

Challenges of Domestic Prosecution of War Crimes: Jurisdiction, Politics, and Capacity

Ms. Mahima Khetarpal

Research Scholar, Geeta University Khetarpalmahi@gmail.com

Prof. (Dr.) Saurabh Chaturvedi

Designation – Dean, School of Law, Geeta University deansol@geetauniversity.edu.in

Abstract

World war crimes prosecutions strive to deter future atrocities and promote global accountability by punishing the worst human rights and humanitarian law abuses. Despite these goals, domestic war crimes prosecution is complicated by jurisdictional issues, political influence, and judicial system capacity. When international mechanisms like the International Criminal Court (ICC) claim jurisdiction over crimes committed in sovereign territories, often far from global legal centers, national sovereignty and the international mandate for justice clash. National courts often struggle to align their domestic legal frameworks with international humanitarian law, including the Geneva Conventions and the Rome Statute, resulting in justice inconsistencies and prosecution gaps. Political issues hinder domestic prosecution since governments may be unwilling or unable to prosecute political leaders, military personnel, or other state stability actors. In post-conflict societies, prosecuting war crimes may threaten fragile political settlements, destabilize transitional governments, or spark new violence, forcing justice to be balanced against national security and social stability. Over and above political constraints, capacity-related constraints hinder domestic war crimes prosecution. After conflict or with developing judicial infrastructures, many jurisdictions lack the legal institutions, resources, and qualified staff to conduct complicated investigations and prosecutions that match international standards. Domestic courts cannot prosecute these cases because to a lack of judicial infrastructure, trained judges and prosecutors, forensic and investigation capabilities, and specialized court facilities. This study explores jurisdiction, politics, and capability through theoretical and doctrinal analysis, case studies from Rwanda, Sudan, and Ukraine, and a critical literature survey. Rwanda's Gacaca courts show how community-based, innovative domestic mechanisms can address massive caseloads and foster reconciliation, Sudan shows how political obstruction and lack of cooperation with international institutions impede accountability, and Ukraine shows the institutional challenges of adapting na Using the complementarity principle, which prioritizes national jurisdiction but allows international intervention when domestic systems are unwilling or incapable, the study examines hybrid tribunals and international cooperation as ways to fill gaps where domestic courts cannot prosecute.

Keywords: War crimes, domestic prosecution, jurisdiction, political interference, legal capacity, international law, accountability, International Criminal Court (ICC), complementarity, legal reform, transitional justice, hybrid tribunals, political will, international cooperation.

Introduction

War crimes prosecution is crucial to national and international legal systems because it punishes criminals, prevents future atrocities, and provides justice to victims. The Nuremberg Trials, ICTY, and ICC have set worldwide justice standards for mass atrocities, genocide,

crimes against humanity, and other major international law violations. Lack of trained prosecutors, judges, forensic experts, and investigators, as well as poor evidence collection, witness protection, and case management technologies, can impede justice. Since there are no war crimes courts or tribunals, general criminal courts must handle complex and sensitive cases that require expertise in international humanitarian law, procedural safeguards, and conflict-sensitive adjudication. High attrition or poor performance among judges, prosecutors, and investigators due to threats from strong defendants, societal actors, or armed factions can compromise trial integrity and cause emotional and psychological suffering. Despite these obstacles, domestic war crimes prosecution is vital for various reasons. Local justice procedures can boost victim engagement by acknowledging culturally and socially relevant victim experiences. Domestic trials improve legal institutions, increase national ownership of judicial procedures, and deter future offenders by demonstrating that impunity is not acceptable. Domestic courts can better understand conflict sociopolitical and cultural factors than foreign tribunals, enabling for more nuanced and context-sensitive adjudication that balances accountability and reconciliation. The Rwandan Gacaca courts and Sierra Leone's Special Court demonstrate how domestic institutions can collaborate with international procedures to solve resource or competence shortfalls while promoting social healing and local legitimacy. This study critically investigates jurisdictional, political, and capability factors in domestic war crimes prosecution. Legal frameworks, Rwanda, Sudan, and Ukraine case studies, and scholarly debate are examined to explain structural, procedural, and normative hurdles to domestic accountability for mass atrocities. The study explores capacity-building, judicial reforms, international legal standards, and strategic integration of international cooperation and hybrid tribunal models to close domestic prosecution gaps. Domestic courts should function without sacrificing judicial independence, victim rights, or social stability. International humanitarian law and global justice are supported by strengthening national legal systems, as domestic prosecution influences transitional justice, post-conflict healing, and war crime deterrence. This research methodically assesses domestic war crimes prosecution impediments and proposes remedies to advise policymakers, judicial authorities, and foreign actors promoting justice, accountability, and the rule of law in post-conflict states. To ensure war crime victims worldwide obtain recognition, reparation, and justice, jurisdictional concerns, political restrictions, and institutional flaws must be addressed. Effective domestic prosecution, supported by international norms and collaboration, is essential for lasting accountability, reinforcing the rule of law, and promoting long-term peace, stability, and reconciliation, bridging the gap between local judicial capacity and global justice expectations for the worst human rights violations, according to the study.

