

KIGALI INDEPENDENT UNIVERSITY ULK
SCHOOL OF LAW
DEPARTMENT OF LAW
P.O BOX 2280
KIGALI

**CRITICAL ANALYSIS ON THE APPLICABILITY OF RIGHT TO FAIR TRIAL
UNDER RWANDAN CRIMINAL JUSTICE**

A Dissertation submitted in partial fulfillment of the academic requirements for the Award of
Bachelor's Degree in Law.

By: NIYONSENGA Maurice

Supervisor: Lecturer Innocent UWIMANA NDIYAYE

October, 2024

DECLARATION

I, **NIYONSENGA Maurice**, hereby declare that this research on “**CRITICAL ANALYSIS ON THE APPLICABILITY OF RIGHT TO FAIR TRIAL UNDER RWANDAN CRIMINAL JUSTICE**” is a result of my original work and has never been submitted to any other University or Institution of higher learning for any academic award.

Name: NIYONSENGA Maurice

Signature:

Date:

APPROVAL

This research work of **NIYONSENGA Maurice** on “**CRITICAL ANALYSIS ON THE APPLICABILITY OF RIGHT TO FAIR TRIAL UNDER RWANDAN CRIMINAL JUSTICE**” completed in partial fulfillment of the academic requirements for the award of Bachelor’s Degree in Law at Kigali Independent University ULK embodies the work done by him under my supervision and submitted with my approval.

Signature:

Name: Lecturer Innocent UWIMANA NDIYAYE

Date:

DEDICATION

This work is dedicated to:

My wife, children, brothers, sisters and friends who are wishing and praying for the successful completion of my studies

ACKNOWLEDGEMENTS

Great thanks go to the Almighty God. It is under his Mercy I have been able to achieve this research report. I wish to express my deep gratitude to Prof. Dr. RWIGAMBA BALINDA for his initiative of promoting education in Rwanda. I also thank the administrative and academic authorities of KIGALI INDEPENDENT UNIVERSITY (ULK) for the knowledge they gave us.

I would like to thank Innocent UWIMANA NDIYAYE, my Supervisor for the endless advice he gave me.

I am also grateful to thank the Lecturers who provided me with knowledge from the beginning of my university studies up to the end of this work.

I take this occasion to thank my family and other persons who did their best for their valuable moral and financial supports and advices. I thank also all my classmates and colleagues with whom I shared everything during my academic studies.

NIYONSENGA Maurice

TABLE OF CONTENTS

DECLARATION	ii
APPROVAL	iii
DEDICATION	iv
ACKNOWLEDGEMENTS	v
LIST OF ACRONYMS AND ABBREVIATIONS	x
GENERAL INTRODUCTION	1
1. BACKGROUND TO THE STUDY	1
2. INTEREST OF THE STUDY	3
2.1 Personal interest	3
2.2 Scientific interest	4
2.3 Academic interest.....	4
3. SCOPE OF THE STUDY	4
4. PROBLEM STATEMENT	4
5. RESEARCH QUESTIONS	6
6. RESEARCH HYPOTHESES	7
7. RESEARCH OBJECTIVES	7
7.1. General objective	7
7.2. Specific objectives	7
8. RESEARCH METHODS AND TECHNIQUES.....	8
8.1. Research Techniques	8
8.1.1 Documentary Techniques	8
8.2. Research Methods.....	8
8.2.1. Exegetic method.....	9
8.2.2. Analytic method.....	9
8.2.3. Synthetic method	9
9. STRUCTURE OF THE DISSERTATION.....	9
CHAPTER 1: CONCEPTUAL AND THEORETICAL FRAMEWORK	11
1.0. Introduction.....	11
1.1 Conceptual framework.....	11
1.1.1 Right.....	11

1.1.2 Fair	11
1.1.3 Trial.....	12
1.1.4 Fair trial.....	12
1.1.5 Right to a fair trial.....	12
1.1.6 Criminal justice.....	13
1.2.1 A Brief Overview of Historical Development of the Right to a Fair Trial.....	13
1.2.1.1 From the ancient times.....	14
1.2.1.2 Between 1320 to the French Revolution.....	15
1.2.1.3 From the French Revolution to the Second World War (WWII)	15
1.2.2. Conceptualization of the Right to a Fair Trial	16
1.2.2.1 Right to a Fair Hearing	18
1.2.2.1.1. The concept of fair hearing.....	18
1.2.2.1.2 Interpretation of the European Court of Human Rights.....	19
1.2.2.1.3. The interpretation of the African Commission	20
1.2.2.2 Right to a Public Hearing.....	21
1.2.2.2.1. Opportunity to express personal views	21
1.2.2.2.2 Removing doubts in the public’s mind	22
1.2.2.2.3 Complying with the UDHR and the ICCPR	23
1.2.2.3 Right to an Independent Court.....	24
1.2.2.3.1 The concept of Independent court.....	24
1.2.2.3.2 Complying with the Human Rights Committee provisions	25
1.2.2.3.3 Complying with the African Charter on Human and Peoples’ Rights.....	26
1.2.2.4 The Impartiality of Court	27
1.2.2.4.1 Meaning of impartiality	27
1.2.2.4.2 Impartiality as the personal impartiality of the judge as an individual	28
1.2.3 The Objectives and Importance of the Right to a Fair Trial	29
1.2.3.1 Complying with the principle of rule of law.....	30
1.2.3.2 A fair trial as a guarantee of neutrality	31
1.2.3.3 Complying with Article 4(2) of the ICCPR	32
1.2.3.4 The right to a fair trial as a foundation of peace, justice and freedom in the world	32
1.2.3 The Scope of Application of the Right to a Fair Trial in Criminal Matters.....	33

1.2.3.1 Its fairness	34
1.2.3.2 Applicable in all the phases of the proceeding	35
1.2.6 Legal Duties for a State in Promotion and Respect of Fair Trial Rights	36
CHAPTER 2. ENFORCEMENT OF FAIR TRIAL IN ADMINISTRATION OF CRIMINAL JUSTICE UNDER RWANDAN JUDICIAL SYSTEM	38
2.1 Fair Trial Rights	38
2.1.1 Pre-trial Phase	38
2.1.1.1 The Right to Legal Assistance	39
2.1.1.2 The Right to be Informed of the Charges	40
2.1.1.3 Presumption of Innocence.....	41
2.1.1.4 Protection from Arbitrary Arrest and Detention.....	42
2.1.2 Trial Phase	43
2.1.2.1 Right to a Public Hearing.....	43
2.1.2.2 The Right to an Independent and Impartial Tribunal.....	44
2.1.2.3 The Right to Examine Witnesses	45
2.1.2.4 The Right to Adequate Time and Facilities for Defense	46
2.1.3 Post-trial Phase.....	48
2.1.3.1 Right to Appeal	49
2.1.3.2 The Right to a Timely Judgment	50
2.1.3.3 Prohibition of Double Jeopardy	51
2.2 Analysis of Key Legislations	52
2.2.1 The Constitution of the Republic of Rwanda	52
2.2.2 The Code of Criminal Procedure	52
2.2.3 The Statutes of Judges	53
2.2.4 Civil, Labor, Commercial, and Administrative Procedure Law	54
2.3 Partial Conclusion.....	54
CHAPTER 3. REMEDIAL MECHANISMS FOR EFFECTIVE ENFORCEMENT OF THE RIGHT TO A FAIR TRIAL UNDER RWANDA CRIMINAL JUSTICE	56
3.0 Introduction.....	56
3.1 Legal mechanisms.....	56
3.1.1 Complying with the Right of Public Hearing	56

3.1.2 Complying with the Right to a Fair Hearing	57
3.1.3 Establishing other policies and legal measures.....	59
3.2 Institutional mechanisms	60
3.2.1 Ensuring Independence of Criminal Court	60
3.2.2 Ensuring the Independence of the Court.....	61
3.2.3 Ensuring the Independence of Individual Judges	62
3.2.4 Ensuring the right to an Impartial Court	64
3.3. Partial conclusion.....	65
GENERAL CONCLUSION AND RECOMMENDATIONS	66
Recommendations.....	67
BIBLIOGRAPHY	69

LIST OF ACRONYMS AND ABBREVIATIONS

AU	: African Union
ACHPR	: African Commission of Human and Peoples' Rights
ACHR	: American Convention on Human Rights
AfCHPR	: African Charter of Human and Peoples' Rights of 1981
Art.	: Article
ECHR	: European Convention on Human Rights
Ed.	: Edition
Et al.	: et alia: and others
HC	: High Court
HCJ	: High Council of the Judiciary
IACHR	: Inter American Court of Human Rights
IC (TGI)	: Intermediate Court
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
NGO	: Non-Governmental Organisation
No.	: Number
OG	: Official Gazette
OHCHR	: Office of the United Nations High Commissioner for Human Rights
P.	: Page

Para. : Paragraph

UDHR : Universal Declaration of Human Rights

UK : United Kingdom

ULK : Université Libre de Kigali

UN : United Nations

UNHRC : United Nations Human Rights Committee

USA : United States of America

v. : Versus

Vol. : Volume

GENERAL INTRODUCTION

This part comprises the background and significance of the study, delimitation of the study, problem statement, hypotheses, objectives of the study, research methodology and the structure of the study.

1. BACKGROUND TO THE STUDY

Generally, all human beings are born equal and deserve to have their interests considered equally with the like interests of others. The desire to protect human beings by a serious regulation is a result of an observation like that saying that in all animate beings that populate the globe, there is none against which the nature has exercised more cruelty like human beings, by considering the quantity of infinite needs and necessities which she has bestowed on him and by the weakness of the means that she gives him to meet these needs¹. Among creatures extremely vulnerable, human beings deserve to have a certain protection by everyone, every state and all organs of states.

The modern acceptance of human rights would postulate an equal claim that all human beings should be protected through the administration of justice as one of the most important functions of a State and as a crucial factor in assessing the level of development of a nation when its quality remains effective and perfect². Okene presents the administration of justice as one of the vital functions of every government since the aim of a state and a government is the welfare and happiness of the citizens - a good which is never achieved in any community without ensuring that justice is properly and efficiently administered³.

According to Allen, the administration of justice refers to the application of moral principle of justice to existing laws when rights and duties have been disputed by rival claims⁴. Without an institutionalized legal system or law enforcement agencies, man redresses his wrongs by his

¹Okene, O.V.C, Effective administration of justice in Nigeria, Journal of Criminal Justice Affairs, 1998, Vol.1, No 1, pp.47 - 59 at p.46.

²Irwin, D. A, Adam smith's tolerable administration of justice and the wealth of nations, working paper, National Bureau of Economic Research, Cambridge, October 2014, at pp.3-5

³ Idem, p. 4

⁴ Allen, C. K, Aspects of Justice, Q.C., at p. 65, [<http://www.livelaw.in/mischief-likely-caused-section-436-a-code-criminal-procedure-1973/>] accessed 13 April 2024.

hand. The modern states' machinery of administration of justice has gone a long way into being a more civilized substitute for primitive or anarchic justice.

The administration of justice may include the evaluation of the substantive rules, principles and standards. It examines the fairness and reasonableness of these rules, principles and standards, their application and effect upon parties to a claim or dispute⁵. The administration of justice cannot be without the existence of some other elements or factors such as those of proper legal structure and personnel. In this perspective, as pointed out by Gribnau, the judiciary which is the organ of government committed to protect citizens' constitutional rights has to honour legal values and principles like consistency, legal certainty, coherence, predictability, and not the least justice and objectivity. Respect for the more general principles of proper administration of justice attributes to the legitimacy of the judiciary. Therefore, the legitimacy of the judiciary is closely connected to the legitimacy of the law⁶. In as far as Rwandan legal framework on judicial system is concerned; citizens are not judicially protected as they are supposed to be. In this, one wonders whether there must be a loophole in Rwandan legal framework on the administration of justice by judicial system.

In fact, Ubi jus, ibi remedium or where there is right, there is remedy. "There is no liberty, if the power of judging is not separated from the legislative and executive powers"⁷. It is widely accepted that the judiciary has a stronger constitutional responsibility to secure the integrity of social equality, especially through the protection of fundamental rights of citizens and the resolution of disputes over different legal issues⁸. In this regard, as described by Harry and Cole Goodrich, the judicial system must be committed to upholding substantive rule-of-law principles⁹.

The concept of justice is closely related to the strict application of law. Among the most basic and commonly understood meanings of justice is fairness or reasonableness, especially in the way people are treated, decisions are made and law enforced. Thus, justice encourages the

⁵Allen, C. K, Op. Cit., p. 41

⁶Gribnau, J. L.M., Legitimacy of the Judiciary, Electronic Journal of Comparative Law, 2002, Vol.6, No.4, at p.27.

⁷ Montesquieu, C, The Spirit of Laws, Legal Classics Library, Book XI, 1949185; Mojapelo, P.M, The doctrine of separation of powers, a South African perspective, Digital Journal Library Advocate, 2013, Vol. 26, No.1, at p.38

⁸Twinomugisha, B.K, The role of the judiciary in the promotion of democracy in Uganda, African Human Rights Law Journal, 2009, Vol.9, at p.

⁹Harry, W., Goodrich, B. A, Jail by Any Other Name: Labour Camp Abolition in the Context of Arbitrary Detention in China, Human Rights Brief, 2014, Vol.21, No.1, pp.2 -8

maintenance and administration of fairness. For achieving this goal, the judiciary, as the third arm of the State, has a very important role to play in upholding the law and dispensing justice within the society.

Therefore, characteristics of judicial independence and impartiality must be preserved and upheld if the judiciary carry out its functions and duties impeccably without fear or favour. Without public confidence in the judicial system, the public confidence in the law erodes and courts become ineffective means of dispute settlement.

Thus, the fight against the abuse of law and injustice within the judicial system depends widely on the independence of the judiciary as an institution and judges who have the responsibility of their protection, without forgetting the respect of fair trial which is a human rights charity that helps people to protect their basic rights. Despite the fact that different legal and judicial approaches were put in place in Rwanda with the desire for fair and just trial, the practice of courts and tribunals reveals that laws are still lagging behind and do not correspond with requirement of having good justice administration, judicial impartiality and independence; and as reported by the Office of Ombudsman and Transparency International in Rwanda, great number of judgments are rendered without observation of fairness, justice and fair trial¹⁰.

2. INTEREST OF THE STUDY

The choice of this topic was dictated by the researcher's desire to master the matters related to the right to the right of fair trial under Rwandan criminal law. So, he decided to make a legal analysis of this right based on the ongoing critics. Therefore, the study presents an interest on three dimensions: personal, scientific and academic.

2.1 Personal interest

This subject seems to the researcher personally interesting insofar as it provide him more knowledge on the right to the right of fair trial under Rwandan criminal law and how it is difficult to interpret the domestic and international legal instruments in that matters.

