

DECLARATION

I, **Arodie MUKANYANDWI** , hereby declare that, to the best of our knowledge, the work presented hereinafter "*Critical analysis on the investigation and prosecution of trans-national crimes under Rwandan law*" is our original work. It has not been presented elsewhere as a dissertation or for any other academic purpose. For other sources that were consulted while carrying out this work, references were duly provided in footnotes and bibliography.

Date: September, 2024

Signature.....

Arodie MUKANYANDWI

APPROVAL

This is to approve that the research entitled *Critical analysis on the investigation and prosecution of trans-national crimes under Rwandan laws* has been undertaken by **Arodie MUKANYANDWI** under our supervision as a partial fulfilment of the academic requirement for the award of Bachelor's Degree with Honors in Law in Kigali Independent University ULK. In our opinion, the work is worthy for public presentation.

Supervisor: NDIYAYE U. Innocent

Signature:

Date:/...../2024

DEDICATION

Arodie MUKANYANDWI

To my Parents

To my Brothers and Sisters

To the rest of our family, friends and Colleagues,

ACKNOWLEDGEMENT

I would like to take this immense opportunity to all people who have contributed for this

path to appear. Especially, our sincere tribute thanks go to our dearest supervisor who has been a keen advisor, more than just a supervisor, but a mentor; **NDIYAYE U. Innocent** for her encouragements and professional guidance for the accomplishment of this dissertation and for our whole university studies in general. Without him, nothing would have been achieved.

Our sincere thanks go again straight to the whole staff of the faculty of law, in Kigali Independent University ULK for having made our dreams real. we recognize their compassionate education and support which has been just more than a duty, but a passion. we have to acknowledge more especially **Prof. Dr. RWIGAMBA BALINDA**, the founder and the President of ULK, from whom we learned a lot, and all the remaining administration staffs whose names cannot all be mentioned on this brief acknowledgment.

The realization of this accomplishment could not happen, if we had not met other amazing and lovely colleges in our LLB classes who have always been near us and made our studying career an enjoyable environment in all these three years of university studies. Their advices and good characters have contributed much in our socio-academic life in campus.

Our heartfelt gratitude goes to the beautiful Families we met at university they are one of the things which will always keep our heart remember our life in campus. Last but not least, our sincere consideration goes to our family which was always behind our everyday life success. Your Love and Compassion towards our success made it real. May God bless you All.

Arodie MUKANYANDWI

LIST OF ABBREVIATION AND ACCRONYMS

Art:	: Article
CSOs	: Civil Society Organizations
DRC	: Democratic Republic of the Congo.
GO	: Official Gazette
GoR	: Government
ICCPR	: International covenant on Civil and Political rights
ILO	: International Labor Organization
INTERPOL	: The International Criminal Police Organization
IOM	: International Organization for Migration (IOM)
NGOs	: Non-Governmental Organizations
N ^o	: Number
NPPA	: National Public Prosecution Authority
P.	: Page
Prof	: Professor
RBA	: Rwanda Bar Association
TOC	: Transnational organized crime
TRIPS	: Trade Related Aspects of Intellectual Property Rights/
UDHR	: Universal Declaration of Human Rights
ULK	: Université Libre de Kigali
UN	: United Nations
UNCAC	: United Nations Convention Against Corruption/
UNCTOC	: United Nations Convention against Transnational Organized Crime.
UNODC	: The United Nations Office on Drugs and Crime
WWW	: World Wide Web

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GENERAL INTRODUCTION

To begin, this work will mainly deal with the making research on legal mechanism for the investigation, prosecution and trial of trans-national crimes. In fact, trans national crimes are violations of law that involve more than one country in their planning, execution, or impact.¹ The trafficking of drugs, counterfeit goods, arms, humans, protected species and environmental resources (such as diamonds) across international borders are some examples include terrorism, human trafficking and slavery, the international trade in weapons and armaments, environmental crime, illicit drug trafficking, piracy, corruption and bribery of public officials. These crimes present great challenges to the rule of law, economic and social development, and the protection of human rights and security. In particular transnational crimes can undermine people's quality of life and threaten their human security by limiting access to employment and educational opportunities. The researcher will go through a definition of transnational crime, provides examples of the human security issues associated with the victims of transnational crime, and summarizes the particular human security issues associated with trafficking in persons. Moreover, he will also explore the history and limitations of international efforts to address those threats.²

These offenses are distinguished from other crimes in their multinational nature, which poses unique problems in understanding their causes, developing prevention strategies, and in mounting effective adjudication procedures.³ Thus, a researcher is going to take a particular attention on legal mechanisms for the conduct of investigation, prosecution and trial of trans-national crimes

1. BACKGROUND TO THE WORK.

Organized crime is a phenomenon with a history that extends back to the beginning of 1900s but has since then had a notable development. From a small group of people in

¹ Oxford bibliographies, "*Trans-national crimes*" accessed on 21st June 2023, available at: <https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0024.xml>

² BC Campus, "*Transnational Crime*" accessed on 21st June 2023, available at: <https://opentextbc.ca/humansecurity/chapter/transnational-crime/>

³ *Ibidem*

specific cities to global networks and Transnational Criminal Organizations (TCO), who perform profit oriented illegal activities over national as well as continental borders (UNODC, 2010). The definition of an organized criminal group according to United Nations is more or less, a consisting group of three or more individuals that are committing serious crimes in order to directly or indirectly obtain beneficial aspects (UNODC, 2010). Transnational Organized Crime (TOC) is hence a criminal network or organization that are active or present in more than one state, which induces crimes that are considered transnational. This refers to crimes that are for instance committed in one state and planned in another, or crimes which impact are affecting more than one state (UNODC, 2010)

Generally, in 1995, the United Nations (UN) defined transnational crime as offences *“whose inception, perpetration and/or direct or indirect effects involve more than one country”* In 2000 the UN Convention on Transnational Organized Crime defined an offence as transnational if it met one of these four conditions: if it is committed in more than one state, if it is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state, if it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, and finally, if it is committed in one state but has substantial effects in another state.⁴

Thus, transnational crimes involve offences that cross international borders or which affect the interests of more than one state. It can be distinguished from domestic crime (offences that occur within a single national jurisdiction) and international crime (offending that is recognized in international law and against the world community). Examples of international criminal offences that are subject to prosecution are those that threaten world order and security, crimes against humanity and fundamental human rights, war crimes, and genocide (Partin, 2015). For example, in 2001 the International Criminal Tribunal for the former Yugoslavia reached a verdict that the rape and sexual enslavement of women and girls in eastern Bosnia and Herzegovina that

⁴ See Article 3, Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime, 2000.

occurred in 1992 constituted crimes against humanity.⁵

Moreover, The UN has identified several different categories of transnational crime: drug trafficking, trafficking in persons, organ trafficking, trafficking in cultural property, counterfeiting, money laundering, terrorist activities, theft of intellectual property, illicit traffic in arms, aircraft hijacking, sea piracy, hijacking on land, insurance fraud, environmental crime, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public officials, and other offences committed by organized criminal groups.⁶ There are also a number of new and emerging transnational crimes that have been identified by the Conference of the Parties to the United Nations Convention on Transnational Organized Crime including cybercrime, identity-related crimes and fraudulent medicine.⁷

Under Rwandan criminal laws, for a crime to be categorized as transnational crimes, one of whose constituent elements should be accomplished outside Rwanda's borders.⁸ Rwanda has shown a relatively high level of commitment to international cooperation against organized crime. The country has ratified most relevant international treaties, including the UN Convention against Transnational Organized Crime. It has been an active member of the East African Community and African Union, often supporting institutional reforms and regional instruments to help meet security challenges and threats. In addition, INTERPOL's National Central Bureau (NCB) for Rwanda is located at the Kigali national police headquarters. Still, Rwanda generally lacks cooperation mechanisms with other countries on matters such as human trafficking. In 2018, the Rwandan Parliament amended various articles of its penal code pertaining to organized crime, increasing the sentences for drug-related crimes substantially. The penal code also covers criminal fauna markets and stipulates the sentences for a variety of fauna crimes. The government passed its first-ever law

⁵ BC Campus, "*Transnational Crime*" accessed on 21st June 2023, available at: <https://opentextbc.ca/humansecurity/chapter/transnational-crime/>

⁶ See united nations office on drugs and crime Vienna united nations convention against transnational organized crime, 2002, p. 4

⁷ See united nations office on drugs and crime Vienna united nations convention against transnational organized crime, 2018, p. 4

⁸ See article 14 of the law N°68/2018 of 30/08/2018 law determining offences and penalties in general, *Official Gazette no. Special of 27/09/2018*.

relating to human trafficking in 2018, making trafficking in persons a criminal offence.

1.2. INTEREST OF THE STUDY

With in this part, a particular attention is going to be made on the interests of the study, mainly on what pushed us to conduct this research as far as legal mechanisms for investigation, prosecution and trial of transnational crimes are concerned.

1.2.1. Personal Interest

In fact, one of the requirements of the university is to write a dissertation. With that regard, I chose to conduct this research titled “Legal mechanism for investigation, prosecution and trial of transnational crimes in Rwanda” due to the fact that I was curious about knowing the legal mechanism that are used in the making of investigation, prosecution and trial of the organized crimes that crosses countries especially in Rwanda.

1.2.2. Academic and scientific interest

For the students from school of law and any other researcher who will be interested in going through this research, he/she will benefit with the legal mechanism the judiciary and prosecution uses in combating transnational crimes. They will also benefit more on how research is conducted with regard to writing dissertation and other academic studies. Moreover, this work will serve as a reference for future researchers.

1. Delimitation of the study

Delimitations are the boundaries that the researcher sets in a research study, deciding what to include and what to exclude. They help to narrow down the study and make it more manageable and relevant to the research goal.⁹The scope of our study will be delimited in domain, time and space as follow:

1.3. Delimitation in domain

This work falls under the domain of public law especially in international criminal law since the practice of

⁹ AJE services, “*Definition of delimitation*” accessed on 27th May 2024, available at: <https://www.aje.com/arc/scope-and-delimitations-in-research/>

1.4. Delimitation in time

In time the researcher will be limited to the period from 2004 up to 2024. This is because it was in 2004 where the convention on the United Nations convention against Transnational organized crime and the protocols thereto was put in force.

1.5. Delimitation in space

This study has been conducted on national territory; it means that it covers Rwandan territory.

