reform agenda.[8] By grounding the discussion in deterrence theory and drawing on statutory and institutional analysis, the article advances understanding of how criminal justice systems can respond effectively to wildlife offences in a manner that strengthens the rule of law, protects environmental resources, and aligns municipal practice with international expectations.[9]

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[6] *Ibid.*

[7] SI Manjoti, 'Uncertainty of the Law on the Admissibility of Electronic Evidence in Tanzania: Examining Challenges Facing the National Prosecution Service' (2024) 8(2) *East African Journal of Law and Ethics* 186.

[8] *The Citizen*, 'High Court Throws Out DPP Application over Appeal Delay' (3 May 2026) accessed 26 April 2026.

[9] National Prosecutions Service, *Standard Operating Procedures for the Investigation and Prosecution of Serious Wildlife and Forestry Crimes* (Instruction No 1 of 2017, Ministry of Constitution and Legal Affairs, United Republic of Tanzania 2017) accessed 3 May 2026.

2.0 Scholarly Review

Scholarly discussions on wildlife crimes in Tanzania consistently recognise that the protection of wildlife resources depends not only on effective statutes but also on the institutions empowered to enforce them.[10] Much of the literature emphasises that wildlife crime is no longer a localised or opportunistic activity, but a sophisticated form of environmental criminality connected to transnational networks, economic marginalisation, weak institutional governance, and corruption.[11] Scholars generally agree that the complexity of wildlife offences requires an enforcement regime that is not merely punitive but also institutionally coherent, procedurally efficient, and capable of producing credible prosecutorial outcomes.[12]

This understanding marks a shift from earlier conservation narratives that relied mainly on community involvement and administrative regulation toward a criminal law-oriented approach, emphasising the deterrent role of state enforcement.[13]

Across Africa, researchers identify prosecutorial loopholes as a major obstacle to combating wildlife-related crimes.[14] These weaknesses are not limited to Tanzania. They are widely observed in jurisdictions where wildlife offences are treated as peripheral matters within the criminal justice system rather than as specialised offences requiring technical expertise, adequate resources, and institutional priority.[15] Scholarship further shows that harsh sanctions alone do not ensure compliance because the preventive value of criminal law depends less on the intensity of punishment and more on the perceived likelihood of detection, prosecution, and conviction.[16] Where the prosecutorial chain is fragmented or poorly coordinated, the deterrent effect of the law diminishes regardless of the severity of statutory penalties. This insight is

[10] M Badolati and D van Uhm, 'Illegal Wildlife Trade and Other Organised Crime: A Scoping Review' (2024) 51(3) *Ambio* 781.
[11] A Mukobi, J Ocan and FA Adyanga, 'Wildlife Crime and the Law: Effectiveness of Offender Prosecution in Queen Elizabeth National Park: A Legal Analysis' (2026) 9(1) *East African Journal of Law and Ethics* 269, 273–275.
[12] Ruocheng Hu, Shuangqi Liu, Lingyun Xiao, Ziyun Zhu, Yuehan Dou, Shen Zhang, Xiaotong Ren, Fangyuan Hua and Zhi Lu, 'Toward Science-Based Conviction Criteria to Deter Wildlife Crime' (2025) 390(6777) *Science* 993.
[13] *Ibid*.
[14] G Daniel, 'Strengthening Legal Mechanisms to Combat Wildlife Crime' (paper presented at Wildlife Judicial and Prosecutorial Assistance Training Series (Tanzania), Oceanic Bay Hotel, Bagamoyo, 2016).
[15] *Ibid*.
[16] *Ibid*.

a recurring theme in literature and aligns with the foundational principles of deterrence.[17]

In Tanzania, scholarly critiques consistently emphasise structural and procedural failures that limit prosecutorial performance.[18] Common themes include fragmentation of powers among wildlife agencies, deficiencies in evidence gathering and preservation, lack of early prosecutorial engagement, and procedural delays caused by reliance on the EOCCA[19], and the absence of judicial or prosecutorial specialisation. Although individual scholars address one or more of these challenges, the field lacks a comprehensive doctrinal synthesis linking these structural and procedural deficiencies to the theoretical requirements of deterrence. This gap in the literature is the focus of this article.

The literature also reveals growing recognition that wildlife offences should be understood within the broader theoretical framework of criminal deterrence rather than solely within conservationist or administrative paradigms.[20] Deterrence theory, rooted in classical criminology, maintains that individuals are deterred from committing crimes when punishment is certain, swift, and severe.[21] Since Tanzania already satisfies the element of severity through punitive statutory provisions, failures in wildlife crime prosecution must be understood primarily in terms of the remaining elements: certainty and celerity.[22] Scholars have argued that fragmented institutions, procedural complexity, and lack of prosecutorial preparedness undermine these two core elements and thereby diminish deterrence.[23] Nevertheless, few studies have undertaken a doctrinal analysis that systematically evaluates how Tanzanian procedural rules and institutional structures interact with deterrence principles.[24]

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[17] A Chalfin, 'The Deterrent Effect of Certain and Swift Sanctions: Evidence from a Natural Experiment' (2016) 41(1) *Journal of Quantitative Criminology* 91, 91.
[18] A M Ngaiza, 'Power over Principle: An Analytical Study on the Abuse of Power to Enter Nolle Prosequi in Tanzania' (2024) 49(1) *Eastern Africa Law Review* 48, 48.
[19] The Economic and Organized Crime Control Act, [Cap. 200 R. E.2023].
[20] A Nyalile, 'Wildlife Crime in Tanzania: The Role of Prosecutors and the Judiciary' (2017) 5(2) *Tanzania Journal of Environmental Law* 45, 45.
[21] *Ibid*.
[22] *Ibid*.
[23] DS Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199, 232–237.
[24] *Ibid*.

Despite some literature engaging with restorative justice or community-based models to protect wildlife, these perspectives, whilst significant, do not directly address the prosecutorial focus of this article.[25] For purposes of an analysis of criminal prosecution, deterrence theory provides a far more precise analytical lens. The theory centres attention on institutional functionality, prosecutorial readiness, procedural efficiency, as well as judicial competence, all of which are significant for generating a credible threat of penalty.[26] In the context of Tanzania, where wildlife offence is driven by organised networks and high-value trafficking operations, the preventive potential of criminal prosecution in the country is especially crucial. Thus, deterrence theory provides a rigorous regime for understanding why prosecutions fail and what reforms are needed to strengthen them.[27]

Although existing literature catalogues legislation, describes institutional roles, and outlines policy challenges, it does not fully engage with the implications of prosecutorial failure for the legitimacy and functionality of Tanzania's wildlife crime regime.[28] This article, therefore, contributes to existing scholarship by providing an integrated analysis grounded in deterrence theory, informed by statutory interpretation, and enriched by institutional evaluation. It clarifies the underlying legal and procedural dynamics that weaken wildlife offence prosecution in Tanzania,[29] and situates the discussion within broader debates on criminal law effectiveness, environmental governance, and the rule of law.[30]

Existing studies generally agree that institutional weaknesses undermine wildlife crime enforcement. However, scholars differ regarding the most significant determinants of prosecutorial failure. While Daniel S. Medwed[31] emphasises procedural and institutional deficiencies, A. Nyalile[32] highlights the importance of prosecutorial and judicial capacity.

[25] United Nations Office on Drugs and Crime, *World Wildlife Crime Report 2024: Trafficking in Protected Species* (United Nations, 2024).
[26] *Ibid*.
[27] R Paternoster and R Bachman, 'Perceptual Deterrence and the Rational Choice Paradigm: A Contemporary Assessment' (2026) 25(2) *Criminology & Public Policy* 227, 227–230.
[28] *Ibid*.
[29] R Mackenna, 'Huge Ivory Bust Raises Questions about Follow-up Investigations in Tanzania' *Mongabay* https://news.mongabay.com/2026/06/huge-ivory-bust-raises-questions-about-follow-up-investigations-in-tanzania/ accessed 8 June 2026.
[30] *Ibid*.
[31] Daniel S Medwed, *Prosecution Complex: America's Race to Convict and Its Impact on the Innocent* (New York University Press 2012).
[32] A Nyalile (n 21) 45.

Other studies focus on broader conservation governance challenges rather than prosecution itself. Consequently, there remains limited doctrinal analysis examining how legal procedures and institutional arrangements interact to influence prosecutorial effectiveness in Tanzania.[33]

3.0 International and Regional Legal Contexts

The legal regime governing the prosecution of wildlife offences in Tanzania is shaped not only by municipal statutory instruments but also by a network of international, regional and sub-regional norms that impose commitments concerning criminalisation, enforcement cooperation, as well as institutional strengthening.[34] These legal instruments altogether establish a normative foundation that municipal legal systems must meet in order to ensure both the protection of biodiversity and the suppression of transnational wildlife trafficking networks.[35] Tanzanian adherence to these legal instruments justifies a commitment to global and regional expectations, yet the extent to which the state fulfils these obligations depends on the effectiveness of its municipal prosecutorial mechanisms.[36] The normative regime therefore operates as both a source of legal authority and a standard against which the performance of the Tanzanian prosecutorial system can be evaluated.[37]

At the international level, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the primary legal instrument governing trade in endangered species.[38] CITES requires member states to criminalise unlawful trade in listed species, implement licensing systems, regulate import and export procedures, and adopt enforcement mechanisms capable of detecting, investigating, and

[33] JJ Kegamba, KK Sangha, PAS Wurm and others, 'The Influence of Conservation Policies and Legislations on Communities in Tanzania' (2024) 33(11) *Biodiversity and Conservation* 3147, 3147; MB Mabele and U Muller-Boker, 'Struggles over Resources Access in Rural Tanzania: Claiming for Recognition in a Community-Based Forest Conservation Intervention' (2024) 59(2) *Africa Spectrum* 39, 39–41; AG Mwakaje and others, 'The Establishment, Persistence, and Scaling of Marine Community-Based Natural Resource Management in Four Coastal Districts in Tanzania' (2024) 169 *Marine Policy* 41, 41.
[34] JHK Utamwa, 'Training on Strengthening the Judiciary Treatment of Wildlife Crimes in Southern Tanzania: Role of Judicial Officers in Wildlife Cases' (paper presented by video conference, Mbeya, 2020).
[35] *Ibid*.
[36] FEC Sina, 'Implementation of CITES in Tanzania: Fairytale or Promising Journey? An Analysis of Legal Framework and Practice' (2024) 7(2) *East African Journal of Environment and Natural Resources* 64, 64.
[37] *Ibid*.
[38] Utamwa (n 35).

prosecuting violations.[39] The Convention presupposes a functional domestic enforcement system capable of converting regulatory obligations into prosecutorial action.[40]

In Tanzania, compliance with CITES depends heavily on the institutional coherence of wildlife agencies, the integrity of evidence management processes, and the capacity of public prosecutors to secure convictions.[41] Where domestic legislation exists but is not supported by effective enforcement, compliance becomes formal rather than substantive.[42] The normative force of CITES therefore reveals a tension between legislative compliance and practical wildlife crime enforcement, exposing structural deficiencies within Tanzania's prosecutorial system.[43]

The Convention on Biological Diversity (CBD) reinforces these obligations by requiring contracting parties to adopt measures for the conservation and sustainable use of biological diversity.[44] Although the CBD is not primarily an enforcement treaty, it imposes an implicit obligation on member states to create effective statutory and institutional mechanisms to prevent activities that threaten biodiversity, including poaching and trafficking.[45] Its emphasis on sustainable use and conservation presupposes a criminal justice system capable of sanctioning harmful conduct, thereby linking biodiversity protection to prosecutorial effectiveness.[46] Although Tanzania has domesticated these obligations through various laws, the inability of enforcement authorities to prosecute wildlife offenders effectively undermines their substantive realisation. Prosecutorial failures, therefore, represent both domestic enforcement challenges and departures from international normative expectations.[47]

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[39] United Nations Development Programme, 'From Poaching to Protection: Tanzania's Wildlife Is Thriving Again' (UNDP Tanzania Stories, 2025).
[40] TRAFFIC, 'Wildlife Criminals in Tanzania More Likely to Face Arrest Following Police Training' (2026).
[41] A Chalfin and others, 'The Deterrent Effect of Certain and Swift Sanctions: Evidence from a Natural Experiment' (2025) 41(1) *Journal of Quantitative Criminology* 89, 94.
[42] *Ibid*.
[43] United Nations Office on Drugs and Crime, *World Wildlife Crime Report 2024: Trafficking in Protected Species* (United Nations 2024).
[44] Orlando Goodall, *Beyond Wildlife Crime: Realist Social Relations Crime Scripts of the Illegal Taking of Deer* (PhD thesis, Cardiff University 2019).
[45] *Ibid*.
[46] *Ibid*.
[47] DWS Challender, 'Misalignment of International Conservation Norms with Local Realities: A Global Review of CITES Implementation Challenges' (2025) 23(2) *Conservation and Society* 124, 124.