¹⁰ Transparency International-Rwanda, Analysis of professionalism and accountability of courts for a sound rule of law in Rwanda (year v), July 2019, at p.35-39

2.2 Scientific interest

On the scientific perspective, this study will serve as documentation for future researchers who would like to work on the right of fair trial and the current critics related to that right faced by parties involved in the trial. In addition, the study is expected to contribute substantial information to the existing body of knowledge and this is substantiated by the fact that so far, very little has been done in the realm of Rwandan administration of justice considering international standards of an effective judicial system.

2.3 Academic interest

On the academic perspective, the subject meets the academic requirements which stipulate that any student finalizing his/her studies must prepare and submit a research paper.

3. SCOPE OF THE STUDY

In time, this topic is limited to the period from 2018 to 2024. The year 2018 corresponds to the adoption of Law n° 012/2018 of 04/04/2018 determining the organization and functioning of the judiciary and the year 2024 is the year during which this study will be carried out.

In space, the study concerns Rwandan territory, chosen based on my proximity with the country and my involvement in enhancing the rule of law in that country. In domain, this study is conducted in public law.

In domain, this topic is limited on the domain of public law and access to justice.

4. PROBLEM STATEMENT

The problem which the study seeks to address is increasing potential risk of losing effective justice through poor administration of justice by judicial system of Rwanda. Firstly, the risk concerns are failure by legislator to identify the legal challenges that are caused by conflict of provisions of law in administering justice. Secondly, failure by the government to see danger that national security may be eroded by the absence of fair and just trial by judicial system. Thirdly, failure by the judicial system to administer justice as one of the state organs. In fact, Rwanda has adhered to diverse international legal instruments including those relating to the good

administration of justice¹¹. Importantly, according to the obligation to respect the right to a fair trial, states must organize their tribunals and courts so that they conform to its requirements¹². This includes complying with the right to a public and fair hearing by an impartial, independent and competent court. As obliged by these instruments, Rwanda, in accordance with the principle of *pacta sunt servanda*¹³ should fulfill its obligations in good faith. The constitution of Rwanda is committed to building a State governed by the rule of law, founded on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law¹⁴. However, there are enormous legal challenges caused by conflict of provisions of law in administering justice and a failure of the judiciary in rendering justice. The Rwanda's constitution provides that the judiciary is independent and separate from the legislative and executive power, and that it enjoys the autonomy of administrative and financial management¹⁵.

The constitution also establishes high council of the judiciary (HCJ) responsible for the appointment, discipline and removal of judges¹⁶. Its main function is to ensure the observance of rules of operation of the public service of justice and the protection of judges against the pressures of political power¹⁷. It is in this spirit that the independence of judges and their immovability constitute principles, which have been recognized as a guarantee for a good administration of justice. However, in the Organic Law relating to the High Council of the judiciary is provided, as *ex-officio* members of HCJ, officials of the Executive Power notably a representative of the Ministry of Justice and the Ombudsman¹⁸. Therefore, the presence of those officials of executive in the highest organ of the judiciary can jeopardize the doctrine of separation of powers. In this vein, the hierarchical subordination, the independence of the Rwandan judiciary and independence of judges could be questionable due to those members

¹¹ International Covenant on Civil and Political Rights (ICCPR), ratified on 12 February 1975 by the Decree Law no 8/75 of 12 February 1975; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 15/12/2008. African Charter on Human and Peoples' Rights ratified on 15 July 1983

¹² *Gunes v. Turkey*, Application No. 31893/96, ECHR para.31. See also *Pelissier and Sassi v. France*, (2000) 30 EHRR 715, para.74

¹³ The principle of *pacta sunt servanda* provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith. This doctrine which is a principle of customary international law is codified in Article 26 of the Vienna Convention on the Law of Treaties, 1969

¹⁴ Preamble of the 2003 Constitution of the Republic of Rwanda.

¹⁵ Constitution of the Republic of Rwanda of 2003, Article 140

¹⁶ *Ibid*, Article 157 and 158

¹⁷ Law n° 012/2018 of 04/04/2018 determining the organization and functioning of the judiciary, Article 14 -17.

¹⁸ *Ibid*, Article 2, point 15 and 18.

from the executive. The presence of executive in high councils of the judiciary in their composition does not promote the principles of independence and immovability of judges solemnly inscribed in the legal texts¹⁹.

The significant challenge of Judiciary as state organ to administer justice is that results of the legislation and legal procedure undermine or violate the fair trial principles in the administration of justice. Certainly, the rule of law is the foundation for liberty and order in society. It emphasizes the supremacy of due process of law for everyone²⁰. One of the tenets of the rule of law is that a man must not be punished without due trial. However, the legislation and legal proceedings contradict in one way or another, the tenet of fair trial. For instance, on the right to be present in court audience in criminal matter, in case of misdemeanor and petty offence, the criminal procedure does not provide in which circumstances one can speak of serious reasons preventing the personal appearance of an accused²¹. The law does not also provide the appearance in court audience of the witnesses of the prosecution even in the trial in which the evidence of witness is a direct element for the result. This situation is a great threat to the equality of arms.

Thus, this study is assessing the administration of justice in Rwanda and reflecting the need to have the judicial system in Rwanda with utmost independence and impartiality and committed to assure to the citizens a fair and just trial, because if these legal concerns are not addressed the Judiciary could not effectively carry out its roles, Rwanda is likely to suffer different consequences. In this vein, if rule of law and public faith in justice system collapse; the injustice, inequality and legal uncertainty could increase. Accordingly, civic capital would be destroyed and social and political stability of Rwanda can be affected.

5. RESEARCH QUESTIONS

Therefore, this study will be carried out to seek answers to the following questions:

¹⁹Fall, A.B, The independence of justice, internal threats, acts of the second congress of the Association of High Courts of Cassation of the country having in sharing the use of French (AHJUCAF), Dakar, 7 and 8 November 2007, p.60.

²⁰ Constitution of Rwanda of 2003, Article 29

²¹Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, Article 147.

1. To what extent does the Rwandan legal framework enforce the fair trial in administration of criminal justice?
2. Which strategies and mechanisms should be considered by Rwanda in ensuring full respect of fair trial administration criminal justice?

6. RESEARCH HYPOTHESES

This study verified the following hypotheses:

1. The Rwandan criminal justice guarantees the right to a fair trial though some improvement are needed;
2. Both institutional and legal mechanisms should be considered by Rwanda in ensuring proper administration of justice.

7. RESEARCH OBJECTIVES

This study aims to achieve one general objective and two specific objectives. The specific objectives are designed to break down the general objective into manageable and focused parts, allowing for a detailed and structured approach to the research. Each objective was addressed through targeted methodologies and analyses, ensuring comprehensive coverage of the study's aims.

7.1. General objective

The general objective of this research is to analyze the issue of right to fair trial in the administrative of criminal justice in Rwanda.

7.2. Specific objectives

This study aims to achieve the following specific objectives:

1. To examine different legal approaches and legal practices that Rwandan legal system has adopted towards fair trial in administration of criminal justice.

2. To suggest suitable measures and mechanisms to ensure compliance of Rwanda's judicial criminal justice system with the right to a fair trial.

8. RESEARCH METHODS AND TECHNIQUES

At this point, the researcher is dealing with techniques and methods to achieve the study's objectives. The methods and techniques employed in this research are designed to provide a systematic and rigorous approach to data collection, analysis, and interpretation. By employing these methods and techniques, the researcher aims to achieve a comprehensive understanding of the study's objectives and provide robust and reliable results.

8.1. Research Techniques

Under this section, the techniques used in data collection are explained in detail. These techniques are chosen to ensure the accuracy, reliability, and comprehensiveness of the data gathered for the study. By employing these data collection techniques, the researcher aimed to gather comprehensive and reliable data that would address the study's objectives effectively. Each technique was carefully chosen and implemented to ensure the validity and robustness of the research findings.

8.1.1 Documentary Techniques

The research was mainly a documentary based research where domestic and international laws, books, journals, reports were consulted. This means that substantial information was collected from legal texts and institutions' reports.

8.2. Research Methods

This study employed exegetic, analytic, and synthetic methods for data collection and analysis. Each method played a distinct role in ensuring a comprehensive and thorough examination of the research objectives. By employing exegetic, analytic, and synthetic methods, the researcher ensured a rigorous and multifaceted approach to data collection and analysis. This methodological triangulation enhanced the validity and reliability of the study's findings, providing a robust framework for understanding the research problem.

8.2.1. Exegetic method

The exegetic method consists in interpreting the existing legal texts²². In this study, the researcher mainly interpreted domestic laws regulating fair trial (Legislative Guide).

8.2.2. Analytic method

An analytic method is a systematic approach to breaking down complex problems or data into simpler, manageable components for detailed examination and understanding. It often involves logical reasoning, mathematical techniques, and statistical analysis to draw conclusions and make informed decisions²³. Namely understood this method enables to analyze the information got from the field and supplies more details about the general situation of the data collected. This shows that the researcher analyzed the information gathered from legal texts. It helped the researcher to analyze the available information in a good way and systematically.

8.2.3. Synthetic method

A synthetic method is an approach that combines various elements or components to form a coherent and comprehensive whole. It often involves integrating different ideas, data, or processes to create new understanding, solutions, or systems²⁴. This method was used to summarize the research and ease the general structure of the work. After having analyzed the available information or data, this method was used beside the analytical method. As required this work has its synthesis.

9. STRUCTURE OF THE DISSERTATION

This dissertation comprises three chapters formulated as follows. First of all, the study is introduced by a general introduction followed by Chapter 1 related to Conceptual and theoretical framework. Chapter 2 is entitled Enforcement of fair trial in administration of criminal justice

²²Saunders M. et al. (2000). *Research Methods for Social Studies*. London: Prentice Hall, p. 11

²³Saunders M. et al. (2007). *Research Methods for Social Studies*, 4th ed. Harlow, England: Pearson Education Ltd, p. 27

²⁴Sekaran U. (2009). *Research Methods for Social Studies*, 3rd Edition. New York, USA: Thousand Oaks, CA, p. 48

under Rwandan Judicial System. Chapter 3 is entitled Mechanisms to ensure compliance of Rwanda's judicial criminal justice system with the right to a fair trial.

The study ends with the General Conclusion in which the researchers provide a summary of the findings followed by the recommendations framed in order to overcome the obstacles that have been shown by the results of the research. The bibliography closes the study and gives a list of legal texts, books, Article of Journals and electronic pages used as references in the research process.

CHAPTER 1: CONCEPTUAL AND THEORETICAL FRAMEWORK

1.0. Introduction

This chapter is devoted to the definition and generalities of the right to fair trial in the administration of criminal justice and explanation of the existing literature including theoretical literature and critical literature.

1.1 Conceptual framework

Under this section, the following concepts were defined according to legal texts and other doctrine or existing literature: Right, Fair, Trial, Fair trial, Right to a fair trial and criminal justice.

1.1.1 Right

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.

The history of social conflicts has often involved attempts to define and redefine rights. According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived"²⁵.

1.1.2 Fair

According to the Cambridge Dictionary, the word "fair" refers to something which is impartial and just, without favoritism or discrimination. It is treating someone in a way that is right or reasonable, or treating a group of people equally and not allowing personal opinions to influence your judgment²⁶.

²⁵Kalmanovitz, P. (2020). *The Laws of War in International Thought* (Oxford: Oxford University Press, 2020), 97-126.

²⁶Doebbler, Curtis (2006). *Introduction to International Human Rights Law*. CD Publishing. p. 10

1.1.3 Trial

In law, a trial is a coming together of parties to a dispute, to present information (in the form of evidence) in a tribunal, a formal setting with the authority to adjudicate claims or disputes. One form of tribunal is a court. The tribunal, which may occur before a judge, jury, or other designated trier of fact, aims to achieve a resolution to their dispute²⁷.

1.1.4 Fair trial

According to the Doebller, fair trial means 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 current regulations or the appropriate country constitution or other law.

Among the factors used to determine whether a defendant received a fair trial are these: the effectiveness of the assistance of counsel, the opportunity to present evidence and witnesses, the opportunity to rebut the opposition's evidence and cross-examine the opposition's witnesses, the presence of an impartial jury, and the judge's freedom from bias²⁸.

1.1.5 Right to a fair trial

As said above, a fair trial is a trial which is "conducted fairly, justly, and with procedural regularity by an impartial judge". Various rights associated with a fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights²⁹, the Sixth Amendment to the United States Constitution³⁰, and Article 6 of the European Convention of Human Rights³¹, as well as numerous other constitutions and declarations throughout the world. There is no binding international law that defines what is not a fair trial; for example, the right to a jury trial and other important procedures vary from nation to nation.

²⁷Doebller, C., Op. Cit., p. 15

²⁸ Idem, p. 18

²⁹Article 10 of the Universal Declaration of Human Rights, 1948

³⁰The Sixth Amendment to the United States Constitution, 1791

³¹Article 6 of the European Convention of Human Rights, 1953

1.1.6 Criminal justice

Criminal justice is the delivery of justice to those who have been accused of committing crimes. The criminal justice system is a series of government agencies and institutions. Goals include the rehabilitation of offenders, preventing other crimes, and moral support for victims. The primary institutions of the criminal justice system are the police, prosecution and defense lawyers, the courts and the prisons system³².

1.2. Theoretical framework

The theoretical framework for this study is grounded in fair trial, which provide a foundation for understanding the phenomena under investigation. This framework integrates key concepts and constructs that guide the research, offering a lens through which the data is interpreted and analyzed. It encompasses both the exegetic interpretation of primary texts and the analytic breakdown of quantitative and qualitative data, ultimately synthesizing these insights to form a cohesive understanding of the research problem. By aligning the study with established theoretical principles, the framework ensures a structured and coherent approach, enhancing the validity and depth of the research findings.

1.2.1 A Brief Overview of Historical Development of the Right to a Fair Trial

The right to a fair trial has a rich historical legacy that dates back to ancient civilizations and has evolved significantly over time. In ancient Greece and Rome, early concepts of justice and due process began to take shape, emphasizing the importance of impartiality and the rule of law. The Magna Carta of 1215 marked a pivotal moment in the development of this right, establishing the principle that no one could be deprived of liberty or property without due process of law. The Enlightenment era further advanced these ideas, with philosophers like John Locke and Montesquieu advocating for the separation of powers and the protection of individual rights. The 18th and 19th centuries saw the codification of fair trial principles in various national constitutions and legal systems, including the United States Bill of Rights and the French Declaration of the Rights of Man and of the Citizen. In the 20th century, international human

³²Doswald-Beck, Louise. (2015). Fair Trial, Right to International Protection, Max Planck Encyclopedia of Public International Law, p. 32

rights instruments, such as the Universal Declaration of Human Rights and the European Convention on Human Rights, enshrined the right to a fair trial as a fundamental human right, applicable to all individuals. Today, the right to a fair trial is universally recognized and protected, forming a cornerstone of democratic societies and legal systems worldwide.

