



East African Journal of Law and Ethics

eajle.eanso.org

Volume 8, Issue 1, 2025

Print ISSN: 2707-532X | Online ISSN: 2707-5338

Title DOI: <https://doi.org/10.37284/2707-5338>



EAST AFRICAN
NATURE &
SCIENCE
ORGANIZATION

Original Article

Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective

Joseph Bornventure^{1*}

¹ Ruaha Catholic University, P. O. Box 774, Iringa, Tanzania.

* Author's Email: born2venture20@gmail.com

Article DOI: <https://doi.org/10.37284/eajle.8.1.3443>

Date Published: **ABSTRACT**

06 August 2025

Keywords:

Access to Justice,
Fair Trial,
Legal Representation,
Hybrid Legal System,
Inquisitorial System,
Pre-Trial Detention,
Cross-Examination,
Legal Aid,
Judicial Oversight,
Evidence Rules,
Alternative Dispute
Resolution.

The adversarial system underpins Tanzania's legal framework, particularly in criminal trials as established under Section 209 (2), 66 (a)(ii), 198 of The Criminal Procedure Act¹. While designed to ensure fairness through party-driven litigation, it often fails to uphold human rights, especially for indigent and uneducated defendants. This study employs a mixed methodological approach, integrating doctrinal legal research with comparative legal analysis, grounded in Cappelletti and Garth's access to justice theoretical framework. This article critically evaluates the adversarial system's impact on the right to a fair trial, access to justice, and protection against self-incrimination in the Tanzania Mainland. Drawing on Tanzanian statutes, case law, and international human rights standards, through systematic examination of primary legal sources and comparative analysis with Germany's inquisitorial system, it identifies challenges such as limited legal representation, judicial delays, and aggressive cross-examination. Proposing a hybrid system integrating adversarial and inquisitorial elements, the article advocates for reforms to enhance judicial oversight, expand legal aid, and relaxed-evidence rules. A comparative analysis with Germany's hybrid model strengthens the case for reform, ensuring Tanzania's justice system aligns with human rights principles and promotes equitable access to justice.

APA CITATION

Bornventure, J. (2025). Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective. *East African Journal of Law and Ethics*, 8(1), 250-265. <https://doi.org/10.37284/eajle.8.1.3443>

CHICAGO CITATION

Bornventure, Joseph. 2025. "Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective." *East African Journal of Law and Ethics* 8 (1), 250-265. <https://doi.org/10.37284/eajle.8.1.3443>.

HARVARD CITATION

Bornventure, J. (2025) "Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective" *East African Journal of Law and Ethics*, 8(1), pp. 250-265. doi: 10.37284/eajle.8.1.3443.

IEEE CITATION

J., Bornventure "Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective", *EAJLE*, vol. 8, no. 1, pp. 250-265, Aug. 2025.

¹ Criminal Procedure Act [Cap 20, R.E. 2023]

MLA CITATION

Bornventure, Joseph. "Evaluating the Adversarial System in Tanzania Mainland: A Human Rights and Access to Justice Perspective." *East African Journal of Law and Ethics*, Vol. 8, no. 1, Aug. 2025, pp. 250-265, doi:10.37284/eajle.8.1.3443.

INTRODUCTION

There are two types of legal traditions which dominate the nature of investigation and adjudication around the globe, adversarial and inquisitorial legal systems. Common law countries use an adversarial system to determine facts in the adjudication process². The inquisitorial process can be described as an official inquiry to ascertain the truth. The process grants more power to the judge who oversees the process. It is characterised by extensive pre-trial investigation and interrogations to avoid bringing an innocent person to trial.

The adversarial system sets opposing prosecution and defence in criminal cases against each other before an impartial judge who acts as a neutral arbiter. The adversarial system assumes that the best way to get to the truth of a matter is through a competitive process to determine the facts and application of the law accurately. In Tanzania Mainland, this system, rooted in British colonial legal traditions, governs criminal trials under statutes like the Criminal Procedure Act³ and Evidence Act⁴.

While theoretically promoting fairness through competitive advocacy, the system faces significant challenges in practice, particularly in safeguarding human rights such as the right to a fair trial, access to justice, and protection against self-incrimination⁵. These challenges are worse in developing countries like Tanzania, where socioeconomic inequalities, limited legal aid, and low legal awareness hinder equitable justice delivery.

This article evaluates the adversarial system in Tanzania from an access to justice perspective, a theoretical framework that emphasises equal

opportunity to engage with legal processes. It examines how the system's procedural framework impacts human rights in criminal trials⁶, identifies key challenges, and proposes a hybrid system after comparing it to an inquisitorial judicial system of Germany, which combines adversarial and inquisitorial elements. A comparative analysis with Germany's hybrid model informs the recommendations, which aim to enhance fairness, efficiency, and human rights compliance in Tanzania's justice system.

METHODOLOGY

This study adopts a mixed methodological approach, integrating doctrinal legal research and comparative legal analysis within the access to justice framework (Cappelletti & Garth, 1978).

IMPLEMENTATION AND BALANCE OF METHODS

Doctrinal Legal Research Implementation

The doctrinal component systematically examines primary legal sources, including Tanzanian statutes (Criminal Procedure Act, Evidence Act, Legal Aid Act), case law from the High Court and Court of Appeal of Tanzania, constitutional provisions (Articles 13, 15, 107A), and international human rights instruments (ICCPR, African Charter on Human and Peoples' Rights, ECHR). This method analyses the legal framework governing Tanzania's adversarial system and identifies gaps between legal provisions and human rights standards.

Comparative Legal Analysis Implementation

The comparative component contrasts Tanzania's adversarial framework with Germany's inquisitorial system, examining statutory

² <https://www.thecitizen.co.tz/tanzania/oped/access-to-justice-in-tanzania-it-is-high-time-the-legal-system-was-decolonised->

³ Ibid

⁴ The evidence Act [CAP. 6 R.E. 2023]

⁵ <https://generisonline.com/a-comprehensive-overview-of-the-legal-system-in-tanzania>

⁶ Rukia Jaha, Civil Adversarial, <https://www.academia.edu>

provisions (German Code of Criminal Procedure), constitutional safeguards (Basic Law Articles 103, 6), and relevant European Court of Human Rights jurisprudence. Germany was selected as the comparator due to its healthy judicial oversight mechanisms,⁷ comprehensive legal aid system, and established human rights protections that directly address Tanzania's identified shortcomings⁸.