1.4. PROBLEM STATEMENT

Generally, different legal mechanism that might bring about efficiency in investigation, prosecution and trial of transnational crimes are vital to the country, Transnational crime has conventionally been seen as a threat to the state, threatening its national and regional security and rule of law, impeding its political and economic development, and limiting the social and cultural development of its society.¹⁰

Wherever and whenever the best interests of citizens and their properties with in a country should be looked at in regards in the international instrument as well as in national law. The United Nations Convention against Transnational Organized Crime is applicable to all forms of serious crime of transnational nature committed by organized criminal groups. More than two decades after its adoption it is among the most ratified international legal instruments. Together with its three Protocols the Convention remains the primary global tool to prevent and address a broad range of criminal activities effectively.

Rwandan courts lack efficiency in trying transnational. Nevertheless, the government has initiated reform of its justice system, seeking to modernize its judiciary and improve processing times for legal cases. Aside from corruption-related units, there are no judiciary-related specialized units in force with the aim of countering organized crime.

Rwanda has at least two law enforcement units within the national police force tasked

¹⁰ BC Campus, "*Transnational Crime*" accessed on 21st June 2023, available at: <https://opentextbc.ca/humansecurity/chapter/transnational-crime/>

with countering organized crime, specifically financial and economic, and narcotics crimes. The Rwanda National Police lack specialized skills and have limited resources. However, community watch groups and other more informal crime prevention and law enforcement mechanisms often supplement police efforts and have become a source of resilience. While the Rwandan army actively patrols and secures borders, incursions by armed groups occur. Reports of rebel groups at the borders with the DRC and Burundi persist, and evidence suggests that these groups may cross over into Rwanda.

Besides, a number of challenges present themselves in providing an accurate picture of transnational crime in Rwanda, including the difficulty of gathering reliable information on essentially hidden practices. Having regard to these, the project used consultants in other countries to collect information based on detailed guidelines, including the collection of data on three criminal groups engaged in transnational activities.¹¹ This, combined with a review of the available secondary literature as well as other inputs, forms the basis for the information presented.

Transnational organized crime (TOC) poses a significant and growing threat to national and international security, with dire implications for public safety, public health, democratic institutions, and economic stability across the globe. Developing countries with weak rule of law can be particularly susceptible to TOC penetration. TOC penetration of states is deepening, leading to co-optation in a few cases and further weakening of governance in many others. The apparent growing nexus in some states among TOC groups and elements of government including intelligence services and high-level business figures represents a significant threat to economic growth and democratic institutions. In countries with weak governance, there are corrupt officials who turn a blind eye to TOC activity. Thus, there are lacks of special laws and judicial police that are dedicated for combating transnational crimes in Rwanda.

Thus, from the above discussion, a set of questions may come up about whether Rwandan laws, regarding the protection of children meets the standard guaranteeing

¹¹ UN *“Transnational organized crime in the west African region”* New York, 2005, p.iii

parental liabilities.

1.5. Research questions

In this work, our research will be led by the following research questions to mention but a few:

1. To what extent the is Rwandan judiciary system investigates and prosecute transnational crimes?
2. What are legal necessary mechanisms that can be put forward to ensure full investigation and prosecution of transnational crimes in Rwanda?

1.6. Hypothesis of the study

Scientifically, the term hypothesis means the part of research that states researchers' predictions about what his/her research will find. It is also a tentative answer to research question that has not yet been tested. With that regard, the hypotheses to my research questions might probably be:

1. Rwandan criminal law prevents transnational crimes however, there still exists loopholes with regard to investigation, prosecution and trial of these kind of crimes due to insufficient strong legal mechanisms.
2. There are both legal and institutional mechanisms for which may be applied to enhance the protections for Rwandan children.

1.7. RESEARCH OBJECTIVES

A research objective, also known as a goal or an objective, is a sentence or question that summarizes the purpose of your study or test. In other words, it's an idea you want to understand deeper by performing research. Moreover, research objectives describe what your research is trying to achieve and explain why you are pursuing it. They summarize the approach and purpose of your project and help to focus your research. The current work has got the general objectives as well as specific objectives

1.7.1 General objective

The general objectives of this work are to make research on legal mechanisms for investigation, prosecution and trial of transnational crimes in Rwanda.

1.7.2 Specific objectives

1. To analyze the extent to which Rwanda is challenged with regard to transnational crimes as far as their investigation, prosecution and trial are concerned.
2. To suggest possible mechanisms relating to the better ways of enhancing the practices of investigation, prosecution and trial of transnational crimes

1.8. RESEARCH METHODOLOGY

Research methodology is the specific procedures or techniques used to identify, select, process, and analyze information about a topic. In a research paper, the methodology section allows the reader to critically evaluate a study's overall validity and reliability. Thus, with in this part of this work, different research methods and techniques that will be used in conducting research are discussed by considering their definitions and why they are important in legal research.

1.8.1. Research Techniques

Research techniques are different models that researchers use to test their hypotheses, uncover answers to problems, and provide evidence for theories and interventions. Experiments are well-devised scientific procedures researchers use to test their hypotheses.¹²

Research technique refers to the strategies and methods used by researchers to conduct their studies and gather data.¹³ It involves the systematic and rational approach to achieving research goals, utilizing appropriate resources at each step of the research process. Research technique can vary depending on the field of study and the specific research methodology chosen.¹⁴

1.8.1.1. Documentary technique

Consists in collecting data through the reading of documents containing information relating to the research topic. In additional, this technique is also defined as the analysis of documents which include any written material that contains the information about

¹² Study smater, *Research technique*, accessed on 29th March 2024. Available at: <https://www.studysmarter.co.uk/explanations/psychology/scientific-investigation/research-techniques/>

¹³ SCISPACE, *What is research technique*, accessed on 20th June 2024, available at: <https://typeset.io/questions/what-is-research-technique-1hjl5ykwn>

¹⁴ *Ibidem*

the document¹⁵. Therefore, in regards to this technique we got enough information of reading and consulting official documents, booklets, dissertations, reports which we consider as relevant to our topic and that we will take into account in our work

1.8.2. Research Methods

Research methods are the strategies, processes utilized in the collection of data or evidence for analysis in order to uncover new information or create better understanding of a topic.¹⁶ A technique is a manmade strategy or tactic, while the method is the approach or pathway.¹⁷

The techniques and methods are crucial and useful to have sufficient information of this research. Through this research, we will rely on different techniques and methods which are very necessary in the full completion of this work just in complete way and no scientific work, whatever its nature can't be done without a certain methods and techniques are followed.

1.8.2.1. Analytical Method

Analytical method is a generic process combining the power of the scientific Method with the use of formal process to solve any type of problem.¹⁸ This method will help us to analyze data that we got from different documents and be able to relate them with the topic in a logical manner.

1.8.2.2. Exegetic method

Exegetic method helps to dissect, analyze and interpret legal text either domestic or international. Moreover, Exegetical method is a tool to help interpreters hear the message and not impose inappropriate notions upon it. As with any other useful tool, exegesis helps also in learning how to use legal texts accurately.¹⁹

¹⁵ BAIKLEY, K

¹⁶ University of Newcastle Library Guides, "Research Methods: What are research methods? accessed on 29th, March 2024, available at " <https://libguides.newcastle.edu.au/researchmethods>

¹⁷ English forward, "The difference between technique and method", accessed on 29th, March 2024, available at <https://www.englishforums.com/English/WhatDifferenceBetweenMethodTechnique/xxvdz/post.htm>

¹⁸ IGI Global, "Definition of synthetic method" accessed on 24th July available at: <https://www.quora.com/What-is-the-synthetic-method-of-mathematics-teaching>

¹⁹ Dr. Robert Bryant, "Guide to Writing in Religion: Exegetical Method" ccessed on 24th July available at: <https://www.presby.edu/doc/academicresources/Exegetical-Method-Bryant.pdf>

1.8.2. Synthetic method

Synthetic method is the word "*synthetic*" is derived from the word 'synthesis which means to combine together. In this method we combine together a number of facts, perform certain mathematical operations and arrive at the solution.²⁰ In this method we start with the known data and connect it with the unknown part. Moreover, this method allows us to globalize the elements into a coherent whole. Thus, this method will be used to synthesize the analyzed data so as to draw relevant conclusions.

1.9. SUBDIVISION OF THE STUDY

This work includes the following three chapters: chapter one will be dealing with definition of the key concept and the theoretical framework of the entire dissertation. The second chapter shall include the challenges Rwanda with regard to the countering Transnational crimes as far as their investigation, prosecution and trial are concerned. Third chapter will be the legal mechanisms to be put forward with the respect to ensure the effectiveness of investigation and prosecution of transnational crimes in Rwanda. Finally, this work will be closed by the general conclusion including recommendations.

CHAPTER I. CONCEPTUAL AND THE THEORETICAL FRAMEWORK

In the frame work of this chapter we would like to have a look on some conceptual and theoretical framework so as to facilitate the reader to better understand some key concepts and theories regarding our topic as far as analyzing the critical analysis on investigation and prosecution of trans-national crimes under Rwanda law

I.1. Conceptual framework

In accordance with the analyzed topic, it is obviously appearing that there is a need of providing some precisions on certain concepts namely: Suspect, guilty mind, criminal action, legal counsel, crime, investigation, Prosecution, transnational crimes, court, fair trial and Judgement.

²⁰ Quora, "*Definition of synthetic method*" accessed on 24th July available at: <https://www.quora.com/What-is-the-synthetic-method-of-mathematics-teaching>

I.1.1. Suspect

A suspect is a person who is believed to have committed a crime, but has not yet been found guilty. If a suspect received an arrest warrant, they might then be identified as a defendant; and after the suspect was convicted or found guilty, they would be called an offender.²¹ Rwandan tribunals also consider “*suspect*” as “[a] person concerning whom the Prosecutor possesses reliable information which tend to show that he may have committed a crime over which the Tribunal has jurisdiction.

Suspects after turning to being defendant they have choice to make agreement with prosecutors with regard to plea bargaining or they do proceed with normal trial. However, no person may be compelled to testify against himself or herself to confess guilt.²²

The right not to be compelled to testify against oneself and the right not to confess guilt include two elements: the right to freedom from self-incrimination and the right to silence. These components are related and at times overlapping, but they are distinct. The right to silence encompasses only oral representations made by a person and refers to a person’s right not to make oral statements to the police or any other criminal justice actor during the investigation of a criminal offense.