Definition of War Crimes

War crimes are major violations of international humanitarian law committed by individuals, military units, or organized groups during armed conflicts that target protected persons or things. These crimes differ from regular crimes by their scope, context, and occurrence in armed conflict, whether international or not, and are addressed under international and domestic legal systems to ensure accountability. Over the last century, codifications like the Hague Conventions of 1899 and 1907 have shaped the legal concept of war crimes, including restrictions on weapons, prisoner of war treatment, and civilian protection. The Nuremberg and Tokyo Tribunals, which prosecuted willful killing, torture, and maltreatment of prisoners of war, genocide, and the deliberate targeting of civilian populations after World War II, established the principle that heads of state and military commanders could be criminally

responsible for international law violations. The Geneva Conventions of 1949 and their Additional Protocols defined war crimes as intentional attacks on civilians, hostage-taking, the use of prohibited weapons, enslavement, deportation, and extensive property destruction not justified by military necessity. The Rome Statute of the International Criminal Court (1998) added war crimes like directing attacks against civilian populations, recruiting child soldiers, sexual violence including rape and forced prostitution, biological or chemical warfare, and property looting. This statute covers both acts and omissions, including command responsibility, so military leaders or civilian superiors can be held liable for subordinates' crimes if they knew or should have known and failed to prevent or punish them. War crimes are distinguished from other atrocities by their contextual element, as they must occur during armed conflicts. Peacetime crimes like murder, torture, and sexual assault may be ordinary criminal offenses. War crimes apply to both international armed conflicts—between two or more states—and non-international conflicts, such as civil wars or internal armed disputes, to protect humanity. War crimes that violate civilians, medical professionals, prisoners of war, cultural property, and humanitarian missions are prosecutable. War crimes legislation also requires fighters to distinguish between military targets and civilian populations and prohibits assaults that injure civilians more than the anticipated military advantage. Environmental damage, infrastructure devastation, and systematic displacement are now war crimes due to a growing awareness of the human and societal consequences of armed conflict. In some situations, national courts can prosecute war crimes regardless of the perpetrator's nationality or the crime's location due to international and local legal instruments. War crimes definitions include genocide, ethnic cleansing, torture, and sexual violence, as shown by prosecutions after the Yugoslav Wars and the Rwandan Genocide. International jurisprudence continues to refine legal interpretations and evidentiary standards.