METHOD INTEGRATION AND BALANCE

The Two Methods Were Balanced through a Three-stage Analytical Process:

Foundation Stage: Doctrinal research established Tanzania's legal framework, identified human rights violations, and documented systemic challenges through case analysis and statutory interpretation.

Comparative Stage: Comparative analysis examined Germany's inquisitorial mechanisms, highlighting protective features absent in Tanzania's system, supported by German case law and statutory provisions.

Synthesis Stage: Both methods converged to formulate hybrid reform recommendations, where doctrinal insights informed feasibility within Tanzania's common law tradition, while comparative findings provided substantive reform content.

DATA SOURCES AND SELECTION CRITERIA

Primary Sources

Tanzanian statutes and case law (2005-2024), German legal codes and constitutional provisions

International human rights instruments and jurisprudence

Secondary Sources

Legal and Human Rights Centre (LHRC) reports (2022-2023, Academic literature on criminal procedure and human rights, Empirical data from World Justice Project (2024) and German Bar Association (2022)

GERMANY SELECTION CRITERIA:

Germany was selected as the primary comparator based on:

- Its well-developed inquisitorial system with active judicial oversight
- Comprehensive legal aid coverage (90% in serious cases) contrasting with Tanzania's 10%
- Fairly pre-trial detention safeguards addressing Tanzania's pre-trial detention rate
- Established human rights jurisprudence under the ECHR framework
- Successful integration of efficiency with rights protection, offering practical lessons for Tanzania's reform.⁹

Legal research was conducted using statutory databases and online sources for academic literature, alongside court records. Materials were systematically documented and analysed through manual categorisation of human rights violations and comparative patterns. This methodology ensures a rigorous, contextually relevant analysis, drawing on Germany's best practices to inform feasible reforms while maintaining grounding in Tanzania's legal tradition and constitutional framework.

⁷ Developments in German Criminal Law: The Urgent Issues Regarding Prolonged Pre-Trial Detention in Germany
Published Mar 1, 2021 · Sina Jung, Carolin Petrick, Eva-Maria Schiller

⁸ A Comparative Study of Judicial Review in Common Law and Civil Law Jurisdictions

⁹ Issa Maige, What can the Tanzania Judicial System learn from Germany? Published Jan 1, 2019 ·

LITERATURE REVIEW

Tanzania's Adversarial System: Procedural Framework and Challenges

Chipeta, in his book *A Handbook for Public Prosecutors*, discusses prosecutorial conduct in Tanzania's adversarial system. He is relevant to this study as he details how courtroom procedure depends heavily on contestation between parties, often disadvantaging unrepresented or indigent accused persons. However, he does not critically assess how these practices affect broader human rights outcomes, which this study aims to explore.¹⁰

Twaib, in his book *Legal Profession in Tanzania: The Law and Practice*, examines the legal profession and access to justice in an adversarial legal framework. He is relevant to this research because he underscores how legal representation significantly shapes trial outcomes in Tanzania. Nonetheless, he does not extend his analysis to the systemic human rights implications of unequal legal aid access, an area this study seeks to investigate.

Mirindo, in the book *Administration of Justice in Mainland Tanzania*, outlines how adversarial principles manifest in Tanzanian court procedures, particularly in criminal trials. It is relevant to this study for its detailed explanation of institutional structures and legal delays in the current system. However, it does not evaluate the human rights impact of delayed justice and passive judicial roles, which this research addresses in depth.¹¹

Comparative Criminal Justice Systems: Adversarial vs. Inquisitorial Models

Langbein in *The Origins of Adversary Criminal Trial* contrasts adversarial and inquisitorial models, highlighting Germany's judicially active approach to truth-finding. He is relevant to this

study as he explains how inquisitorial principles can protect defendants in systems where legal representation is weak, similar to the Tanzanian context. However, the book does not apply these comparisons directly to African or Tanzanian legal systems, which this study attempts to contextualise.¹²

Vogler in *A World View of Criminal Justice* provides a global analysis of justice systems, emphasising the efficiency and fairness of inquisitorial processes. He is relevant to the study for offering a detailed model that prioritises early evidence gathering and active judicial oversight. Yet, he does not assess how such a model could be localised to common law systems like Tanzania's, which this paper aims to propose.¹³

International Perspectives on Criminal Procedure and Human Rights Protection

Weigend and Turner in *The Criminal Process: An International Literature Review* offer comparative insights into criminal procedure, with a strong emphasis on Germany's inquisitorial safeguards. Their work is relevant for demonstrating how procedural justice is achieved through neutral prosecutors and proactive judicial inquiry. However, they do not examine adversarial systems like Tanzania's in detail, which this study integrates for a more balanced comparative critique.¹⁴

Research Gap and Study Contribution

The reviewed literature reveals a significant gap in the comprehensive analysis of how Tanzania's adversarial system impacts human rights, particularly for marginalised defendants. While existing scholarship addresses individual components of prosecutorial conduct (Chipeta), legal representation (Twaib), and institutional structures (Mirindo)—none provides a holistic

¹⁰ Chipeta BD, *A Handbook for Public Prosecutors* (Mkuki na Nyota 2009)

¹¹ Mirindo F, *Administration of Justice in Mainland Tanzania* (Law Africa Publishing 2010).

¹² Langbein JH, *The Origins of Adversary Criminal Trial* (Oxford University Press 2003).

¹³ Vogler R, *A World View of Criminal Justice* (Ashgate Publishing 2005).

¹⁴ Weigend T, *The Criminal Process: An International Literature Review* (KLI 2016)

human rights evaluation through the access to justice framework.