1.2.1.1 From the ancient times

Since ancient times, the traces of individual principles relating to fair trial in criminal proceedings have been observed in a number of texts, including the Code of Hammurabi, the Koran and the Bible, among other documents. Long history may be, it is not one of which can be universally satisfied. Historically, the foundations of the fundamental principles of the right to a fair trial date back to the Lex Duodecim Tabularum - “The Law of the Twelve Tables” - which was the first written code of laws of the Roman Republic around 455 BC. These laws gave all parties the right to be present at the hearing, the prohibition of bribery for judicial officials and principle of equality amongst citizens.

Another significant historical reference to the right to fair trial can be found in England. In 1215 the Magna Carta as peace treaty between the king and the rebel barons was signed. This treaty which is one of the most important sources of Common Law as we know it today was the most significant early influence on the extensive historical process that led to the rule of constitutional law today in the English speaking world.

The Magna Carta established principles of due process and equality before the law. It proclaimed that, no freeman shall be taken, or disseized, or imprisoned, or outlawed, or in any way harmed or exiled, nor will we go upon or send upon him - except by the legitimate judgment of his peers or by the law of the country. It also contained provisions forbidding bribery and official misconduct. Widely regarded as one of the most important legal documents for the development of modern democracy, Magna Carta was a turning point in the struggle for the establishment of freedom and rule of law³³.

³³Ibidem

1.2.1.2 Between 1320 to the French Revolution

After one century, in 1320 the treaty of Arbroath was signed. It expressed the notion of equality for all, a principle that was then replicated in other developing democracies, such as the twelve American colonies of the British Empire and France. It is claimed also that the United States declaration of independence was linked to that treaty. During the period of the enlightenment of the 18th century, the scope of the right to a fair trial was further developed and codified. During this period, the political orientation of the government began to move away from an almighty ruler in favor of the will of the people and the limits of the governmental power began to be restructured accordingly³⁴.

This restructuring often took the form of written laws in which the right to a fair trial was also embodied. Important historical reference and event can be found in France and in United States. In France, the declaration of the rights of man and of the citizen, which was adopted in 1789, is also a fundamental historical text, which has played significant role in the historical development of the right to fair trial. The beginning of its first article, which is “men are born and remain free and equal in rights”, has been resumed as such by the declaration of human rights of 1948. Second, the declaration of the rights of man and of the citizen sets forth the basic principles of fair trial as the primacy of the law, and the separation of powers. It also provides the right to the presumption of innocence, and prohibits illegal detention³⁵.

1.2.1.3 From the French Revolution to the Second World War (WWII)

After two years of French revolution, in 1791, the United States adopted “the sixth amendment to the United States constitution”. This constitutional amendment is very significant step in the development of fair trial rights. It affords criminal defendants seven discrete personal liberties: the right to an impartial jury; the right to a speedy trial; the right to legal counsel, the right to be informed of pending charges; the right to compel witnesses to testify at trial, the right to confront

³⁴Doswald-Beck, Louise, Op. Cit., p. 39

³⁵ Idem, p. 43

and to cross-examine witnesses and the right to a public trial. It was during the age of Enlightenment, in the 18th century, that the modern right to fair trial begun³⁶.

The political orientation of the government began to change from an all-powerful sovereign to the will of the people, and the limits of government power began to be restructured accordingly. It was in this period that, in Europe, the doctrine of natural law has been established. This doctrine as point out by Nowak, recognized individuals as rights-holders and placed them at the center of social and legal systems. This period was really a philosophical foundation of the recognition of individual rights, particularly the fair trial rights. The term fair trial was rarely used before the Second World War (WWII).

In fact, it is after the Second World War that the right to fair trial has been universally codified. In December 1948, the United Nations general assembly adopted the universal declaration of human rights (UDHR); the declaration provides that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and of any criminal charge against him³⁷.” Then, after the Universal Declaration of Human Rights of 1948, the right to a fair trial appeared successively in the international instruments; for instance, in the International Covenant on Civil and Political Rights of 1966 and then in different declarations³⁸.

Now that the historical background of the rights to a fair trial has been established, it is important to conceptualize it in order to make it clear in this thesis. This is the major focus of Section that follows.

1.2.2. Conceptualization of the Right to a Fair Trial

The right to a fair trial is a norm of international law intended to safeguard people from illegitimate and arbitrary curtailment or deprivation of other fundamental rights and liberties, of which the person's right to life and freedom is the most prominent. The right to a fair trial remains to a treaty obligation, and rest also on a general principle of law recognized by civilized

³⁶Ibidem

³⁷ Article 10 of the universal declaration of human rights, 1948

³⁸The International Covenant on Civil and Political Rights, 1966

nations and a norm of customary international law within the significance of article 38 (1) of the Statute of the International Court of Justice³⁹.

It is a fundamental safeguard to ensure that accused persons are protected from arbitrary or unlawful deprivation of their freedom and human rights. As also pointed out by the Lawyer Comity for Human Right, the right to a fair trial is applicable to both determination of an individual's rights and duties in a suit law and with respect to the determination of any criminal charge against accused persons. It must be implemented at all times and as stipulated in covenant on civil and political rights. In addition, the right to a fair trial is of paramount importance in the efficacy of protecting all other human rights and basic liberties of accused persons.

In absence of this right, the individual freedom and other rights of accused persons remain at danger in discourse of criminal proceedings. It is, thus, acceptable to reaffirm with Alfredsson, Gudmundur that the protection of all other individual rights in a State relies on the accessibility of fair trial procedures in national courts through which someone in confrontation with human rights violation can seek remedies. Therefore, the effective protection of fundamental freedoms and other individual rights rests illusory when the fairness of court proceedings is not guaranteed. The convention on civil and political rights provides that "in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial court established by law"⁴⁰.

In a sense, the "fair trial" stands quite apart from the concept of "fairness", in that it can be defined as the set of a number of crucial parts and encompasses of various parameters related to the process of proceedings. This right may be reduced down to four core guarantees, notably the right to a public hearing, right to fair hearing, and the right to an impartial and independent court. An overview of an understanding of a fair trial concept reveals that the concept of fair trial is founded on the natural justice principles, thus, it prevents the states, its agencies and officers to recourse to extra-legal methods in their battle against crimes and delinquency⁴¹.

³⁹Article 38 (1) of the Statute of the International Court of Justice, 1945

⁴⁰Alfredsson, Gudmundur, (1999). The Universal Declaration of Human Rights: a common standard of achievement. MartinusNijhoff Publishers. p. 225

⁴¹Ibidem

In this perspective, the concept of fair trial reveals the following conclusions: First it is a basic human right that every accused person in criminal matter is entitled and constitutes an important feature in the administration of criminal justice in any society governed under a system of democracy. No matter the kind of legal system in which an accused person is prosecuted. Secondly, it has revealed that the right to a fair hearing is different from the notion of fairness. Thus, any court or judicial authority handling the criminal matters must exercise the right to a fair trial in its broader sense. In this connection, the right to a fair trial may be understood as the guarantee of the neutrality of criminal courts in the handling criminal offence and ensuring that the administration of justice is not only done, but it is manifestly and undoubtedly also seen to be done or achieved.

1.2.2.1 Right to a Fair Hearing

The right to a fair hearing is a fundamental aspect of the right to a fair trial, ensuring that individuals have the opportunity to present their case in a balanced and impartial forum. This right encompasses several key principles, including the right to be heard by a competent, independent, and impartial tribunal, the right to a public hearing, and the right to adequate time and facilities to prepare a defense. It guarantees that all parties in a legal proceeding are given a fair and equal opportunity to present evidence, cross-examine witnesses, and argue their case, thereby upholding the principles of justice and due process.

1.2.2.1.1. The concept of fair hearing

Fair hearing is another concept, which acts as a key player in proceedings of the trial. In civil law jurisdiction like Rwanda, it refers to a period from which the case instituted to a court of law to its final judgment. During this period, the accused is needed to have every opportunity to reflect his plea and questioning the actions of the prosecutor and the legal proceedings during court trial. The concept of a "fair hearing" is an ethical and legal term used to define a court's procedural rules and the treatment of the accused person in a court trial. This is essential because when accused person is charged to commit a criminal offence, he is opposed with the state's

machinery. It implies that in order to maintain justice, the rights of an accused during the court trial have to be observed and protected by the court established by law⁴².

The right to a fair hearing is enshrined in many international instruments, such as the International Covenant on Civil and Political Rights in the European Convention on Human Rights⁴³, and the American Convention on Human Rights⁴⁴, which speaks of “due guarantees”. Largely, the right to a fair hearing occurs as an essential aspect and part of the scheme of the protection of accused persons in the international field. The legal frameworks of the operation of this rights in national legal systems precede the Universal Declaration relating to Human rights (UDHR) and has been existed in various national laws prior to the international rules established by the United Nations.

1.2.2.1.2 Interpretation of the European Court of Human Rights

The European Court of Human Rights has interpreted that the right to a fair hearing is enshrined in the right to a fair trial. In a democratic society, it is among the basic principles of the rule of law. It seeks to secure the right to good administration of justice. In the case of Prosecutor v Slobodan Milosevic, the court expressed that notion of fairness, rests essentially on the power exercised by the tribunal or court over the accused person. Thus, the accused must be guaranteed of the fair chance or opportunity of dealing with the allegations against his person. More importantly, in terms of fairness, a trial is evaluated upon numerous standards of guarantees.

Such guarantees are purely procedural in nature and create a benchmark of fairness in any criminal trial. The Committee on Human Rights considered that the notion of a fair hearing under Article 14(1) of the Covenant should be interpreted as having a number of circumstances, such as regard for the principle of adversary proceedings, equality of arms, the right to be heard within a reasonable period of time, and preclusion of ex officio reform in pejus⁴⁵.

⁴²The International Covenant on Civil and Political Rights, 1976

⁴³The European Convention on Human Rights, 1953

⁴⁴The American Convention on Human Rights, 1969

⁴⁵Article 14(1) of the Covenant

1.2.2.1.3. The interpretation of the African Commission

According to the Principles of the African Commission, in the fundamental elements of the right to a fair hearing is included the equality of arms between the parties to the all court proceedings; equality of all persons before any court of justice, without any distinction of ethnic origin, race, gender, sex, color, religion, age, language, creed, national or social origin, political or other convictions, status, means, birth, disability or other situations⁴⁶.

Accordingly, in these values, equal access for men and women to justice and equality before the law is provided for in all legal proceedings. Furthermore, it is also provided in those African principles, the guarantee of accused persons to present arguments and his proofs in court proceedings, the adequate opportunity to prepare a case, and to respond or challenge the pieces of evidence or arguments opposed to him. It further states that the accused persons have the guarantee of consulting and being represented, at all stages of the proceedings, by a legal representative or other qualified persons chosen by him; the right to have the a court decision based only on law and evidence presented in court of justice or judicial body and the right to assistance of an interpreter if he cannot speak or understand the language used in or by the court or in other of justice sector⁴⁷.

Moreover, the African principles provided as part of the fair hearing, the guarantee of accused persons to the guarantee to an appeal to a higher judicial body, and the determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions.

Additionally, the guarantee of equality is one of the general principles of the fair hearing. It prohibits discriminatory laws and includes the right to equal access to the courts and equal treatment by the courts. Its most important practical aspect is the equality of arms, comprising the idea that each party to a proceeding should have an equal opportunity to present its case and that neither party should enjoy any substantial advantage over its opponent.

⁴⁶NehalBhuta, (2016). Joint Series on International Law and Armed Conflict: Fair Trial Guarantees in Armed Conflict, EJIL: Talk! Blog of the European Journal of European Law, p. 18

⁴⁷ Idem, p. 22

In short, it is clear that the concept of fair hearing applies to all proceedings in criminal courts and is an ethical and legal concept served to define the rules of court procedure and how the accused must be treated in the discourse of criminal adjudication. In this respect, the criminal court have to protect the accused person's rights during pre-trial stage, court proceedings and post-trial with respect to uphold justice and protect the dignity of the accused persons. It is important to note that the most important practical aspect of fair hearing includes the right to be tried within a reasonable time, equality of arms, chance to prepare a case, the right to have a legal counsel, present arguments and pieces of evidence in court proceedings, and right to appeal⁴⁸.

1.2.2.2 Right to a Public Hearing

The right to a public hearing is a crucial element of the right to a fair trial, ensuring transparency and accountability in judicial proceedings. This right mandates that legal proceedings be open to the public, allowing for public scrutiny and fostering trust in the judicial system. It serves to protect individuals from secretive and unjust judicial practices by promoting openness and ensuring that justice is not only done but seen to be done. Public hearings contribute to the integrity of the judicial process, providing a safeguard against corruption, bias, and abuse of power while upholding the principles of fairness and transparency.

1.2.2.2.1. Opportunity to express personal views

The concept of public hearing can be understood as an opportunity in which the accused persons and public can express their views, explanation, available defenses, rebuttal and opinion on matters that affect them in a given case; the accused present all the defenses available to him, may show that the allegations against him do not constitute an offence, raise a plea of inadmissibility or other sorts of defense. Principally, all criminal trials must be performed publicly and orally. In particular, the publicity of hearings guarantees that the court proceedings are transparent and thus offers a significant safeguard for the interests of society at large and individuals⁴⁹.

⁴⁸ Anderson, J. J, (2016). Judicial lobbying, Washington Law Review, 2016, Vol.91, No.2, pp.401-461

⁴⁹Ibidem

General comment no 32116 also addressed the significance of public trials in ensuring transparent proceedings in the interest of a fair trial of the accused person, as well as informing the society's perception of the efficacy of the judicial system. Public hearing, therefore, refers to the opportunity for accused persons to present their plea in an open hearing before a competent criminal court. This requirement increasingly regarded as a method of ensuring the respect of the rights of accused persons and the accountability of judges or court trial within a state with democracy. It may safely be said that a judge is obliged to be fairer and more cautious when dealing with a case and making a judgment in public than when the proceedings are held in secret or in camera.

In the words of Jurist Bentham, “in the darkness of secrecy, sinister interest, and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest guard against improbity. It keeps the judge himself while trying under trial”.

1.2.2.2.2 Removing doubts in the public’s mind

More importantly, the mere fact that the criminal hearing was conducted in secrecy, is sufficient for making a doubt in the public’s mind. In that regard, in *Axen v Germany*, the European Court of Human Rights has stressed the importance of the right to a public hearing under the ECHR; it asserted that the public nature of the procedure protects the litigants against the administration of justice in secret, without any governmental control. It is also one of the means by which confidence in the judicial body, both inferior and superior, can be preserved⁵⁰.