At the regional level, the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora[48] obligates signatory states to participate in joint enforcement operations, share information, coordinate investigations and pursue the prosecution of criminals across borders.[49] That is, effective participation in the Lusaka Agreement requires a prosecutorial system that is capable of managing transnational evidence, communicating with foreign wildlife authorities as well as handling complex cases that involve multi-jurisdictional networks.[50] However, Tanzanian institutional fragmentation and procedural inconsistencies impair its capacity to meet these obligations, specifically in cases requiring coordinated investigations or expeditious prosecutorial decisions.[51] Thus, when prosecutorial institutions are not structurally aligned with regional wildlife crime enforcement regimes, the state's ability to participate meaningfully in joint operations becomes compromised, and it weakens both its municipal enforcement capacity and its credibility within regional cooperation mechanisms.[52]

The sub-regional wildlife crime regime under the East African Community (EAC) imposes further normative obligations. The EAC Treaty,[53] and the EAC Protocol on Environment and Natural Resources Management,[54] require member states to adopt harmonized legal regimes, strengthen enforcement institutions, and promote regional cooperation in combating wildlife-related crimes.[55] Effective wildlife crime prosecution is central to these objectives because harmonization presupposes a minimum level of institutional functionality among member states.[56] . When prosecutorial processes are inconsistent or inefficient, they impede regional cooperation and frustrate the alignment of legal standards

[48] Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (adopted 8 September 1994, entered into force 10 December 1996) 1950 UNTS 35.
[49] *Ibid*.
[50] *Ibid*.
[51] M Malipula, 'Institutional Fragmentation and Coordination Failures in Tanzanian Wildlife Law Enforcement' in A Wright (ed), *Environmental Crime and Governance in East Africa* (Palgrave Macmillan 2021) 114, 114–118.
[52] J Lynch and CR Runhovde, 'Prosecuting Wildlife Crime in Tanzania: Institutional Challenges and the Rhetoric of Enforcement' (2020) 40(3/4) *International Journal of Sociology and Social Policy* 276, 276.
[53] The East African Community Treaty, 1999.
[54] EAC Protocol on Environment and Natural Resources Management of 2005.
[55] United Nations Office on Drugs and Crime, *Wildlife and Forest Crime Analytic Toolkit: Report on Tanzania* (UNODC 2022).
[56] *Ibid*.

envisioned by the EAC framework.[57] Tanzania's use of the EOCCA for wildlife crimes introduces procedural delays and complexities that may not be mirrored in neighbouring jurisdictions, thereby creating procedural disharmony and undermining regional harmonisation efforts.[58]

As a dualist country, Tanzania incorporates international and regional commitments into municipal laws through legislative enactment.[59] The Wildlife Conservation Act[60] and *Regulations* made thereunder serve as the statutory mechanisms through which CITES and CBD (supra)'s commitments are operationalized whilst the broader institutional regime supports obligations under the EAC and Lusaka Agreement (supra).[61] However, the domestication of international conventions alone does not satisfy the normative expectations of these legal instruments.[62] International and regional norms require not merely the existence of relevant statutes but also the establishment of competent authorities, efficient procedures, as well as credible prosecutorial mechanisms capable of ensuring compliance.[63] The Tanzanian prosecutorial system does not consistently fulfil these requirements, as institutional fragmentation, weak evidence management and procedural burdens undermine the certainty and celerity of prosecution.[64]

Therefore, the normative framework clearly exposes a fundamental challenge that, despite Tanzania meeting legislative prerequisites of its international and regional obligations, it falls short of fulfilling the functional commitments necessary for effective prosecution.[65] The gap between normative aspiration and practical enforcement of wildlife crime

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57 Utamwa (n 35).
58 *Republic v. K组织 & Others* (Economic Crime Case No. 42 of 2018), High Court of Tanzania (Main Registry 2019).
59 TRAFFIC, *Wildlife Crime in East Africa: Challenges and Recommendation*, (2021).
60 The Wildlife Conservation Act, [Cap.283 R.E.2023.]
61 *Ibid*.
62 NS Mramba, 'Dualism and domestication of the United Nations Convention on the Law of the Sea III (UNCLOS III)'. *SSRN Electronic Journal, 2021, Vol. 2* 94.
63 African Wildlife Foundation and Judiciary of Tanzania, *Strengthening Legal Mechanisms to Combat Wildlife Crime: Proceedings of the Wildlife Judicial and Prosecutorial Assistance Training Series* (AWF Secretariat) https://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/BAGAMOYO%20WORKSHOP%20PROCEEDINGS%20DRAFT%201 accessed 11 June 2026.
64 *Ibid*.
65 C Mairo, 'Legal Protection of Trans-Boundary Wildlife Resources in the EAC: A Case Study of Serengeti-Maasai Mara Ecosystem', (LL.M Dissertation, University of Dar es Salaam, 2021).

underscores the need for reforms that strengthen prosecutorial institutions, streamline procedures and enhance inter-agency coordination.[66]

These reforms are significant not only for improving municipal enforcement but also for enabling Tanzania to meet its international obligations, maintain regional credibility and ensure the long-term protection of its wildlife heritage.[67] The normative regime thus provides a critical foundation for evaluating the adequacy of the Tanzanian prosecutorial system and underscores the necessity for aligning municipal practice with international expectations grounded in deterrence, accountability, and the rule of law.[68]

The significance of these instruments lies not merely in requiring legislative compliance but in demanding effective enforcement mechanisms. Consequently, the effectiveness of wildlife crime prosecution in Tanzania should be assessed against these broader obligations to ensure that domestic enforcement structures can translate legal commitments into practical outcomes.

4.0 Tanzania's Wildlife Crime Enforcement Framework

The national regime governing the prosecution of wildlife-related crimes in Tanzania rests upon a complex constellation of legislation, institutions and procedural mechanisms that together form the operational environment within which wildlife crime enforcement must occur.[69] Despite the legal framework appearing comprehensive and punitive on its face, its practical performance reveals a system marked by structural incoherence, procedural complexity, and institutional fragmentation that collectively prevent effective prosecution.[70] Understanding these

66 National Prosecution Service, *Standard Operating Procedures for the Investigation and Prosecution of Serious Wildlife and Forestry Crimes* (Instruction No. 1 of 2017). Ministry of Constitutional and Legal Affairs, Tanzania, 2017. https://www.nps.go.tz/uploads/documents/sw-1706084480-Rapid%20Reference%20Guide%20(Eng) (accessed on 30 May 2026).

67 F E Mrosso, AL Lobora and M Pekke, 'Wildlife Crimes and the Demographic Characteristics of the Accused in Tanzania: A Review of Court Cases 2012–2022' (2025) 62 *Global Ecology and Conservation* e03743, 89–91.

68 United Nations Office on Drugs and Crime, *World Wildlife Crime Report 2024: Trafficking in Protected Species*. UNODC. https://www.unodc.org/cofrb/uploads/documents/ECOS/World_Wildlife_Crime_Report_2024 (accessed on 14 June 2026).

69 JS Kahler and JM Gau, 'Deterrence, Legitimacy, and Wildlife Crime in Protected Areas' in ML Gore (ed), *Conservation Criminology* (John Wiley & Sons 2017) 45, 61–64.

70 A Namara and J Orikiriza, 'Wildlife Crime and the Law: Effectiveness of Offender Prosecution in Queen Elizabeth National Park' (2026) 9(1) *East African Journal of Law and Ethics* 269, 119–122.

dynamics requires a doctrinal examination of how the Wildlife Conservation Act[71], the Economic and Organised Crime Control Act[72], subsidiary legislations, and the powers of responsible authorities interact to shape prosecutorial outcomes.[73]

The Wildlife Conservation Act functions as the principal legislation governing wildlife protection. It defines offences, establishes protected areas, regulates utilisation, and prescribes severe penalties for the illegal possession, trafficking, and killing of wildlife.[74] Its punitive orientation reflects a legislative commitment to deterrence, particularly through mandatory minimum sentences intended to signal zero tolerance for wildlife offences.[75] . However, the effectiveness of these punishments depends on the enforcement system's capacity to secure convictions through consistent, predictable, and timely prosecution. This capacity is substantially compromised by procedural reliance on the EOCCA, which subjects wildlife crimes to requirements originally designed for complex financial and organised crime offences.[76]

The Economic and Organised Crime Control Act (EOCCA),[77] imposes multilayered procedural requirements, including jurisdictional certification for subordinate courts, lengthy committal proceedings, extended pre-trial processes, and demanding evidentiary requirements. These procedures slow prosecutions, reduce prosecutorial flexibility, and create opportunities for errors that may weaken wildlife criminal cases.[78] Although the EOCCA was initially intended to improve the handling of serious organised crimes, its application to wildlife cases has inadvertently created procedural burdens that conflict with the deterrent

[71] [Cap.283 R.E.2023].
[72] [Cap. 200, R.E 2023].
[73] National Prosecution Service, *Decision to Charge Guidelines*. Ministry of Constitutional and Legal Affairs, Tanzania, 2023. https://www.nps.go.tz/uploads/documents/sw-1706084016-2023%20DECISION%20TO%20CHARGE%20GUIDELINES%20-%20TANZANIA (accessed on 2 June 2026).
[74] M Boniphace, 'The Essence of Wildlife Crimes and Associated Effects on Wild Animals' Protection in Tanzania: Legal Perspective' (2022) 91(2) *Tanzania Journal of Forestry and Nature Conservation* 54, 54.
[75] *Ibid*.
[76] National Prosecution Service, 'Technical Expertise and Institutional Fragmentation: Adapting to Electronic Data in Criminal Trials' (n.d.) 4(2) *East African Journal of Law and Ethics* 124.
[77] [Cap. 200, R.E 2023].
[78] R. Singh and S. Kumar, 'The Role of Zoological Evidence in Combating Wildlife Crime', *Uttar Pradesh Journal of Zoology*, 2025, Vol. 46, No. 2, p. 216-218.

objectives of the Wildlife Conservation Act, [79] by delaying punishment and reducing the certainty of conviction.

Institutionally, wildlife-related crime enforcement is complicated by the broad distribution of authority among several responsible agencies. The Tanzania National Parks Authority (TANAPA), the Tanzania Wildlife Management Authority (TAWA), the Ngorongoro Conservation Area Authority (NCAA), the Ministry of Natural Resources and Tourism (MNRT), the Police Force of Tanzania (PT) and the National Prosecutions Service (NPS) all hold legally recognised roles in investigation, detection, arrest, evidence handling as well as prosecution.[80] Despite this multiplicity of institutions suggesting a robust enforcement regime in Tanzania, the overlapping powers, unclear hierarchies and inconsistent procedures undermine operational coordination.[81] Nevertheless, each institution possesses its own internal reporting lines and operational priorities, yet the prosecution of wildlife offences requires seamless collaboration across authorities so that evidence collected by wildlife agencies aligns with the investigative expectations of the police and the prosecutorial requirements of the NPS.[82]

In practice, this alignment is rarely achieved. Wildlife officers often initiate arrests and seize evidence without early prosecutorial guidance, resulting in case files that lack critical evidentiary elements necessary to sustain charges. Police investigations may duplicate or conflict with investigations conducted by wildlife officers, while the NPS frequently receives fragmented or incomplete files that require substantial reconstruction before charges can be properly framed. These dynamics create a systemic disconnect that weakens case coherence and ultimately reduces the certainty and celerity of punishment.

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[79] [Cap. 283, R.E 2023].

[80] B. Killian, 'Translating Global Norms into Domestic Legislation: The Politics of Treaty Ratification and Domestication in East Africa. In S. Ndlovu & M. Hansungule (Eds.), *International Law and Domestic Realities in Africa*, Routledge, 2019, pp. 102-105.

[81] *Republic v. K组织 & Others* (Economic Crime Case No. 42 of 2018), High Court of Tanzania (Main Registry 2019).

[82] S.I. Manjoti, 'Uncertainty of the Law on the Admissibility of Electronic Evidence in Tanzania: Examining Challenges Facing the National Prosecution Service, *East African Journal of Law and Ethics*, 2025, Vol.*8, No.* 2, p. 192.