Review of literature

Author(s)	Title	Source	Year	Focus/Topic
Abbas, M. S.	Challenges To The Successful Prosecution Of War Crimes	SSRN Electronic Journal	2021	Discusses challenges in prosecuting war crimes domestically and internationally.
Bassiouni, M. C.	Universal Jurisdiction for International Crimes	Virginia Journal of International Law	2017	Focus on universal jurisdiction's role in prosecuting international crimes.
Bohlander, M. (Ed.)	Globalization of Criminal Justice (1st ed.)	Routledge	2017	Examines globalization's impact on criminal justice systems.
Drumbl, M. A.	Accountability for Property Crimes and Environmental War Crimes: Prosecution, Litigation, and Development	None provided	2009	Explores the prosecution of environmental and property crimes during wartime.
Hossain, M. F.	The Effectiveness of Universal Jurisdiction in	None provided	2024	Investigates universal jurisdiction's effectiveness

Author(s)	Title	Source	Year	Focus/Topic
	Enforcing International Criminal Law against Perpetrators			in holding international criminals accountable.
Irvin-Erickson, D.	Prosecuting Sexual Violence at the Cambodian War Crimes Tribunal: Challenges, Limitations, and Implications	Human Rights Quarterly, 40(3), 570–590	2018	Focuses on the challenges of prosecuting sexual violence at international tribunals.
Jafarova, N.	The Legal Analyses of Challenges Faced by European Courts in the Application of Universal Jurisdiction	None provided	2025	Analyzes the challenges European courts face in applying universal jurisdiction to war crimes prosecution.
Mensah, E. K. G.	Investigating International Criminal Law and Sovereignty Issues Surrounding the Prosecution of Heads of State	SSRN Electronic Journal	2024	Explores the sovereignty issues surrounding the prosecution of high-ranking officials for war crimes.
Nazarko, A.	Legal Tug-of-War: The Institutional Challenges of the Domestic Prosecution of War Crimes in Ukraine	Analytical and Comparative Jurisprudence, 6, 697–701	2023	Discusses challenges in Ukraine's legal system in prosecuting war crimes.
Peskin, V.	Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals	Journal of Human Rights, 4(2), 213–231	2005	Examines the bias and challenges of prosecuting winners in international tribunals for the former Yugoslavia and Rwanda.
War Crimes and Realpolitik	International Justice from World War I to the 21st Century	Choice Reviews Online, 42(07), 42-4281-4281	2005	Focuses on international justice efforts from the World War I era to present day.

The Legal Framework for Domestic Prosecution of War Crimes

International Law and Domestic Jurisdiction

The Geneva accords and ICC Rome Statute standardize national legal systems, affecting war crimes prosecution. Individuals are protected against war crimes such civilian targeting, torture, and the use of prohibited weapons under the Geneva Conventions. These treaties require states to punish or extradite war criminals. The Rome Statute created the ICC to prosecute genocide, war crimes, and crimes against humanity. Although the ICC is a last resort, its rules require domestic countries to prosecute some crimes internationally.