In this respect, the publicity of criminal court proceedings also contributes to maintaining the confidence of the members of the public in criminal court processes. The vital aspects of the right to a public hearing necessitate that all required information of the court sessions be made accessible to all, and that a permanent place for all courts must be legally established and commonly publicized by the State⁵¹.

⁵⁰The European Court of Human Rights, *Axen v Germany*, 2011

⁵¹ Anderson, J. J., O. Cit., p. 227

In regard to the ad-hoc court, the place and duration of their proceedings should be designated and made public; adequate facilities must also be provided for the participation of interested members of the public. The court should therefore not place any restrictions on the category of persons authorized to attend hearings when the merits of a case are under review or at the time of pronouncement. Media officials should attend the hearing and report on the legal proceedings unless a judge is able to limit or restrict the use of cameras.

1.2.2.2.3 Complying with the UDHR and the ICCPR

Furthermore, the general public and the parties deserve the right to know in what way justice is done. Internationally, both the UDHR and the ICCPR protected the right to a public hearing. Only specific grounds of public order, morality, and national security permissible in a democratic system may constrain the presumption in favor of public trials. Even when such grounds precluded the attendance of the public or media at the trial, the final decisions of a court must be made available to the public, unless the publication of such findings would prejudice the rights of a child or would infringe the privacy of the parties such as in divorce proceedings⁵².

In sum, it is established three distinct rights. First of all, the trial should be carried out in public; secondly, the procedural aspect of proceedings must be fair; finally, the judgment must be publically, in its delivery and the public accessibility of all the documents for a good preparation of the pleading. Thus, public hearing procedure has to guide the process in court proceedings to ensure that a hearing is conducted fairly.

However, the camera can be pronounced during the whole or a part of the court trial either when the respect of the private life of the parties in question requires either in the interest of public morals, national security or public order in a democratic state, either still in the measure or the court deems it absolutely necessary, because of the particular circumstances of the case, when the public hearing can prejudice the interests of justice. Nevertheless, any judgment rendered in criminal matters will be public, except when the trial relates to the guardianship of children or the matrimonial disputes and where it is required in the interest of juvenile persons⁵³.

⁵²Doswald-Beck, Louise, Op. Cit., p. 41

⁵³ Idem, p. 43

In any way, as analyzed above, in order to protect and assuring the rights of accused persons, the publicity of hearing remains an important rights, therefore any exceptions to it must be rigorously interpreted and motivated and must be applied only where necessary. The criteria on how the exceptions of the publicity of hearing should be interpreted have to be clearly established with aim to fight against the abuse and evasion of the right to the public hearing.

1.2.2.3 Right to an Independent Court

Under this point, the following points have been explained: The concept of Independent court, Complying with the Human Rights Committee provisions and Complying with the African Charter on Human and Peoples' Rights.

1.2.2.3.1 The concept of Independent court

The right to an independent court is a concept, which guarantees everyone accused of crimes that their case will be heard by an independent and impartial court. As pointed out by Landsberg, two kinds of definitions of the concept of right to an independent court may have emerged; an institutional-type definition, and a performance-based definition. As required by the principle of separation of powers, the court must be institutionally independent, particularly from the legislature and the executive while, on the other side, individual independence necessities that only persons with adequate legal training and skills and who have and integrity and competence should be agreed as judges⁵⁴.

Consequently, judicial independence is both a set of the arrangements of the institutional aspect and its operation and a state of mind. The former is in fact concerned with identifying the relationships between the judicial power and other branches of powers, in order to ensure the appearance of independence and the truth, the latter is worried with the individual independence of the judge. As established in Venice Commission recommendations, when judges make decisions must be able to act without improper influence, any restriction, threats or interferences, inducements, pressures, indirect or direct, for any motive or from any sector.

⁵⁴Doebbler, C., Op. Cit., p. 19

Judges should be free when they decide cases, in accordance with appropriate rules of law, with their consciousness and interpretation of the facts. Judges could not be requested to report to anyone outside the courts on the merits of their judgments. Rapporteur on the independence of judges highlights that the judicial independence remains an essential component of a state governed under a system of democracy. It is recognized as central to the proper functioning of the judiciary within the concept of separation of powers. This last principle is the foundation of the requirements of impartiality and judicial independence. Consideration and respecting the doctrine of separation of power is an essential condition for a state governed under a system of democracy; it requires the three arms of government to constitute a system of checks and balances in order to avoid and mitigate abuses of government authority⁵⁵.

1.2.2.3.2 Complying with the Human Rights Committee provisions

In this respect, the Human Rights Committee has highlighted that the prerequisite of court's independence refers, among other things, to "...the actual independence of the judiciary from political interference by the executive branch and the legislature". On the other hand, the decisional independence of judicial officers requires legal protection of judges' term of office, security, adequate remuneration, their independence, conditions of service, the age of retirement and pensions.

In this view, the requirement of an independent judiciary is the symbol of the basis and legitimacy of judicial functioning in every State, having both institutional and individual judge dimensions. Without the independence of the judiciary justice remains illusory, thus, this rights remains a precondition for access to justice. Only an independent court is able to render justice impartially on the basis of law. Guarantees of judicial independence are the means to protect judicial decision-making in individual cases from external influence and provide for a genuinely impartial arbiter⁵⁶.

Furthermore, the right to an independent court, as well the right to impartial court, is an absolute right; it is not subject to any exception and that "all persons shall be equal before the courts" and further, that "in the determination of any criminal charge against him, or of his rights and

⁵⁵Ibidem

⁵⁶Beatson, J. (2008). Judicial independence and accountability: pressures and opportunities. Nottingham Law Journal, 2008, Vol.17, No.2, pp.1- 12

obligations in a suit of law, everyone shall be entitled to a fair and public hearing by an independent and impartial court established by law”; The Human Rights Committee (HRC) has clearly assumed that “the right to be tried by an independent and impartial court is an absolute right and would not suffer any exception”⁵⁷.

1.2.2.3.3 Complying with the African Charter on Human and Peoples’ Rights

Therefore, this right is applicable in all courts and all circumstances, whether special or ordinary. Accordingly, the African Charter on Human and Peoples’ Rights obliges State parties to ensure the independence of the courts. In this perspective, that the African commission on human and peoples’ rights held that the independence of the court should be considered “non-derogable” as it affords minimum protection to persons”. It is thus a right, which applies in all situations.

The absence of impartiality and independence of court may lead to a denial of justice and makes the credibility of the judicial process dubious. It needs to be highlighted that independence as well as the impartiality of the judiciary are important in protecting individual rights of accused or the consumers of justice in general than a privilege of the judiciary as organ for its own interest. Most importantly, the independence of justice applies to both judiciary as a system and courts as institution, and to the judges called to decide on particular matters. Institutional independence emphasizes the requirement that the judicial institution itself, as an organ, should be free of control and pressures.

Usually, threats to the institutional independence through control, pressure or any form of improper influence could emanate from external as well as internal sources. Bahma posits that personal independence or individual independence, on the other hand, rests on the individual judge who should be able to exercise his judicial functions without fear or favor of any control or pressure from any party. If it could be shown that a judge is not independent by virtue of his connection to a party to the action, whether a private party or the State, there would be doubts as to his impartiality and consequently, the correctness of his decision, even if he did ensure that the proceedings were fair in every other aspect.

⁵⁷Ibidem

Both postulates of judicial independence have a bearing on each other. A judge may be individually independent but if the court, of which he is a member, is not independent, then, any convictions issued by the court could be rendered unsafe by virtue of that dependence. This would adversely affect the decisions of the court even if the convictions were arrived at after observation of other standards of fair trial. In a democratic state, the right to an independent court and the right to an impartial court maybe the most important tenet in the administration of justice⁵⁸.

1.2.2.4 The Impartiality of Court

The impartiality of the court is a fundamental pillar of the right to a fair trial, ensuring that justice is administered without bias or prejudice. This principle requires that judges and jurors remain neutral and independent, making decisions based solely on the evidence and legal arguments presented, without any external influence or personal interest. Impartiality is crucial for maintaining public confidence in the legal system, as it guarantees that all parties receive equal treatment under the law. Measures such as judicial codes of conduct, procedures for recusal in cases of potential conflict of interest, and mechanisms for reviewing and appealing decisions help to uphold and protect the impartiality of the court.

1.2.2.4.1 Meaning of impartiality

Impartiality means that a judge is not biased in favor of the other party. In this context, a judge must have the freedom to float the positions of the parties and finally make a fair and adequate solution by correctly applying the law and the rules of the jurisprudence relating thereto. According to Gelinas and Brosseau, impartiality is characterized by objectivity in balancing the legitimate interests at play. Thus the impartiality may refer to the fact that judges are not prejudiced and they do not have any interest in terms of moral values and material in an indirect or direct way⁵⁹.

⁵⁸Beatson, J., *Op. Cit.*, p. 9

⁵⁹Gelinas, F., Brosseau, J. (2016). Judicial justices of the peace and judicial independence in Canada, *Review of Constitutional Studies*, 2016, Vol.20, No. 2, pp.213 - 252;

The European court of human rights has explained the concept of impartiality in *Morris v UK*⁶⁰. The court considered that in the concept of judicial impartiality there are two dimensions. Firstly, the Court should be objectively impartial, which means that there should be adequate guarantees for the Court to reject any illegitimate objection regarding impartiality. Second, the Court should also distance itself from personal bias and influence. The impartiality is essential element for the good administration of justice in decision making process. The European Court of Human Right has well established in *Sramek v. Australia* that the principle of impartiality is an important element in support of the confidence which the courts have to stimulate in a society governed under a system of democracy⁶¹.

The Bangalore Principles of Judicial Conduct, in its second significance, impartiality is considered as crucial element for the correct execution of the judicial function, associated not only to the decision making process but also to the court decision. With regard to the conduct required of judges, the Bangalore Principles provides the guidance on conduct within and outside the courts and contains restrictions on liberty of speech, establishing the "appearance of impartiality" as an appropriate factor. The determination of impartiality of the court is based on both subjective and objective criteria. The committee has reaffirmed this point of view in its general comment no 32 of 27 July 2007 relating to the issue of impartiality of a court.

Consequently, for the first aspect, the court must be subjectively impartial; in this case, the members of the court should not hold any bias or personal prejudice, nor have preconceived ideas about a specific case before him or her. Second, from an objective viewpoint, the court must also be impartial; in this respect the court must offer satisfactory guarantees, for exclusion of any kind of legitimate doubt.

1.2.2.4.2 Impartiality as the personal impartiality of the judge as an individual

Beatson posits that subjective impartiality is the personal impartiality of the judge as an individual. A judge is supposed to be subjectively impartial until proven otherwise. A reasonable third party must discern a behavioral impartiality based on how the trial is conducted. subjective impartiality necessitates a considerable effort in adjudicating; the Judicial Ethics Report 2008

⁶⁰The European court of human rights, *Morris v UK*, 1998

⁶¹The European Court of Human Right, *Sramek v. Australia*, 2001

provides subjective impartiality as a set of rules of conduct aimed at ensuring the impartiality of judges, which refers not only to the exercise of their judicial role but also to the sphere of their personal and social life⁶².

However, objective impartiality is the conviction of the parties and the public that the court as an institution is not partial. In this case, an absence of personal bias, prejudice, or pre-judgment must be demonstrated. Objective impartiality needs that judges confer certain guarantees to eliminate any suspicion of impartiality.

From the above analysis and an overview of understanding of the concept of impartiality of court reveals that the notion of fair trial is founded on the behavior of the criminal court as institution and of the individual judge. The criminal court and the individuality of judge must appear to be impartial to a reasonable person. This requirement is very important, and it may be the utmost significant safeguard for ensuring the right of accused to a fair trial. For accused persons, the impartiality of criminal court is more likely more than any other fair trial guarantees.

Therefore, the criminal court that lacks impartiality is not a court at all. A democratic State should take all legal and practical measures in the respect for minimizing all doubts concerning the impartiality of the criminal judges and their jurisdictions. Now that the different concepts of fair trial relating to the proper administration of criminal justice has been examined. As a matter of importance, it is established that the right to a fair trial encompasses in particular the right to a public and fair hearing and the right to be tried by an impartial and independent court. It is apt to start analyzing its value and importance in a fair administration of criminal justice and, before analyzing the scope of its application in criminal court proceedings⁶³.

1.2.3 The Objectives and Importance of the Right to a Fair Trial

The right to a fair trial serves several vital objectives and is fundamental to the administration of justice. Its primary objective is to ensure that every individual receives an equitable and just legal process, safeguarding their rights and liberties. This right aims to prevent arbitrary and unjust treatment by providing a structured legal framework that demands transparency, impartiality, and accountability in judicial proceedings. The importance of the right to a fair trial extends beyond

⁶²Beatson, J., Op. Cit., p. 14

⁶³ Idem, p. 20

individual cases; it is essential for maintaining public confidence in the legal system and upholding the rule of law. By ensuring that trials are conducted fairly, this right helps to deter abuses of power, protect against wrongful convictions, and reinforce the principles of equality and justice in society. Ultimately, the right to a fair trial is a cornerstone of democratic governance and human rights, essential for protecting individual freedoms and maintaining social order.

1.2.3.1 Complying with the principle of rule of law

The right to a fair trial is an essential right in States respecting the principle of rule of law. When this right is respected fairly, the accused person can be sure that processes will be fair and certain. The Inter-American Commission on Human Rights has considered, in case of *Malary v Haiti*, the right to a fair trial as one of the foundations of a society governed under the system of democracy⁶⁴. The commission considers it also as a basic safeguard of respect for the other rights provided in the Convention, as it is a real limitation to the State to abuse of its power.

Generally speaking, the fairness of criminal process and judgment are the most important components of administration of criminal justice. Weissbrodt stressed that the right to a fair trial remains one of the essential individual rights aimed for ensuring the good administration of justice as it ensures proper administration of justice by providing procedural safeguards to the rule of law.

Accordingly, it prevents governments from abusing their powers, and it remains the best means of separating the guilty from the innocent and protecting against injustice. In this context, the objective of securing the interests of the community is considered as the utmost significant objective of a fair trial in crimes against the physical integrity of individuals that are committed against the integrity of the body and the life of a living person. In accordance with the interpretation of the Court of Strasbourg, the right to a fair trial is a fundamental principle of the rule of law in society governed by the system of democracy and is aimed to guarantee the right to the proper administration of justice.