The challenge of evidentiary management also exposes weaknesses in the domestic legal and institutional regimes.[83] Wildlife offence is highly dependent on proper evaluation, species identification, chain of custody, as well as scientific verification, yet these processes are normally inadequately executed due to capacity constraints and institutional disjunctions. However, the evaluation of wildlife products required to determine the gravity of charges is frequently contested due to inconsistent methodologies and inadequate documentation.[84] Also, the chain of custody procedures is compromised when evidence moves between multiple wildlife institutions without standardised handling protocols. Thus, these gaps are significant because the strength of the prosecution depends on the integrity of evidence, and any weakness creates avenues for defense challenges that can result in acquittals or plea bargains that reduce the deterrent effect of the law.[85]

The NPS occupies a central position within the prosecutorial framework and holds the mandate to prosecute wildlife crimes. However, its effectiveness is often undermined by late involvement in detection, investigation, and evidence gathering, as well as by structural limitations that inhibit proactive engagement with wildlife agencies.[86] The NPS typically becomes involved only after investigations by other bodies are complete, by which time errors in evidence gathering and charge construction may be difficult to remedy.[87] Although early prosecutorial guidance is crucial for ensuring legally sound investigations, the current institutional framework provides no systematic mechanism for embedding public prosecutors within the investigative process. This absence weakens the foundation of prosecutions and compromises the certainty and celerity necessary for deterrence.[88]

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83 Mairo, C. 'Legal Protection of Trans-Boundary Wildlife Resources in the EAC: A Case Study of Serengeti-Maasai Mara Ecosystem", Master of Laws Degree (LL.M) Dissertation from the University of Dar-es-Salaam, (2021).

84 United Nations Office on Drugs and Crime, *World Wildlife Crime Report 2024: Trafficking in Protected Species*. UNODC, 2024. https://www.unodc.org/cofrb/uploads/documents/ECOS/World_Wildlife_Crime_Report_2024 (accessed on 4 June 2026).

85 *Ibid*.

86 B. Killian, 'Translating Global Norms into Domestic Legislation: The Politics of Treaty Ratification and Domestication in East Africa', In S. Ndlovu & M. Hansungule (Eds.), *International Law and Domestic Realities in Africa,* (Routledge, 2019)104-107.

87 *Ibid*.

88 Mairo (n 71) 45.

Moreover, judicial systems also contribute to the challenges facing the prosecution of wildlife crimes in Tanzania. Wildlife crimes are adjudicated by generalist courts of law whose caseloads and broader jurisdiction limit the development of specialised competence among judicial officers.[89] The magistrates and judges without focused training on wildlife and environmental law encounter difficulties in interpreting valuation provisions, evidentiary requirements as well as the technical rules governing wildlife identification.[90] Thus, this lack of specialization renders to inconsistent decisions, unpredictable sentencing and repeated procedural errors that create chances for defense exploitation.[91] Hence, since deterrence depends on judicial consistency and predictability, the absence of specialization erodes public trust in the ability of the legal system to effectively handle wildlife related crimes.

The national legal and institutional framework is further weakened by the absence of a centralized structure for coordinating wildlife offence investigations and prosecutions.[92] Thus, without a unified command or integrated institutional structure, wildlife cases proceed through a disjointed pathway that reflects the internal structures of various authorities rather than a coherent domestic enforcement strategy.[93] This fragmentation reduces accountability as no single institution can be held accountable for failures in prosecution. Therefore, institutional fragmentation also produces an enforcement environment in which procedural delays become normalized, and criminals can thus exploit institutional loopholes to evade punishment.[94]

Generally, taken together, the procedural and institutional weaknesses embedded in the Tanzanian national regime reveal a fundamental misalignment between legislative aspirations and prosecutorial functionality.[95]

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[89] *Ibid*.
[90] A Namara and J Orikiriza, 'Wildlife Crime and the Law: Effectiveness of Offender Prosecution in Queen Elizabeth National Park' (2026) 9(1) *East African Journal of Law and Ethics* 269, 118-119.
[91] JR Kideghesho, 'Reversing the Trend of Wildlife Crime in Tanzania: Challenges and Opportunities' (2016) 25(3) *Biodiversity and Conservation* 427, 449–453.
[92] *Ibid*.
[93] *Ibid*.
[94] L Eliamani, 'Tanzania's Compliance with International Standards on Forfeited Asset Management: A Critical Legal and Institutional Analysis' (2025) 8(2) *East African Journal of Law and Ethics* 1, 1.
[95] Transparency International, *Wildlife Crime and Corruption: Institutional Weaknesses along the Enforcement Chain*. Transparency International Secretariat., 2020

Despite the Tanzanian legal framework being severe and seemingly comprehensive, its operationalization is deeply compromised by the structural incoherence and procedural burdens that totally undermine certainty and swiftness of punishment against the criminals. The national regime thus fails to meet the theoretical requirements of deterrence because it does not provide a credible threat of wildlife crime prosecution. Hence, this disjunction between law and practice constitutes the central legal problem that should be addressed through comprehensive reform.

5.0 Challenges Facing the Prosecution of Wildlife Crimes in Tanzania

In Tanzania, the wildlife crimes prosecution system is characterized by profound inconsistencies between legislative intention and institutional reality.[96] Despite the statutory framework appears robust, the actual enforcement environment shows that the capacity of the criminal justice system to prosecute wildlife offences is severely compromised by structural fragmentation, evidentiary weaknesses, procedural burdens as well as interpretative inconsistencies.[97] Thus, these weaknesses are not isolated deficiencies but interlinked failures that undermine the certainty and celerity of penalties; the two core pillars of deterrence.[98] Therefore, due to this, the prosecutorial chain fails to create the credible threat of sanction that is crucial for preventing wildlife related crimes in practice.[99]

5.1 Procedural Challenges under EOCCA

The first major analytical finding concerns the systemic misalignment between the Wildlife Conservation Act,[100] and the EOCCA.[101] This

https://knowledgehub.transparencycdn.org/helpdesk/367_Wildlife_Crimes_and_Corruption (accessed on 16 June 2025).

96 Mohammed Saheb Hussain and Stella Melchiory, 'Effectiveness and Legal Challenges Facing the Implementation of the Laws Which Prohibits the Illegal Wildlife Trade in Tanzania' (2022) 8(6) *Journal of Legal Studies & Research* 90, 90–104.

97 JR Kideghesho, 'Reversing the Trend of Wildlife Crime in Tanzania: Challenges and Opportunities' (2016) 25(3) *Biodiversity and Conservation* 427.

98 JJ Kegamba and AA Siga, 'Wildlife Crimes and the Demographic Characteristics of Offenders in Western Serengeti, Tanzania: A Review of Court Cases 2012–2022' (2025) 62 *Global Ecology and Conservation* e03743.

99 A. G. Mwakipesile, *A Research Report on Investigation and Prosecution of Corruption Offences Towards Administration of Justice in Tanzania*. Tanzania Commission for Science and Technology (COSTECH), 2024. https://repository.costech.or.tz/items/28e3c04c-2cef-46ae-a256-778d8372711c (accessed on 12 June 2026).

100 [Cap. 283, R.E. 2023].

101 [Cap. 200, R.E. 2023].

misalignment lies at the heart of prosecutorial inefficiency.[102] While the Wildlife Conservation Act envisages firm and prompt sanctions, the EOCCA introduces procedural obligations that delay prosecutions, complicate charge preparation, and create barriers to efficient adjudication.[103] Requirements such as jurisdictional certification for subordinate courts, extended bail restrictions, committal proceedings, and procedural rigidity frustrate prosecutorial imperatives.[104] These procedures are fundamentally incompatible with the swift prosecutorial action demanded by wildlife crimes. Consequently, cases move slowly through the system, creating opportunities for evidentiary deterioration, witness fatigue, and strategic withdrawal by offenders.[105] These delays erode deterrence by eliminating the swiftness of punishment and reducing the likelihood that offenders will be held liable.[106]

5.2 Institutional Coordination Deficiencies

Another concern is the pervasive institutional fragmentation that characterizes wildlife crime enforcement in Tanzania.[107] Multiple wildlife agencies currently hold overlapping responsibilities for investigation, arrest, evidence gathering, and case initiation. Instead of reinforcing enforcement capacity, this dispersion of powers has produced a convoluted enforcement chain marked by inconsistent communication, gaps in evidentiary handover, and unclear procedural leadership.[108] Wildlife authorities often conduct arrests and initial investigations without effective coordination with police officers or the NPS.[109] This premature or uncoordinated action frequently results in evidentiary

102 FEC Sina, 'Implementation of CITES in Tanzania: Fairytale or Promising Journey? An Analysis of Legal Framework and Practice' (2024) 7(2) *East African Journal of Environment and Natural Resources* 64, 64.
103 G. Pius, 'A comparative Analysis between Tanzania and Kenya on the Victims' Remedy against the Decision not to Prosecute'. Ruaha Catholic University Repository, 2024. https://ebooks.rucu.ac.tz/storage/uploads/gerald%20pius (accessed on 28 May 2026).
104 TRAFFIC International East Africa, *Strengthening Prosecutions of Wildlife Crimes in Zanzibar: Closing Legal Loops*. TRAFFIC International, 2024. https://www.traffic.org/news/strengthening-prosecutions-of-wildlife-crimes-in-zanzibar/ (accessed on 5 June 2026).
105 *Ibid*.
106 *Ibid*.
107 Wildlife Conservation Society of Tanzania, *Efficacy of Judicial Outcomes: Tracking the Enforcement of Criminal Penalties in Municipal Zones*. WCST Briefing Papers, 2023. https://www.suaire.sua.ac.tz/bitstreams/38a97714-2088-4bdb-9cdb-f3bfeb94a631/download (accessed on 16 June 2026).
108 A Mukobi, J Ocan and FA Adyanga, 'Wildlife Crime and the Law: Effectiveness of Offender Prosecution in Queen Elizabeth National Park: A Legal Analysis' (2026) 9(1) *East African Journal of Law and Ethics* 269.
109 SI Manjoti, 'Uncertainty of the Law on the Admissibility of Electronic Evidence in Tanzania: Examining Challenges Facing the National Prosecution Service' (2025) 8(2) *East African Journal of Law and Ethics* 185, 192.

defects that cannot be remedied later.[110] When multiple institutions handle the same wildlife case, the absence of standardized protocols means that evidence may be improperly stored, inconsistently recorded, or inadequately documented.[111] Such evidentiary weaknesses compromise prosecutors' ability to establish the elements of wildlife offences and increase the likelihood of case collapse.[112]

Another concern relates to the chronic deficiencies in evidence gathering and management which significantly weaken prosecutorial outcomes.[113] Prosecution of wildlife crimes depends heavily on accurate species identification, valuation of wildlife products, chain of custody integrity, as well as timely preparation of forensic analyses.[114] The institutional weaknesses at each stage of this process create avenues for evidentiary loopholes and inconsistencies. For example, valuation reports may differ between institutions, chain of custody forms may be incomplete or signed improperly, and scientific verification may be delayed or unavailable at all.

5.3 Evidentiary and Investigative Challenges

These deficiencies create vulnerabilities because defence advocates can challenge the credibility, admissibility, or legal sufficiency of the evidence.[115] In wildlife-related cases, where the gravity of the offence is often determined by the value or protected status of the specimen, uncertainty or inconsistency in valuation may result in downgraded charges, acquittals, or judicial reluctance to impose severe punishments.[116] The erosion of evidentiary integrity, therefore, directly compromises prosecutorial certainty and weakens the deterrent value of the entire legal framework..[117]

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[110] *Ibid*.
[111] *Ibid*.
[112] BJ Mabula, 'Patent Prosecution Regime in Mainland Tanzania: A "Prosecutor–Grantor Perspective"' (2023) 50(2) *Eastern Africa Law Review* 168.
[113] Ministry of Natural Resources and Tourism (MNRT), *National Human-Wildlife Conflict Management Strategy 2020–2024* (United Republic of Tanzania 2020) 15.
[114] *Ibid*.
[115] *Ibid*.
[116] Wildlife Conservation Society of Tanzania, *Efficacy of Judicial Outcomes: Tracking the Enforcement of Criminal Penalties in Municipal Zones*. WCST Briefing Papers, 2023. https://www.suaire.sua.ac.tz/bitstreams/38a97714-2088-4bdb-9cdb-f3bfeb94a631/download (accessed on 9 June 2026).
[117] M A Bakari, 'Strategies Used to Improve the Investigation of Criminal Cases in Tanzania: Law and Practice' (2025) 11(4) *ISIR Publisher Journal of Criminal Justice* 148, 148.

5.4 Prosecutorial Capacity Constraints

A further concern is the limited involvement of prosecutors during the investigative stage. Public prosecutors in Tanzania frequently encounter poorly assembled wildlife case files containing incomplete witness statements, contradictory factual accounts, or insufficient evidentiary documentation. Because prosecutors are brought into the process too late, often only after investigations have been concluded, they have limited capacity to correct investigative errors or guide the collection of credible evidence.[118] Late prosecutorial engagement frequently results in defective charges that do not align with the factual record or statutory requirements, forcing prosecutors to amend charges repeatedly or withdraw cases.[119] These systemic defects weaken the credibility of the prosecutorial process and undermine its preventive force by increasing the rate of failed prosecutions.