I.1.2. Guilty mind

Mens rea or *guilty mind*, is legally referred to as the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused. Mens Rea, or “guilty mind,” marks a central distinguishing feature of criminal law. An injury caused without mens rea might be grounds for civil liability but typically not for criminal. Criminal liability requires not only causing a prohibited harm or evil -- the “actus reus” of an offense -- but also a particular state of mind with regard to causing that harm or evil.²³

²¹ Cornell Law school, “*Definition of suspect*” accessed on 5th June 2024, Available at: [suspect | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

²² See article 29 of the constitution of the republic of Rwanda, official gazette n° special of 04/08/2023.

²³ Robinson, Paul “*Mens Rea*” University of Pennsylvania Law School, Scholarship at Penn Law published

With regard to transnational crimes, the guilty mind of committing cross border crimes comes from personal willingness of doing so knowing that it's a crime. Transnational organized crime encompasses virtually all serious profit-motivated criminal actions of an international nature where more than one country is involved. There are many activities that can be characterized as transnational organized crime, including drug trafficking, smuggling of migrants, human trafficking, money-laundering, trafficking in firearms, counterfeit goods, wildlife and cultural property, and even some aspects of cybercrime. It threatens peace and human security, leads to human rights being violated and undermines the economic, social, cultural, political and civil development of societies around the world. The vast sums of money involved can compromise legitimate economies and have a direct impact on governance, such as through corruption and the "buying" of elections.²⁴

I.1.3. Criminal action

Criminal action is an action filed on behalf of the public before criminal courts and aimed at punishing the offender. A criminal action is instituted by the public prosecution. However, the action referred to may be instituted by an aggrieved person by filing a suit in a criminal court by way of private prosecution.²⁵

Additionally, there exist different targets that have to be applied for the better States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate.

I.1.4. Legal counsel

To counsel is to provide legal advice or guidance to someone on specific subject matter. Counsel is also a lawyer giving advice about a legal matter and representing clients in

on 2003/01/01. Page 1

²⁴ UNODC, '*Transnational Organized Crime the Globalized Illegal Economy*, accessed on 14th July 2024, available at: https://www.unodc.org/documents/toc/factsheets/TOC12_fs_general_EN_HIRES.pdf

²⁵ See article 4 of the law N° 027/2019 of 19/09/2019 Law relating to the criminal procedure, *Official Gazette n° Special of 08/11/2019*

court.²⁶ A legal counsel or a counsellor at law is a person who gives advice and deals with various issues, particularly in legal matters. It is a title often used interchangeably with the title of lawyer. The word counsel can also mean advice given outside of the context of the legal profession.

Additionally, during plea bargaining, a defendant may be assisted by his or her legal counsel so as to defend his legal rights. The counsel helps in drafting agreement taking into considerations all the required conditions for valid agreement as far as the best interest of his client are concerned.

Under Rwandan law, for a person to be a legal counsel and be able to practice in Rwandan court there exists a number of requirements to be fulfilled so as to be allowed to start the work. To name a few, to be a Rwandan national; to hold at least a bachelor's degree in Law or its equivalent; to have a recognized certificate from Institute of Legal Practice and Development or its equivalence; not to have been definitively sentenced to a term of imprisonment equal to or exceeding six (6) months; to have passed the test conducted by the Bar Association; not to have been convicted for the crime of genocide perpetrated against the Tutsi; not to have been convicted for the crime of genocide ideology and related offences.²⁷

For foreign counsels, where their national legislation provides for reciprocity and subject to international agreements, Advocates from foreign Bar Associations shall be granted the right to practice, if need be, provided they observe the regulations governing the Advocates' profession in Rwanda.²⁸ The President of the Bar Association shall have the power to grant such authorization. Advocates from States which have concluded a regional integration agreement with Rwanda shall be allowed to practice in Rwanda as provided for in such regional integration agreement.

²⁶ Cornell law, "Definition of counsel" accessed on 5th June 2024, available at: <https://www.law.cornell.edu/wex/counsel>

²⁷ See article 6 of the law no 83/2013 of 1/09/2013 establishing the Bar Association in Rwandan and Determining its organization and functioning, *Official Gazette no 44 of 04/11/2013*

²⁸ Idem Art.7

I.1.5. Crime

Actually, an offence is legally defined as an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as community.²⁹ With regard to the wording of the Rwandan law

Law determining offences and penalties in general, it stipulates that "*Offence an act or omission that breaches public order and which is punishable by law*"³⁰

Transnational organized crime is not stagnant, but is an ever-changing industry, adapting to markets and creating new forms of crime. In short, it is an illicit business that transcends cultural, social, linguistic and geographical boundaries and one that knows no borders or rules. Drug trafficking continues to be the most lucrative form of business for criminals, with an estimated annual value of \$320 billion.² In 2009, UNODC placed the approximate annual worth of the global cocaine and opiate markets alone at \$85 billion and \$68 billion, respectively.³¹

Human trafficking is a global crime in which men, women and children are used as products for sexual or labor-based exploitation. While figures vary, an estimate from the International Labor Organization (ILO) in 2005 indicated the number of victims of trafficking at any given time to be around 2.4 million, with annual profits of about \$32 billion.⁴ Recent research on overall forced labor trends however would suggest that the scope of the problem is much bigger. In Europe, the trafficking of mostly women and children for

I.1.6. Prosecution

The act of officially accusing someone of committing an illegal act, especially by bringing a case against that person in the court of law. Persons who work in the prosecution are called prosecutors. Their work is to prove that a person accused of committing a crime is guilty of that crime.³²

²⁹ Black law dictionary, "*Definition of crime*", accessed on 5th June 2024, available at <https://thelawdictionary.org/crime/>

³⁰ See article 2 (1^o) of the law N°68/2018 of 30/08/2018 Law determining offences and penalties in general, *Official Gazette no. Special of 27/09/2018*.

³¹ World Drug Report 2011.

³² Cambridge Dictionary "*prosecution*", accessed on 5th June 2024, available at

In most countries, the principal responsibilities of prosecutors in the criminal justice system are to provide legal guidance to investigations conducted by the police, to review the results in order to determine whether the evidence is sufficient to support a charge, to file a case in court or request further investigations, and, finally, to prosecute criminal cases in court on behalf of the state. In carrying out these responsibilities, prosecutors are exercising the sovereign power of the state and are expected to represent the best interests of the community, which includes honoring the rights of the accused. Prosecutors are essential to keeping communities safe and holding citizens, companies, and government officials accountable.³³

Besides, at the end of the suspect's interrogation, the prosecutor may propose a plea-bargaining agreement, by choosing which cases to go for plea bargaining.³⁴ In Rwanda, plea bargaining is currently not done on all kinds of crimes. For instance, in primary prosecution, it is done on defendants who are accused of theft and assault and battery.

I.1.7. Court

Court, also called court of law is a judicial tribunal established to administer justice. An entity the government to which the administration of justice is delegated³⁵, court is also defined as a place where legal questions are decided by a judge and jury or by a magistrate³⁶. The court in other jurisdictions is designated as a person or group of persons with judicial authority to hear and resolve disputes in civil, criminal or military matters. The word court, which originally meant simply an enclosed space, also refers to the room, hall, building or any other place where legal proceedings take place.³⁷

In the course of plea bargaining, the court may admit or reject an agreement of plea bargaining but cannot alter the agreement. In case the agreement is admitted, the court,

<https://dictionary.cambridge.org/dictionary/english/prosecution>

³³ *Ibidem*

³⁴ See article 26 of the law n° 027/2019 of 19/09/2019 Law relating to the criminal procedure, Official Gazette n° Special of 08/11/2019.

³⁵ A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

³⁶ Collins COBUILD "Definition of law court", accessed on 5th June 2024, available at <https://www.collinsdictionary.com/>

³⁷ Karlen, Delmar , Smentkowski, Brian P. and Gibson, James L.. "Court". Encyclopedia Britannica, 30 Aug. 2019, <https://www.britannica.com/topic/court-law>

while taking a decision, considers the agreement on plea bargaining concluded between the public prosecution and the accused.³⁸

Under Rwandan laws, we have ordinary courts and specialized courts as provided for by the law determining the jurisdiction of courts in Rwanda.³⁹ The primary function of any court system to help keep domestic peace is so obvious that it is rarely considered or mentioned. If there was no institution accepted by the citizens of a society as an impartial and authoritative judge to determine whether a person has committed a crime and, if so, what type of punishment should be imposed, the vigilantes offended by the conduct of the person could well take justice themselves and proceed to the punishment of the alleged disbeliever according to their uncontrolled discretion⁴⁰.

If no agency were empowered to decide private disputes impartially and authoritatively, people would have to settle their disputes by themselves, with power rather than legitimate authority likely being the basis of such decisions. Such a system could easily degenerate into anarchy. Even a primitive society could not survive under such conditions. Thus, in this most basic sense, the courts are an essential part of the machinery of society for maintaining peace.⁴¹

I.1.8. Fair Trial

Fair trial is defined as a trial that is conducted fairly, justly, and with procedural regularity by an impartial judge and in which the defendant is afforded his or her rights under the U.S. Constitution or the appropriate state constitution or other law⁴². With regard to article 29 of the Rwandan constitution that provides all elements of a fair trial

³⁸ See article 27 of the law n° 027/2019 of 19/09/2019 Law relating to the criminal procedure, Official Gazette n° Special of 08/11/2019.

³⁹ See article 2 of the law n°30/2018 of 02/06/2018 Law determining the jurisdiction of courts, Official Gazette n° Special of 02/06/2018

⁴⁰American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2016 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company.

⁴¹ Karlen, Delmar, Smentkowski, Brian P. and Gibson, James L.. "Court". Encyclopedia Britannica, 30 Aug. 2019, accessed on 5th June 2024, available at: <https://www.britannica.com/topic/court-law>

⁴¹American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2016 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company.

⁴²Fair trial." Merriam-Webster.com Legal Dictionary, Merriam-Webster, accessed on 5th June 2024, available at: <https://www.merriam-webster.com/legal/fair%20trial>.

The judicial system in a country is central to the protection of human rights and freedoms. Courts play a major role in ensuring that victims or potential victims of human rights violations obtain effective remedies and protection, that perpetrators of human rights violations are brought to justice and that anyone suspected of a criminal offence receives a fair trial according to international standards⁴³. The judicial system is an essential check and balance on the other branches of government, ensuring that laws of the legislative and the acts of the executive comply with international human rights and the rule of law.