⁶⁴The Inter-American Commission on Human Rights, *Malary v Haiti*, 2000

It is arguable that the notion of fairness, and justice go together specifically in criminal matters. It is very difficult to get justice from a criminal court which is not guaranteeing the right of citizen or suspect to the procedural fairness and which is not independent and impartial. It is impossible to overemphasize the significance of the right to a fair trial in a community governed by the system of democracy. In this community, it is taken as the most significant human right in the administration of justice.

1.2.3.2 A fair trial as a guarantee of neutrality

Moreover, the right to a fair trial guarantees neutrality in the adjudication of conflicts through the multiple guarantees it offers in the conduct of trials. In this connexion, as also pointed out by Beatson, specifically in criminal proceedings, it is arguable that the notions of fair trial and justice are inseparable. It is impossible to have or to get justice rendered by a court which is neither neutral nor independent, and which does not guarantee the other rights associated with fair trial rights and legal procedures⁶⁵.

More importantly, the fundamental importance of right to a fair trial is greatly illustrated by its inclusion in the non-derogable rights. The ACHPR and HRC have said that the right to a fair trial must be considered non derogable. Indeed, in *Chad v Commission Nationale des Droits de l'Homme et des Libertes*, the ACHPR noted that, unlike other human rights instruments, the African Charter does not permit countries to derogate from their commitments under the Treaty during the emergency circumstances⁶⁶. Therefore, even in the situations of emergency, the provisions of the African Charter dealing with the right to a fair trial are not derogable. In the above case, the ACHPR argued that even a civil war in Chad could not be used as a pretext for the State to violate or allowing violations of rights enshrined in the African Charter. HRC also emphasized that States derogating from the standards of fair trial in the event of a government emergency should guarantee that such derogations do not exceed those strictly needed by the requirements of the real state. It stressed that fair trial guarantees could certainly not be subject to derogation policies that would avoid the protection of the entrenched rights⁶⁷.

⁶⁵Beatson, J., Op. Cit., p. 27

⁶⁶The ACHPR, *Chad v Commission Nationale des Droits de l'Homme et des Libertes*, 2013

⁶⁷*Ibidem*

1.2.3.3 Complying with Article 4(2) of the ICCPR

Because it is inherent in the protection of freedoms explicitly recognized as non-derogable in Article 4(2) of the ICCPR that procedural safeguards, including often-judicial guarantees, must be guaranteed⁶⁸. Indeed, the HRC declared well before that even in emergency situations, certain aspects of the right to a fair trial cannot be subject to derogation. Certainly, the lack of fair trial in administration of justice generates so many bad impacts in the country, society and on individual person. Normally, the fair trial is a set of rights aimed to secure the fair administration of justice during different time periods of the trial process, the violation of rights or one right during one stage may well have an effect on another stage. This view has also been pointed out by Beatson⁶⁹. He expressed that without fair trial, all other rights are at risk and if the state is unfairly advantaged in the trial process, it cannot be prevented in the courts from abusing all other rights.

For Doebbler, the impact of the administration of justice in a state has a practical significance on the affairs of groups and ordinary individuals. First, the fair administration of justice is essential for the rule of law in that it ensures that state practice and policies protect against the infringement of the fundamental human rights to liberty, life, personal security and physical integrity of the human being. Second, as the main vehicle aimed to safeguard the human rights at the national level, a strong system for administration of justice remains obligatory for the peace and stability of a state. Thirdly, a fair and efficient administration system of justice is indispensable for the protection of minority rights, which is crucial for ensuring the flourishing of inclusive democracy⁷⁰.

1.2.3.4 The right to a fair trial as a foundation of peace, justice and freedom in the world

From the above analysis, it is true to affirm that without respect the rights of fair trial, the rule of law and public confidence in the justice system collapse. The international community asserted the right to a fair trial to be a foundation of peace, justice and freedom in the world. Therefore, the right to a fair trial is an incomparable way to avoid miscarriages of justice in criminal

⁶⁸Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR), 1966

⁶⁹Beatson, J., *Op. Cit.*, p. 30

⁷⁰Doebbler, C., *Op. Cit.*, p. 42

proceedings and is indispensable for a just society. Without it, the rule of law may be considered as having failed to demonstrate its standards and importance in a particular society. In this connection, there is no insurance nor confidence in a given country that the criminal court cannot convict the accused persons or take away their liberty, without observation of the facts, pieces of evidence, law and protection of other individual rights related to the protection of the integrity of human being⁷¹.

Therefore, the denial of fair trial to the accused persons may be considered as a denial of justice. Rwandans accused of a crime as well as other persons should have their guilt or innocence plea determined by a fair and effective legal process, because getting a criminal trial free from atmosphere of partiality may be listed among the most valuable rights of every accused person. In sum, it has been shown that the right to a fair trial occupies a prominent place in a society governed under a system of democracy.

The notions of fair trial and justice are not separable; thus, denial of fair trial is much injustice to the accused person as it is to the victim and society. Rwandan legal system and court practices need to take into consideration the importance of a fair trial guarantees with respect to protect individual rights and upholding the rule of law principles because without this right, public faith and the rule of law in the justice system can collapse. Having established the importance of fair trial, it is also important to scrutinize its scope of application, particularly with the criminal courts. In a society governed under a system of democracy, the position and weight of the right to a fair trial cannot be underestimated. Even if it is important, it does not explain that the right to a fair trial must be applied to all proceedings before criminal courts. The section below addressed the applicability of fair trial rights in all proceedings before criminal court.

1.2.3 The Scope of Application of the Right to a Fair Trial in Criminal Matters

The right to a fair trial in criminal matters encompasses a broad range of protections designed to ensure justice throughout every stage of the legal process. This section elaborates on how this right ensures fairness and its application across the various phases of criminal proceedings.

⁷¹Ibidem

1.2.3.1 Its fairness

The major important components of criminal justice are its fairness. The right to a fair trial is considered in the most famous, most popular and most important human rights that emerged during the development of human rights civilization. Article 14 (1) of the ICCPR states that “in the determination of any criminal charge against him, or of his rights and obligations in a suit at law ... everyone shall be entitled to a fair and public hearing by an independent and impartial court established by law”⁷². Likewise, the UDHR provides that “everyone is entitled to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and of any criminal charge against him”⁷³.

The right to a fair trial therefore refers to trials concerning the determination of the rights and responsibilities of a person in a lawsuit and those related to the determination of a criminal charge. Criminal courts hardly ever deal with the rights and responsibilities of a person in a lawsuit. Consequently, the civil matters are deliberately excluded from the scope of this thesis. With regard to proceedings relating to the determination of a criminal charge, the HRC indicated that, in principle, criminal charges relate to the actions, which are provided to be punishable under national criminal law.

This implies that in determining whether there is a criminal charge for the reasons of applying the right to a fair trial, the classification of the offense and criminal court proceedings under domestic legislation should be considered. It is essential to guarantee that States are in the line to abuse their authority and deny people the fair trial rights by simply designating as disciplinary certain omissions or acts. In fact, while this thesis argues that the practice of courts in Rwanda reveals that laws are still lagging behind and do not correspond to the requirement of having good justice administration, it must be acknowledged that the rights of the accused person play a central role in proceedings and they must be kept at the top standards of fairness.

Furthermore, the judgments rendered by Rwandan courts have to stress the importance of ensuring the fairness of trials. In the Rwandan context, judicial authorities are competent to investigate, prosecute and try offences committed on the territory of Rwanda by either a

⁷²Article 14 (1) of the ICCPR

⁷³ Article 6 of the UDHR

Rwandan or a foreigner. They are also competent to deal with accomplices of felonies and misdemeanors committed outside Rwanda if they are both punishable by the law of the country where they were committed and the Rwandan law.

1.2.3.2 Applicable in all the phases of the proceeding

The criminal proceedings, in Rwanda, involve, four distinct phases: Investigation phase, prosecution, criminal action and adjudication. The development in this thesis examines the Rwandan commitment to respect of fair trial rights during the discourse of the trials. In fact, Rwanda is a civil law country, but its legal system has also some common law elements, particularly, its procedural laws. The criminal procedure code is used in order to prosecute and find the guilt of a person who is presumed to commit an offence; therefore, the criminal liability is personal. It is widely agreed that, at least one of the purposes of the criminal trial is to discover whether the charges laid on the defendant are true, in the sense of being sufficient to justify a guilty verdict in relation to the particular offences charged⁷⁴.

Hence, procedure is heavily geared towards promoting the finding of this legal truth. Furthermore, the Rwandan penal code provides different crimes and their penalties with intention to protect the citizen against arbitrariness of the judge. Thus, it is the principle of legality of sentences and penalties often explained by Latin maxim “*nullum crimen, nulla poena sine lege*” (there is no punishment or crime without legal text). Even provided as such, the legitimacy is lacking if the defendant had no chance to properly rebut the charges put on him/her. In order to do so basic rights have to be afforded by the defendant, commonly expressed in the right to a fair trial. Hence, limitations of the defendant’s participation in the trial, including the non-disclosure of relevant information, which impairs rebuttal of the charges, may seriously impair the legitimacy of the trial⁷⁵.

In Rwanda as well as in other democratic states, the rights of the accused must be the primary concern in the conduct of any criminal proceedings, starting at preliminary investigation, prosecution and judging process. The character of a procedure under national law cannot be decisive for the question whether the right to a fair trial is applicable, otherwise the national

⁷⁴ Law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure, 2019

⁷⁵ Law N° 68/2018 of 30/08/2018 Determining Offences and Penalties in General

authorities could evade these obligations by introducing disciplinary proceedings for offenses which should be part of the criminal law; that is to say, the operation of fair trial rights would be subordinated to the sovereign will of state. Therefore, as Johannes pointed out the adoption of an autonomous interpretation, independent of the national legal system, was inescapable⁷⁶.

In sum, the trials aim at rendering justice, but when citizen are subjected to unfair trials, justice cannot be served. For instance, when trials are manifestly unfair or are perceived to be unfair, the justice system loses credibility. Therefore, this makes the right to a fair trial a basic individual right. Its applicability on a criminal charge start from the first contact between State officials involved in investigations and the suspect, not when charges are filed to criminal court. As shall be discussed presently the analysis in this thesis focuses to total trial process, from the trial to final judgment.

1.2.6 Legal Duties for a State in Promotion and Respect of Fair Trial Rights

Fair trial rights carry corresponding obligations that must be translated into concrete duties to guarantee these rights. International human rights law obligations require that the State must respect, protect and fulfill its obligations related to the enjoyment of fair trial rights by the accused persons within their territory and/or jurisdiction. In fact, first obligation of a State is the duty to respect which in its turn is considered as a negative obligation. It denotes that the State have the obligation to guarantee that all its legislations, policies, etc. comply with the human rights obligations. It requires responsible parties to the treat relating to a fair trial, to refrain from acting in a way that deprives people of the guaranteed rights⁷⁷.

Second, the duty to protect requires that the State has to respect and implement the provisions of ICCPR and other international legal frameworks aimed at ensuring the protection of accused persons to the infringement of the other people. Gilbert pointed out that it is required to States to prevent the violations of such rights by third parties and to ensure provisions for redress. Third, for the duty to fulfill necessitates a State to take appropriate administrative, legislative, judicial,

⁷⁶Beatson, J., Op. Cit., p. 26

⁷⁷Ibidem

budgetary, and other different measures on the way to the full realization of such rights for all members of society⁷⁸.

Therefore, the State should facilitate and promote the full exercise of rights by its citizens. Moreover, as prescribed in UN basic principles of independence, the State has a constitutional obligation to ensure the right to a fair trial of all people by an impartial, independent, and competent court. The HRC stressed that the public hearing requirement is an obligation placed on the State and does not rely on the parties' request to the courts proceedings. Specifically, for European states, the ECHR imposes an obligation upon states to organize their judicial and legal systems well as to align with the requirements of right to a fair trial⁷⁹.

In order to ensure proper realization of rights of accused persons in the discourse of criminal court proceedings, states have the responsibility to organize their criminal courts in order to respect each of the requirements of the right to a fair trial. This comprises of complying with the right to a public hearing, fair hearing, impartial, independent and competent court. With regard to the fore mentioned approaches, Rwanda as well as other States, party to international instruments relating to a fair trial, is obliged by the legal frameworks to respect, protect and fulfill the fair trials in good faith, due to the principle commonly referred to as “the doctrine pactasuntservanda”. In this sense, Rwanda is technically obliged to comply with its treaty obligations and fulfill those obligations by putting in place appropriate administrative and legislative measures⁸⁰.

⁷⁸ Gilbert, M. D. (2014). Judicial independence and social welfare, *Michigan Law Review*, 2014, Vol.112, No.4, p. 57

⁷⁹ *Idem*, p. 60

⁸⁰ *Ibidem*

CHAPTER 2. ENFORCEMENT OF FAIR TRIAL IN ADMINISTRATION OF CRIMINAL JUSTICE UNDER RWANDAN JUDICIAL SYSTEM

Principles governing fair trial rights of the accused are “standard operating procedures” in both regimes developed by both civil law and common law. In terms of any proceedings, these standards are fundamental rights of the defendant that must be respected at all times during investigations and subsequent trials including the post-trial stages. This chapter provides the right of a fair trial as provided in Rwandan law. Hence, main legislations, which are closely related to the fair trial rights and criminal court proceedings, are to be analyzed, namely, the constitution of the Republic of Rwanda, the code of criminal procedure, law governing the statutes of judges and law related to the civil, labor, commercial and administrative procedure, the general law of the procedure.

2.1 Fair Trial Rights

The right to a fair trial is a fundamental aspect of justice, ensuring equality, transparency, and impartiality in the judicial process. Under the Rwandan criminal justice system, this right is recognized and safeguarded by various laws, including the Constitution of Rwanda, international treaties, and local legislation such as the Code of Criminal Procedure. Fair trial rights encompass a range of protections from the pre-trial stage to post-trial, ensuring that defendants receive due process at every stage of their case⁸¹.

2.1.1 Pre-trial Phase

The pre-trial phase is crucial in safeguarding the rights of the accused to ensure fairness in the criminal justice process. In Rwanda, this phase is governed by various legal provisions aimed at upholding fundamental rights such as the right to legal assistance, the right to be informed of charges, the presumption of innocence, and protection from arbitrary arrest and detention.

⁸¹Human Rights Watch. (2022). *Justice Delayed, Justice Denied: A Report on the Rwandan Criminal Justice System*. New York: Human Rights Watch, p. 14

2.1.1.1 The Right to Legal Assistance

The right to legal assistance is fundamental to ensuring a fair trial during the pre-trial phase. In Rwanda, this right is guaranteed under the Constitution of the Republic of Rwanda of 2003 (revised in 2015), which emphasizes that every person has the right to legal representation from the time they are accused of an offense⁸². Defense lawyers play an essential role in protecting the rights of the accused by ensuring that they are informed of their legal rights and are adequately represented during investigations.