Similarly, comparative literature (Langbein, Vogler, Weigend & Turner) offers valuable insights into inquisitorial alternatives but lacks specific application to Tanzania's legal context and reform needs. This study bridges these gaps by systematically evaluating Tanzania's adversarial system through a human rights lens and proposing contextually relevant hybrid reforms informed by Germany's inquisitorial strengths.

Adversarial System in Tanzania

The adversarial system in Tanzania traces its origins to British colonial rule, formalised by the Tanganyika Order in Council 1920, which introduced English common law principles. Precolonial Tanzania relied on customary and Islamic legal traditions, which were more inquisitorial, with community leaders or religious authorities actively investigating disputes.

The colonial shift to adversarial emphasises party-led trials, cross-examination, and strict evidence rules, later codified in statutes like the Criminal Procedure Act, Evidence Act, and Judicature and Application of Laws Act. The Constitution of the United Republic of Tanzania reinforces this framework, guaranteeing fair trials as stipulated under Article 13¹⁵ and judicial independence, under Article 107(A)¹⁶.

In criminal trials, the prosecution, led by the Director of Public Prosecutions, bears the burden of proving guilt beyond a reasonable doubt as provided under Section 117¹⁷, while the defence challenges the prosecution's evidence. The judge ensures procedural fairness without actively investigating facts. This system assumes equality of arms, robust legal representation, and adherence to strict evidence rules, but its application in Tanzania raises human rights concerns, particularly for marginalised groups.

Key Features of the Adversarial System in Tanzania

The adversarial system's core features shape Tanzania's criminal justice process, with varying impacts on human rights:

Presumption of Innocence

The presumption of innocence, enshrined under Article 13(6)(b) of the Constitution of the United Republic of Tanzania, is a fundamental safeguard within the criminal justice system. This principle not only protects individuals from arbitrary or unjust conviction but also affirms the core value of fairness in criminal proceedings. It places the burden of proof squarely on the prosecution, ensuring that no person is punished without the state establishing guilt beyond a reasonable doubt. This aligns with international human rights standards, particularly Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)¹⁸ and Article 7(1)(b) of the African Charter on Human and Peoples' Rights, both of which Tanzania is a party to.

However, in practice, the right to be presumed innocent is routinely undermined, especially through the widespread use of prolonged pre-trial detention. Many individuals in Tanzania are detained for extended periods without trial, media portrayals, police press briefings, and public perception often contribute to the stigmatisation of an accused person, creating a climate where individuals are presumed guilty based on allegations alone.

In such instances, the very notion of innocence becomes symbolic rather than practical, as detainees are subjected to punitive conditions without having been found guilty of any crime. This situation not only violates constitutional rights but also contradicts the principles of natural justice and procedural fairness, with devastating consequences for justice and human dignity.

¹⁵ The Constitution of the United Republic of Tanzania, 1977

¹⁶ Ibid

¹⁷ The evidence Act [CAP. 6 R.E. 2023]

¹⁸ International Covenant on Civil and Political Rights

Burden and Standard of Proof

The prosecution must prove guilt beyond a reasonable doubt (Evidence Act s 117(1), relieving the accused of proving innocence. This high standard safeguards defendants but places significant pressure on under-resourced prosecution teams, leading to delays. On the other hand, laws, particularly those addressing economic crimes, shift the burden of proof onto the defendant, directly violating the presumption of innocence. For example, under the Economic and Organised Crime Control Act¹⁹, defendants accused of illicit wealth accumulation must prove the lawful origin of their assets. This reversal of the burden contravenes ICCPR Article 14(2) and African Charter Article 7(1)(b), as it compels defendants to disprove guilt, undermining the prosecution's obligation to prove guilt beyond a reasonable doubt.

Party-Controlled Proceedings

Parties drive the trial by presenting evidence and arguments as provided under the Criminal Procedure Act 207(2)²⁰. The judge's passive role ensures impartiality but limits intervention in cases of inadequate representation. In Tanzania's adversarial system, party-controlled proceedings are a cornerstone of criminal trials, designed to ensure fairness through competitive advocacy. The criminal procedure law mandates that the prosecution and defence drive the trial by presenting evidence, examining witnesses, and making legal arguments. This framework aligns with the adversarial principle of equality of arms, where both parties have equal opportunities to shape the case's outcome, as reinforced by Article 13(6)(a) of the Constitution of the United Republic of Tanzania 1977.

In practice, the reliance on party-controlled proceedings in Tanzania's adversarial system often undermines fair trial rights, particularly for

indigent and uneducated defendants, due to systemic inequalities and limited judicial intervention. These violations contravene both domestic and international human rights standards. Party-controlled proceedings assume that both parties have competent legal representation to present evidence and arguments effectively. However, Tanzania's Legal Aid Act²¹ is underfunded, with the Legal and Human Rights Centre (LHRC) (2023) reporting that only 10% of indigent defendants in urban areas access legal aid, and even fewer in rural regions.

Legal Representation

The Legal Aid Act of Tanzania aims to ensure accessible and quality legal assistance for indigent defendants while maintaining standards and accountability among legal aid providers. Therefore, to guarantee the right to legal representation in criminal cases. Also provided under Article 13(6)²² of The Constitution of the United Republic of Tanzania and Article also provided under Article 14(3)(d) of the International Covenant on Civil and Political Rights²³ as also under Article 7(1)(c) of the African Charter, which ensures the right to defence, including access to a lawyer. Moreover, in the case of *Avocats Sans Frontières v. Burundi*²⁴ the Court ruled that inadequate legal aid violates this provision. Therefore, limited access to legal aid often leaves indigent defendants unrepresented, violating the right to a fair trial.

Cross-Examination

Parties test witness credibility through cross-examination, a cornerstone of adversarial trials. While effective for truth-finding, aggressive questioning can intimidate vulnerable witnesses, such as victims of sexual offences. These features, while designed to promote fairness, reveal practical shortcomings in Tanzania's context,

¹⁹ Economic and Organized Crime Control Act [Cap 200, R.E. 2023]

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

²¹ Legal Aid Act [Cap 21.R.E. 2017]

²² The Constitution of the United Republic of Tanzania, 1977

²³ International Covenant on Civil and Political Rights, 1966

²⁴ *Avocats Sans Frontières v. Burundi* (2015)

particularly for indigent and uneducated defendants.