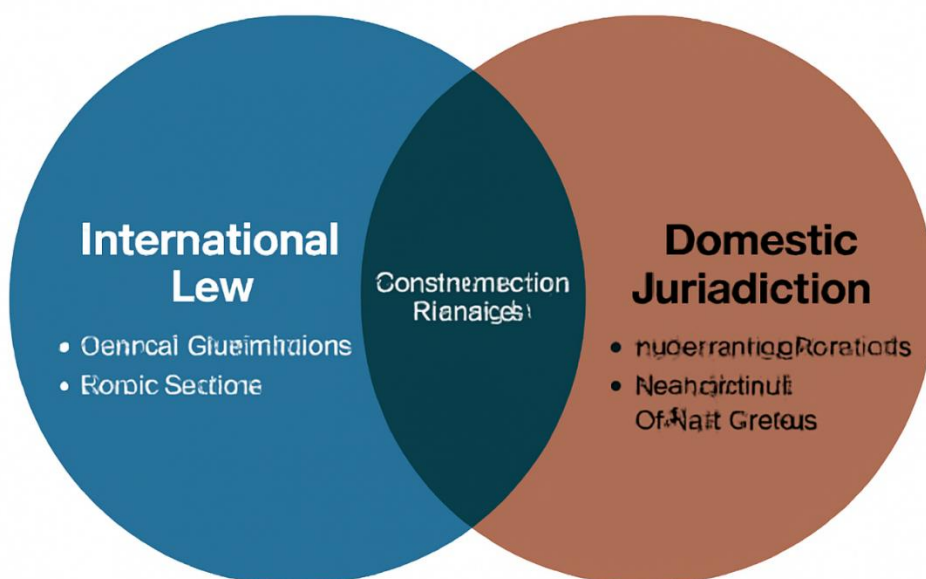
Complementarity Principle

The Rome Statute says international and domestic war crimes courts are complementary. When national courts cannot or will not pursue war crimes, the ICC helps. The ICC prosecutes war crimes when local tribunals cannot due to political concerns, judicial incompetence, or complex situations. Local justice and government management of judicial procedures protect national sovereignty. The ICC eliminates national court impunity for corruption, incompetence, and political meddling. Complementarity helps national authorities prosecute war crimes and ensures international responsibility when domestic mechanisms fail. National interests and international law must balance for global justice.

Domestic Legal Systems

International war crimes are difficult to prosecute domestically. To follow the Geneva Conventions and Rome Statute, national legal systems must prosecute war crimes. International humanitarian law is included in many government statutes, war crimes courts, and criminal codes. Countries use these regulations differently. Some nations, especially those with robust legal systems, have adopted international war crimes prosecution standards. States ban Rome Statute genocide, crimes against humanity, and war crimes. Local laws may make prosecution tougher in places with weaker legal systems or those unable to collaborate due to political or sociological factors. Untrained war crimes judges, prosecutors, and police may misapply international norms. Despite these limits, domestic legal systems must follow international law for accountability and war crime prevention.

International Law and Domestic Jurisdiction



Jurisdictional Challenges

National Jurisdiction over International Crimes

Foreign crimes challenge domestic courts' jurisdiction. Universal jurisdiction, which lets a state prosecute war crimes and genocide regardless of geography or race, is crucial. Universal jurisdiction allows national courts to handle foreign offenses, but it's problematic. Some states resist general sovereignty and political abuse jurisdiction. Even if planned or conducted elsewhere, territorial jurisdiction allows a state to pursue international crimes committed within its borders. This only works if the culprit is in the country or can gather evidence.

When foreign national or armed personnel offenses occur outside their control, states may be unwilling to pursue. These cases show how difficult it is for domestic courts to prosecute overseas crimes without legal and diplomatic help.

Conflict with International Jurisdiction

Due to the overlap between domestic and international law, national courts may fight international tribunals or courts over international offenses. ICC is the top war crimes, crimes against humanity, and genocide court. The complementarity principle requires the ICC to pursue crimes national courts cannot. National governments' right to prosecute war crimes in their own courts threatens ICC interest. A state may prosecute an ICC suspect, posing jurisdictional issues. A nation's judicial system refusing to work with international bodies for political or sovereignty reasons escalates conflicts. Strong governments' political pressure on national rulings may impair international judicial efforts. Parallel hearings between national and international courts may complicate war crimes cases.

Limitations of Jurisdiction

International criminal prosecution is tough, especially when arresting individuals and gathering evidence abroad. Diplomacy, law, and state involvement complicate extradition, a key issue. After a suspect is found and charged, arresting them can be challenging, especially if they live in a country unwilling to help or have political immunity. Powerful persons may avoid arrest through political shelter, diplomatic immunity, or states' reluctance to extradite to international courts.

Political Challenges

Political Will and National Interests

Governments hesitate to charge war crimes if they have political, military, or economic power. Political stability, internal conflict reduction, and national unification normally cause hesitancy. War crimes charges against nationals or government leaders might topple the regime. In post-conflict cultures, governments may skip war crimes courts against military or political figures to avert unrest or factionalism. Peace accords and national reconciliation pardon war criminals, weakening justice. Governments may choose stability or political survival over war crimes prosecution.

Impunity for Powerful Actors

War crimes are hard to prosecute when powerful people are immune or politically linked. Political, military, and economic leaders often go unpunished. Strong people often enjoy legal immunity from national constitutions or informal political frameworks. Political and international links can help heads of state, military leaders, and businessmen avoid justice. War criminals are spared. Criminals may have political immunity due to legal gaps. Lack of accountability and impunity enhance international law violations. The court system benefits powerful players in countries where they have impunity, making justice difficult and frequently meaningless.