With regards to plea bargaining, fair trial is served when the agreement interred into by prosecution and the suspect are admitted by the court. Since the suspect have to be given lesser punishment when the court admits all the entire agreement submitted, it simply regarded as a fair trial happened. Due to how a trial involving plea bargaining are quick, the suspect starts his punishment on time and the prosecution benefits from the information revealed by the suspect during his/her interrogation using them in further investigation and prevention of the same criminal acts.

The right to a fair trial is enshrined in international and domestic law around the world. the focus on the rights of victims of trans national crimes such as human trafficking and efforts to increase the rate of prosecutions of these kinds of crimes should not come at the cost of alleged offenders' rights to a fair trial, as a failure to uphold fair trial rights places them at risk of unfair prosecution. It could be considered that the extent to which the transnational criminal legal regime regulating crimes at the international level provides for these fair trial rights, suggest that the fundamental purposes of transnational criminal law exist in a state of tension against the aims of the international human rights regime, and conclude that further empirical research on the legal experiences of human traffickers is necessary.

⁴³ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – A Practitioners Guide (Second edition) P.20

I.1.9. Judgement

Judgment is a court decision, spelled out in a court order, that adjudicates a dispute between two parties by determining the rights and obligations of each party.⁴⁴ A judgment also referred to as the last part of a court case. A valid judgment resolves all contested issues and terminates the legal action, since it is considered the official pronouncement of the law by the court on the action which was pending before it. It indicates who wins the case and what remedies the winner receives. Remedies can include damages, injunction, or both. A judgment also signifies the end of the court's jurisdiction in the case. The Federal Rules of Civil Procedure and most state civil procedure rules allow appeals only from final judgments.⁴⁵

A judgment must be in writing and must clearly show that all issues have been decided. It must specifically indicate the parties for and against whom it is given. Monetary judgments should be precise, specified with certainty, and expressed in words rather than numbers. Judgments affecting real estate should contain an explicit description of the real estate so that the land can be easily identified.

In most cases, judgments for the cases that involves plea trials are just nothing other than making admission to the plea-bargaining agreement or rejecting them. Once a case is rejected, the prosecutor who has the case in his hands may redo plea bargaining by correcting mistake marked by the judge or go for the normal trial before the competent court.

Under Rwanda courts, judges are obliged to base on facts and apply law on those facts. Mostly, Rwanda criminal laws are in line with the United Nations Convention against Trans- national Organized Crime, which came into force in September 2003, is the main international instrument in the fight against organized crime. Besides Rwandan penal code has a section that criminalizes acts which are considered to be transnational. With in that regard judges adjudicate cases referring to laws either national and international

⁴⁴ Investopedia, "*Definition of Judgment*", accessed on 5th June 2024, available at <https://www.investopedia.com/terms/j/judgement.asp>

⁴⁵ The Free Dictionary [Internet]. "*Judgment*". The People's Law Dictionary, Gerald N. Hill and Kathleen T. Hill, 1981-2005 [cited 19 Aug. 2023], accessed on 5th June 2024, available from: <https://legal-dictionary.thefreedictionary.com/Judgment>

conventions ratified by Rwanda, precedents and customary practices.⁴⁶ Pursuant to article 9 of the law on civil procedure it stipulates that *"A judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine."*⁴⁷

I.2. Theoretical framework.

I.2.1. Fair and just prosecution

A guilty plea is typically the result of a negotiated agreement whereby a defendant agrees to plead guilty and forfeit their right to a trial in exchange for some concession from the prosecution, usually involving a reduction in the amount or type of charges brought or a shorter recommended sentence. Plea dispositions are largely viewed as essential to the administration of the criminal legal system because they allow for the rapid processing of cases in a system that contains too many cases to support speedy jury trials in every case.⁴⁸

Speedy disposition through guilty pleas can benefit victims, who can achieve justice quickly without having to undergo the traumatic process of testifying, as well as benefit defendants, who are likewise able to move on with their lives sooner than a trial would allow. Plea bargaining can also be a tool to achieve cooperation prosecutors might offer a reduced sentence in exchange for a guilty plea and agreement to testify against a third party⁴⁹

A case is said to be fair when all the it respects all the procedure provided for by the law on time and it being done with impartiality. Prosecutors should do all their work with spirit of providing fair service. It is to draft agreement they also have to be fair by making sure that a suspect is given a less sanction. Plea bargaining is done with the

⁴⁶ See article 9 of the law no 22/2018 of 29/04/2018 Law relating to the civil, commercial, labor and administrative procedure

⁴⁷ See article 9 of the law Law N° 027/2019 of 19/09/2019 Law relating to the criminal procedure, *Official Gazette n° Special of 08/11/2019*

⁴⁸ Turner, J. I. (2017), Plea Bargaining. In Luna, E. (ed), Reforming Criminal Justice: Pretrial and Trial Processes (Vol. 3), Academy for Justice, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-CriminalJustice_Vol_3.pdf

⁴⁹ *Idem*

consent of a suspect, there should be no force to inter into pleading guilty.

1.2.3. The principle of legality.

The principle of legality represents one of the most important principles of the state of law, which significantly contributes to defending the law order and the social balance, one of the most important principles of the rule of law, the principle of legality lies at the foundation of any judicial system, without which the existence of the rule of law cannot be conceived.

The principle of legality, in criminal law, means that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). It also embodies, that the criminal law must not be extensively interpreted to an accused's detriment, for instance by analogy. According to that principle, an offence must be clearly defined in the law.⁵⁰ The concept of law comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability. The requirements are satisfied where the individual can now from the wording of the relevant provision and, if need be, with the assistance of courts' interpretation of it, what acts and omissions will make him criminally liable. The principle of legality also includes the rule which prohibit the retrospective application of the criminal law to an accused's disadvantage.⁵¹ That principle is enshrined in the constitutions of many countries as well as in the most important international convention that protects human rights.

In order to be applicable to a system of law in its integrality, the principle of legality also needed a corresponding constitutionalizing. Contemporary constitutions understood and adequately turned to good account this imperative demand in their texts, through the express provision of this principle. Article 29 (d) of the current Rwandan constitution stipulates that "*not to be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute an offence under national or international law at the time it was committed. Offences and their penalties are*

⁵⁰ Grădinaru, Daniel, The Principle of Legality (November 20, 2018). RAIS Conference Proceedings - The 11th International RAIS Conference on Social Sciences, Available at SSRN: <https://ssrn.com/abstract=3303525>

⁵¹ *Idem*.

determined by law;”

Moreover, the right to a fair hearing is not only a basic norm in international human rights law but it is also a domestic norm in Rwanda, which envisages a fair trial where the accused is presumed innocent until proven guilty. However, contemporary criminal justice accommodates pleas of guilt subject to guilty plea standards under plea bargain agreements, where the accused are assumed to have voluntarily waived full trials, primarily for judicial expediency and efficiency. With all above, agreements between prosecution and defendant, the less sanctions to be imposed should be in line with law provisions so as to keep the principle of legality.

1.2.4. International organization and global governance

TOC is diverse activities with extremely dangerous consequences done by mostly non state actors. Thus, any authoritative effort should totally be involved. Even though this term is initially associated with economic dimension, it has expanded meaning to other sectors, including TOC. The focus will be on how the problems and related global and regional institutions are carefully managed and maintained where partnership and network become basically important. In managing the issues, agents in global governance cover both states and nonstate actors.

If we look at the basic understanding of concept itself, global governance means the importance of making common decision taking into account the institutions and regulations at global level in response to particular world problems.⁵² Two specifically prominent literatures elaborating about TOC relative to global governance and institutions should be viewed. Both are written by the same single writer, Anja P. Jakobi, entitled *Common Goods and Evils? The Formation of Global Crime Governance*⁵³ and *Crime, Security and Global Politics: An Introduction to Global Crime Governance*.⁵⁴ The former explains the historical aspect of forming global crime governance (GCG) for particular kinds of TOC. It also provides lenses on GCG consisting of its patterns and

⁵² Sinclair, T. J. (2012). Cambridge: Polity Press.

⁵³ Jakobi, A. P. (2013). *Common Goods and Evils? The Formation of Global Crime Governance*. New York: Oxford University Press.

⁵⁴ Jakobi, A. P. (2020). *Crime, Security and Global Politics: An Introduction to Global Crime Governance*. London: Red Globe Press.

strategies, including the roles of non-states actors. The perspectives provided will help to broaden the focus of research on TOC linked to global governance, involving institutions and policies flourished and adopted in all layers, not just relying on usual global governance theories which deal heavily with economic milieu. Meanwhile, the later points out the international ties.⁵⁵

1.2.5. International legal instruments

The fact of the real threat of transnational organized crime/TOC at this time strengthens the recognition of TOC as a common problem by countries in the world. So international cooperation is needed in the settlement which has been regulated in a series of mutually agreed provisions as an instrument of international law enforcement. As the main objective of UNCTOC is to encourage cooperation directed at efforts to prevent and eradicate transnational organized crime (see Article 1).⁵⁶ The Convention and its protocols include setting standards for the domestic law of each state party and co-operation guidelines for more comprehensive action

on each type of transnational organized crime. According to UNODC, TOC activities are related to illegal drugs, global crime, and various crimes, namely trafficking in persons and organs, firearms, corruption, drug trafficking, counterfeit drugs, migrant smuggling, money laundering, maritime piracy, terrorist issues, intellectual property theft, artistic and cultural objects,

endangered species of flora and fauna, and crimes related to cyber platforms.⁵⁷

UNCTOC enables states parties to commit to mutual assistance, which includes international cooperation in the form of seizure of evidence and proceeds of crime (see Article 13), acceleration and expansion of extradition gains (see Article 16), legal assistance (see Article 18), and cooperation in the investigation of the suspect (see Article 19 and Article 20). Including other special actions such as exchanging information, and complying with bilateral and multilateral agreements in the context of

⁵⁵ *Idem*

⁵⁶ UNODC. (2004). The United Nations Convention against Transnational Organized Crime (p. 5).

⁵⁷ *Ibidem* (p. 2).

international law enforcement as regulated in articles 26 and 27.