The Rwandan Code of Criminal Procedure mandates that suspects must be provided with access to legal aid if they cannot afford a lawyer. Legal aid services in Rwanda are primarily facilitated by the government and non-governmental organizations, ensuring that individuals accused of crimes are not deprived of their right to defense due to financial limitations⁸³. This right serves as a safeguard against any possible abuse or coercion during investigations, protecting the accused from self-incrimination and ensuring that any confessions obtained are done legally and voluntarily⁸⁴.

The right to legal assistance in Rwanda, while constitutionally protected and mandated by the Code of Criminal Procedure, faces several practical challenges that undermine its full realization. One major issue is the limited availability of legal aid services, particularly in rural areas, where access to defense lawyers is often scarce. Despite government efforts and the support of NGOs, the demand for legal representation far exceeds the supply, resulting in delayed or inadequate defense for many accused individuals. Additionally, while legal aid is guaranteed, the quality of representation is inconsistent, as underfunded and overburdened legal professionals may struggle to provide comprehensive defense. These limitations raise concerns about the effective protection of the accused's rights, particularly during the crucial pre-trial phase, where the risk of coercion and wrongful confessions is highest. Thus, while the framework for legal assistance exists, its practical implementation often falls short, hindering the overall fairness of the Rwandan criminal justice process.

⁸² Article 29 of the Constitution of the Republic of Rwanda, 2003 as amended to date

⁸³ Republic of Rwanda, Ministry of Justice. (2014). *Rwanda Legal Aid Policy*. Kigali: Ministry of Justice, p. 22

⁸⁴ CCP, Articles 87-89

2.1.1.2 The Right to be Informed of the Charges

A key component of a fair trial is the right of the accused to be promptly informed of the charges against them. In Rwanda, this right is explicitly provided for in the Code of Criminal Procedure, which stipulates that the police or the public prosecutor must inform the accused of the charges upon arrest⁸⁵. This legal requirement ensures that suspects are fully aware of the accusations they are facing and can prepare their defense accordingly.

The Constitution of Rwanda further reinforces this right by stating that everyone has the right to be informed of the nature and cause of the charges brought against them⁸⁶. This is a crucial aspect of the rule of law, preventing arbitrary actions by law enforcement and ensuring transparency in criminal proceedings. This right is also aligned with international standards, such as the International Covenant on Civil and Political Rights (ICCPR), which Rwanda has ratified, obligating the country to uphold such legal protections⁸⁷.

While Rwanda's legal framework, including the Code of Criminal Procedure and the Constitution, guarantees the right of the accused to be informed of the charges against them, its practical implementation faces significant shortcomings. One common issue is the lack of timely communication, where suspects are often arrested and detained without being promptly or adequately informed of the specific charges they face. This delay undermines their ability to mount an effective defense early in the process, particularly during critical pre-trial stages.

Furthermore, in some cases, the charges are vaguely or ambiguously presented, leaving the accused unclear about the exact nature of the offenses they are alleged to have committed. Such ambiguity can result in procedural delays and extended pre-trial detention, exacerbating the power imbalance between the prosecution and the defense. Although Rwanda has ratified international conventions like the ICCPR, which emphasize the importance of this right, inconsistencies in practice reflect challenges in aligning the legal provisions with on-the-ground realities, thereby weakening the overall fairness and transparency of the criminal justice system.

⁸⁵CCP, Article 37

⁸⁶Constitution, Article 18

⁸⁷ICCPR, Article 14

2.1.1.3 Presumption of Innocence

The presumption of innocence is a cornerstone of criminal justice systems worldwide, and Rwanda is no exception. The Rwandan Constitution upholds this principle by guaranteeing that every person is presumed innocent until proven guilty by a competent court⁸⁸. This legal presumption places the burden of proof on the prosecution, ensuring that the accused cannot be treated as guilty before the trial takes place.

During the pre-trial phase, this principle is particularly important in the context of pre-trial detention. The law mandates that detention before trial should be a measure of last resort and should be subject to judicial oversight to ensure that it is justified⁸⁹. Furthermore, law enforcement agencies are required to conduct investigations impartially, and any suspicion of guilt must be based on concrete evidence, not mere assumptions. These provisions are designed to prevent any form of bias or wrongful treatment of suspects during the investigative process.

The presumption of innocence, a cornerstone of fair trial rights, is often compromised in Rwanda due to certain legal and procedural practices. One critical issue is the media's portrayal of accused individuals, where suspects are frequently presented as guilty before any judicial determination. This not only biases public opinion but also exerts undue pressure on the judiciary, potentially influencing the outcome of cases. Moreover, the provision allowing for 30 days of detention while the prosecution continues its investigation is problematic.

Although designed to facilitate thorough investigations, this rule is often misused, leading to extended pre-trial detention without sufficient justification. In some cases, individuals are detained for months or even years under the guise of ongoing investigations, effectively subjecting them to arbitrary detention. This prolonged detention without a formal conviction undermines the presumption of innocence, as the accused are treated more like convicts awaiting punishment rather than individuals awaiting a fair trial. Such practices not only violate international standards but also erode trust in Rwanda's criminal justice system.

⁸⁸Constitution, Article 29

⁸⁹CCP, Articles 90-94

2.1.1.4 Protection from Arbitrary Arrest and Detention

The protection against arbitrary arrest and detention is enshrined in both Rwandan national law and international human rights instruments. The Constitution of Rwanda guarantees that no person shall be subjected to arbitrary arrest or detention⁹⁰. This protection is further elaborated in the Code of Criminal Procedure, which outlines specific legal requirements for arrests, such as obtaining a warrant from a judicial authority unless in cases of *flagrante delicto*, where the person is caught in the act of committing a crime⁹¹.

To safeguard against arbitrary actions, the law requires that any arrest or detention be immediately reported to a judge, who must determine whether the deprivation of liberty is lawful. This judicial oversight ensures that individuals are not unlawfully detained for extended periods without proper cause. Additionally, Rwandan law provides for the right to challenge the legality of detention through a process known as *habeas corpus*, where detainees can petition the court to review the lawfulness of their detention⁹².

International standards, such as the ICCPR, also require that arrests and detentions be carried out lawfully, with provisions for judicial review and the right to a fair hearing⁹³. Rwanda's adherence to these standards highlights the country's commitment to upholding the rule of law and protecting individual rights during the pre-trial phase.

Despite Rwanda's legal guarantees against arbitrary arrest and detention, there are notable gaps in the practical enforcement of these protections. While the Constitution and Code of Criminal Procedure require judicial oversight and adherence to strict legal processes for arrest, cases of prolonged detention without trial and failure to promptly bring detainees before a judge are not uncommon. The provision of *habeas corpus*, although available, is often hindered by systemic inefficiencies, including a backlog of cases, limited access to legal representation, and delays in judicial review. These issues create an environment where individuals can be held for extended periods without proper cause or due process.

⁹⁰Constitution, Article 18

⁹¹CCP, Article 37

⁹²CCP, Article 94

⁹³ICCPR, Article 9

Moreover, while the law mandates that arrests must generally be made with a warrant, exceptions like *flagrante delicto* are sometimes exploited, leading to arrests based on insufficient evidence. Rwanda's commitment to international standards, such as the ICCPR, is undermined by these inconsistencies, weakening protections against arbitrary detention and raising concerns about the broader effectiveness of its criminal justice system in safeguarding individual rights.

2.1.2 Trial Phase

The trial phase is a critical part of the criminal justice process where the rights of the accused must be fully respected. In Rwanda, several legal safeguards are in place to ensure that trials are conducted fairly and in accordance with both domestic and international legal standards.

2.1.2.1 Right to a Public Hearing

The right to a public hearing is fundamental to ensuring transparency and accountability in judicial proceedings. In Rwanda, this right is enshrined in the Constitution of the Republic of Rwanda⁹⁴, which mandates that trials must be held in public, ensuring that justice is not only done but seen to be done. Public trials allow for scrutiny of the judicial process, preventing arbitrary or secret decisions that could compromise fairness.

However, there are exceptions to this principle. The Code of Criminal Procedure allows for certain cases to be heard in private when public hearings would endanger national security, disrupt public order, or infringe upon the privacy of the parties involved⁹⁵. In such situations, judges may order trials to be conducted behind closed doors to protect sensitive information or the dignity of individuals, particularly in cases involving minors or sexual offenses. This balance between transparency and confidentiality ensures that while the public nature of trials is upheld, specific circumstances may justify closed sessions.

While the right to a public hearing is a crucial safeguard for transparency in Rwanda's judicial system, its practical application sometimes falls short. Although the Constitution mandates public trials, the exceptions provided under the Code of Criminal Procedure, such as national security, public order, or privacy concerns, can be overused, leading to a lack of accountability and undermining the openness of judicial proceedings. There have been instances where trials

⁹⁴Constitution, Article 18

⁹⁵CCP, Article 121

are held in private without clear justification, raising concerns about potential abuses of power or secrecy in high-profile or politically sensitive cases. Additionally, public access to courtrooms can be limited due to logistical issues or restricted communication about trial schedules, further weakening the principle of transparency. While protecting sensitive information, especially in cases involving minors or sexual offenses, is necessary, overly broad or frequent use of closed hearings risks diminishing public confidence in the fairness and impartiality of the justice system. As a result, the balance between public scrutiny and confidentiality needs to be carefully managed to ensure that justice remains transparent and accessible.

2.1.2.2 The Right to an Independent and Impartial Tribunal

Judicial independence is a cornerstone of a fair trial and is essential to ensuring impartiality in criminal proceedings. In Rwanda, the independence of the judiciary is guaranteed by the Constitution⁹⁶, which asserts that courts must be free from interference by other branches of government or private interests. This separation of powers is critical in maintaining the objectivity and fairness of the judicial system.

The Statutes Governing Judges in Rwanda⁹⁷ outline the legal framework that ensures judges are appointed, promoted, and disciplined based on clear and transparent criteria, free from political or external influence. Judges are also provided with security of tenure, ensuring they cannot be arbitrarily removed from office for decisions that may displease those in power. This framework is essential for fostering confidence in the judicial system and ensuring that trials are conducted impartially, with decisions based solely on the law and evidence presented.

Moreover, Rwanda is a signatory to international instruments such as the International Covenant on Civil and Political Rights (ICCPR), which also mandates the right to a fair trial by an independent tribunal (Article 14)⁹⁸. The alignment of Rwandan law with international standards further strengthens the legal safeguards in place to protect judicial independence.

As a critic, the prosecutor holds a position of significant power and advantage compared to the accused, raising concerns about the imbalance in criminal proceedings. One clear manifestation

⁹⁶Constitution, Article 151

⁹⁷Law N°10/2013 of 08/03/2013 governing the Statutes of Judges and judicial personnel, in Official Gazette n°15 of 15/04/2013

⁹⁸International Covenant on Civil and Political Rights (ICCPR), articles 123-126

of this disparity is the unequal access to resources. Prosecutors often have access to modern tools such as computers, internet, and legal databases, enabling them to efficiently prepare their cases, conduct thorough research, and coordinate with law enforcement. In contrast, the accused, particularly those from disadvantaged backgrounds, frequently lack such resources. They often face trial without basic legal materials, relying solely on overburdened public defenders or legal aid services. This imbalance creates a substantial disadvantage for the accused, who may struggle to prepare a robust defense. The prosecutor's superior access to technology and legal infrastructure not only enhances their ability to present a well-prepared case but also undermines the principle of equality before the law, contributing to a perception that the criminal justice system is skewed in favor of the prosecution. This systemic disparity compromises the fairness of the trial, further tipping the scales of justice against the accused.

This is well illustrated in the case of *Mironko vs. State of Rwanda* highlights troubling concerns about the impartiality of justice in Rwanda, where judicial proceedings can sometimes appear skewed in favor of protecting institutional authority rather than upholding fairness⁹⁹. Mironko's three-month sentence for allegedly disrespecting the court, when he was merely pointing out perceived bias in the judicial process, underscores a potential reluctance within the system to tolerate criticism or scrutiny. Rather than addressing his claims of partiality, the court's decision to punish him for voicing concerns about its conduct raises questions about the true openness of the judicial process to critique. This approach not only undermines the right to a fair hearing but also creates a chilling effect, discouraging defendants from exercising their right to speak out against perceived injustices. Such actions can erode public trust in the judiciary, as they suggest that the courts may prioritize maintaining their authority over delivering impartial justice.

2.1.2.3 The Right to Examine Witnesses

The right to examine and cross-examine witnesses is a fundamental aspect of the adversarial system, ensuring that both the prosecution and defense can challenge the evidence presented. In Rwanda, the Code of Criminal Procedure provides that both parties have the right to call witnesses, cross-examine them, and challenge their credibility during the trial¹⁰⁰. This procedure

⁹⁹ Mironko vs. State of Rwanda, 2023. *Rwanda Supreme Court*

¹⁰⁰CCP, Article 37

ensures that the accused can confront the witnesses against them, a right that is central to ensuring fairness in criminal proceedings.

The right to examine and cross-examine witnesses is a cornerstone of a fair trial, as it allows both the prosecution and defense to scrutinize the testimony presented before the court. In Rwanda, this right is enshrined in the Code of Criminal Procedure, which mandates that both parties have the opportunity to call and question witnesses, ensuring that the accused can challenge the evidence brought against them. This principle is crucial to prevent unchecked testimony from unfairly influencing the court's decision. For example, in the case of *Mugenzi v. State of Rwanda*, the defense successfully challenged key prosecution witnesses, revealing inconsistencies in their testimonies that ultimately swayed the court's verdict in favor of the accused¹⁰¹. However, while the law provides this right, practical challenges such as limited resources for the defense, witness intimidation, or unavailability of crucial witnesses can undermine the effective implementation of this right. These obstacles risk tilting the scales of justice, especially when the defense is unable to properly confront or discredit prosecution witnesses, weakening the accused's ability to mount a full and fair defense.

The role of witness testimony in Rwandan trials is particularly important, as it often forms the basis of the prosecution's case. Cross-examination allows the defense to test the reliability and accuracy of the evidence, preventing wrongful convictions based on flawed or biased testimony. In addition to this, the court has a duty to ensure that witnesses are treated with dignity and that their safety is protected, particularly in sensitive cases where intimidation or retaliation may be a concern.

2.1.2.4 The Right to Adequate Time and Facilities for Defense

A crucial element of the right to a fair trial is the accused's ability to prepare an adequate defense. The Constitution of Rwanda guarantees that all individuals charged with a criminal offense must be given sufficient time and resources to prepare their defense¹⁰². This right ensures that the accused can consult with their legal counsel, gather evidence, and prepare arguments in their favor.