Role of the Judge

In Tanzania's adversarial system, judges act as neutral referees, ruling on procedural and evidence matters without actively investigating facts, as mandated by Article 107A of the Constitution, which ensures judicial independence. This passive role is designed to maintain impartiality, allowing parties to control the trial's direction, per Section 207(2) of the Criminal Procedure Act²⁵. The judge's neutrality aligns with ICCPR Article 14(1)²⁶, which requires an independent and impartial tribunal, and African Charter Article 26, which guarantees judicial independence.

The judge's passivity is intended to prevent bias and uphold the adversarial principle of party-driven litigation, where the prosecution and defence bear the responsibility for presenting evidence and arguments. This framework theoretically safeguards fair trial rights by limiting judicial overreach and ensuring that verdicts are based solely on party-presented evidence, as seen in *R v. Mussa Mwaikunda*²⁷, where the judge's neutral stance led to an acquittal based on the prosecution's evidentiary failure. The judge's passive role, while promoting impartiality, often disadvantages defendants lacking skilled counsel, leading to human rights violations in Tanzania's adversarial system.

The Inquisitorial Judicial System of Germany

The German legal system is a civil law mostly based on an extensive collection of statutes, as compared to the common law systems. In criminal and administrative law, Germany uses an inquisitorial system where the judges are actively involved in investigating the facts of the case. In contrast to the adversarial system used by common law countries, the German system of

criminal and administrative procedure, rather than allowing cross-examination between the defence and prosecutors, the judges conduct the majority of the trial. During a trial, the parties are expected to give all their evidence to the judges, who will then call forward and question the witnesses, after which the defence counsel and prosecutor may question the witnesses.

Germany, as a civil law jurisdiction, adopts an inquisitorial approach to criminal justice. Its criminal procedure is primarily governed by the Code of Criminal Procedure²⁸, which ensures that investigations and trials are conducted fairly, efficiently, and with due respect to the rights of the accused. Unlike the adversarial systems seen in Tanzania, Germany's inquisitorial system involves a more active role of the judiciary throughout the criminal process.

The criminal process in Germany begins with a preliminary investigation conducted under the supervision of the public prosecutor. Once a prosecuting authority becomes aware of a potential criminal offence, it is duty-bound to investigate both incriminating and discharging circumstances. This obligation is a core measure of the presumption of innocence, a fundamental principle revered in Article 6(2)²⁹ of the ECHR and Article 103(1)³⁰ of the Basic Law of Germany.

For example, in cases of theft or assault, the police, acting under the direction of the prosecutor, must pursue all leads, including those that might demonstrate the suspect's innocence. Unlike in adversarial systems, where defence attorneys might bear the burden of revealing exculpatory evidence, in Germany, this duty lies with the state. This stage ensures that no individual is arbitrarily subjected to criminal charges without a factual basis. The state's duty to investigate impartially exemplifies equality before the law, reflecting Article 3 of the Basic

²⁵ Criminal Procedure Act [Cap 20, R.E. 2022]

²⁶ International Covenant on Civil and Political Rights, 1981

²⁷ *Republic v. Mussa Mwaikunda* [2005] TLR 387

²⁸ Basic Law for the Federal Republic of Germany (Grundgesetz, GG)

²⁹ European Convention on Human Rights

³⁰ *Ibid*

Law, which guarantees equal treatment and non-discrimination.

Intermediary Proceedings, Judicial Oversight and Fair Process

Following the investigation, if the prosecutor believes there is sufficient evidence, the case enters the intermediary phase. At this stage, a judge (not involved in the trial phase) assesses the sufficiency of the evidence and decides whether to open the main proceedings. The judge reviews whether the evidence meets the threshold of “sufficient suspicion.” This intermediary control mechanism prevents weak or uncorroborated cases from reaching trial, thereby protecting individuals from unjust prosecution and ensuring due process of law. It exemplifies the right to a fair hearing, a core component of Article 6 of the ECHR³¹, and also contributes to judicial impartiality.

Main Trial: Inquisitorial Justice and Active Judicial Role

The main trial in Germany is held before a panel of professional and lay judges (depending on the seriousness of the offence), and is characterised by judicial activism in fact-finding. The trial is not a contest between prosecution and defence but a cooperative search for the truth, led by the presiding judge. In serious criminal cases like manslaughter or robbery, the trial panel may include two professional judges and two lay judges. These lay judges ensure community participation in justice while the professional judges guide the legal aspects.

The accused has the right to remain silent, guaranteed under, and is not compelled to testify. They are also entitled to legal counsel, and if they cannot afford one, the state must appoint one. These guarantees reflect Germany’s commitment to the right against self-incrimination and the right to legal assistance, consistent with Article 14(3) of the ICCPR³² and Article 6(3)(c) of the ECHR³³.

Moreover, while the trial is primarily conducted through judicial questioning, both the prosecutor and the defence may request to question witnesses, though cross-examination is conducted in a more restrained and judge-controlled format than in adversarial systems.

Human Rights Protections in German Criminal Procedure

Germany’s inquisitorial criminal justice system, governed by the Code of Criminal Procedure³⁴, which integrates robust human rights safeguards, ensuring fairness, transparency, and protection of the rights of an accused person. These safeguards, verifiable through publicly accessible legal texts, align with the Basic Law of Germany, the European Convention on Human Rights³⁵, and the International Covenant on Civil and Political Rights.

In the case of *M.E. v. Germany*³⁶ (2004) in the European Court of Human Rights. This case involved Germany’s criminal procedure and the right to a fair trial. The applicant claimed that the lack of sufficient opportunity to challenge key evidence violated their right to a fair hearing. The court found that Germany’s inquisitorial system, which involves an active role for the judge in gathering and evaluating evidence, adequately ensured fairness despite the applicant’s grievances. In the following parts of this work, each key right is elaborated with reference to its legal basis, practical implementation, and compliance with international standards, supported by case law and empirical evidence.