Article 30 of this convention is also contained in the coordination of countries with one another in the form of assistance in technical matters and resources.⁵⁸ States parties should consider adopting the preventive measures in article 31 and its protocols which specifically add to the scope of the main criminal problem. In the fight against money laundering crimes, based on article 7 of UNCTOC, each state party considers the establishment of a financial intelligence unit as a facility for collecting and disseminating information at domestic and international levels on potential crimes.⁵⁹ Similar steps are also regulated in article 14 of the United Nations Convention Against Corruption/UNCAC. Continued in the next article, this convention regulates the coordination of the settlement of acts of corruption through legislative steps involving foreign public officials, or a person or entity who gains unofficial benefits from the conduct of international business (see Article 8).⁶⁰ Furthermore, the main problem of corruption is discussed specifically in UNCAC which encourages countries to carry out international cooperation following articles 44 to 50 of this convention (see article 43), and collaborate with regional and international organizations, or participate in international programs (see Article 5).⁶¹ The crime of international theft is also included in the TOC category, namely the theft of intellectual property, as well as art and cultural objects. Intellectual property regulations in these countries have been

regulated in the Trade Related Aspects of Intellectual Property Rights/TRIPS⁶² agreement which refers to the Berne Convention for the Protection of Literary and Artistic Works and the Convention Establishing the World Intellectual Property Organization.⁶³ In particular, to suppress international trade that violates intellectual property rights, each member country conducts international cooperation and facilitates

⁵⁸ *Ibidem* (p. 32)

⁵⁹ *Ibidem* (p. 9).

⁶⁰ *Ibidem* (p. 10).

⁶¹ UNODC. (2004). United Nations Convention against Corruption. Retrieved July 4, 2021, from United Nations

Office on Drugs and Crime.

⁶² WTO. (1994). TRIPS – Trade-Related Aspects of Intellectual Property Rights (p. 321). Retrieved July 15, 2024, from World Trade Organization:

⁶³ WIPO. (1967). Convention Establishing the World Intellectual Property Organization. Retrieved July 4, 2024, from World Intellectual Property Organization:

the provisions of the assistance agreement including the promotion of cooperation and technical support such as the exchange of information in trade administrations that goods are considered suspicious, counterfeit, and pirated copyrighted goods (see Article 67 and Article 69).⁶⁴

CHAPTER II: THE CRITICAL ANALYSIS ON CHALLENGES RWANDAN INVESTIGATORS AND PROSECUTORS FACE WITH REGARD TO THE COUNTERING TRANSNATIONAL CRIMES

Within this chapter, a researcher is going to make a particular attention on the critical analysis on challenges Rwanda investigators and prosecutors face with regard to the process of countering transnational crimes. Thus, different legal provisions and cases are about to be analyzed with the use of general principles, doctrines and international norms that are related to criminal proceedings for transnational crimes in general.

In additional, this chapter shall oversee challenges that mainly face the smooth going of investigation and prosecution of transnational crimes in Rwanda as far as Rwandan laws are concerned. Rwanda is considered among the safest and most stable states on the continent, which is achieved through the exertion of tight control over the entire territory and domination of the country with autocracy established by the Rwandan ruling party. The government has prioritized the fight against crime, and crime prevention has become an important part of the national strategy for public safety and security. However, Rwanda faces some fragility with pervasive group grievance and

⁶⁴ WTO. (1994). TRIPS – Trade-Related Aspects of Intellectual Property Rights (pp. 348-349).

deep involvement in larger geopolitical struggles affecting the region.

II.1. Responsibilities of investigators in investigating transnational crimes in Rwanda

Preliminary investigations are conducted by investigators, on own motion, on complaint or on instructions from the public prosecution.⁶⁵ Under Rwandan law N°12/2017 OF 07/04/2017 establishing the Rwanda investigation bureau and determining its mission, powers, organization and functioning, show how RIB officers have powers to investigate crimes committed on Rwandan territory and those that crosses borders of Rwanda in General.

Under article 3 (1) of the above said law, stipulated about the definition of the term investigation where it provides that 'Investigation is any information gathering action intended for seeking information meant to prevent and track down crimes, gather incriminating or exculpatory evidence as well as any other activity whose purpose is to check whether or not a suspect has to be prosecuted or not' in other words, investigators are there to gather information which are used in preventing and tracking crimes.⁶⁶ Moreover the law suggest categories of investigators which are namely career investigators; and non-career investigators. While doing their duties, challenges are invertible as to many other kinds of duties around the globe.

Rwandan investigators have a big duty of conducting investigation to different kind of offences which are punishable by Rwandan criminal laws such as counter terrorism, cybercrime, gender-based violence, public funds embezzlement and corruption human trafficking drug trafficking.

With regard to transnational crimes which are most observed, we have human trafficking, people smuggling, smuggling/trafficking of goods sex slavery, terrorism offences.⁶⁷ As defined in previous sections, transnational crimes are crimes that have actual or potential effect across national borders and crimes that are intrastate but

⁶⁵ See article 4 of the law n° 058 /2023 of 04/12/2023 amending law n° 027/2019 of 19/09/2019 relating to the criminal procedure, official Gazette n° Special of 05/12/2023.

⁶⁶ See article 3 of the law N°12/2017 OF 07/04/2017 establishing the Rwanda investigation bureau and determining its mission, powers, organization and functioning.

⁶⁷ ccc

offend fundamental values of the international community. The term is commonly used in the law enforcement and academic communities. Transnational organized crime (TOC) refers specifically to transnational crime carried out by crime organizations.

II.2. The role of Rwanda investigation Bureau in countering transnational crimes

In recent years, transnational crimes have been increasing and are organized in sophisticated ways, therefore handling them calls for our change of mindset, approach and high level of cooperation.” said RIB Deputy Secretary General, this organ have established special unit that is responsible for investigating transnational crimes, cooperation with other countries through exchange of information, joint operation, extradition and mutual legal assistance. If done efficiently, no doubt it helps parties to preserve peace and stability in their respective countries.

In fact, RIB plays the key roles of prevention, detection and investigation of crimes. Performing these key functions, ensures that the perpetrators are held accountable and the victims get protected as justice is delivered. This is done knowing that transnational crimes are not left behind such that crimes which cross borders be countred. RIB as an organ, cooperates with other authorities such as Migration, ministry of justice, courts, RCS and so many other non-governmental institutions. Fo instance, On 30 January, the Rwanda Investigation Bureau (RIB) in collaboration with the International Organization for Migration (IOM) and coordination with Ministry of Justice (MINIJUST) has successfully reached over 50,000 people over a two-month long nationwide campaign to counter trafficking in persons (TiP), thanks to support from the Government of Japan. The campaign targeted border communities living in the districts of Nyagatare, Kirehe, Rubavu, Gisagara and Nyaruguru with the aim of preventing TiP among vulnerable populations and supporting referrals to medical, legal and protection services.

“This awareness raising campaign was organized to prevent this crime, but also due to our belief as Rwandans that every person is valuable,” stated Dr. Ugirashebuja Emmanuel, the Minister of Justice and Attorney General of Rwanda. “In this context, the Government of Rwanda, together with partners such as the Government of Japan, and IOM have joined in this program to fight against the trafficking of Rwandans and other

persons who are taken from neighboring countries.”⁶⁸

II.3. The role of national public prosecution authority in countering transnational crimes

Powers to prosecute before a court belong to the public prosecution⁶⁹. The mission of the National Public Prosecution Authority is to “*Participate to the Security of People and their property by pursuing the authors of breaches and criminals to bring them to justice with equity of treatment according to the ambition of the Constitution and International Law ratified by Rwanda*”⁷⁰. Thus, As provided for by the Law No 014/2018 of 04/04/2018 determining the organization, functioning and competence of the National Public Prosecution Authority and the Military Prosecution Department in its article 3, the National Public Prosecution Authority has the overall responsibility for investigating and prosecuting offences throughout the country. More specifically, the National Public Prosecution Authority to investigate and prosecute international and cross-border crimes is their responsibilities⁷¹

Besides, prosecutors act on behalf of the state against criminal offenders. He shall present at the court during the trial and state the main points of indictment after the accused is interrogated by the judge. He shall maintain his opinions after the court investigation on evidence is shown.⁷² Prosecutors helps much in making indictments that will serve during prosecution in trial, they also prosecute before the court the accused in the name of public. With regard to their the specificity of international crimes they need special knowledge that would help them to conduct interrogations and other tactics which will enable them to take conclusion of whether prosecuting or not. It is not easy for prosecutors who received a dossier from RIB to analyze the case which is some time not exhausted in terms of evidences that is why the law allow them to

⁶⁸ UN Migration, “*Awareness Raising Campaign on Counter Trafficking Reaches Over 50,000*” accessed on 30th September 2024, available at: <https://rwanda.iom.int/news/awareness-raising-campaign-counter-trafficking-reaches-over-50000>

⁶⁹ See article 23 of the law n° 027/2019 of 19/09/2019 relating to the criminal procedure,

⁷⁰ NPPA, “*NPPA quarterly progress report*” July – December 2021, P.3

⁷¹ See article 3 of Law No 014/2018 of 04/04/2018 determining the organization, functioning and competence of the National Public Prosecution Authority and the Military Prosecution Department.

⁷² Taiwan prosecution office “*Functions - Duties and responsibilities of prosecutors*” accessed on 1st October 2024, available at: <https://www.tcc.moj.gov.tw/296098/296099/296106/446539/post>

conduct further investigation from their own initiatives which act as supplements to the evidences collected by investigators.

Moreover, prosecutors help to address well names and punishments to be served by the accused when found guilty. Therefore, the knowledge of criminal laws especially those that generates crimes and their penalties is vital to prosecutors who have the case at their hands such that they prepare a well convincing indictment.

Apart from their responsibility to prepare criminal cases, prosecutors play an important role in criminal investigation, despite the differences in basic legal principles across countries. In some countries, prosecutors have an overall responsibility over investigation, while in others they have a more limited role in carrying out investigation.⁷³

One of the most important and common roles of prosecutors is oversight of investigators to ensure due process of law. In order to meet the rule of law standards and strengthen public confidence in the authority of the investigators to conduct investigations in a manner that balances rights of individuals, the investigative work of law enforcement must be monitored. One function of prosecutors is to supervise and give recommendations to investigators. The extent of such authority varies from country to country from non-binding advice to complete prosecutorial control over police investigations. Consideration should be given to the proper degree to which the division between the responsibilities for investigation can be separated from the responsibility for an independent prosecution. Both police and prosecutors should make efforts to understand and respect each other's responsibility in criminal procedure and justice delivery.

II.4. Crime prevention strategies in Rwanda

crime prevention defines crime prevention as strategies and measures that seek to reduce the risk of crimes occurring and their potential harmful effect on individual and society.⁷⁴ As already stated, effective crime prevention strategies can only be adopted

⁷³ UNODC, "*role of prosecutors*" accessed on 1st October 2024, available at: <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/role-of-prosecutors.html>

⁷⁴ United Nations Office on Drugs and Crime, Handbook on the Crime Prevention Guidelines; Making

after knowing the unique factors that cause such offences.