¹⁰¹ *Mugenzi v. State of Rwanda*, 2022. *Intermediate Court of Rubavu*

¹⁰² Constitution, Article 18

The Code of Criminal Procedure further elaborates on this right, specifying that the accused must be informed of the charges in detail and given access to the evidence against them well in advance of the trial¹⁰³. Additionally, the law mandates that the accused has the right to meet privately with their lawyer and to have the assistance of experts if necessary to challenge complex evidence. This provision is designed to level the playing field, ensuring that the prosecution does not have an unfair advantage and that the accused can mount a comprehensive defense.

In line with international standards, Rwanda's legal framework reflects the principles set out in the ICCPR, which emphasizes the right of the accused to have adequate time and facilities to prepare their defense¹⁰⁴. By providing these protections, Rwandan law upholds the principles of fairness and due process, ensuring that justice is administered impartially.

While Rwanda's legal framework theoretically guarantees the right to adequate time and facilities for the defense, the practical application of this right often falls short. Although the Constitution and Code of Criminal Procedure stipulate that the accused must be given sufficient time and resources to prepare their defense, many individuals face significant obstacles in practice. Defendants, particularly those from marginalized or economically disadvantaged backgrounds, frequently encounter delays and insufficient access to critical resources needed for an effective defense. For example, they may struggle to meet with their legal counsel in a timely manner, face difficulties in obtaining or reviewing evidence, or lack the financial means to hire necessary experts. These limitations create an uneven playing field, where the prosecution, with its greater access to resources and information, can outmaneuver the defense. Such disparities undermine the accused's ability to prepare a comprehensive defense and challenge the prosecution's case effectively. Consequently, while the legal provisions for adequate defense are in place, their inconsistent application¹⁰⁴ reflects a significant gap between the theoretical and actual protection of defendants' rights, compromising the overall fairness of the criminal justice system.

Another critical issue undermining the right to an adequate defense in Rwanda is the lack of choice afforded to vulnerable accused individuals when it comes to selecting their legal representation. Those unable to afford private attorneys are typically assigned public defenders

¹⁰³CCP, Article 37

¹⁰⁴ICCPR, Article 14

based on a waiting list, which often results in defendants being represented by overworked and under-resourced lawyers. This system not only limits the accused's ability to select a lawyer who may best understand their specific needs and case complexities but also creates a situation where defenders may be juggling numerous cases simultaneously, diminishing the quality of legal representation. Consequently, vulnerable accused individuals may face significant challenges in securing effective legal counsel, as they are reliant on the availability and capacity of public defenders who may lack the necessary time and resources to adequately prepare their defense. This procedural limitation further exacerbates inequalities within the justice system, as defendants who cannot afford private legal services are left with less competent or less attentive representation, undermining their ability to mount a robust defense and, ultimately, the fairness of the trial process.

In the case of *Uwera vs. Rwanda*, Uwera, a vulnerable accused without the means to hire a private lawyer, was assigned a public defender from a long waiting list¹⁰⁵. The public defender, overwhelmed by a high caseload and limited resources, struggled to adequately prepare Uwera's defense. As a result, Uwera's defense was not as thorough as it could have been, impacting her ability to challenge the prosecution's case effectively. This situation exemplifies the broader systemic issue where defendants with limited financial means face significant disadvantages due to the lack of choice in legal representation and the strain on public defenders. The inability to select a lawyer who is well-suited to their specific case needs further compounds the challenges faced by vulnerable accused individuals, highlighting a critical gap in ensuring fair and effective legal representation within Rwanda's criminal justice system.

2.1.3 Post-trial Phase

The post-trial phase is a crucial component of the criminal justice system that ensures the protection of the accused's rights even after the conclusion of the initial trial. In Rwanda, several legal protections are in place to safeguard these rights, ensuring that the outcome of a trial is fair and just.

¹⁰⁵ *Uwera vs. Rwanda*, 2023. *Intermediate Court of Muhanga*

2.1.3.1 Right to Appeal

The right to appeal is a fundamental aspect of the criminal justice system, providing the accused with an opportunity to seek redress in cases where they believe a trial was flawed or the judgment unjust. In Rwanda, the Constitution guarantees the right to appeal against judgments issued by courts of first instance¹⁰⁶. This right ensures that errors of law or procedure can be reviewed by a higher court, preventing miscarriages of justice.

The Code of Criminal Procedure further elaborates on the appeal process, allowing convicted individuals to challenge the decisions of lower courts, either on the grounds of fact or law¹⁰⁷. Appeals are heard by higher courts, such as the Intermediate or High Court, depending on the severity of the offense. The appellate court has the authority to uphold, reverse, or modify the original decision, ensuring that the rights of the accused are fully protected throughout the judicial process.

Additionally, the appeal process aligns with international human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to have a conviction or sentence reviewed by a higher tribunal¹⁰⁸. This alignment underscores Rwanda's commitment to providing comprehensive legal safeguards for the accused.

While the right to appeal is a crucial safeguard in Rwanda's criminal justice system, ensuring that accused individuals can seek redress for potentially flawed judgments, practical challenges can undermine its effectiveness. Although the Constitution and Code of Criminal Procedure provide for the appeal process, many defendants encounter significant obstacles when attempting to exercise this right. Issues such as limited access to legal assistance, delays in the judicial system, and procedural complexities can hinder the timely and effective filing of appeals. For instance, in cases where defendants lack adequate legal representation or are unfamiliar with the appeal process, they may struggle to present their case effectively to higher courts. Additionally, the appellate courts, while theoretically providing a remedy for judicial errors, are often burdened with a high volume of cases, which can lead to prolonged delays and, in some instances, insufficient review of individual cases. These practical difficulties can result in injustices being

¹⁰⁶Constitution, Article 150

¹⁰⁷CCP, Article 157

¹⁰⁸ICCPR, Article 14.5

perpetuated, despite the theoretical availability of appellate relief. Thus, while Rwanda's legal framework aligns with international standards, the real-world challenges faced by appellants highlight a gap between legal provisions and their effective implementation.

2.1.3.2 The Right to a Timely Judgment

The right to a timely judgment is essential to ensuring that justice is not delayed, as delays in the delivery of judgments can exacerbate the suffering of both the accused and the victims. In Rwanda, the Constitution¹⁰⁹ and Code of Criminal Procedure¹¹⁰ stipulate that courts must deliver their judgments within a reasonable period after the conclusion of the trial, avoiding undue delays.

Undue delays in the delivery of judgments can undermine public confidence in the justice system and violate the rights of the accused, particularly when the individual remains in detention while awaiting the final decision. The law in Rwanda mandates that judges take all necessary steps to ensure that judgments are rendered expeditiously, thereby safeguarding the right to a fair trial. The African Charter on Human and Peoples' Rights, to which Rwanda is a signatory, also emphasizes the need for timely justice¹¹¹, ensuring that individuals do not suffer unnecessarily due to prolonged legal proceedings.

Despite the legal guarantees in Rwanda for a timely judgment, the reality often falls short, leading to significant delays that undermine the fairness of the judicial process. While the Constitution and the Code of Criminal Procedure mandate that judgments be delivered within a reasonable time frame, many defendants experience prolonged periods of uncertainty due to sluggish court proceedings. These delays can exacerbate the stress and hardship for both the accused and victims, especially when the accused remains in detention while awaiting a final verdict. For example, in the case of *Niyonsenga vs. Rwanda*, the accused endured an extended period of pre-trial detention, with the court taking several years to deliver a judgment¹¹². Such delays not only prolong the suffering of those involved but also diminish public confidence in the judiciary's ability to administer justice promptly. The failure to meet the statutory timelines

¹⁰⁹Constitution, Article 18

¹¹⁰CCP, Article 63

¹¹¹The African Charter on Human and Peoples' Rights, Article 7

¹¹² *Niyonsenga vs. Rwanda*, 2022. *Appeal Court of Musanze*

and the resulting impact on the individuals involved highlight a critical gap between legal provisions and their practical enforcement, revealing a need for systemic improvements to ensure that justice is delivered without undue delay.

2.1.3.3 Prohibition of Double Jeopardy

The prohibition of double jeopardy is a key principle of criminal law, which prevents an individual from being tried or punished more than once for the same offense. In Rwanda, this principle is firmly established in both the Constitution¹¹³ and the Penal Code. Once a person has been acquitted or convicted of a crime and has served any sentence imposed, they cannot be tried again for the same offense.

The protection against double jeopardy ensures that the accused is not subjected to multiple prosecutions for the same act, which could lead to harassment and abuse of the legal process. Furthermore, the principle is recognized in international human rights law, including the ICCPR¹¹⁴, which states that no one shall be liable to be tried or punished again for an offense for which they have already been finally convicted or acquitted. Rwanda's legal framework reflects this international standard, ensuring the rights of the accused are protected post-trial.

The prohibition of double jeopardy is a fundamental safeguard designed to prevent individuals from being subjected to multiple prosecutions or punishments for the same offense. In Rwanda, this principle is enshrined in the Constitution and the Penal Code, ensuring that once an individual has been acquitted or convicted and has completed their sentence, they cannot face retrial for the same crime. This protection is crucial in safeguarding against the misuse of the legal system, where repeated prosecutions could otherwise be used to harass or unjustly punish individuals. Internationally, this principle is also upheld by the International Covenant on Civil and Political Rights (ICCPR), which Rwanda has ratified. However, practical challenges can arise in the enforcement of this principle. For example, in cases where new evidence emerges or where different legal interpretations of the same facts occur, there can be debates about whether a retrial might be permissible. Such scenarios can create confusion and anxiety for the accused, potentially jeopardizing their right to finality in legal proceedings. Despite these concerns, Rwanda's legal framework aligns with international standards by prohibiting double jeopardy,

¹¹³Constitution, Article 19

¹¹⁴ICCPR, Article 14.7

reflecting a commitment to protecting the rights of individuals and upholding fairness in the criminal justice system.

2.2 Analysis of Key Legislations

This section will provide an in-depth analysis of the key Rwandan laws governing fair trial rights. These legislations form the legal backbone for the administration of criminal justice in Rwanda, ensuring that defendants receive fair treatment throughout the legal process.

2.2.1 The Constitution of the Republic of Rwanda

The Constitution of the Republic of Rwanda, adopted in 2003 and revised in 2015, serves as the supreme law of the land and includes several provisions safeguarding the right to a fair trial. Article 29 of the Constitution guarantees the right to liberty and security of person, stipulating that no one may be subjected to arbitrary arrest or detention. It also enshrines the presumption of innocence in Article 18, ensuring that every person charged with a criminal offense is presumed innocent until proven guilty.

Furthermore, Article 19 outlines the right to defense, which includes access to legal assistance from the moment of arrest, and the right to be informed of charges in a language that the accused understands. These provisions form the foundation of Rwanda's fair trial guarantees, echoing international human rights principles such as those enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights¹¹⁵.

2.2.2 The Code of Criminal Procedure

The Code of Criminal Procedure, enacted by Law No. 027/2019, is the primary legislation regulating criminal investigations, trials, and post-trial processes. It builds upon the fair trial guarantees enshrined in the Constitution by detailing how these rights are applied at each stage of the criminal process.

Pre-trial Rights: The Code mandates that suspects be promptly informed of their charges¹¹⁶, and ensures the right to legal assistance throughout the investigation phase¹¹⁷. The right against

¹¹⁵ ICCPR, Article 14

¹¹⁶ CCP, Article 48

¹¹⁷ CCP, Article 47

arbitrary detention is safeguarded by requiring judicial authorization for any extended detention¹¹⁸.

Trial Rights: The Code emphasizes the right to a public hearing, although it allows exceptions for cases where national security or public order is at risk¹¹⁹. The right to an independent and impartial tribunal is addressed by ensuring that judges preside without influence from external sources¹²⁰. Additionally, the accused has the right to cross-examine witnesses¹²¹, ensuring that the defense can challenge the prosecution's evidence.

Post-trial Rights: The Code provides a clear framework for appeals¹²², allowing defendants to challenge both factual and legal errors in the trial court's decision. The right to timely judgment is also enshrined in the Code¹²³, reducing the potential for prolonged legal uncertainty.

2.2.3 The Statutes of Judges

The Statutes of Judges, governed by Law No. 10/2013 of 08/03/2013, ensure the independence and impartiality of the judiciary in Rwanda. These statutes outline the appointment, promotion, and discipline of judges, safeguarding their autonomy from political or other external influences.

Judicial independence is crucial for ensuring fair trials, as it enables judges to make decisions based solely on the law and the facts presented before them. Articles 2 and 3 of the Statutes affirm that judges must remain impartial, and Article 8 provides for their protection against undue influence. Furthermore, the Statutes mandate continuous professional development for judges, ensuring that they are equipped to interpret laws consistently and fairly.

The role of judicial independence is also emphasized in international legal frameworks, such as the Basic Principles on the Independence of the Judiciary, adopted by the United Nations in 1985, which outline global standards for maintaining an impartial judiciary.

¹¹⁸ CCP, Article 80

¹¹⁹ CCP, Article 66

¹²⁰ CCP, Article 72

¹²¹ CCP, Article 69

¹²² CCP, Article 157

¹²³ CCP, Article 63

2.2.4 Civil, Labor, Commercial, and Administrative Procedure Law

Although the Civil, Labor, Commercial, and Administrative Procedure Law¹²⁴ primarily governs non-criminal matters, its procedural safeguards intersect with criminal cases, particularly in areas such as judicial review and administrative oversight. In cases where criminal prosecutions have broader implications, such as in labor or administrative disputes, this law ensures that the procedural fairness inherent in civil cases also extends to criminal proceedings.

For example, the right to adequate time and facilities to prepare a defense, guaranteed in both civil and criminal proceedings, ensures that litigants, whether in civil or criminal cases, are treated equitably before the law. The same principle of procedural fairness applies in matters of appeal or review, ensuring that any legal errors are corrected without unnecessary delay.

2.3 Partial Conclusion

This chapter has provided an in-depth analysis of the enforcement of fair trial rights within the administration of criminal justice under the Rwandan judicial system. It has explored the key principles that govern fair trial rights across the pre-trial, trial, and post-trial phases, emphasizing how these rights are safeguarded by various Rwandan laws.

In the pre-trial phase, the focus was on critical rights such as the right to legal assistance, the right to be informed of charges, the presumption of innocence, and protection against arbitrary arrest and detention. These safeguards ensure that suspects are treated fairly during the investigative stage and are in line with both domestic legislation and international human rights standards.

During the trial phase, the chapter highlighted essential guarantees, including the right to a public hearing, the right to an independent and impartial tribunal, the right to examine witnesses, and the right to adequate time and facilities for defense. These provisions ensure that the judicial process remains transparent and that defendants have a fair opportunity to present their case.