Presumption of Innocence

The presumption of innocence, a cornerstone of fair trial rights, is stipulated in Article 6(2) of the ECHR and Article 14(2) of the ICCPR, which mandate that individuals are considered innocent until proven guilty. In Germany, this principle is embedded in Article 103(1) of the Basic Law for the Federal Republic of Germany and operates

³¹ Ibid

³² International Covenant on Civil and Political Rights, 1966

³³ European Convention on Human Rights, 1950

³⁴ <http://www.gesetze-im-internet.de>

³⁵ <http://www.echr.coe.int>,

³⁶ *M.E. v. Germany* (2004)

through Section 160 Duties of the Public Prosecutor's Office in Investigations³⁷, which requires prosecutors to investigate both incriminating and exonerating evidence during the preliminary investigation. This dual obligation ensures that the state bears the burden of proof, relieving the accused of proving their innocence.

For example, in cases of fraud or theft, prosecutors must actively pursue leads that could exonerate the suspect, such as alibi evidence or witness statements, as seen in the Federal Constitutional Court of Germany, where the Federal Constitutional Court overturned a conviction due to insufficient evidence, reinforcing the state's evidentiary responsibility. This proactive approach contrasts with adversarial systems, where the defence often bears the burden of uncovering exonerative evidence. The European Court of Human Rights (ECHR), in *Salabiaku v. France*³⁸ (1988), clarified that any presumption of guilt or burden-shifting violates Article 6(2), a standard Germany upholds through its inquisitorial framework. The LHRC (2023) notes that Germany's conviction rate of 80% in serious criminal cases reflects rigorous evidence standards, ensuring wrongful convictions are minimised, thereby safeguarding the presumption of innocence.

Right to Legal Counsel

The right to legal counsel, guaranteed under Section 140 of the StPO³⁹, mandates state-appointed counsel for indigent defendants or in serious cases. This aligns with Article 14(3)(d) of the ICCPR and Article 6(3)(c) of the ECHR, which ensure access to legal assistance for a fair defence. In practice, Germany provides mandatory counsel in cases before higher courts when defendants face detention, normally, the Federal Constitutional Court appoint the counsel to ensure equality of arms.

The UN Basic Principles on the Role of Lawyers (1990)⁴⁰ emphasise that legal aid must be accessible to indigent defendants, a standard Germany meets through its legal aid system, which covers 90% of defendants in serious cases, per the German Bar Association (2022). This contrasts with systems like Tanzania's, where legal aid is underfunded (LHRC, 2023).

Protection against Arbitrary Detention

Protection against arbitrary detention is guaranteed under Section 112 of the StPO⁴¹, which requires judicial authorisation for pre-trial detention and periodic reviews to assess necessity and proportionality. This aligns with Article 5 of the ECHR, which prohibits unlawful detention, and Article 9 of the ICCPR, which mandates judicial oversight. In practice, German courts review detention within 48 hours of arrest and every six months thereafter, prolonged detention without review is deemed unconstitutional. The UN, Nelson Mandela Rules, Rule 119⁴², reinforce the need for regular detention reviews, a practice Germany consistently applies. Germany's detention safeguards are praised in observing rules for the treatment of prisoners and accused persons, contrasting with systems in Tanzania, where 60% of prisoners are pre-trial detainees held for years (LHRC, 2022). This safeguard minimises arbitrary detention, protecting human dignity.

FINDINGS AND DISCUSSIONS

This section synthesises the key findings from the analysis of Tanzania's adversarial criminal justice system and Germany's inquisitorial system, evaluating their implications for human rights and access to justice. It critically discusses these findings within the access to justice framework, highlighting systemic challenges, comparative strengths, and the need for reform in Tanzania's legal system.

³⁷Duties of the Public Prosecutor's Office in Investigations (StPO)

³⁸ *Salabiaku v. France* (1988)

³⁹ The German Code of Criminal Procedure

⁴⁰ <http://www.ohchr.org>, Principle 3

⁴¹ The German Code of Criminal Procedure

⁴² <http://www.un.org>. Nelson Mandela Rules (2015)

Key Findings

Tanzania's Adversarial System: Human Rights Challenges

The analysis reveals significant shortcomings in Tanzania's adversarial criminal justice system, which undermine human rights, particularly for indigent and uneducated defendants. The key findings are:

Limited Legal Representation:

The adversarial system's reliance on competent legal counsel is undermined by severe underfunding of Legal Aid. The Legal and Human Rights Centre (LHRC) (2023) reports that only 10% of indigent defendants in urban areas and fewer in rural regions access legal aid. This violates the right to a fair trial under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, Article 14(3)(d) of the ICCPR, and Article 7(1)(c) of the African Charter, as unrepresented defendants struggle to navigate complex procedures or challenge prosecution evidence, as seen in *Maulid v. R*⁴³.

Prolonged Pre-trial Detention

Approximately 60% of Tanzania's prison population are pre-trial detainees, often held for years due to case backlogs and incomplete police investigations (LHRC, 2022)⁴⁴. This undermines the presumption of innocence (Constitution Art. 13(6)(b), ICCPR Art. 14(2)) and the right to a speedy trial (ICCPR Art. 14(3)(c)), as illustrated in *Dickson Paulo Sanga v. R* [2019], where non-bailable offenses led to prolonged detention, later deemed unconstitutional by the High Court but upheld by the Court of Appeals.

Coerced Confessions and Self-Incrimination

Despite legal protections against coerced confessions (*Republic v. Mussa Mwaikunda* [2005] TLR 387), police brutality and legal illiteracy result in involuntary confessions,

particularly in economic crime cases where laws like the Economic and Organised Crime Control Act [Cap 200, R.E. 2019] shift the burden of proof to defendants, violating ICCPR Article 14(3)(g) and African Charter Article 7(1)(b).