Political Manipulation of Legal Processes

Political influence by legal institutions can hinder justice and lead to selective prosecution in war crimes. Politically biased judiciaries exist in many nations. Leaders and factions can defend or attack opponents in court. Party influence can lead to party-based prosecution rather than crime. War criminals from rival factions or ethnic groups may be prosecuted but not the prevailing faction, skewing justice.

Role of International Diplomacy

Since foreign political pressure can effect national war crimes cases, international diplomacy is crucial. States and international organizations can diplomatically implore countries to prosecute war criminals for human rights or peacebuilding. State failure to prosecute war criminals or delay justice may result in sanctions, public disfavor, or diplomatic isolation. If their political or economic interests align with the accused, great powers may utilize diplomatic influence to avert war criminal prosecution. UN and ICC may assist national governments with trials or investigations, but state sovereignty and collaboration limit their use. Some regimes use diplomacy to protect vital allies, whereas international diplomacy promotes justice and impunity. International diplomacy is essential because external actors determine domestic war crimes prosecutions' justice or politics.

Capacity Challenges

Institutional Capacity

Poor institutional capacity—resources, people, and legal expertise—impedes national war crimes prosecution. Many domestic legal systems, especially in post-conflict or developing nations, cannot handle complex war crimes prosecutions. International law and war crimes prosecutors, investigators, and judges are scarce. Lack of funding can delay the formation of specialist courts, hiring skilled staff, and providing support services. Complex war crimes may be too much for national courts. Modern forensic technologies and legal software for evidence collection and detailed investigations may be limited by funding.

Technical Challenges

War crimes investigations be challenging for evidence collection, witness protection, and forensic analysis. Wartime instability and devastation reduce war crimes prosecution evidence, records, and testimonials. Direct accounts are limited by trauma, fear, and displacement in eyewitness testimony. Mass graves, crime weapons, and DNA evidence may require advanced technology and competence that domestic judicial systems lack. In politically unstable places, war crimes witnesses must be protected from reprisals, intimidation, and violence.

Weak Legal and Judicial Infrastructure

Poor legal and judicial infrastructure hinders war crimes prosecution, especially in developing nations. Many nations lack war crimes courts to address legal, political, and factual issues. War crimes are complex, thus conventional criminal tribunals may struggle to pursue them. Due to their workload, many legal systems delay and underinvest in war crimes cases, which need careful preparation, lengthy trials, and huge resources. Undefined legal frameworks for prosecuting international crimes complicate problems because home laws may not match Geneva Convention or Rome Statute standards. Political participation and corruption may weaken judicial independence in poor rule of law countries. Structures slow justice, prolong impunity, and hinder war crime justice.

Training of Legal Professionals

Investigators and prosecutors must learn Geneva Conventions, Rome Statute, conflict zone evidence collecting, sensitive testimony, and victim/witness protection. Judges must understand war crimes' increased evidentiary requirements and legal complexities. Without training, lawyers may struggle to accept international regulations and ensure legal and procedural trials. War crimes attorneys after the war may lack institutional support for

education and growth. War crimes prosecution procedures often fail, leading in inconsistent decisions, extended trials, and inability to hold offenders accountable. War crimes lawyers need specific training and continual legal growth to sensitively handle cases.



Case Studies

Case Study 1: Successful Domestic Prosecution of War Crimes (Rwanda)

The 1994 Rwandan Genocide killed 800,000 Tutsis, one of the greatest mass disasters. Rwanda created the community-based Gacaca courts to address the massive and complex crimes committed after this calamity. Locals punished and defended genocide suspects in Gacaca. This method worked because it handled many cases and delivered justice quickly. Over 12 years, Gacaca courts processed approximately 1.2 million cases, facilitating national reconciliation. In Arusha, Tanzania, the ICTR tried Rwandan leaders and troops. Rwanda shows how local and international tribunals punish war crimes. Rwanda shows that national prosecutions can complement international justice and reconstruct post-conflict society despite fairness and impartiality difficulties.