5.5 Judicial Capacity and Consistency

Judicial challenges also form part of the analytical findings. Wildlife offences are adjudicated by generalist courts whose interpretation of legislative provisions is often inconsistent and procedurally unspecialized.[120] Magistrates and judges without specialized training in wildlife and environmental law may misinterpret valuation provisions, misapply evidentiary standards, or underestimate the gravity of wildlife crimes. This inconsistency leads to unpredictable outcomes even in cases where the evidence is credible and the charges are properly framed.[121] The lack of consistency in judicial interpretation undermines the stability of jurisprudence and sends conflicting signals to potential offenders regarding the likelihood and severity of punishment.[122] The absence of judicial specialisation therefore diminishes certainty, undermines celerity, and weakens the overall deterrent impact of wildlife crime legislation.[123]

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[118] *Ibid*.
[119] *Ibid*.
[120] Judiciary of Tanzania, & African Wildlife Foundation. (2016), *Strengthening Legal Mechanisms to Combat Wildlife crime: Judicial Training Needs Assessment and Workshop Report*. AWF Secretariat, 2016. https://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/BAGAMOYO%20WORKSHOP%20PROCEEDINGS%20DRAFT%201 (accessed on 4 June 2026).
121 *Mwaura v. Republic* (Criminal Appeal No. 188 of 2016), Court of Appeal of Tanzania (Unreported 2020).
[122] A Sharan, 'Framing of Charges and Discharge Proceedings: Reconciling the Rights of the Accused with the Demands of an Equitable Trial' (2025) 3(4) *International Journal of Law and Legal Review* 123, 123–128.
[123] African Wildlife Foundation, 'AWF Training Program Empowers Prosecutors, Boosts Wildlife Crime Convictions in Uganda' (2024), available at: https://www.awf.org (accessed on 19 June 2026).

Generally, these analytical findings expose a wildlife crime prosecutorial system in Tanzania that is structurally incapable of delivering the certainty and swiftness of sanction upon which deterrence depends. Despite the statutory regime is severe, its severity is neutralised by procedural delays, evidentiary weaknesses, institutional fragmentation and judicial inconsistency.[124] The outcome is a profound gap between the normative aspirations of wildlife conservation law and its practical enforcement in the country[125]. Thus, this gap not only undermines biodiversity protections but also threatens the integrity of the criminal justice system and the rule of law.[126] Therefore, addressing these systemic deficiencies requires grounded reforms that enhance coordination, strengthen evidence management, embed prosecutorial engagement early in investigations and ensure judicial specialisation at large.[127] This is because, without such reforms, the deterrent promise of Tanzanian wildlife law will remain largely unrealised.[128]

6.0 Conclusion and recommendations

6.1 Conclusion

This article has demonstrated that the prosecution of wildlife crimes in Tanzania is constrained not by the absence of strong statutory provisions but by institutional fragmentation, procedural inefficiencies, evidentiary weaknesses, and limited prosecutorial and judicial specialisation. Guided by deterrence theory, the analysis has shown that the effectiveness of wildlife crime enforcement depends less on the severity of penalties and more on the certainty and swiftness of punishment. Although Tanzania possesses a comprehensive legal framework for wildlife protection, weaknesses within the enforcement chain continue to undermine prosecutorial effectiveness and diminish the deterrent value of wildlife legislation.

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124 African Wildlife Foundation, 'AWF Training Program Empowers Prosecutors, Boosts Wildlife Crime Convictions in Uganda' (2024), available at: https://www.awf.org (accessed on 19 June 2026).

125 C.O. Tarimo, 'The Effectiveness of Law Enforcement in Wildlife and Forest Resources Management: A Case Study of Juhibu and Juhibeko, Tanzania' (MSc. Dissertation, Sokoine University of Agriculture, Morogoro, Tanzania, 2016), 45.

126 F Bamwine, 'The Efficacy of Prosecuting Wildlife Crimes in Uganda' (2019) 49(2–3) *Environmental Policy and Law*181, 181.

127 Ibid.

128 Mzumbe University, *Contemporary Tanzanian Penal Policy and the Limitations of Deterrence*. Tanzania Online Gateway, 1972. http://www.tzonline.org/pdf/contemporarytanzanianpenalpolicy (accessed on 17 June 2026); N. S. Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice*, 2013, Vol. *42, No.* 1, p. 252-261.

6.2 Recommendations

In response to the legal and institutional challenges affecting the prosecution of wildlife crimes in Tanzania, this article recommends the following reforms:

6.2.1 Establishing a Wildlife Crime Coordination Framework

The recommended reforms must begin with the recognition that the fragmentation of powers among the wildlife agencies, police and public prosecutors inhibits coordinated responses to wildlife-related crimes. Since wildlife crimes frequently require rapid evidence gathering, precise valuation, species identification, and chain of custody, the institutional disconnection severely compromises prosecutorial outcomes in the country. Thus, a coherent enforcement chain in Tanzania is indispensable for achieving the certainty and celerity required by deterrence. This is because the fragmented institutional roles create inconsistent evidentiary records, disjointed case preparation and delays that weaken prosecution at all.

Therefore, reform requires formalising mechanisms for structured inter-agency coordination. Thus, this reform may take the form of a domestic wildlife crime coordination framework or legally empowered inter-agency protocols specifying investigative roles, reporting lines and intelligence-sharing procedures. Hence, without such cohesion in Tanzania, the enforcement chain will continue to break down at significant junctures, rendering the statutory regime functionally ineffective.

6.2.2 Engaging Prosecutors in Investigations

Equally important is a shift toward early prosecutorial engagement in wildlife crime investigations. Public prosecutors should not serve merely as end-stage actors tasked with litigating already defective case files. Instead, they should be integrated into the investigative process so that charges reflect both the factual circumstances and the statutory requirements. Prosecutors often receive files that are incomplete, poorly structured, or procedurally flawed, leaving little room for correction. This late-stage engagement contradicts the preventive aims of wildlife law because it reduces the likelihood of conviction. Integrating prosecutors at the investigation stage would ensure the legal sufficiency of evidence, promote accurate charge framing, and prevent avoidable case withdrawals. This reform would directly strengthen the certainty of punishment, which is a core element of deterrence.

6.2.3 Reviewing the Applicability of the EOCCA to Wildlife Crimes

Also, a related reform imperative concerns the procedural recalibration of the EOCCA. Its procedural burdens, specifically pre-charge consents, committal procedures, and extended timelines, delay wildlife-related cases and undermine their prosecutorial viability. Although wildlife offences do not share the evidentiary complexity of financial offences, they remain subject to legal procedures designed for entirely different categories of crimes. Thus, this procedural mismatch obstructs the celerity required for deterrence and creates avenues for evidentiary erosion and witness unavailability. The recommended reform must therefore either exempt wildlife offences from EOCCA's procedures or introduce a dedicated procedural framework tailored to the unique demands of wildlife offences. The streamlined procedures and expedited committal mechanisms would significantly strengthen prosecutorial efficiency and reinforce the swiftness of sanctions.

6.2.4 Standardising Evidence Handling and Valuation Procedures

Moreover, judicial specialisation emerges as a central reform requirement as well. The absence of specialised wildlife offence courts or designated judicial officers prompts inconsistent interpretations of statutory provisions, uneven application of valuation rules, and erratic sentencing patterns. Thus, these inconsistencies diminish the predictability of judicial outcomes, which weakens the preventive effect of the legal system. That is, establishing specialised wildlife-related crime court divisions within the resident magistrates' courts or the High Court of Tanzania, which would prompt the cultivation of judicial expertise, would enhance interpretative consistency and restore predictability to the enforcement chain. Additionally, specialisation may facilitate the development of coherent jurisprudence in Tanzania, an important component of deterrence, as criminals tend to respond to systems that produce stable and reliable legal outcomes.

6.2.5 Strengthening Prosecutorial and Judicial Training

Additionally, reforms must further address the systemic weaknesses in evidence management that consistently undermine prosecutorial access in Tanzania. That is, proper valuation of wildlife products, consistent application of identification accepted protocols and a secure chain of custody are significant to proving the elements of wildlife crimes. The recurring failures in valuation methodologies, documentation procedures and evidence handling are still problematic in the country. This is because these weaknesses expose wildlife cases to legal challenges that erode the prosecution's ability to meet the burden of proof. However, reforming evidentiary processes requires standardised valuation procedures, improved forensic capacity, and legally empowered chain of custody protocols applicable across all enforcement authorities. Thus, only a coherent evidentiary regime can support the certainty of punishment required by deterrence.

6.2.6 Strengthening Prosecutorial and Judicial Training

Finally, the reform agenda should address the normative implications of Tanzania's international and regional commitments. Compliance with CITES, the CBD, the Lusaka Agreement, and EAC legal frameworks requires prosecutorial systems capable of managing complex wildlife cases, cooperating across borders, and implementing effective enforcement mechanisms. Failure to prosecute wildlife crimes effectively is therefore not only a domestic challenge but also a weakness in Tanzania's contribution to international environmental governance. Strengthening prosecutorial and judicial capacity is essential for maintaining credibility within regional enforcement networks and ensuring that the national legal regime supports the broader goals of biodiversity protection.

Judicial Crossroads on Bona Fide Pre-Action Steps: Assessing High Court Decisions in Tanzania

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Abstract
The bona fide pre-action framework under section 13 of the Civil Procedure Code requires attention to genuine steps taken to resolve a dispute before litigation, yet it does not expressly prescribe a pleading form, exceptions, sanctions, or the legal effect of non-compliance. Recent High Court decisions have therefore moved in different directions: some treat the requirement as a mandatory gateway whose breach justifies striking out, others treat it as a facilitative norm, and a third group asks whether the conduct of the parties discloses a sincere and genuine attempt judged contextually. This article addresses that uncertainty through doctrinal analysis of the statutory text, recent case law, Tanzanian ADR literature, and lessons from England and Australia. It argues that the pre-action requirement should be enforced as a real pre-action discipline, but not as an automatic jurisdictional bar. The article proposes proportionate pre-action protocol rules requiring pleading or disclosure of bona fide steps, recognising practical forms of compliance, providing exceptions for urgency and futility, and prescribing graduated sanctions such as amendment, stay, costs and, in exceptional cases, striking out.

Keywords: *Bona fide pre-action steps; pre-action framework; civil procedure; access to justice; jurisdictional gateway.*

1.0 Introduction

Civil procedure has two related but sometimes competing functions. It structures the orderly resolution of disputes, but it must also preserve the right of parties to have genuine controversies determined on their merits.1 In Tanzania, that tension is now visible in litigation concerning the bona fide step requirement under Section 13 of the Civil Procedure Code, which speaks of bona fide steps to resolve disputes before proceedings are initiated in court.2 The pre-action framework is important because it places pre-action conduct at the front door of civil litigation, yet it does so without the procedural architecture normally associated with pre-action protocols.

[1] B. D Chipeta, '*Civil Procedure in Tanzania: A Student's Manual*' (Law Africa revised edn 2013) ch 1.
[2] *Civil Procedure Code, Cap 33 R.E. 2023, s 13.*

The policy behind the pre-action requirement is not isolated. The Constitution directs courts to promote reconciliation and amicable settlement where appropriate.[1] The Civil Procedure Code separately recognises out-of-court settlement by conciliation, negotiation and mediation, and allows settlement agreements to be registered in a court of competent jurisdiction.[2] Tanzanian ADR scholarship has long explained that ADR was introduced partly to improve the quality, efficiency and accessibility to civil justice, and partly because ordinary litigation is costly, technical and adversarial.[3] At a general level, ADR literature describes negotiation and mediation as processes that redirect parties from positional contest to problem-solving, interest identification and durable settlement.[4]

The difficulty is that Section 13 is drafted in a way that simultaneously encourages settlement and creates uncertainty. Subsection (1) states that a person is deemed to have taken bona fide steps if the steps constitute a sincere and genuine attempt to resolve the dispute out of court, having regard to the person's circumstances and the nature and circumstances of the dispute.[5] Subsection (2) gives examples such as notification, appropriate response, exchange of relevant information, consideration of reconciliation, negotiation, mediation, arbitration, warning, diversion and independent evaluation.[6] Subsection (3) confirms that the list is not closed, while subsection (4) states that the pre-action requirement applies to all proceedings intended to be initiated in court.[7]

The core problem is remedial. The framework does not say that a suit filed without pleaded pre-action engagement is void. It does not say that the court lacks jurisdiction. It does not require a certificate, statement, affidavit or annexure. It does not suspend limitation, define exceptions, prescribe the role of defendants, or identify the sanctions for breach.[8] The silence has produced a line of High Court decisions which, while

[1] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d).*
[2] *Civil Procedure Code, Cap 33 R.E. 2023, s 71(1)-(3).*
[3] J. Clement Mashamba, '*Alternative Dispute Resolution (ADR) in Tanzania: Law and Practice*' (Mkuki na Nyota 2013) 45-51.
[4] Y. Shamir, '*Alternative Dispute Resolution Approaches and their Application*' (UNESCO 2003) 1-8.
[5] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1).*
[6] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(2).*
[7] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(3)-(4).*
[8] *Compare Civil Procedure Code, Cap 33 R.E. 2023, s 13, with Civil Dispute Resolution Act 2011 (Cth), ss 6-12.*

attempting to give effect to the same text, diverge on whether the pre-action requirement is jurisdictional, directory or contextual.