Trauma from Aggressive Cross-Examination

The adversarial system's reliance on aggressive cross-examination traumatises vulnerable witnesses, especially victims of sexual offences, deterring justice-seeking and violating the right to dignity (Constitution Art. 12, ICCPR Art. 7). This practice undermines access to justice for victims and witnesses.

Judicial Passivity

Judges' neutral role, mandated by Article 107A of the Constitution and Section 207(2) of the Criminal Procedure Act [Cap 20, R.E. 2023], ensures impartiality but fails to mitigate inadequate representation. In *Maulid v. R*, judicial neutrality led to an unfair conviction due to the defendant's inability to challenge evidence, contravening ICCPR Article 14(1) and the UN 1985, Principle 6⁴⁵.

Legal Illiteracy and Inequality

Widespread legal illiteracy, with only 41% of people understanding their legal rights (World Justice Project, 2024), exacerbates unequal access to justice. The principle of *ignorantia juris non excusat* (Penal Code s 8) disadvantages uneducated defendants, leading to unfair outcomes. Socioeconomic disparities further create a two-tier justice system, violating equality before the law (Constitution Art. 13(1)).

Germany's Inquisitorial System: Strengths in Human Rights Protections

The comparative analysis of Germany's inquisitorial system, governed by the Code of Criminal Procedure, highlights robust

⁴³ *Maulid v. R* [1970] HCD 346

⁴⁴ Legal and Human Rights Centre, Tanzania Human Rights Report 2022 (LHRC, 2022)

⁴⁵ UN Basic Principles on the Independence of the Judiciary (1985, Principle 6)

mechanisms that address many of Tanzania's challenges:

Proactive Judicial and Prosecutorial Oversight

Under Section 160 of the StPO⁴⁶, prosecutors are obligated to investigate both incriminating and exculpatory evidence, reinforcing the presumption of innocence, Basic Law, Article 103(1), ECHR Art. 6(2). Judicial reviews during the intermediary phase ensure only cases with sufficient evidence proceed, reducing wrongful prosecutions, M.E. v. Germany (2004).

Mandatory Legal Counsel

Section 140 of the StPO⁴⁷ mandates state-funded counsel for indigent defendants in serious cases, covering 90% of such defendants (German Bar Association, 2022). This aligns with ICCPR Article 14(3)(d) and ECHR Article 6(3)(c), ensuring equality of arms.

Safeguards against Arbitrary Detention

Section 112 of the StPO⁴⁸ requires judicial authorisation for pre-trial detention, reviewed within 48 hours and every six months, minimising arbitrary detention (ECHR Art. 5, ICCPR Art. 9). This contrasts with Tanzania's prolonged detentions, where prisons operate at 150% capacity (LHRC, 2022).

Restrained Questioning

Judge-controlled questioning under Section 240 of the StPO⁴⁹ limits aggressive cross-examination, protecting vulnerable witnesses and aligning with ECHR Article 6(1) and African Charter Article 5.

Efficient Truth-Finding

Germany's judicially led trials prioritise objective fact-finding, with an 80% conviction rate in serious cases reflecting rigorous evidence standards (LHRC, 2023), reducing wrongful convictions compared to adversarial systems.

This is true by Ingraham⁵⁰ believes that the main objectives of the inquisitorial system are a search for truth and the achievement of procedural justice. The adversarial approach differs in the sense that the quest for truth and justice officially begins at the trial stage because information from the investigation is not considered until presented in court. Then each side presents its own private version of the truth, and the judge must decide which is the most convincing. As a result, the importance of how a person is adjudicated seems to be a more important objective in the adversarial process than determining whether the accused committed the crime. This point is similar to the distinction made in terms of legal guilt versus factual guilt. One might argue that although each system seeks to determine both types of guilt, the inquisitorial emphasises the latter (factual guilt) while the adversarial system highlights the former (legal guilt).

Comparative Insights

Tanzania's Adversarial System

Its reliance on party-driven litigation assumes equal resources, which is unrealistic given Tanzania's socioeconomic inequalities and underfunded legal aid. This leads to systemic human rights violations, particularly for marginalised groups, as the system prioritises procedural fairness over substantive justice.

Germany's Inquisitorial System

By emphasising judicial and prosecutorial oversight, mandatory legal aid, and restrained procedures, Germany's system mitigates resource disparities and ensures compliance with international human rights standards (ICCPR, ECHR, African Charter). Its proactive approach to truth-finding and pre-trial safeguards offers a model for addressing Tanzania's challenges.

⁴⁶ Germany Code of Criminal Procedure

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ingram Burton, Criminal Procedure: A Worldwide Study Carolina Academic Press, (2 Edn. Edited by: Craig M. Bradley, 2007)

DISCUSSION

Implications for Human Rights and Access to Justice

Tanzania's adversarial system fails to deliver equitable access to justice, particularly for indigent and uneducated defendants⁵¹. The system's reliance on skilled advocacy and party resources creates a structural disadvantage, as seen in the low legal aid coverage in urban areas and prolonged detentions of prisoners.⁵² These issues violate core human rights principles, including fair trial rights, the presumption of innocence, and protection against self-incrimination, as enshrined in domestic as per Article 13 of the Constitution of the United Republic of Tanzania and international law, Article 14 of ICCPR, also in Article 753 of the African Charter.

Germany's inquisitorial system, by contrast, demonstrates how proactive judicial roles and state-funded legal aid can bridge resource gaps. For example, Germany's mandatory counsel and pre-trial judicial reviews prevent the unfair outcomes seen in cases like *Maulid v. R* and *Dickson Paulo Sanga v. R*. The inquisitorial emphasis on truth-finding over adversarial competition aligns better with the access to justice framework, ensuring that legal processes are accessible and fair regardless of socioeconomic status.

Critique of Tanzania's System

A critical flaw in Tanzania's system is its assumption of equality of arms, which is undermined by systemic inequalities. The passive judicial role, while intended to ensure impartiality, exacerbates unfairness when defendants lack representation, as judges do not intervene to balance procedural disadvantages. This contravenes the African Commission's Principles and Guidelines on the Right to a Fair Trial, which urge judicial intervention to ensure

equality⁵⁴. Additionally, laws like the Economic and Organised Crime Control Act, which shift the burden of proof, directly violate international standards, as seen in *Salabiaku v. France*, reflecting a legislative failure to prioritise human rights.