Crime prevention has become an increasingly significant part of several national strategies on public safety and security. The concept of prevention is grounded in the notion that crime and victimization are driven by many causal or underlying factors. These are the result of a wide range of factors and circumstances that influence the lives of individuals and families as they grow up, and of local environments, and the situations and opportunities that facilitate victimization and offending. Determining what factors are associated with different types of crime can lead to the development of a set of strategies and programmes to change those factors, and prevent or reduce the incidence of those crimes. These underlying or causal factors are often termed risk factors. They include global changes and trends that affect the social and economic conditions of regions and countries; factors affecting individual countries and local environments and communities; those relating to the family and close relationships; and those that affect individuals.

II.5. Most common transnational crimes that are committed in Rwanda

Under article 157 of the current criminal procedural law as amended to day stipulates that *“Rwandan courts can prosecute and try any person, whether Rwandan or foreigner, a Rwandan or foreign non-governmental organization or legal entity that commits, inside or outside the territory of the Republic of Rwanda, an international crime or a transnational crime as provided for by the Law determining offences and penalties in general.”*⁷⁵ This legal provision show how Rwandan courts are competent to trial transnational crimes committed on the territory of Rwanda or out of it. The most common transnational crimes in Rwandan are Human and Drug trafficking, Cybercrimes and financial crimes.

Them Work (2010) p 10

⁷⁵ See article 157 of the law N° 027/2019 of 19/09/2019 Law relating to the criminal procedure as amended to day.

II.5.1. Human trafficking

With regard to Human trafficking, Rwanda has improved its competency to adjudicate human trafficking cases by enacting the 2018 human trafficking law,⁷⁶ providing relevant training for members of the judicial system, and is in the process of instituting joint sessions between prosecutors and judges. In collaboration with the IOM and UN Women, the Rwandan Government has designed a training needs assessment in order to create more comprehensive capacity-building. Additionally, the NPPA established a focal point for human trafficking as a specialized unit to improve the prosecution of cases. The fact that conviction rates have significantly increased from 12.5% in 2016 to 53.3% in 2018 signals continued progress in this area.⁷⁷

Additionally, the primary transit countries for trafficking in East Africa are Uganda, Kenya, and, to a lesser extent, Tanzania. With respect to destination countries for trafficking in East Africa, Uganda ranks first, followed by Kenya and Tanzania. Regional cooperation, resulting in ease of travel across border posts, has the unintended consequence of increasing the flow of human trafficking, thus calling for the establishment of a joint East African regional team to work on the crime of TIP. Porous borders also contribute to cross-border trafficking. Several ports of entry and exit emerged in the research as being especially prone to human trafficking: Burera and Gicumbi bordering Uganda in the Northern Province, Nyagatare bordering Uganda and Tanzania in the Eastern Province, and Kirehe bordering Tanzania and Burundi in the Eastern Province. In this regard, Rwanda has made improvements, installing mechanisms to detect traffickers and other criminals at ports of entry, but it still has more to do in securing porous borders, especially in the Eastern and Northern Provinces. Cross-border trafficking from Rwanda to Middle Eastern countries remains a daunting problem. In general, informants recommend adopting a holistic approach in counter-trafficking efforts that also involves civil society and the private sector. Greater collaboration is unlikely to occur without a robust capacity-building mechanism.⁷⁸

⁷⁶ Law No. 51/2018 of 13/08/2018 relating to the prevention, suppression, and punishment of trafficking in persons and exploitation of others

⁷⁷ Data source: 85 VoT cases obtained from the HCCIC and NPPA for the period of 2016–2018.

⁷⁸ Never Again Rwanda, ""

II.5.2. Drug trafficking

Rwanda's role in global drug markets is minor. However, as the country becomes a regional hub, the country's role in the transnational drug trade is expected to increase. Even though consumption remains low, the country is becoming an overland trans-shipment point for heroin landing in east Africa, specifically from Kenya and Tanzania, and destined for markets and trans-shipment points elsewhere in southern and central Africa. Similarly, the criminal market for cocaine is also believed to be limited in size, but there is evidence of trafficking and local use in Rwanda, with cocaine-related interceptions taking place at Kigali Airport. Cocaine is believed to arrive mainly via west and central African airports.

Cannabis is the most consumed and trafficked illegal drug in the country, and Rwanda is a trans-shipment point for regionally produced cannabis, as well as a minor destination market. Even though the consumption of cannabis products for recreational purposes remains illegal, legislation legalizing medical use of cannabis entered into force in 2021. This triggered concerns over the increase of cannabis consumption in the country because of the lack of infrastructure and protocols to realize controlled domestic use of cannabis for medical purposes. Conversely, synthetic drug trade is almost non-existent with little information about the production, consumption and transportation of synthetic drugs in the country.

II.5.3. Cyber Crimes

Rwanda is experiencing a surge in cybercrimes, including computer viruses being used by hackers to disrupt the operations of various institutions, such as banks, and to enter different systems. This is attributed to the rapid spread of information technology infrastructure as well as the changed habits of citizens as a result of the COVID-19 pandemic-related restrictions. However, cases of cyber-dependent crime are still sporadic, and the criminal market is not consolidated given that the country-initiated skills-building programs in network-monitoring, which has heightened cybercrime awareness among many internet users. Rwanda has established the law n° 60/2018 of 22/8/2018 on prevention and punishment of cybercrimes. Which is a very good step forward as an element of its role in combating cybercrimes.

II.5.4. Financial Crimes

The most prevalent financial crimes causing the most financial loss in Rwanda are tax evasion, embezzlement, and misuse of public funds. Despite government efforts, corruption and embezzlement top the list of serious financial crimes in Rwanda. Cases are still widespread with those in public office and in the private sector, where instances of mismanagement and flouting of contractual terms result in financial losses. Financial fraud, including Ponzi schemes, are also prevalent. The loss of stable sources of income induced by the pandemic has increased the number of Rwandans who fall victim to false promises of higher returns. Mobile money fraud is the most common type of cyber-enabled financial crime, with people being manipulated via phone calls or SMS to give up confidential information such as passwords, bank codes and credit card numbers.

II.6. The failing of states as a challenge to combat the increase of transnational crimes in the region

The international community is confronted with an increasing level of transnational crime in which criminal conduct in one country has an impact in another or even several others. Drug trafficking, human trafficking, computer crimes, terrorism, and a host of other crimes can involve actors operating outside the borders of a country which might have a significant interest in stemming the activity in question and prosecuting the perpetrator. Contemporary transnational crimes take advantage of globalization, trade liberalization and exploding new technologies to perpetrate diverse crimes and to move money, goods, services and people instantaneously for purposes of perpetrating violence for political ends.⁷⁹

Moreover, problems of weakened states and transnational crime create an unholy

⁷⁹ Dan E. Stigall, U.S. Department of Justice (2013). "Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law". *Notre Dame Journal of International and Comparative Law*. 3 (1). [SSRN 2211219](#)

confluence that is uniquely challenging. When a criminal operates outside the territory of an offended state, the offended state might ordinarily appeal to the state from which the criminal is operating to take some sort of action, such as to prosecute the offender domestically or extradite the offender so that he or she may face punishment in the offended state. Nonetheless, in situations in which a government is unable (or unwilling) to cooperate in the arrest or prosecution of a criminal, the offended state has few options for recourse. Furthermore, often state actors are part of transnational criminal dynamics in conflict zones and benefit from the smuggling of illicit goods.⁸⁰

II.7. Challenges investigators face with regard to the prevention and investigation of transnational crimes

Judicial Officers may inadvertently become vulnerable to exposure to criminal activity in the course of their duties in the following ways: Lack of Knowledge of the law and appropriate offences, Sensitivity of the cases due to the huge amounts involved and high-profile suspects Insufficient evidence to convict in deserving cases, political pressure to delay or dismiss high profile cases and fear of retribution. Thus, investigator mostly who works on borders are nearly exposed to corruption due to many transnational drugs and human trafficking which are committed, offenders have a lot of money which can be used to influence investigators.

Moreover, when it comes to the issue of lack of knowledge of the law, here, it is all about the issue of not mastering the procedure and substantive matters on the case which result into bad prepared dossier from investigation offices to prosecution. It would be hard for investigators to conduct a well interrogation if he /she doesn't master the law. Thus, basic Human rights for due process of law during interrogation should be respected such as presumption of innocence, telling the accused all the charges against him and his right to legal assistance.

⁸⁰ Weigand, Florian. Conflict and Transnational Crime: Borders, Bullets & Business in Southeast Asia. Edwar Elgar

II.8. Challenge Rwandan prosecutors face in relation to the transnational crimes

Lack of sufficient evidence from the investigation, most perpetrators of transnational crimes are wise and they are good at hiding evidences. It is hard for prosecutors to trace their ways in the production of evidences to present before the court. Another challenge is concerned with bribery of officials which causes the offenders to go back home looking like innocent. However, under Rwandan law on corruption punishes both the giver and taker of bribe since they are all treated equally and they both are punishable according to the law.

Additionally, there also exist lack of prosecution capacity which also causes the increase of many loosed cases due to poor preparation and prosecutors who have no capacity to prosecute such kind of cases at their hands. At certain point, prosecutors also face the challenge of unrealistically high standard of proof where the case at hand getting their evidence to prove beyond the reasonable doubt is hard.

One would also say that witness credibility and death of death of crucial witnesses still is a challenge to the prosecution in relation to the matters of prosecuting transnational crimes. When a witness is dead it is hard to get information about how the offence was committed at some levels the offender would be acquitted if the evidence proving beyond the reasonable doubt are not presented. It is also a challenge when the suspect is dead death there would be no one to prosecute and in principle the criminal liability is personal, no one should be tried of offence committed by others.

Moreover, Cultural differences is also an issue about confidentiality and revealing the names of human subjects vary considerably from one country to another. Sometimes differences in culture may cause a challenge since some behavior are accepted in one country where in the other country they are not.

II.8.1. Internal Challenges of investigators and prosecutors in countering transnational crimes in Rwanda

Rwanda is a developing country, insufficient budget allocations in the face of other competing national needs, some of the internal challenges comprises the inadequate training of officials in relevant agencies, corruption of the judiciary and too much cases to work on which makes them. All these contribute to poor administration of

transnational crimes and make it possible for perpetrators to increase in an area.