This article contributes to the emerging literature in four respects. First, it treats the pre-action requirement not merely as an ADR clause but as a civil procedure problem concerning pleadings, jurisdiction, remedies and access to justice. Secondly, it groups the recent authorities thematically rather than narrating them one by one. Thirdly, it draws lessons from England and Australia, two common-law systems with developed pre-action discipline through express protocol machinery, costs sanctions, stays and non-invalidation rules. Fourthly, it proposes a practical framework for rules or legislative amendments suitable for Tanzania rather than leaving reform as a list of open questions.[9]

1.1 Methodology and Scope

This article adopts a doctrinal legal methodology. It analyses primary legal materials, namely the Constitution, the Civil Procedure Code, the Government Proceedings Act, where statutory notices are relevant, and recent High Court decisions on the pre-action requirement.[10] It also uses secondary materials on civil procedure, ADR, access to justice and pre-action procedure in England and Australia.[11] Nevertheless, existing Tanzanian literature has addressed ADR, mediation, civil procedure and access to justice in broader terms, but it has not yet sufficiently examined the bona fide step requirement as a distinct pre-action procedural gateway whose breach may affect pleadings, jurisdiction, sanctions and access to court.

The case law sample is limited to decisions delivered between 2025 and 2026 because the pre-action requirement, as reformulated in the 2023 revised edition of the Code and applied in recent litigation, became a live and repeated issue during that period. The sample includes decisions in which the pre-action requirement was directly argued, [12] decisions in which the court raised the point, [13] and decisions where the pre-action

[9] For the need to avoid treating procedure as an obstacle to substantive justice, see Mulla, The Code of Civil Procedure (18th edn, LexisNexis 2017) vol 1, preliminary commentary.
[10] *Government Proceedings Act, Cap 5 R.E. 2023, s 6.*
[11]See e.g., Chipeta (n 1); Mashamba (n 5); Shamir (n 6); Adrian Zuckerman, Zuckerman on Civil Procedure: Principles of Practice (4th edn, Sweet & Maxwell 2021).
[12]*Frode Farestveit v Mrisho Kinega* Mrisho (Civil Case No. 23523 of 2024) [2025] TZHC 7090.
[13] *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No. 10631 of 2025) [2025] TZHC 7247. Also, in *Joseph Chilery Mayenje and*

requirement was discussed in relation to demand notices, statutory notices, administrative complaints, court-annexed mediation, applications or petitions.[14]

The article deliberately avoids treating every cited case as having the same precedential weight. Decisions are read for their reasoning, factual setting and procedural consequence. Where a decision is known principally through how it was cited in another decision, the article treats it cautiously and uses it only to identify the line of reasoning attributed to it.[15] This avoids selection bias and avoids converting cross-citations into independent factual findings.

The interpretive approach is textual, purposive, and remedial. Textual analysis asks what the pre-action requirement says and does not say. [16] Purposive analysis asks how the pre-action requirement advances amicable settlement, timely justice, and responsible litigation. Remedial analysis asks what consequence best fits the statutory text, the overriding objective, and the constitutional preference for substantive justice.[17]

The article is not empirical. It does not measure settlement rates, litigation cost, or party experience. Its conclusions are therefore normative and doctrinal, and they should be complemented by empirical research if the Rules Committee considers detailed rule-making.

The lesson-drawing discussion is limited to England and Australia. They are used to draw reform lessons from jurisdictions with more elaborate pre-action machinery. England is useful because its Civil Procedure Rules employ pre-action protocols, proportionality, stays, and costs rather than automatic nullity. Australia is useful because the Civil Dispute Resolution Act 2011 (Cth) uses statutory language strikingly close to Tanzania's pre-action framework, while expressly providing that failure to file a genuine steps statement does not invalidate the proceedings.[18]

Others v Abrahamu Godwin Msyete and Others (Land Case No. 000020518 of 2025) [2026] TZHC Land D 309, the court raised the issue of Section 13 suo motu.

[14] *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No. 26624 of 2025) [2026] TZHC 752.

[15] *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* (Land Case No. 000020518 of 2025) [2026] TZHC Land Division 309, discussing *Alkemist Worldwide Limited v Hotel Sea Cliff Limited* (Civil Case No. 19658 of 2025) [2025] TZHC 7346.

[16] *Civil Procedure Code, Cap 33 R.E. 2023, ss 3A, 3B and 13.*

[17] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(e).*

[18] *Civil Dispute Resolution Act 2011 (Cth), ss 4, 6, 7, 10-12.*

2.0 Statutory and Doctrinal Framework

Section 13 is headed “Bona fide steps to resolve dispute”. The phrase “bona fide” imports sincerity and good faith rather than rigid formality.[19] The statutory language does not demand a particular ritual. It asks whether the steps taken, viewed in light of the person’s circumstances and the nature of the dispute, amount to a sincere and genuine attempt to resolve the dispute out of court.[20]

Three features of the text matter. First, the examples in subsection (2) are broad and practical: notice, discussion, response, disclosure, consideration of facilitated processes and negotiation.[21] Secondly, the examples are non-exhaustive, which allows courts to recognize statutory notices, correspondence, meetings, administrative engagement, mediation invitations, payment proposals and other genuine settlement conduct.[22] Thirdly, the section applies to all intended court proceedings, but universal application is not the same as automatic invalidation.[23]

The relationship between the pre-action requirement and court-annexed ADR is also important. Court-annexed mediation occurs after filing, while the pre-action requirement concerns pre-action conduct.[24] A litigant who does nothing before filing and later attends mediation has not literally complied with pre-action discipline. Nevertheless, post-filing mediation may reduce prejudice and may justify a proportionate remedy short of striking out, especially where the defendant participates without timely objection.

The doctrine of preliminary objection also limits how the pre-action requirement should be raised. A preliminary objection must be founded on a pure point of law which, if argued on the assumption that all pleaded facts are correct, may dispose of the suit.[25] Whether a party made a sincere and genuine attempt to resolve a dispute will often require

[19] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1).*
[20] Abdallah H Gonzi, ‘*Timely Justice: The Requirement to take Bona Fide Steps before Litigation under Section 13 of the Civil Procedure Code of Tanzania - its Relevance and Challenges’* (Legal Brief Online Lawyers' Forum, 12 April 2026) 34-36.
[21] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(2)(a)-(g).*
[22] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(3).*
[23] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(4).*
[24] Civil Procedure Code, Cap 33 R.E. 2023, ss 71-74; Civil Procedure Code (Court Annexed Mediation and Arbitration) Rules, GN No 422 of 2021.
[25] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696.

evidence of correspondence, meetings, notices, responses, urgency, futility or prejudice. It will not always be a pure point of law.[26]

The doctrinal question is therefore not whether the pre-action requirement matters. It plainly does. The question is whether every defect in compliance should be treated as an incurable jurisdictional defect. That question must be answered by considering text, purpose, remedy and lessons from England and Australia, not merely by emphasising the word "shall" or the phrase "all proceedings".

More so, the bona fide step framework should be interpreted in light of Article 107A(2)(d) and (e) of the Constitution.[27] Article 107A(2)(d) requires courts, in the exercise of judicial authority, to promote reconciliation and amicable settlement of disputes where appropriate.[28] This constitutional directive gives normative support to the pre-action requirement because bona fide pre-action steps are intended to encourage parties to explore settlement before invoking the adjudicatory jurisdiction of the court.[29] However, Article 107A(2)(e) also requires courts to administer justice without being unduly constrained by procedural technicalities.[30] The two provisions must therefore be read together. the pre-action requirement should be enforced as a serious procedural obligation, but it should not be converted into an automatic procedural weapon for defeating claims where the omission is curable, causes no prejudice, or where the circumstances justify immediate recourse to court.
This approach is supported by the Court of Appeal of Tanzania in *Zuberi Musa v Shinyanga Town Council*, where the Court emphasised that Article 107A(2)(e) is not intended to abolish procedural rules, but to ensure that such rules are applied in a manner that advances, rather than obstructs, substantive justice.[31] The Court recognised that procedural rules remain important for the orderly and predictable administration of justice, but they should not be applied rigidly where doing so would defeat the justice of the case.[32] Applied to the pre-action requirement, this

[26] *New Era Stores v Ocean Trading Co*. [1950] KLR 53; *Captain Harry Gandy v Caspar Air Charters Ltd* [1956] 23 EACA 139.
[27] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d)-(e)*; *Civil Procedure Code, Cap 33 R.E. 2023, s 13*.
[28] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d).*
[29] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4).*
[30] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(e).*
[31] *Zuberi Musa v Shinyanga* Town Council, Civil Application No. 100 of 2004, Court of Appeal of Tanzania, unreported.
[32] *Ibid.*

means that the requirement of bona fide pre-action steps should promote responsible litigation and amicable settlement, while courts should retain discretion to impose proportionate remedies such as amendment, stay, directions, mediation referral or costs, instead of striking out every suit automatically.[33]

3.0 Thematic Review of the High Court Decisions

The preceding discussion has shown that the bona fide step requirement under Section 13 of the Civil Procedure Code introduces a procedural duty whose precise legal effect remains unsettled. The High Court decisions on bona fide pre-action steps do not speak with one voice. Some decisions treat compliance with the pre-action requirement as a mandatory condition precedent to the institution of proceedings,[34] while others regard it as a facilitative provision intended to promote amicable settlement without defeating access to court.[35] A further line of decisions adopts a middle position by examining the conduct of the parties, the nature of the dispute, the steps actually taken before filing, and the prejudice occasioned by non-compliance. For that reason, a mere chronological narration of cases is inadequate.[36] What is required is a thematic examination of the judicial reasoning underlying the decisions.

This part, therefore, analyses the High Court jurisprudence under three broad themes: the strict or mandatory approach, the permissive or directory approach, and the contextual or proportionality-based approach. The purpose is not simply to identify which cases fall into each category, but to examine the legal issue raised in each decision, the reasoning adopted by the court, and the implications of that reasoning for civil procedure in Tanzania. Such an approach enables the article to determine whether the pre-action requirement has been judicially constructed as a

[33] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4); Constitution of the United Republic of Tanzania 1977, art 107A(2)(d)-(e).*

[34] See for example, *Frode Farestveit v Mrisho Kinega Mrisho* (Civil Case No. 23523 of 2024) [2025] TZHC 7090; *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No. 10631 of 2025) [2025] TZHC 7247; *Alkemist Worldwide Limited v Hotel Sea Cliff Limited* (Civil Case No. 19658 of 2025) [2025] TZHC 7346.

[35] See *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No. 26624 of 2025) [2026] TZHC 752; *Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited and Another* (Land Case No. 29281 of 2024) [2026] TZHC Land Division 189; *Kolon Global Corporation v Pipes Industries Company Ltd* (Miscellaneous Commercial Application No. 21845 of 2025) [2026] TZH Commercial D 119.

[36] *Bernadetha George Obuya v Yusuph Razac Ladha and Others* (Land Case No. 12826 of 2024) [2026] TZHC 2706; Tai Five Hotel Ltd v Board of Trustees of Public Service Social Security Fund (PSSSF) and Another (Land Case No. 6952 of 2026) [2026] TZHC 2819; Vigu Trading Company Limited v Imperium Opes Group Limited and Others (Land Case No. 6175 of 2026) [2026] TZHCLandD 347.

jurisdictional gateway, a procedural discipline, or a flexible case-management tool.

3.1 The strict jurisdictional approach

The strict approach treats the pre-action requirement as a condition precedent to civil litigation. Its real concern is not merely whether a demand letter was sent, but whether the plaintiff approached the court after making a genuine attempt to resolve, narrow, or clarify the dispute. In *Frode Farestveit v Mrisho Kinega Mrisho*[37] the court did not treat pre-action correspondence as automatically sufficient. The issue was whether the correspondence revealed a sincere settlement effort rather than a bare assertion of entitlement. The decision therefore, gives the pre-action requirement a substantive quality: compliance is not proved by the existence of paper, but by conduct showing that litigation was not the first meaningful step.