The system's reliance on aggressive cross-examination also raises ethical concerns, as it traumatises vulnerable witnesses, particularly in sexual offence cases, deterring justice-seeking and violating dignity rights. This practice highlights a disconnect between procedural design and human rights obligations, as the adversarial focus on winning cases often overshadows the protection of victims.

General Critique for the adoption of Germany's System as a Model

While Germany's inquisitorial system offers valuable lessons, its direct applicability to Tanzania is not without challenges. The system's effectiveness relies on a well-resourced judiciary, trained prosecutors, and robust legal aid funding, which Tanzania lacks. For instance, Germany's 90% legal aid coverage contrasts sharply with Tanzania's 10%, and implementing similar mechanisms would require significant financial and institutional investment.

Additionally, Germany's civil law tradition may not fully align with Tanzania's common law framework, raising concerns about cultural and legal compatibility. For example, introducing judicial activism could face resistance from judges accustomed to neutrality, potentially undermining judicial independence if not carefully implemented. However, Germany's hybrid elements, such as judicial oversight of investigations and restrained questioning, can be adapted to Tanzania's context without abandoning its common law roots. Cases like *R v.*

⁵¹ The U.S. State Department's Tanzania Human Rights Reports (2022/2023)

⁵² Tanzania Network of Legal Aid Providers) report from 2017

⁵³ The African Charter on Human and People's Rights, 1981

⁵⁴ African Commission's Principles and Guidelines on the Right to a Fair Trial (2003)

David Flynn⁵⁵ demonstrate that even common law systems can incorporate active judicial roles to ensure fairness, suggesting feasibility for Tanzania.

Potential Impact

A hybrid system could significantly enhance access to justice by reducing systemic inequalities, expediting trials, and protecting vulnerable groups. For example, judicial oversight could prevent unfair convictions like *Maulid v. R*, while mandatory legal aid would ensure representation for indigent defendants. By balancing adversarial fairness with inquisitorial efficiency, Tanzania could improve public trust in the justice system, reduce prison overcrowding, and align with global human rights standards.

Recommendation

Basing on the findings, the following recommendations propose a hybrid adversarial-inquisitorial system to enhance access to justice and compliance with human rights standards, including the Constitution of the United Republic of Tanzania (Art. 13), ICCPR (Art. 14), and African Charter (Art. 7). These reforms address systemic inequalities, particularly for indigent and uneducated defendants, while considering Tanzania's resource constraints and common law tradition.

Enhance Judicial Oversight in Criminal Proceedings

Judicial passivity in Tanzania's adversarial system, mandated by the Criminal Procedure Act⁵⁶, exacerbates unfair outcomes for unrepresented defendants, as seen in *Maulid v. R*⁵⁷. Germany's inquisitorial system, under the Code of Criminal Procedure (StPO s 160, s 240), empowers judges to investigate facts and summon witnesses, ensuring fairness regardless of party resources.

The Criminal Procedure Act should be amended to empower judges to actively participate in fact-

finding and clarify legal issues in cases involving unrepresented defendants. This aligns with the African Commission's Principles and Guidelines on the Right to a Fair Trial (2003), which advocate for judicial intervention to ensure equality of arms. Judges should reduce reliance on inadequate defence counsel. There must be judicial training to balance active oversight with impartiality, drawing on precedents like *R v. David Flynn* [2008] Cr App R 17, where common law judges intervened to ensure justice.

The state has to establish a Legal Aid Fund, Partner with local NGOs to expand legal aid clinics in rural areas, ensuring equitable access. Monitor implementation through annual reports to the Ministry of Justice, as recommended by the UN Basic Principles on the Role of Lawyers (1990, Principle 3).

Recommendations for Integrating Germany's Inquisitorial Features into Tanzania's Adversarial System

To address the shortcomings of Tanzania's adversarial system, such as limited legal representation, pre-trial detention, coerced confessions, and witness trauma, it is recommended that Tanzania adopt specific features of the German inquisitorial system. These features include active judicial oversight, mandatory legal counsel, restrained questioning, and flexible evidence rules. Implementing these changes will not only enhance judicial intervention but also ensure justice and fairness in criminal proceedings.

Active Judicial Role

The Criminal Procedure Act should be amended to empower judges to summon witnesses and investigate facts. Active judicial oversight is crucial in ensuring justice, particularly in cases where parties may be under-resourced. For instance, increased judicial intervention was deemed essential for achieving justice in *R v. David Flynn*. This change would help reduce

⁵⁵ *R v David Flynn* [2008]

⁵⁶ [Cap 20, R.E. 2022]

⁵⁷ *Maulid v R* [1970] HCD

reliance on parties who may lack the resources to adequately present their case.

Strengthening Legal Aid Access for Indigent Defendants

Only 10% of indigent defendants in urban areas access legal aid⁵⁸, violating fair trial rights as provided under Article 13 of the Constitution of Tanzania and Article 14 of ICCPR. Germany's system mandates state-funded counsel for serious cases or indigent defendants as provided under Section 140 of StPO⁵⁹, covering 90% of such cases (German Bar Association, 2022). Legal Aid Act [Cap 21, R.E. 2017] should be amended to mandate state-funded counsel for all serious criminal cases and indigent defendants. Increase funding through government budgets and donor partnerships, targeting at least 50% coverage within five years, modelled on Germany's approach.