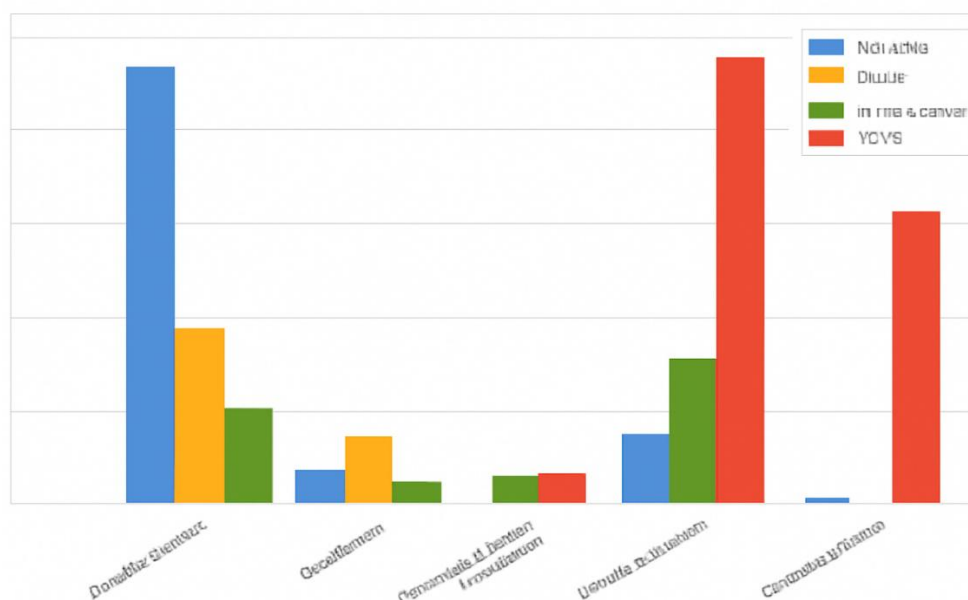
Case Study 2: Failed or Problematic Prosecution (Sudan)

Sudan has struggled to prosecute war crimes, particularly during the 2003–present Darfur War, due to political and legal issues. ICC issued war crimes, crimes against humanity, and genocide arrest warrants for Sudanese President Omar al-Bashir in 2009 and 2010. Sudan denies ICC prosecution of its ruler due to national sovereignty and political instability. The Sudanese government's refusal to extradite Bashir and efforts to hide him demonstrate the difficulty of prosecuting war criminals. Sudan's legal system has escaped punishment despite sanctions and diplomatic isolation. Bashir and other Sudanese officials' exoneration shows that powerful leaders in crisis zones can avoid prosecution, undermining national and international justice efforts. Darfur shows the difficulties of pursuing war crimes in politically heated situations and the limits of international pressure on local justice systems.

Comparative Analysis

Comparisons of country war crimes prosecutions show triumphs and accountability difficulties. Rwanda, Sierra Leone demonstrate domestic prosecution works. The controversial Rwandan Gacaca courts resolved conflicts and kept peace. Civil war perpetrators were convicted by the hybrid national-international Special Court for Sierra Leone (SCSL). Sudan and Syria demonstrate how political will and institutional constraints delay war crimes rulings. Sudan's refusal to cooperate with the ICC and Syria's civil war, where the government targets opposition groups with impunity, show how national court systems fail to try powerful political individuals' war crimes. National courts in post-conflict societies can restore justice and peace, but political climate, judicial independence, and international law implementation matter. These cases show that local and international systems must cooperate to overcome jurisdictional, political, and capability justice impediments.

Comparison of Secretary of Internal Protection on Net Crime



Addressing the Challenges

Strengthening Domestic Legal Frameworks

A broad approach is needed to improve national war crimes courts. Bring national laws into line with Geneva and Rome. Nations need war, genocide, and crimes against humanity frameworks. National war crimes units need additional money for dedicated courts, skilled staff, and cutting-edge forensics. Countries must prioritize resource allocation to minimize war crimes prosecution delays due to funding restrictions. Complex war crimes demand higher prosecutor, judge, and investigator training. National courts should educate international humanitarian law and war crimes prosecution with international organizations. Supporting local justice and accountability by reforming, strengthening, and training domestic legal institutions helps national tribunals pursue war crimes.