The same jurisdictional discipline appears in *Beka Trading Company Limited and Another v Tanzania Electrical, Mechanical and Electronics Service Agency and Another*[38]. The court drew a line between notice of intention to sue and bona fide settlement engagement. Its real issue was whether a statutory or formal notice could perform the additional function of settlement dialogue. By treating the pre-action requirement as a separate gateway, the court protected the legislative policy of early dispute resolution. The difficulty, however, is that the court moved from that policy to the drastic consequence of incompetence although the pre-action requirement itself does not prescribe nullity or striking out.

In *Alkemist Worldwide Limited v Hotel Sea Cliff Limited*[39]the court reinforced the pleading dimension of the strict approach. The question was not simply whether negotiations had occurred somewhere outside the pleadings, but whether the initiating process disclosed facts from which the court and the defendant could see that the pre-action requirement had been complied with. The decision is important because it converts bona fide steps from background conduct into a pleaded material fact. Its weakness is that it risks allowing form to prevail over substance where genuine correspondence exists but is poorly pleaded.

[37]Civil Case No. 23523 of 2024, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7090.
[38]Civil Case No. 10631 of 2025, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7247.
[39]Civil Case No. 19658 of 2025, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7346.

Mortgage and statutory sale cases show the reach of the strict school. In *Issa Hamad Kivina and Another v Equity Bank Tanzania Limited and Others*[40], the plaintiffs argued, in substance, that a completed mortgage sale made pre-action engagement futile. The court rejected that argument because futility had not been demonstrated in a manner that displaced the pre-action requirement. The doctrinal issue was whether commercial urgency or completed transactions justify bypassing pre-action engagement. The decision gives certainty to lenders and purchasers, but it also shows why an express exception for futility and preservation of property is necessary.

The distinction between pre-filing and post-filing ADR was made sharply in *John Alex Kapama v Chande Ally Chande*[41]. The court held that court-annexed mediation after institution could not retrospectively become the pre-action step contemplated by the pre-action requirement. The reasoning is coherent at the level of chronology: a post-filing process is not a pre-action process. Yet the decision leaves an important remedial question unanswered. If parties have already undergone mediation under court supervision, striking out may repeat the cost and delay without improving the settlement culture.

The strict school is strongest where the plaintiff did nothing or pleaded nothing. It becomes more contestable where the plaintiff sent statutory notices, engaged some defendants, or participated in later mediation. *Yassa General Supplies Limited v Temeke Municipal Council and Another*[42], *Dr Siana Ellena Kinyaiya v Judith Mwakasege and Others*[43], *Charles Werongo and Another v CRDB Bank PLC and Others*[44] and *Yusufu Shaban Omari v Abdulrahman Mohamed Kwadu*[45] demonstrate the strict school's three practical extensions: government notices are not automatically enough, annexures cannot replace clear pleading, partial engagement with one defendant may not suffice against all defendants, and even applications may fall within the phrase "all proceedings".

These extensions explain why the controversy is significant for access to justice; the pre-action requirement is being used not only to discipline

[40]Land Case No. 19389 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 34.
[41]Land Case No. 332 of 2023, High Court of Tanzania, Land Division, [2026] TZHC Land Division 179.
[42]Land Case No. 25701 of 2026, High Court of Tanzania, Land Division, [2026] TZHC Land Division 193.
[43] Land Case No. 26408 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 206.
[44] Land Case No. 311 of 2024, High Court of Tanzania, Land Division, [2026] TZHC Land Division 120.
[45] Land Case No. 19597 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 312.

suits, but also to police the competence of diverse civil processes. The normative weakness of the strict approach is remedial excess. The pre-action requirement speaks in flexible language of sincerity, genuineness, circumstances, and non-exhaustive steps.[46] It does not create a tribunal, a certificate, a time limit or a statutory bar. For that reason, the strict school is persuasive as to obligation, but less persuasive as to automatic jurisdictional consequence. Its best use is to justify directions, amendments, stays, or costs in ordinary cases, and striking out only where non-compliance is total, deliberate or abusive.

3.2 The permissive approach

The permissive approach rejects the proposition that every pre-action requirement objection defeat jurisdiction. In *Dew Drop Drinks Company Limited v Lemon Dove Company Limited*[47]The court treated the pre-action requirement as a facilitative provision designed to encourage settlement rather than a jurisdictional guillotine. The real issue was whether statutory silence on sanctions could be filled by judicial implication. The court answered in the negative, thereby protecting access to court while still recognising the desirability of pre-action engagement.

In *Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited and Another*[48], The court focused on the wording of the pre-action requirement. It reasoned that the phrases "shall be deemed" and "may be taken" identify conduct that may amount to bona fide steps; they do not say that a suit is incompetent if the plaintiff has not pleaded a prescribed formula. The analytical value of the decision lies in its insistence that courts should not manufacture a sanction that Parliament did not provide. Its weakness is that, if taken too far, it may make the pre-action requirement practically toothless.

Commercial litigation illustrates why the permissive approach has force. In *Exim Bank Tanzania Limited v Arusha Sundries Limited and Others*[49], The dispute arose in a context where demand, default notices, restructuring engagement and payment discussions may all serve settlement functions. The court treated commercial correspondence as potentially relevant to bona fide steps. The decision is significant because

46 *Civil Procedure Code, Cap 33 R.E. 2023, s 13.*
47 Civil Case No. 26624 of 2025, High Court of Tanzania at Dar es Salaam, [2026] TZHC 752.
48 Land Case No. 29281 of 2024, High Court of Tanzania, Land Division, [2026] TZHC Land Division 189.
49 Commercial Case No. 15988 of 2025, High Court of Tanzania, Commercial Division, [2026] TZHC Commercial D 107.

it resists a mechanical distinction between a demand letter and an attempt to settle. In many commercial disputes, a demand letter is precisely the document that informs the debtor of the dispute, invites payment and opens the door to negotiation.

In *Aisha Ally Diyanga v Johra Hassan Mamba and Others*[50], The court considered the pre-action requirement in the setting of a company petition. The real issue was whether pre-action settlement should be treated the same way in ordinary debt litigation and in disputes involving corporate mismanagement, unfair prejudice or preservation of company affairs. The court declined to treat the pre-action requirement as an automatic bar. This is persuasive because petitions often seek supervisory, protective or status-based relief, and the need for court intervention may arise before meaningful negotiation is realistic.

The clearest access-to-justice reasoning appears in *Mohammed Enterprises (Tanzania) Limited v Eliphaz Manyiri*[51]. The plaintiff had pleaded public notices, local administrative engagement and demands to vacate. The court held that those facts could amount to bona fide steps and added that striking out would be inappropriate where the matter had already passed through court-annexed mediation. The point is not that post-filing mediation is literally pre-action compliance. It is that the remedy must be proportionate to the prejudice. Where the statutory objective has substantially been pursued during the case, automatic striking out may waste rather than save judicial resources.

Similarly, *Kolon Global Corporation v Pipes Industries Company Ltd*[52] offers a sophisticated critique of the strict school. The court treated the pre-action requirement as relevant to case management, costs, mediation and conduct, but declined to treat it as an automatic jurisdictional bar. That decision is valuable because it locates the pre-action requirement within the broader machinery of civil procedure. The pre-action framework influences how litigation should be managed; it does not necessarily decide whether the court exists as a forum.

[50]Miscellaneous Civil Cause No 29215 of 2025, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2858.
[51]Land Case No. 12527 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 299.
[52]Miscellaneous Commercial Application No. 21845 of 2025, High Court of Tanzania, Commercial Division, [2026] TZHCComD 119.

The weakness of the permissive approach is enforcement. If courts merely say that the pre-action requirement is directory and move on, parties may rationally ignore it. A provision requiring sincere and genuine attempts to resolve disputes cannot be reduced to judicial advice. The permissive cases are therefore strongest when they reject automatic nullity, not when they deny meaningful procedural consequences.

3.3 The contextual proportionality approach

The contextual approach offers the most coherent middle ground. In *Bernadetha George Obuya v Yusuph Razac Ladha and Others*[53], The objection was raised after the plaintiff had closed her case and the defence hearing had commenced. The real issue was therefore not abstract compliance alone, but timing, prejudice and the propriety of using the pre-action requirement late in the proceedings. The court declined to strike out automatically and treated the existence of bona fide steps as a factual question. This is doctrinally persuasive because a preliminary objection should not depend on contested facts.[54]

In *Tai Five Hotel Ltd v Board of Trustees of Public Service Social Security Fund (PSSSF) and Another*[55]The court held that a 90-day notice to a public body could complement the pre-action requirement where it disclosed the dispute, informed the defendant of the material facts and invited engagement before the expiry of the notice period. The decision does not equate every government notice with bona fide steps. Its real contribution is a content-based test: a statutory notice may count if, in substance, it allows the recipient to investigate, respond, settle or narrow the dispute.[56]

The same factual sensitivity appears in *Kayen Investments Limited v Rena Callist Nyamwelo and Others*[57]. The court looked beyond the label placed on the plaintiff's conduct and considered whether the conduct, in context, was directed at avoiding litigation or narrowing the controversy. This matters because subsection (3) expressly provides that the listed steps are not exhaustive. A rigid checklist would contradict that statutory design and punish litigants for failing to use prescribed vocabulary.

[53] Land Case No. 12826 of 2024, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2706.
[54] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696.*
[55] Land Case No. 6952 of 2026, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2819.
[56] *Government Proceedings Act, Cap 5 R.E. 2023, s 6.*
[57]Land Case No. 12518 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 341.

In *Vigu Trading Company Limited v Imperium Opes Group Limited and Others*[58], the court treated the adequacy of negotiations and settlement efforts as a matter that may require evidence. The decision is significant for preliminary objections. A defendant may raise the pre-action requirement as a pure point of law where the plaint is completely silent and no factual dispute arises. But where the plaint or annexures disclose letters, meetings, administrative complaints, payment proposals or mediation invitations, the court may need evidence before deciding whether the steps were sincere and genuine.

This contextual school best fits the policy of ADR in Tanzania. Mashamba explains that court-annexed mediation was introduced to reduce delay and improve the quality of civil justice, [59] while Gonzi J has argued that the bona fide step standard is inherently dependent on the person's circumstances and the nature of the dispute.[60] The thematic lesson is therefore clear: the question is not whether a case belongs to a strict, permissive or contextual list. The question is what the plaintiff actually did, what the defendant knew, whether the omission caused prejudice, and what remedy will advance timely, proportionate and substantive justice.

4.0 Normative Issues Arising from the Tanzanian Cases

The conflicting High Court approaches reveal deeper normative questions about the role of civil procedure in Tanzania. The pre-action framework is not merely a technical rule requiring parties to communicate before litigation. It raises broader questions concerning access to justice, the limits of judicial power, procedural good faith, the relationship between pre-action obligations and court-annexed mediation, and the appropriate sanction for procedural default. The cases, therefore require analysis beyond their immediate outcomes, because each line of authority carries different consequences for litigants, advocates, courts, and the administration of civil justice.

This part identifies the principal normative issues emerging from the Tanzanian jurisprudence. These include whether the pre-action

[58]Land Case No. 6175 of 2026, High Court of Tanzania, Land Division, [2026] TZHC Land Division 347.
[59]J Clement Mashamba, '*Alternative Dispute Resolution (ADR) in Tanzania: Law and Practice*' (Mkuki na Nyota 2013) 47-51, 111-114.
[60]Abdallah H Gonzi, *Timely Justice: The Requirement to take Bona Fide Steps before Litigation under Section 13 of the Civil Procedure Code of Tanzania - its Relevance and Challenges*' (Legal Brief Online Lawyers' Forum, 12 April 2026) 34-38.

framework should be treated as jurisdictional or procedural, whether failure to plead bona fide steps should automatically defeat a suit, whether statutory notices and demand letters amount to sufficient compliance, and whether striking out is a proportionate response to non-compliance. It also considers the implications of the pre-action requirement for government proceedings, multi-party suits, applications, petitions, urgent matters, contractual ADR clauses, and subsequent court-annexed mediation. The central concern is whether the interpretation of the pre-action requirement should promote settlement without undermining the constitutional and procedural commitment to substantive justice.