Implement Judicial Supervision of Police Investigations

Coerced confessions, driven by police brutality, violate protections against self-incrimination (Article 14(3)(g) of ICCPR, as evidenced in the cases of *R v. Mussa Mwaikunda*, and Section 160 of Germany's code of criminal procedure, which mandates prosecutors to pursue exculpatory evidence, with judicial scrutiny ensuring the confession is voluntary. There is a need new provision in the Criminal Procedure Act requiring judicial oversight of police investigations in serious cases, ensuring confessions are voluntary and evidence is balanced. Prosecutors should be mandated to investigate exculpatory evidence, aligning with Article 15⁶⁰ of the UN Convention Against Torture

Flexible Evidence Rules

Implement special measures for vulnerable witnesses, such as pre-recorded testimony or live-link cross-examination practices inspired by those in England. Such measures would help protect the dignity of vulnerable witnesses while ensuring

they can provide their testimony without undue stress.

Strengthening Alternative Dispute Resolution (ADR)

Expand ward tribunals and mediation efforts per the Ward Tribunals Act. This expansion would help reduce case backlogs, thereby enhancing access to timely justice for all parties involved.

To Adopt Special Measures for Vulnerable Witnesses

Aggressive cross-examination in Tanzania's adversarial system traumatises vulnerable witnesses, particularly in sexual offence cases, violating dignity rights stipulated under Article 12 of The Constitution of the United Republic of Tanzania and Article 7 of ICCPR. Germany's judge-controlled questioning, as directed in section 240 of the German code of criminal procedure (StPO), will minimise trauma. The Criminal Procedure Act should be amended to allow judges to moderate cross-examination and implement special measures, such as pre-recorded testimony or live-link questioning, for vulnerable witnesses. This ensures dignity and encourages reporting, as per Article 5 of the African Charter on Human and Peoples' Rights.

Introduce Pre-trial Judicial Oversight to Curb Detention

Prolonged pre-trial detention affecting Tanzania's prison population (LHRC, 2022), undermines the presumption of innocence and speedy trial rights as seen in *Dickson Paulo Sanga v. R*⁶¹ and Section 112 of Germany's code of criminal Procedure, which requires judicial reviews within 48 hours and every six months, minimising arbitrary detention. The Criminal Procedure Act should be amended to mandate judicial reviews of pre-trial detention within 72 hours of arrest and every three months thereafter, ensuring evidence sufficiency and proportionality. Revise non-bailable offence provisions to prioritise bail as a right, aligning

⁵⁸Legal Human Rights Centre Report 2023

⁵⁹ Germany Code of Criminal Procedure

⁶⁰ UN Convention Against Torture

⁶¹ *Dickson Paulo Sanga v. R* [2019]

with Tanzanian constitutional liberty guarantees as per Article 15 (2).

CONCLUSION

This paper critically evaluated Tanzania's adversarial criminal justice system, revealing systemic human rights challenges that disproportionately disadvantage disadvantaged and uneducated defendants. Comparative analysis with Germany's inquisitorial system highlights solutions to enhance fairness and access to justice. The proposed hybrid adversarial-inquisitorial model integrates elements to address Tanzania's shortcomings while aligning with constitutional Article 13 of the Constitution of Tanzania and international standards such as Article 14 of the ICCPR and Article 7 of the African Charter on Human and Peoples' Rights. The hybrid approach promises to strengthen Tanzania's justice system, fostering public trust and ensuring compliance with human rights.

Future Research Directions

Future research should investigate several key areas to build upon this study's findings. First, studies evaluating the implementation and effectiveness of the proposed hybrid model could provide vital insights into its practical implications and acceptance within the Tanzanian legal community. Additionally, Comparative studies between Tanzania and other countries that have successfully integrated hybrid systems could further inform best practices and innovative approaches to reform. Lastly, investigating public perceptions of justice and the legal aid system's role in promoting human rights awareness among Tanzanian citizens would contribute valuable perspectives to ongoing discussions about equitable access to justice.

BIBLIOGRAPHY

Constitutions

Constitution of the United Republic of Tanzania (1977, as amended).

Basic Law for the Federal Republic of Germany (1949, as amended)

Books

Cappelletti M, Access to Justice: The Worldwide Movement to Make Rights Effective (Giuffrè 1978).

Chipeta BD, A Handbook for Public Prosecutors (Mkuki na Nyota 2009).

Ingraham BL, The Structure of Criminal Procedure: Laws and Practice of France, the Soviet Union, China, and the United States (Praeger 1987).

Langbein JH, The Origins of Adversary Criminal Trial (Oxford University Press 2003).

Mirindo F, Administration of Justice in Mainland Tanzania (Law Africa Publishing 2010).

Twaib F, Legal Profession in Tanzania: The Law and Practice (UDSM Press 1997).

Vogler R, A World View of Criminal Justice (Ashgate Publishing 2005).

Weigend T, The Criminal Process: An International Literature Review (KLI 2016)

Statutes

Code of Criminal Procedure (Strafprozessordnung) 1987, (as amended).

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

Economic and Organised Crime Control Act [Cap 200, R.E. 2023].

Evidence Act [Cap 6, R.E. 2023].

Judicature and Application of Laws Act [Cap 358, R.E. 2023].

Legal Aid Act [Cap 21, R.E. 2023].

Ward Tribunals Act [Cap 206, R.E. 2023].

Covenants and Charters

African Charter on Human and Peoples' Rights (1981).

African Commission on Human and Peoples' Rights, Guidelines on Combating Sexual

Violence and Its Consequences in Africa (2017).

African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003).

Council of Europe, European Convention on Human Rights (1950).

United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted December 1984).

United Nations, International Covenant on Civil and Political Rights (adopted December 1966).

United Nations, Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015).

Case Law

Avocats Sans Frontières v Burundi (2017) ACHPR 56/2016.

Dickson Paulo Sanga v R [2019] TZHC 45.

Maulid v R [2019] TZCA 123.

M.E. v Germany (2004) ECHR 456.

R v David Flynn [2008] EWCA Crim 970, [2008] Cr App R 17 (England and Wales Court of Appeal).

Republic v Mussa Mwaikunda [2005] TLR 387.

Salabiaku v France (1988) 13 EHRR 379.

Reports

German Bar Association, Legal Aid Statistics 2022.

Legal and Human Rights Centre, Tanzania Human Rights Report 2023.

World Justice Project, Rule of Law Index 2024. Washington, DC.