Language barriers is also a challenge to the internal officials sometimes perpetrators speaks different language which need a translator, this cause poor communication and for investigators.

II.9. Factors that make transnational crime possible world wide

In a recent report of a workshop commissioned by NIJ, the National Research Council said that trans-national crime was being affected by three related factors: n Globalization of the economy. Increased numbers and heterogeneity of immigrants and improved communications technology.⁸¹ These factors do not “cause” transnational crime. Rather, they facilitate crime, or in some cases, they are criminal opportunities in themselves. For example, immigration does not cause crime. The desire to immigrate, however, may cause people to violate immigration quotas and regulations and may lead to illegal immigration, which in turn is exploited by criminals. Most of the causes of transnational crime are not new; they are, in fact, quite similar to factors that drive crime in general: disparate socioeconomic conditions, which stimulate migration and its antecedent trafficking in persons; the desire for illegal goods and services, which moves crime into the transnational realm when the suppliers are in one country and the consumers are in another; and the universal greed for money and power.⁸²

II.10. The unique challenges of transnational crime

The challenges in preventing and controlling transnational crime stem from several sources. For example, some crimes arise out of particular cultural or societal conditions and experiences that differ from one country to another. Behavior that is acceptable in one country may be illegal in another. Crimes that arise out of electronic communications, such as money laundering, are not bound by national borders. The whole panoply of so-called cybercrimes is almost by definition transnational crimes, since cyber-space is not constrained within these borders. The traditional desire to hide crime and elude law enforcement is met more fully by the increasing ease of global

⁸¹ James O. Finckenauer “*Meeting the challenge of the transnational crimes*” accessed on 3rd October, available at: <https://www.ojp.gov/pdffiles1/jr000244b.pdf>

⁸² *Ibidem*

travel and communication.⁸³

The challenges in dealing with transnational crime arise from the national orientations of laws and law enforcement. Every country has its own laws and law enforcement system to deal with crime. With regard to Rwanda, we have laws which give specificity to transnational crime and specialized courts to deal cases related to the transnational crimes. But what about crime and criminals that cross national borders? the international community is not well positioned to respond to such issues as foreign nationals committing a crime in the United States and escaping to their home country], [because] extradition and other procedures are archaic, based upon 19th century standards, and of limited use today.

CHAPTER III. THE MECHANISMS TO BE PUT FORWARD THE EFFECTIVENESS OF INVESTIGATION AND PROSECUTION OF TRANSNATIONAL CRIMES IN RWANDA

This chapter is aimed at providing and suggesting the possible mechanisms and measures with the respect to the effectiveness of investigation and prosecution of transnational crimes under Rwandan criminal laws. Indeed, we will be providing both legal and institutional mechanisms to be put forward to enhance the effectiveness of investigation and prosecution of transnational crimes under Rwandan criminal justice system.

What is more to this, this chapter will mainly focus on the possible legal framework to which Rwandan criminal justice would make so as to have clear legal procedures related to the application of plea bargaining. Both legal and institutional mechanism are going to be discussed on in this chapter so as to give solutions to the challenges analyzed in chapter ii of this work.

In all actions concerning investigation and prosecution of transnational crimes, the respect of legal procedure should be a primary consideration. In assessing whether the procedures concerning criminal procedure are respected, States should make every effort to provide enough materials, and wherever possible, make sensibilization on radio and domestic community.

⁸³ *Ibidem*

Suspects have right to information as well as their rights to legal counsel. States and other relevant stakeholders such as investigators and prosecutors.

III.1. The legal mechanisms for the enhancement of plea bargaining under Rwandan law.

Generally, as with the respect of the rule of law principle, procedures regarding the effectiveness of investigation and prosecution of transnational crimes as a whole should be provided for by domestic criminal procedural law of a country, as per now, the current law regarding criminal procedure is not clear in relation to the rules and guide line which should be referred to when making the investigation and prosecution of transnational crimes. There should be amendments in the current criminal procedural law, where there should be specific provisions on the tactics of conducting investigation and prosecution for transnational crimes. With regard to penal code, penalties for transnational crimes should be increased high level so as to make perpetrators to be afraid of committing the same crimes.

In addition, Rwandan criminal procedural law must go beyond the determination of the rights and obligations of suspects but also provide on how these rights and obligations can be enforced. Moreover, it must do this in a systematic and formal way, because the failure to do so would render the legal system inefficient, unfair, and biased and, as a result, possibly upset the social peace. Embodying this systematization and formalization, procedural law constitutes the sum total of legal rules designed to ensure the enforcement of rights by means of the courts.⁸⁴

Because procedural law is a means for enforcing substantive rules, there are different kinds of procedural law, corresponding to the various kinds of substantive law. Criminal law is the branch of substantive law dealing with punishment for offenses against the public and has as its corollary criminal procedure, which indicates how the sanctions of criminal law must be applied. Because the object of judicial proceedings is to arrive at the truth by using the best available evidence, there must be procedural laws of

⁸⁴ Jescheck, Hans-Heinrich, Yeazell, Stephen C., Weigend, Thomas and Hazard, Geoffrey. "Procedural law". Encyclopedia Britannica, 11 Aug. 2023, <https://www.britannica.com/topic/procedural-law>. Accessed 21 August 2024.

evidence to govern the presentation of witnesses, documentation, and physical proof.⁸⁵

In our view, there is a need of revising criminal procedural law so as to match the current procedures used in investigating and prosecution of transnational crimes with the law provisions. Rwandan legislative organ should do as much as it can to elaborate legal basis for transnational crimes within procedural law that everyone would understand the substantive reason of the process.

III.1.1. Ensuring the respect of legislations in relation to investigation and prosecution of transnational crimes.

Firstly, the legal mechanisms that needed to be put forward is mostly concerned with improving the policy on investigation and prosecution of transnational crimes that will provide guidelines and scope in which the legislators will follow to make the favorable laws protecting suspects rights. Secondly, it is much important to enact legislations that clearly provide the procedures and substantive ways of adjudicating criminal proceedings involving transnational crimes for defendants and how it would be handled.

With regard to the issue of very many suspects which are detained and stay long in detention facilitates, it would be better for investigators and prosecutors to propose plea bargaining for the suspect so as to reduce number of cases lodged in courts and also to decrease number of detained suspects in custodies and prisons. Pursuant to article 26 of the Rwandan criminal procedure stipulates that *“At the end of the suspect’s interrogation, the prosecutor may propose a plea-bargaining agreement whereby the suspect helps the prosecutor to obtain all the necessary information in the prosecution of the offence and to know other persons involved in the commission of the offence and in return of some benefits but without hindering good administration of justice. The prosecutor undertakes to make concessions to the suspect in relation to charges against him or her and the penalties that he or she may request”* Prosecutors and their assistants after conducting interrogation on the suspects, have obligation to respect this above-mentioned legal provision by proposing the use of plea bargaining to the interrogated persons at the moment. As the principle governing agreements, a suspect

⁸⁵ *Idem*

should have some benefits in return such as getting less sanction or being given total suspension with respect to the offense he/she is accused.

In addition, prosecution is obliged to impose charges the suspect as agreed on by both parties when the plea-bargaining agreement is admitted. This legal provision concerns with the principle of good faith where each party of the agreement. Good faith in contract law is a general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith. It is an implied condition of every contract that parties won't do anything to deliberately hinder the contract's completion. The duty of good faith and fair dealing protects the right of the other party to receive the benefits of the contract. The scope of this duty is not specific and courts have discretion to determine it.⁸⁶

While taking a decision, judges have obligation to consider the agreement on plea bargaining concluded between the public prosecution and the accused in case the agreement is admitted.⁸⁷ The law also provide that

The respect of procedural law by all on plea bargaining is most vital because once they are respected suspects will be served fair trial. Moreover, principles of due process of law in general have to be followed by all law practitioners especially prosecution and judicial personnel. With reference to article 29 of the current Rwanda Constitution, which stipulates as follows: *"Everyone has the right to due process of law."* In terms of outcomes and processes, Article 29 means that criminal proceedings should advance defendant's best interest by taking to consideration all rights reserved within the said article. For instance, defendant should be informed of the nature and cause of charges and the right to defense and legal representation, be presumed innocent until proved guilty by a competent Court, to appear before a competent Court, not to be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute an offence under national or international law at the time it was

⁸⁶Up counsel, "Contract of Good faith" [Contract of Good Faith: Everything You Need to Know \(upcounsel.com\)](https://upcounsel.com) accessed on 22nd August 2024.

⁸⁷ See article 27 of N° 027/2019 of 19/09/2019 Law relating to the criminal procedure, Official Gazette n° Special of 08/11/2019 as amended to day

committed. Offences and their penalties are determined by law; not to be held liable for an offence he or she did not commit; criminal liability is personal; not to be punished for an offence with a penalty that is more severe than the penalty provided for by the law at the time that offence was committed, not to be prosecuted or punished for an offence which has reached its statute of limitations and so forth.⁸⁸

III.2. The institutional mechanisms for the effectiveness of plea bargaining in Rwanda

Institutional mechanisms are the process by which things are invested with an institutional function or stimulus.⁸⁹ Within this part, lots about institutional mechanisms are going to be discussed with regard to the effectiveness of investigation and prosecution of transnational crimes process under Rwandan laws.

According to paragraph 7 of the United Nations Guidelines for the crime prevention preconizes states should develop crime prevention strategies and create institutional framework for their implementation.⁹⁰ In this regard, a permanent central authority in charge of the crime prevention policy is recommended. Where this authority exists, it works with other public and private institutions to develop a national plan or program of crime prevention. The above-mentioned authority may be located in the ministry having justice or security in its attributions. For example, in Canada, the National Crime Strategy is located in the Ministry of Security and Safety and support a range of programs at the local level through funding specific programs that focus on youth.⁹¹

A number of institutional mechanisms have been put in place so as to ensure the respect of principles governing investigation and prosecution of transnational crimes. Institutions like National Public Prosecution Authority (NPPA), Rwandan Investigation Bureau (RIB), Courts, Rwanda Correctional Service, Rwanda Bar Association, Legislative organ and so forth plays a big role in ensuring the smooth going of investigation and

⁸⁸ See article 29 of the Constitution of The Republic of Rwanda, Year 62 Official Gazette n° Special of 04/08/2023

⁸⁹ Jacob Robert Kantor. "*The Institutional Development Mechanism.*" Chapter 11 in *An Overview of Social Psychology*. Chicago: Follett Publishing (1929): P.1

⁹⁰ Garland D; Sparks R, *Criminology, Social Theory and the Challenge of our Times*. The British Journal of Criminology (2000) 40 at 189-204

⁹¹ United Nations Office on Drugs and Crime, *Handbook on the Crime Prevention Guidelines; Making Them Work* (2010) p 32

prosecution of transnational crimes.