4.1 Pleading and proof

The first normative issue is pleading. Because bona fide steps are facts within the plaintiff's knowledge, the plaint should ordinarily disclose what was done before filing. This may be by pleading a letter of claim, statutory notice, meeting, mediation invitation, exchange of documents, payment proposal, administrative engagement or reasons why no steps were taken.[61] Pleading should not, however, be equated with jurisdiction. A defective pleading may be amended unless the omission is incurable or abusive.[62]

The Rules Committee should therefore prescribe a short pleading requirement. A plaint, petition or originating application should contain a paragraph titled "Bona fide pre-action steps". The paragraph should either state the steps taken or explain why none were taken. This would convert the pre-action requirement from an uncertain objection into an orderly pleading discipline.

4.2 Demand letters and statutory notices

The second issue is whether a demand letter or government notice is enough. A demand letter is not automatically sufficient merely because it precedes litigation. Its sufficiency depends on the content. A letter that identifies the issues, invites response, offers discussion or proposes settlement may be a bona fide step. A letter that merely threatens litigation may not.[63] Likewise, a 90-day notice under the Government Proceedings Act may amount to a bona fide step if it communicates the

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[61] *Civil Procedure Code, Cap 33 R.E. 2023, Order VI.*
[62] *Ibid, Order VI rule 17.*
[63] Beka Trading (n 15).

dispute and invites meaningful engagement, but it should not automatically satisfy the pre-action requirement in every case.[64]

The proposed rule should therefore recognise statutory notices as possible, but not conclusive, evidence of compliance. Courts should examine whether the notice enabled the recipient to understand the claim and consider resolution. This approach respects both the Government Proceedings Act and the independent purpose of the pre-action requirement.

4.3 Applications, Petitions, and Special Proceedings

The third issue is scope. The pre-action requirement (4) states that the pre-action requirement applies to all proceedings intended to be initiated in court.[65] A literal reading includes plaints, petitions, originating summonses and applications. Yet some proceedings are urgent, ex parte, protective or statutory in nature. It would be artificial to require full negotiation before an injunction to preserve property, an ex parte order, a limitation-saving filing or a statutory application where the court order itself is the legally required step.

The better approach is to require a statement, not necessarily prior settlement engagement, in such proceedings. The applicant should state either what was done or why pre-action steps were not possible, proportionate or appropriate. That solution gives the pre-action requirement universal reach without sacrificing practical justice.

4.4 Multi-Party Disputes

The fourth issue is multi-party litigation. The bona fide step framework becomes more difficult to apply where a suit involves several defendants whose legal interests are not identical. The difficulty is not merely numerical. Some defendants may be alleged wrongdoers, some may be public authorities joined because effective relief cannot be granted without them, and others may be formal or necessary parties. In such circumstances, a plaintiff may have engaged one category of defendants but not another. Automatic striking out against all defendants may therefore be excessive where the omission does not prejudice every party and can be cured by case-management directions. Courts should instead ask whether the plaintiff took reasonable bona fide steps toward known

[64] *Government Proceedings Act, Cap 5 R.E. 2023, s 6*.
[65] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(4).*

adverse parties, whether later-joined or formal parties suffered prejudice, and whether a stay, amendment, mediation referral or directions would cure the omission.[66]

The decision in *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* demonstrates the point. The suit was brought by three plaintiffs against five defendants. The first and second defendants were alleged to have trespassed on the disputed land and erected structures, while the Commissioner for Lands, the Registrar of Titles and the Attorney General were joined as public defendants because the dispute also touched land administration. The plaintiffs argued that they had complied with the pre-action requirement because they had served a ninety-day statutory notice on the public defendants and had confronted the first and second defendants by objecting to the alleged invasion and construction activities.[67]

The court rejected that argument while holding that compliance with the pre-action requirement is mandatory and that the purpose of the pre-action requirement is to engage all parties to a suit through deliberate pre-litigation bona fide steps. The ninety-day notice was considered insufficient because it was issued to comply with government proceedings requirements and was not directed to the first and second defendants, who were alleged to have committed the trespass. The court also held that confronting alleged trespassers and objecting to construction activities did not, without more, amount to the kind of sincere and genuine pre-action engagement contemplated by the pre-action requirement. In doing so, the court preferred the strict line of authority and declined to follow the permissive approach in *Dew Drop Drinks Company Limited v Lemon Dove Company Limited*.[68]

The case is useful because it shows that a statutory notice to government defendants is not automatically equivalent to engagement with all parties to a multi-party dispute. Where private defendants are the factual source of the dispute, they should ordinarily be notified of the issues and invited to respond, negotiate, mediate or otherwise participate in settlement efforts. That conclusion is consistent with decisions such as *Beka Trading*

[66] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4).*
[67] *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* (Land Case No 000020518 of 2025) [2026] TZHCLandD 309 (HC Land Div, 22 April 2026) 1-4.
[68] Joseph Chilery Mayenje (n 69) 5-12; *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No 26624 of 2025) [2026] TZHC 752 (HC, 11 March 2026).

Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another and *Yassa General Supplies Limited v Temeke Municipal Council and Another*, which treat a ninety-day notice as insufficient where it is merely a procedural notice and not a genuine invitation to resolve the dispute.[69]

At the same time, the case exposes the risk of excessive sanctions. The matter was struck out in its entirety, although some steps had been taken against some parties, and the issue was raised by the court *suo motu*. This demonstrates the need for a proportionality rule in multi-party suits. The inquiry should not end with whether every defendant was engaged in exactly the same manner before filing. It should focus on whether the plaintiff acted reasonably in the circumstances, whether the omitted engagement concerned a known adverse party, whether the failure prevented meaningful settlement, and whether the omission can be cured without defeating substantive justice.[70]

A rule should therefore expressly provide that compliance in multi-party suits is assessed proportionately. The plaintiff should not be required to undertake impossible engagement with unknown, nominal, formal or later-joined parties. However, known adverse parties whose interests are directly affected should ordinarily be notified of the issues in dispute and given a reasonable opportunity to respond. Where engagement is incomplete but curable, the preferred response should be a stay, focused pre-action directions, amendment of pleadings, referral to mediation or costs orders. Striking out should be reserved for total non-compliance, deliberate evasion, bad faith, incurable prejudice or abuse of process.[71]

4.5 Court-annexed mediation after filing

The fifth issue is whether court-annexed mediation cures non-compliance. It cannot rewrite the chronology: mediation after filing is not a pre-action step. Yet it may mitigate prejudice and influence remedy. If the parties

[69] *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No 10631 of 2025) [2025] TZHC 7247 (HC, 26 November 2025); *Yassa General Supplies Limited v Temeke Municipal Council and Another* (Land Case No 25701 of 2026) [2026] TZHCLandD 166 (HC Land Div, 17 April 2026).
[70] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1); Constitution of the United Republic of Tanzania, 1977, art 107A(2)(d)-(*e); *Joseph Chilery Mayenje* (n 69) 12.
[71] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(3); Dew Drop Drinks Company Limited* (n 70).

have already engaged in court-annexed mediation, the court should consider whether striking out still serves any useful purpose.[72]
The proper question should be remedial, not metaphysical. A post-filing mediation should not automatically cure the defect, but it may justify costs, directions, amendment or dismissal of the preliminary objection rather than striking out.

5.0 Lessons from England and Australia

A lesson-drawing discussion is necessary because the interpretive difficulty created by the pre-action requirement is not unique to Tanzania. Other common-law jurisdictions have also attempted to encourage early settlement while preserving access to courts. England and Australia are particularly useful because both jurisdictions impose or encourage pre-action engagement, yet their systems generally avoid treating non-compliance as an automatic jurisdictional bar.[73]

England provides guidance through its pre-action protocols and the Practice Direction on Pre-Action Conduct and Protocols. The English model requires parties to exchange sufficient information, understand each other's position, consider ADR, narrow issues and reduce costs before proceedings are commenced.[74] However, the consequence of non-compliance is usually addressed through case management directions, stays, costs orders, interest consequences or other sanctions rather than automatic invalidation of proceedings. The decisions in *Halsey v Milton Keynes General NHS Trust*, *Dunnett v Railtrack plc*, *PGF II SA v OMFS Company 1 Ltd* and *Churchill v Merthyr Tydfil County Borough Council* show that English courts may strongly encourage ADR and penalise unreasonable conduct, but the remedy must remain proportionate and consistent with the right of access to a judicial hearing.[75]

Australia is even closer to the Tanzanian language because the Civil Dispute Resolution Act 2011 (Cth) uses the terminology of genuine steps.

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[72] *Civil Procedure Code, Cap 33 R.E. 2023, ss 71-74*; *Civil Procedure Code (Court Annexed Mediation and Arbitration) Rules, GN No 422 of 2021.*

[73] Lord Woolf, '*Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*' (HMSO 1996) ch 1; Practice Direction - Pre-Action Conduct and Protocols, paras 1-4; Civil Dispute Resolution Act 2011 (Cth), ss 3-4.

[74] Practice Direction - Pre-Action Conduct and Protocols, paras 3-4 and 6.

[75] Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576, [2004] 1 WLR 3002; Dunnett v Railtrack plc [2002] EWCA Civ 303, [2002] 1 WLR 2434; PGF II SA v OMFS Company 1 Ltd [2013] EWCA Civ 1288, [2014] 1 WLR 1386; Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416.

Under that Act, a person takes genuine steps if the steps constitute a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and circumstances of the dispute.[76] The Act requires applicants and respondents to file genuine-steps statements, imposes duties on lawyers, and permits courts to consider compliance when exercising powers and awarding costs.[77] Most importantly, it expressly provides that failure to file a genuine-steps statement does not invalidate the proceedings.[78]

The lesson for Tanzania is that it can enforce bona fide pre-action steps as a meaningful obligation without converting the pre-action requirement into an automatic procedural guillotine. England shows the value of detailed pre-action protocols and proportionate sanctions. Australia shows the value of a statutory statement model, recognised exceptions and an express non-invalidation rule. Together, they support a Tanzanian approach that requires pleading or explaining bona fide steps, gives defendants an opportunity to challenge compliance, and leaves the court with a graduated menu of remedies proportionate to the circumstances of each case.[79]

5.1 England and Wales: pre-action protocols, proportionality and sanctions

England and Wales provide a useful comparison because it has moved from broad encouragement of settlement to an integrated system of pre-action protocols and case management powers. The Practice Direction on Pre-Action Conduct and Protocols states that pre-action protocols explain the conduct and steps the court normally expects parties to take before proceedings.[80] Where no specific protocol applies, the general Practice Direction applies.[81]

The objectives of English pre-action conduct are concrete: parties should exchange sufficient information to understand each other's position, make

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[76] *Civil Dispute Resolution Act 2011 (Cth), ss 3 and 4(1A).*

[77] *Civil Dispute Resolution Act 2011 (Cth), ss 6, 7, 9, 11 and 12;* Federal Court Rules 2011 (Cth), r 8.02.

[78] *Civil Dispute Resolution Act 2011* (Cth), s 10(2); Attorney-General's Department (Cth*), Civil Dispute Resolution Act 2011*; *Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys* [2012] FCA 282; *Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys* (No 2) [2012] FCA 977.

79Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 6-12; Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175.

[80]*Practice Direction - Pre-Action Conduct and Protocols, para 1.*

[81]*Practice Direction - Pre-Action Conduct and Protocols, para 2.*

decisions on how to proceed, try to settle without proceedings, consider ADR, support efficient case management and reduce costs.[82] These objectives closely resemble the policy behind Tanzania's pre-action framework, but England expresses them through detailed practice rules rather than leaving courts to infer consequences from general language.
Proportionality is central. The Practice Direction states that a pre-action protocol must not be used as a tactical device to secure unfair advantage and that only reasonable and proportionate steps should be taken to identify, narrow and resolve issues.[83] This is a critical lesson for Tanzania. A pre-action regime should prevent premature litigation, but it should not become a tactical trap.

English practice identifies ordinary steps before issue: the claimant should write a concise claim letter, the defendant should respond within a reasonable time, and key documents relevant to the dispute should be disclosed.[84] Litigation is described as a last resort, and parties are expected to consider negotiation or another form of ADR.[85]

The remedial model is equally important. If proceedings are issued, the court considers non-compliance when giving directions and making costs orders. The court considers whether parties complied in substance and is not likely to be concerned with minor or technical infringements, especially where the matter is urgent.[86] Available consequences include relieving parties from compliance, staying proceedings while steps are taken, and applying sanctions.[87]

Sanctions in England are graduated. The court may order costs, indemnity costs, interest deprivation or enhanced interest.[88] The notable point is that non-compliance does not automatically invalidate the proceedings. It triggers case management and costs consequences.