International Cooperation

Domestic, foreign, and NGO tribunals must cooperate in war crimes trials. Domestic courts lacking resources and experience can benefit from international cooperation. To prosecute globally, national courts can consult the ICC for advice, resources, and experience. Evidence-

gathering and victim-rights NGOs can help national institutions enhance investigations and convictions. In difficult extradition countries, suspects must communicate globally. Extradition and international legal aid transport suspects and evidence. NGOs educate about war crimes and assist victims. International cooperation demonstrates perpetrators' guilt without politics.

Political and Institutional Reforms

Fundamental institutional and political reforms are needed to counteract political influence in war crimes prosecution. Politics-free war crimes courts can operate. These courts, like the ICTR and Special Court for Sierra Leone, may use national and foreign judges and prosecutors for neutrality. Fairness requires removing political pressure from the court. International scrutiny helps national war crimes trials. The UN or ICC may monitor and promote country political meddling prevention. Threatened or intimidated judges, witnesses, and whistleblowers need enhanced legal protections.

Conclusion

In conclusion, jurisdictional, political, and competence issues impede domestic war crimes prosecution. Domestic prosecutions often struggle to prove national jurisdiction over foreign charges and resolve international court disputes. Political issues including influential players' resistance and legal procedure manipulation hinder justice. Without institutional capacity, technical expertise, and specialized legal infrastructure, national institutions struggle to manage war crimes. Law, international cooperation, and political and institutional reforms can fix these difficulties. Stronger domestic laws, resources, and judicial independence help national courts prosecute war crimes. International courts and NGOs can coordinate aid and information. Independent war crimes courts and international monitoring are needed to prevent political interference and ensure fair justice. Combating war crimes, accountability, and post-conflict reconciliation can enhance nations.

Reference

1. Abbas, M. S. (2021). Challenges To The Successful Prosecution Of War Crimes. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3760300>
2. Bassiouni, M. C. (2017). Universal Jurisdiction for International Crimes: *VIRGINIA JOURNAL OF INTERNATIONAL LAW*, 42.
3. Bohlander, M. (Ed.). (2017). *Globalization of Criminal Justice* (1st ed.). Routledge. <https://doi.org/10.4324/9781315254081>
4. Drumbl, M. A. (2009). *Accountability for Property Crimes and Environmental War Crimes: Prosecution, Litigation, and Development*.
5. Hossain, M. F. (2024). *The Effectiveness of Universal Jurisdiction in Enforcing International Criminal Law against Perpetrators of International Crimes*.
6. Irvin-Erickson, D. (2018). Prosecuting Sexual Violence at the Cambodian War Crimes Tribunal: Challenges, Limitations, and Implications. *Human Rights Quarterly*, 40(3), 570–590. <https://doi.org/10.1353/hrq.2018.0032>
7. Jafarova, N. (2025). *The Legal Analyses Of Challenges Faced By European Courts In The Application Of Universal Jurisdiction For War Crimes Prosecution*.
8. Mensah, E. K. G. (2024). Investigating International Criminal Law and Sovereignty Issues Surrounding the Prosecution of Heads of State for War Crimes and Genocide. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4813323>

9. Nazarko, A. (2023). Legal Tug-of-War: The Institutional Challenges of the Domestic Prosecution of War Crimes in Ukraine. *Analytical and Comparative Jurisprudence*, 6, 697–701. <https://doi.org/10.24144/2788-6018.2023.06.120>
10. Peskin, V. (2005). Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Journal of Human Rights*, 4(2), 213–231. <https://doi.org/10.1080/14754830590952152>
11. War crimes and realpolitik: International justice from World War I to the 21st century. (2005). *Choice Reviews Online*, 42(07), 42-4281-42-4281. <https://doi.org/10.5860/CHOICE.42-4281>