Starting with NPPA as an institution, there a need of rules and regulations that governs work within the institution in general plus special rules that deals with the investigation and prosecution of transnational crimes to foster the handling and preparation of cases in the institution. Prosecutors should be given enough materials that enables them to finish their duties on time since plea bargaining was introduced to minimize the time that was being consumed through normal trials. Prosecutors are the gatekeepers of the criminal legal system.

The prosecutor shall ensure that the plea negotiations are initiated at the earliest opportunity because they are the ones to decide whether to prosecute and what to charge. The institution its self has the duty to encourage prosecutors to use pre-indictment bargaining to avoid the increase number of people in prisons and a huge number of cases in courts. People are arrested and charged with crimes every day, putting tremendous stress on the court system and prisons. To resolve the tremendous number of cases, prosecutors may seek out plea agreements that are done before the accused is given provisional detention.⁹²

On the other hand, Rwandan judiciary is an institution which has the duty of being the guardian of human rights and freedoms in the country.⁹³ This duty is exercised in accordance with this Constitution and other laws.⁹⁴ Rwandan judiciary has the mission to dispense justice in the name of the people with equity and integrity contributing to the strengthening of the rule of law, respect of fundamental liberties and human rights for transformational governance.⁹⁵ Thus, has the obligation to provide fair justice through respecting criminal procedures which are provided for by the law in the implementation of plea bargaining.

⁹² Aizman law firm, 'Plea bargaining process between prosecution and Defense attorney' available at accessed on 23rd August 2023.

⁹³ See article 43 of the Constitution of the Republic of Rwanda, Official Gazette n° Special of 04/08/2023.

⁹⁴ Rwandan judiciary, "About" available at [Overview \(judiciary.gov.rw\)](https://www.judiciary.gov.rw), accessed on 23rd August 2024.

⁹⁵ Rwandan judiciary, "About" available at [Overview \(judiciary.gov.rw\)](https://www.judiciary.gov.rw), accessed on 23rd August 2024.

Courts also have to work hand in hand with NPPA so as to have common understanding on the matter and share some related information on cases that concerns the investigation and prosecution of transnational crimes. Chief registrar and Chief Prosecutors normally have to collaborate so as to figure out which cases that might go for plea bargaining as one of the way to solve increasing number of detained suspects who are charged of committing transnational crimes.

Besides, Rwanda correctional service is an institution that was established to provide safe and humane custody for prisoners both under-trial and convicts as and when sent by the courts, ensure their rehabilitation for their successful reintegration upon release.⁹⁶ Moreover, RCS is an essential component of Rwanda's Justice, Rule of Law-and-Order Sector. RCS has the noble mandate of protecting the society from offenders incarcerated by due process of the law.

RCS as an institution, has to provide access to justice for detainees who are under detention for accused of transnational crimes. They should also allow meetings and campaign events that has ambition of teaching the benefits of plea bargaining in prisons and those who agree to plead guilty would be given chances to do so. RCS should also keep communication with courts and the prosecution sides so as to discuss on better ways in which plea bargaining may be conducted.

III.2.1. Respecting guiding principles of the work within the institution.

To mention, the first mechanism is about selection and appointing of workers within the institutions who merits the job. Employing people with much skills about criminal procedure, criminology, human rights and investigation procedures will be much important in implementing plea bargaining especially when it comes to defendants who need special attention while dealing with their cases. This is because the respect of the law will be their priority together with their guiding principle of integrity, independence and impartiality. Additionally, these institutions should provide enough materials that will help in smooth going of their work so as to serve well as it is desired efficiently on time.

⁹⁶ RCS, "Who we are" available at [Who we are – RWANDA CORRECTIONAL SERVICE \(rcs.gov.rw\)](https://www.rcs.gov.rw), accessed on 23rd August 2024.

Moreover, it is much better for institutions to organize regular trainings for the staff members about the effectiveness of investigation and prosecution of transnational crimes as well as to the community to ensure that people are aware of their rights and share them with skills related to the prevention of crimes in general. Building the sense of self evaluation within the institution should also be another tool to be used in order to enhance the principle of accountability.

III.2.2. International cooperation

Given the limits on the exercise of extraterritorial enforcement jurisdiction, states have developed mechanisms to cooperate in transnational criminal matters. The primary mechanisms used in this regard are extradition, lawful removal, and mutual legal assistance.⁹⁷ Extradition is the mechanism by which one sovereign request and obtains custody of a fugitive located within the jurisdiction and control of another sovereign. It is an ancient mechanism, dating back to at least the thirteenth century BCE, when an Egyptian Pharaoh negotiated an extradition treaty with a Hittite King. Through the extradition process, a sovereign (the requesting state) typically makes a formal request to another sovereign (the requested state).

If the fugitive is found within the territory of the requested state, then the requested state may arrest the fugitive and subject him or her to its extradition process. The extradition procedures to which the fugitive will be subjected are dependent on the law and practice of the requested state.⁹⁸

Aside from mechanisms for the return of fugitives, states have also developed mechanisms for requesting and obtaining evidence for criminal investigations and prosecutions. When evidence or other forms of legal assistance, such as witness statements or the service of documents, are needed from a foreign sovereign, states may attempt to cooperate informally through their respective police agencies or,

⁹⁷ Dan E. Stigall, *U.S. Department of Justice (2013). "Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law". Notre Dame Journal of International and Comparative Law. 3 (1). [SSRN 2211219](#)*

⁹⁸ *Idem*

alternatively, resort to what is typically referred to as requests for "mutual legal assistance"⁹⁹ The practice of mutual legal assistance developed from the comity-based system of letters rogatory, though it is now far more common for states to make mutual legal assistance requests directly to the designated "Central Authorities" within each state. In contemporary practice, such requests may still be made on the basis of reciprocity but may also be made pursuant to bilateral and multilateral treaties that obligate countries to provide assistance. Many countries are able to provide a broad range of mutual legal assistance to other countries even in the absence of a treaty.

The financial crime expert Veit Buetterlin explained that transnational crime types such as counterfeiting, smuggling, human trafficking, drug trafficking, illegal logging, illegal mining, or illegal wildlife trade can only be effective if the involved crime networks can launder the proceeds.¹⁰⁰ He also mentioned that the international community needs to overcome a state where "criminals act internationally, while prosecutors stop at borders."¹⁰¹

Moreover, Judges and Prosecutors play a critical role as stakeholders in the enforcement of the law; hence need to be conversant with the law and investigative processes as to be able to adjudicate / prosecute financial crime cases effectively, they also need to familiarize themselves with the law in other jurisdictions as these crimes transcend transnational / continental boundaries. Prosecutors and Law Enforcement Agencies need to work together to ensure effectiveness and efficiency in the conduct of financial crime investigations and speedy closure of cases. Investigative Agencies should collaborate in the sharing of information on TOC Investigations Effective Witness Protection programs to address Witness unavailability. Prosecutors and investigators need to liaise closely for the co-ordination of Law Enforcement activities to avoid Conflicting roles and duplication of effort.

III.3. Area of improvement for government of Rwanda

Governments should address the Lack of Capacity (Resources), Funding, Training and infrastructural support for LEA's, and invest in modern investigative tools and

⁹⁹ *Idem*

¹⁰⁰ ["Fighting the war against terrorist financing"](#)

¹⁰¹ ["Defence review - Germany \[Video\] - Money Laundering Bulletin"](#)

equipment to facilitate effective investigation and prosecutions as well as asset recovery. Government and Regulators should have the necessary legislation in place, coupled with appropriate regulatory regimes to enforce it including asset recovery processes; and appropriate training programs for all stakeholders. Thus, countries should foster international cooperation to provide the widest possible range of mutual legal assistance in TOCS investigations and prosecutions. Prosecution and Conviction of key corruption and TOC suspects will satisfy high public expectations and reduce Negative perceptions about the Judiciary.

CONCLUSION

Often invisible but always insidious, transnational organized crime is a vicious threat to peace, security, and sustainable development wherever it operates. And it operates everywhere in all countries, rich and poor, North and South, developed and developing. The individual countries can however not fight alone. Africa must take hands in the TOC fight. Rwanda has shown a relatively high level of commitment to international cooperation against organized crime. The country has ratified the most relevant international treaties pertaining to organized crime with the exceptions of the Arms Trade Treaty as well as the 1961 Single Convention on Narcotic Drugs. It has been an active member of the East African Community and AU, often supporting institutional reforms and regional instruments to help meet security challenges and threats. In addition, Interpol's National Central Bureau for Rwanda is located at the Kigali national police headquarters. Still, Rwanda generally lacks cooperation mechanisms with other countries on matters such as human rights. At a national level, the Rwandan government has put in place laws and policies to sufficiently combat organized crime, including drug trafficking, human trafficking, cybercrimes and corruption. The country is also taking measures to counter illegal logging and poaching of wildlife species in its national parks, through the enactment of legislation, such as the Law on Biodiversity and Wildlife Conservation, to foster conservation efforts. However, their enforcement remains problematic as most of the laws are unenforced or partly enforced because of lack of capacity.

RECOMMENDATIONS

The following is going to be the discussion about the different suggested recommendations with regard to the respect of right and obligations concerning investigation and prosecution of transnational crimes. As analyzed in different chapters above, a lot have changed with regard to tracing perpetrators of trans national crimes, the establishment of special courts to hear these kinds of crimes also was a good way forward, however as a researcher, below are recommendations of which they should be looked at by the respective institution.

To the Rwandan investigation Bureau

- RIB should improve their investigation process through providing regular training of officer such that they master the professional investigation tips in their duties.
- RIB should provide enough and advanced equipment and tools which are able to trace evidences which will be used in prosecution process.
- Should conduct regular audit to officer who mainly work on border for preventing corruption.

To the National public prosecution Authority

- Prosecutors should improve their way of preparing indictment by gathering enough evidences to avoid too much cases which are loosed during trial.
- NPPA should also provide regular training of officer such that they master the professional investigation tips in their duties.
- Prosecutors need to propose plea bargaining to possible cases for reducing case logs in courts

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