English case law on ADR confirms the same proportionality. In Halsey, the Court of Appeal accepted that an unreasonable refusal to mediate may justify costs sanctions, but it resisted the proposition that parties should be

[82] *Practice Direction - Pre-Action Conduct and Protocols, para 3.*
[83] *Ibid, para 4.*
[84] *Ibid, para 6.*
[85] *Ibid, paras 8-10.*
[86] *Ibid, paras 13-14.*
[87] *Ibid, para 15.*
[88] *Idid, para 16.*

deprived of access to court merely because mediation was suggested.[89] In Dunnett, an otherwise successful party was penalised in costs for unreasonably refusing ADR.[90] In PGF II, silence in the face of an invitation to mediate was treated as unreasonable conduct capable of incurring costs and consequences.[91]

The position has developed further. In Churchill, the Court of Appeal held that a court may stay proceedings or order parties to engage in a non-court-based dispute resolution process, provided the order does not impair the essence of the right to a fair trial and is proportionate to achieving a legitimate aim.[92] Churchill is especially relevant to Tanzania because it shows that robust ADR encouragement can coexist with access to court if the remedy is tailored, proportionate and rights-sensitive.

5.2 Australia: genuine steps, statements and explicit non-invalidation

Australia is even closer to Tanzania because the Civil Dispute Resolution Act 2011 (Cth) uses the language of "genuine steps". The Act's object is to ensure, as far as possible, that people take genuine steps to resolve disputes before certain civil proceedings are instituted.[93] A person takes genuine steps if the steps constitute a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and circumstances of the dispute.[94]

The Australian examples are materially similar to Tanzania's pre-action framework: notification of issues, appropriate response, provision of relevant information and documents, consideration of ADR, agreement on a facilitator, attending the process, considering another process, and attempting negotiation.[95] The list is also non-exhaustive.[96]

The difference lies in procedural detail. An applicant instituting civil proceedings in an eligible court must file a genuine steps statement at the time of filing.[97] The statement must specify the steps taken or the reasons

89 *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 1 WLR 3002.
90 *Dunnett v Railtrack plc* [2002] EWCA Civ 303, [2002] 1 WLR 2434.
91 *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288, [2014] 1 WLR 1386.
92 *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416.
93 *Civil Dispute Resolution Act 2011 (Cth), s 3.*
94 *Ibid (Cth), s 4(1A).*
95 *Ibid,s 4(1). Compare Civil Procedure Code, Cap 33 R.E. 2023, s 13(2).*
96 *Ibid, s 4(2).*
97 *Ibid, (Cth), s 6(1).*

why no steps were taken, including urgency or safety and security concerns.[98] A respondent served with the applicant's statement must file a statement indicating agreement or specifying disagreement and reasons.[99] The Australian Act also imposes a professional duty on lawyers to advise and assist clients to comply.[100] The Federal Court forms reflect this machinery by providing an Applicant's Genuine Steps Statement under rule 8.02.[101]

Most importantly for Tanzania, Australia expressly rejects automatic invalidation. Section 10(2) states that failure to file a genuine steps statement does not invalidate the application, response or proceedings.[102] Instead, the court may take into account whether a required statement was filed and whether genuine steps were taken when exercising its powers or awarding costs.[103]

The Australian Attorney-General's Department describes the Act as deliberately flexible and notes that what constitutes a genuine step depends on the context of the particular dispute.[104] It also states that non-compliance may have consequences, such as cost implications, and refers to Superior IP as an example of judicial willingness to impose consequences.[105]

Australian civil procedure also reinforces proportionality through case management. In Aon Risk Services, the High Court emphasised that litigation is not only a private contest between parties; delay and inefficient conduct affect other litigants and the public administration of justice.[106] That principle supports sanctions for irresponsible pre-action conduct without converting every defect into a jurisdictional bar.[107]

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98 *Civil Dispute Resolution Act 2011 (Cth), s 6(2).*
99 *Ibid, Cth), s 7.*
100 *Ibid, 2011 (Cth), s 9.*
101 *Federal Court of Australia, Forms under the Federal Court Rules 2011, Form 16 Applicant's Genuine Steps Statement, r 8.02.*
102 *Civil Dispute Resolution Act 2011 (Cth), s 10(2).*
103 *Civil Dispute Resolution Act 2011 (Cth), ss 11-12.*
104 *Attorney-General's Department (Cth), Civil Dispute Resolution Act 2011.*
105 Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys *[2012] FCA 282; Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys (No 2) [2012] FCA 977.*
106 *Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175.*
107 *Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175.*

5.3 Lessons for Tanzania

England and Australia point in the same direction. Pre-action obligations are meaningful, but their breach is normally managed through procedural directions, stays, costs, interest or professional responsibility, not automatic nullity. England supplies detailed protocols and proportional sanctions. Australia supplies a statutory statement model and an express non-invalidation rule. Tanzania currently has the obligation but not the machinery.[108]

The lesson is therefore not that Tanzania should copy either system wholesale. Tanzania should adopt a tailored model: a mandatory statement of bona fide steps, flexible examples of compliance, clear exceptions, a respondent's right to challenge or explain, and graduated sanctions. This model would respect the Tanzanian text while avoiding the unfairness of a jurisdictional guillotine.[109]

6.0 Proposed Framework for Tanzanian Courts Pending Reform

Pending appellate or legislative clarification, courts should apply a five-stage proportionality test. This is a proposed test, not a statement of binding current law.[110]

First, the court should identify whether the proceeding falls within the pre-action requirement. The starting point is that it does because subsection (4) applies to all proceedings intended to be initiated in court.[111] But the court should consider whether the nature of the proceeding makes pre-action engagement impossible, unsafe, futile or inappropriate, such as urgent injunctions, preservation orders, ex parte proceedings, limitation emergencies, fraud, violence, statutory sales or statutory applications where court intervention is the mechanism prescribed by law.[112]

Secondly, the court should ask whether the initiating document pleaded or disclosed bona fide steps or reasons for non-engagement. Silence should

[108]Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; *Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*
[109]*Civil Procedure Code, Cap 33 R.E. 2023, ss 3A-3B and 13.*
[110]*Ibid, s 13(1) and (4).*
[111]*Ibid, s 13(4).*
[112]*Civil Dispute Resolution Act 2011 (Cth), s 6(2)(b),* recognising reasons for not taking steps, including urgency and safety or security concerns.

normally be corrected by amendment, particulars or affidavit evidence unless the facts show total disregard or abuse.[113]

Thirdly, the court should assess substance rather than labels. The question is not whether the plaintiff used the words "the pre-action requirement". It is whether the plaintiff's conduct showed a sincere and genuine attempt to resolve, narrow, clarify or evaluate the dispute. [114] Relevant conduct includes demand letters, statutory notices, responses, meetings, exchange of documents, payment proposals, mediation invitations, administrative complaints and prior negotiations.[115]

Fourthly, the court should assess timing and prejudice. A defendant who raises the pre-action requirement promptly is in a stronger position than one who waits until after pleadings, mediation or trial. The court should ask whether the omission caused prejudice and whether the prejudice can be cured by stay, directions or costs.[116]

Fifthly, the court should select a proportionate remedy. The menu should include dismissal of the objection, amendment, particulars, stay for pre-action engagement, referral to mediation, costs, denial of costs, interest consequences, adverse case management directions or, in exceptional cases, striking out.[117] Striking out should be reserved for total non-compliance, deliberate evasion, abuse of process, incurable prejudice or a special statutory framework that expressly requires prior exhaustion.[118]

7.0 Recommendations for Legislative or Rules Committee Reform

Parliament or the Rules Committee should adopt pre-action protocol rules under the Civil Procedure Code. The rules should not merely repeat the pre-action requirement. They should operationalise it.

First, every plaint, petition, originating summons or originating application should contain a short statement of bona fide pre-action steps. The statement should identify the steps taken, dates of engagement where

[113] *Civil Procedure Code, Cap 33 R.E. 2023, Order VI rr 17-18.*
[114] *Ibid, s 13(1)-(3).*
[115] *Ibid, s 13(2)-(3).*
[116] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696; *New Era Stores v Ocean Trading Co* [1950] KLR 53.
[117] *Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*
[118] *Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*

available, parties engaged, documents exchanged and outcome. Where no steps were taken, the statement should give reasons.

Secondly, the rules should recognise standard forms of compliance: a letter of claim, response to a letter of claim, statutory notice that invites engagement, meeting, negotiation, mediation invitation, conciliation attempt, administrative complaint, document exchange, payment proposal, issue-narrowing correspondence or any other sincere and genuine attempt appropriate to the dispute.

Thirdly, the rules should create clear exceptions. They should include urgency, injunctions, preservation of property, limitation, safety or security concerns, domestic or commercial power imbalance, fraud, risk of asset dissipation, public interest, futility, statutory schemes requiring immediate court action, ex parte proceedings and circumstances where engagement would be oppressive or disproportionate.

Fourthly, the rules should provide a respondent's mechanism. The defendant or respondent should plead whether the statement of bona fide steps is admitted, disputed or insufficient, and should state reasons. This would avoid surprise preliminary objections and enable early judicial case management.

Fifthly, the rules should prescribe graduated sanctions. The default response to non-compliance should be directions, amendment, stay or costs. Striking out should be discretionary and exceptional. Where a lawyer failed to advise a client on the requirement, the court should have power to make costs orders against the lawyer personally in an appropriate case.

Sixthly, the rules should clarify the relationship between the pre-action requirement and government notices. A 90-day notice should qualify as a bona fide step only where, in substance, it identifies the dispute and allows the public authority to consider settlement or response. A bare notice that only threatens suit should not automatically satisfy the pre-action requirement.

Seventhly, the rules should clarify multi-party suits. Compliance should be assessed against known adverse parties. Failure to engage an unknown, later-joined or nominal party should not automatically defeat the whole suit. The court should have power to direct post-filing engagement with any party who was not reasonably engaged before filing.

Eighthly, the rules should clarify applications and petitions. The applicant should file a statement of steps or reasons for non-engagement. In urgent or ex parte matters, the statement may be brief and may be supplemented after the urgent relief is heard. This preserves both the pre-action requirement and the effectiveness of urgent remedies.

Ninthly, the rules should clarify the interaction with court-annexed mediation. Post-filing mediation should not automatically cure pre-action non-compliance, but successful or good-faith participation may mitigate sanctions. Conversely, a party that ignores pre-action engagement and then obstructs court-annexed mediation should face costs or case management consequences.

Tenthly, the rules should address limitations. Where parties agree to engage in pre-action settlement discussions, the rules should encourage written standstill agreements or provide a mechanism for filing protective proceedings and staying them while compliance occurs. England's Practice Direction expressly recognises that pre-action rules do not alter limitation and permits a stay where proceedings are issued to preserve time.

8.0 Counterarguments and Response

A strict view may argue that without striking out, parties will ignore the pre-action requirement. The answer is that meaningful sanctions need not be jurisdictional. Stays, costs, denial of costs, adverse interest and professional costs orders can be effective without destroying meritorious claims.

A permissive view may argue that any pre-action obligation burdens access to court. The answer is that access to justice includes timely, affordable and proportionate dispute resolution. [119] Properly designed pre-action steps do not deny access to court; they make litigation more informed and less wasteful.[120]

[119] Lord Woolf, '*Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales'* (HMSO 1996) ch 1.
[120] Hazel Genn, *Judging Civil Justice* (Cambridge University Press 2010) chs 1-3.

A practical objection is that pre-action protocols may be abused by powerful defendants to delay weaker claimants. This risk is real. It is why the Tanzanian model should include exceptions for urgency, power imbalance, safety, limitation, public interest and futility, and why courts should prevent pre-action rules from becoming tactical weapons.[121]

9.0 Conclusion

The High Court decisions on the pre-action requirement reveal a genuine judicial crossroads. One route gives the framework teeth but risks technical injustice. Another protects access to court but risks making the framework meaningless. The better route is contextual proportionality. The pre-action framework should be treated as a real pre-action obligation of procedural good faith, but non-compliance should not automatically deprive the court of jurisdiction unless Parliament clearly says so or the facts show total disregard, deliberate evasion, abuse of process or incurable prejudice.

The proposed five-stage test is an analytical model for courts pending reform. It is not currently a binding law. Until the Court of Appeal or the Rules Committee settles the matter, the High Court should enforce the pre-action requirement through substance, timing, prejudice, and proportionate remedies. Legislative or rules-based reform should then provide the machinery Tanzania currently lacks: mandatory pleading or statement of bona fide steps, recognised forms of compliance, clear exceptions, a respondent mechanism, and graduated sanctions.

The lessons from England and Australia confirm that this is the principled path. England enforces pre-action conduct through protocols, proportionality, stays, and costs. Australia enforces genuine steps through statements and costs, while expressly rejecting invalidation of proceedings for failure to file the statement. Tanzania should adopt the same underlying lesson: responsible litigation should be encouraged and enforced, but access to justice should not be sacrificed to avoidable procedural absolutism.

[121] *Practice Direction - Pre-Action Conduct and Protocols, para 4.*

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