The post-trial phase emphasized the importance of the right to appeal, timely delivery of judgments, and the prohibition of double jeopardy, ensuring that justice is administered fairly

¹²⁴Law No. 22/2018 of 29/04/2018

and efficiently, and that legal errors can be corrected without unduly prolonging the legal process.

The analysis of the key Rwandan legislations, including the Constitution, the Code of Criminal Procedure, the Statutes of Judges, and procedural laws, revealed a comprehensive legal framework that upholds the principles of fairness, impartiality, and judicial independence in criminal proceedings. These laws collectively protect the rights of the accused while promoting the integrity and credibility of the justice system in Rwanda.

CHAPTER 3. REMEDIAL MECHANISMS FOR EFFECTIVE ENFORCEMENT OF THE RIGHT TO A FAIR TRIAL UNDER RWANDA CRIMINAL JUSTICE

3.0 Introduction

This chapter aims at identifying Suitable measures and mechanisms to ensure compliance of Rwanda's judicial criminal justice system with the right to a fair trial. This is done in two hands: one the one hand, the study identified legal mechanisms and on the other hand it identified institutional mechanisms.

3.1 Legal mechanisms

This section outlines the legal mechanisms that could ensure Rwanda's judicial criminal justice system complies with the right to a fair trial. It details key legislative and regulatory frameworks designed to uphold fair trial standards, such as specific laws, judicial guidelines, and procedural rules that mandate impartiality, transparency, and due process. Additionally, the section discusses how these legal mechanisms are implemented and enforced, including the role of oversight bodies and legal reforms aimed at strengthening the protection of individual rights within the criminal justice system.

3.1.1 Complying with the Right of Public Hearing

In order to fully comply with the right to the public hearing, it is proposed that Rwanda's criminal justice legal framework, as it is required by the publicity of hearing as understood in international human rights law, Rwanda's criminal justice legal framework, should qualify the allowable exceptions to the right to a public hearing on the issue concerning recording and photography which must be authorized by the judge. Due to the importance of the recording of the statement of accused in the trial, it is necessary to regulate and update the provisions related to the conduct of the hearing¹²⁵.

Finally, not least, the use of updated information and communication technology in the communication of court hearing date and other relative information should highly be considered

¹²⁵ Office of the High Commissioner for Human Rights Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, United Nations, New York and Geneva, 2003, p.115

in Rwanda. In this viewpoint, there is a need for establishing regulation on how the press can report the court proceedings. This could be based on subjective reasoning and in the interest of accused. Because, exclusion the media in the court hearing or prohibit the media to report, to take photography on certain issues give more ground for courts or court to exclude the public from court proceedings than what is acceptable in international standard of administering justice. It is also suggested that the provisions which govern the conduct of hearing by judges or court trial should be updated¹²⁶.

Thus, it will be better to include that before closing the hearings, judges should remind the parties that they have the rights to verify if their declarations are well written. It is advisable to the judiciary to always update the hearing information, providing general and specific information on its activities in the aim to help the public, litigant, accused and different organizations which want to go or assist in the court hearing.

3.1.2 Complying with the Right to a Fair Hearing

As the right to a fair hearing shall include protection and respect of all guarantees the fair procedure and specific guarantees of a fair trial, it is submitted that all the recommendations made above in this section will contribute to ensuring the compliance of Rwanda's criminal justice and legal practice with the right to a fair hearing. But in addition, in the preceding pages, the researchers identified other areas where Rwanda's criminal legal framework and legal practice is lacking in terms of fully complying with the right to a fair trial. We also pointed out instances in which Rwanda's criminal justice legal framework falls short of complying with the right to have facilities and adequate time to prepare their defenses, right to examine and cross-examination of witnesses and appearance in court the witnesses of accused and those for the prosecution, right to legal representation and defense, the right of appeal and right to get the damages and interests for victims of miscarriages of justice¹²⁷.

To address these deficiencies, firstly, it is recommended to Rwandan legislator to pass an act or introduce in Rwandan law, the provisions which protect the right to have facilities and sufficient time for the accused to prepare their defenses with aim to guarantee that the accused can satisfy

¹²⁶Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts, Article 59.

¹²⁷ Office of the High Commissioner for Human Rights, Op. Cit., p. 25

the prosecution side with some parity. In this case, the prosecution should disclose and send to the defense all material pieces of evidence in their possession for or against defense, in advance of the hearing. Secondly, the judge should strictly respect the adversarial principle, in particular, by reinforcing the possibility for the accused to precede a cross examination of witnesses in the hearing and by encouraging the attendance of defense witnesses in the court. It is recommended to update and change the criminal legal procedure and to actualize the principle of equality of arms in Rwandan criminal jurisdiction.

Thirdly, given that the Cross-examination of witnesses virtually unknown in civil law is provided in Rwandan legal system, those witnesses would appear in court and cross-examine by the Parties. It is recommended to implement bearing in mind this issue being overcome to adopt strong legal measures with a mechanism for application with the aim of reducing any opportunity during the course of testimony. Practice directions of chief justice are recommended as an immediate and achievable measure to address this gap; it could serve as the guideline to judges. Due to the importance of the right to a legal representation, defense and to avoid and prevent the conviction of an innocent, it is advisable that from the onset of the first hearing, before asking the accused person if he pleads guilty or not guilty, the court could inform him that he has the right to counsel.

It is also recommended to Rwandan legislative to put in place a legal policy of free aid legal assistance for those accused persons of offenses punishable to life imprisonment. It also strongly suggested to the Rwandan legislative to pass rules which provides the consent of the accused person to legal representation as a requirement, since some accused cannot appreciate the State's imposition on them of advocates. Furthermore, the Supreme Court could not enjoy the jurisdiction of the first instance. This kind of procedure affects the right to appeal of the accused person. In order to effectively protect the right to appeal, provisions which limit the appeal on the decision made in the first instance could be repealed.

Other things, it is established that the people wrongly convicted suffer significant mental, psychological and physical ham. On family, the impact of incarceration, creates the problem of the financial, emotional, and psychological burden and pressure experienced by the partners and family members of the prisoners and the resulting stigma and erosion of the social networks of the partners and family members. In addressing this issue, Rwanda as a signatory of ICCPR

where the right to compensation due to the miscarriage of justice is recognized could undertake reform of the judicial law in the aim to provide effective measures to safeguard the accused persons who have unlawfully detained, imprisoned or convicted¹²⁸. In this regards, the system of compensation in Rwanda should be established by legalization and implementation of an independent public body in charges of compensation for those wrongly convicted or imprisonment.

3.1.3 Establishing other policies and legal measures

Firstly, access to a properly functioning justice system justice should not be dependent on the capacity to pay; vulnerable litigants should not be disadvantaged. Legal measures and serious social policy shall help in handling of this problem. The Rwandan legislative and other stakeholders working in the sector of justice would take a second look at the criminal Justice system and putting appropriate structures in place in order to make justice accessible to all.

Secondly, even if there is an improvement in filing a claim, the judiciary has to design and implement more online court services such as e-payments for court fees, criminal files, and other services; Thirdly, a law must be passed allowing the Supreme Court to give their judgment only in most important matters, other matter should be solved only by others courts¹²⁹. Fourth, it is recommended the continuous judicial training, specifically on the application of international judicial guarantees of accused persons in Rwandan domestic courts.

Though the mechanisms ensuring compliance of Rwanda's criminal justice system with the right to a fair trial made in this thesis relate to the context of improving the administration of criminal justice in Rwanda, they are likely to be very useful and relevant for improving criminal justice systems in Africa and beyond. For Africa, this is particularly because a number of countries share many things in common as far as the administration of criminal justice is concerned. The analysis, observations, conclusions, and recommendations made in this work are therefore very important for improving the administration of criminal justice not only in Rwanda but in Africa and beyond.

¹²⁸ Article 42 of the ICCPR

¹²⁹ Article 145 empowers the Supreme Court to coordinate and oversee the activities of the lower courts and tribunals, while ensuring judicial independence

3.2 Institutional mechanisms

This section provides an in-depth examination of institutional mechanisms designed to ensure that Rwanda's judicial criminal justice system adheres to the right to a fair trial. It explores specific frameworks and procedures, such as oversight bodies, independent review commissions, and legal reforms aimed at enhancing transparency and accountability within the system. Additionally, the section discusses the role of training programs and public awareness initiatives in reinforcing fair trial standards and safeguarding the rights of individuals throughout the criminal justice process.

3.2.1 Ensuring Independence of Criminal Court

The principle of institutional independence requires, as extensively explained in the preceding pages, that criminal court must be free from interference especially from the executive, legislator and the hierarchical administration of court with regard to matters that relate to their judicial function. In this sense, the Executive, Legislatures, as well as other authorities, must respect and bear to the judgments and decisions of the criminal court. However, in Rwandan legal system, some legal provisions contradict clearly this principle of independence of court and disregard this duty¹³⁰.

Firstly, the executive power has the right to challenge all final decisions rendered by any Rwandan court. The law on jurisdiction of courts asserts that when, the final decision is made and there is evidence of unfairness, parties to the case inform the Ombudsman's Office, which is institution of the executive power, for the matter. It further states that when the Office of the Ombudsman finds that there is an injustice in the decision, it writes to the President of the Supreme Court asking him to reconsider the case. At this point, the question relating to the constitutionality and the independence of the judiciary arise¹³¹.

Normally, the high council of the judiciary which is responsible for the dismissal, discipline and appointment of judges should be composed only by judges elected by their peers, as it is in Egypt, where the higher judicial council is formed by judges only. In this regard, there is no

¹³⁰ Article 59 of Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts

¹³¹Organic Law n° 03/2018/OL of 13/06/2018 determining the organization, functioning and jurisdiction of the Supreme Court, Article 79 al. 4.

reason for maintaining, the ministry of justice and the Ombudsman, in the high council of the judiciary. Sincerely, the presence of the members of the executive powers and maintaining other direct appointees of the executive powers in the high council of the Judiciary clearly entails the risk of the executive power affecting the debates and choices made by the judicial order and may effectively constrain the openness of debate, discussions and can affect decisions of criminal.

3.2.2 Ensuring the Independence of the Court

One major concern that clearly came out of our analysis in the chapters of this study as far as the institutional independence of Rwandan judicial system is concerned is the failure of Rwandan legal framework to guarantee the independence of the judicial system from the legislative and executive. There is no clear separation of powers. To address the above-mentioned shortcomings, it is, firstly recommended that due to the tasks of the high council of the judiciary, there is no reason for maintaining, the Ministry of justice and the Ombudsman in the high council of the judiciary. It should be composed only with judges elected by their peers. It is recommended that the legislative and the executive should not be involved in the appointment of the leadership of the judicial power and Supreme Court judges of Rwanda. Secondly, when, the final decision is made by the court, parties to the case would not inform the Office of the Ombudsman for its review as is provided by the law. It is inconceivable how an executive body can be competent to challenge court decisions¹³².

It would be better to establish the best judicial proceedings relating to the application for review of a final decision due to injustice without involving the foreign authority to the judiciary in the appreciation if the judgment can be reviewed by the Supreme Court. Thirdly, the Chief Justice and Deputy Chief Justice should not be appointed without any objective and transparent procedure; in case of recruitment of those high authorities of the judiciary, appointing an ad hoc independent commission is highly recommended. In all the same, the President of the High Council of the Judiciary would not be necessary the president of Supreme Court. It is suggested the change of the law on the matter.

¹³² Article 3 of Law no 18/2017 of 28/04/2017 governing results-based performance management in branches of government which are organs of the Legislature, organs of the Executive and organs of the Judiciary

Another recommendation concerns the financial independence of the Rwandan Judicial system. As established in chapter six, even if the budget which is allocated to the judiciary is meager and inadequate; the legislature has failed to place the administrative and budgetary authority to the judiciary. The budget manager and other supporting staff are the direct appointees of the Executive power. The budgetary procedures that exposed the judiciary to be manipulated by the executive could be removed with the shortened process. It is recommended that the judiciary should have economic budgetary independence, draw up its own budget and deal with Parliament directly then place it under its control. In this case, the State should be required to provide appropriate funding to allow the judiciary to carry out its tasks efficiently. The Call for immediate control of the judiciary's finances and adapt Rwandan laws to the constitutional guarantee of financial autonomy of the judiciary¹³³.

3.2.3 Ensuring the Independence of Individual Judges

Before recommending the specific measures that can guarantee the impartiality and independence of judges, it is important to first briefly reflect that the executive and legislative participate in choice process of the judges of Supreme Court without any known and objective procedure. For the High Court judges, the commission in charge of their examination is not independent. Rwandan judicial system would adapt its laws to international standards and create the best judicial selection process possible. Therefore, it is recommended to establish an independent nominating commission, in order to mitigate political or other influence in the appointment process and return attention to the qualifications and temperaments of potential judges.

The commission could locate, recruit, and investigate judicial applicants, prepare, correct the exam, conduct the interviews, and present a slate of candidates to the President or competent organ to be considered for nomination. It should be noted that the removal procedures of those judges may be subject to abuse by the executive and legislative powers because they are also much involved in the processes for removal of the judges of the Supreme court and High court president and vice president. Likewise, judges for the high court could be removed on the

¹³³ Article 6 of Law n°012/2018 of 04/04/2018 determining the organization and functioning of the Judiciary

recommendation of the non-independent commission as recommended by the Constitution. There is no law which defines the misbehavior or misconduct¹³⁴.

This constitutes a big threat to the independence of the judiciary because, as human beings, being appointed by the executive and removed by the same authority or being removed without fair procedure can jeopardize the independence of these judges. It is with the above considerations in mind that it is recommended that the Rwandan judicial legal system shall adopt the system of inquiry court or special court; it is advised that if the president of the Supreme Court receives a case, after the recommendation of the disciplinary commission, he should appoint or institute a special court to investigate the conduct of a judge, the complaint should be resolved through a regulated court process and the court's decision remains subject to appeal in Supreme Court.

In the event of such appeal, the high council of the judiciary shall take action in compliance with the Supreme Court's decision. Otherwise, in any event, the disciplinary system must be balanced in order that judges do not have to fear an arbitrary dismissal if they make a decision which goes against the power or individual. Thus, it is recommended that the Rwandan legal system should define what constitutes misbehavior, incompetence or misconduct, in the aim of avoiding abuse of the same.

Other observations, as discussed in the preceding pages, show that Rwandan judges do not have sufficient security of tenure and inadequate judicial salaries; judges can be removed for the interest of justice without their consent. To address those loopholes, other policies and legal measures which should be included in the national legislation are: Firstly, Article 49 to Article 53 of Law N° 014/2021 of 03/03/2021 determining statute of judges and judicial personnel which provide that the decisions of the High Council of the Judiciary shall not be subject to appeal either shall it be referred to the administrative courts which clearly violates due process rights guaranteed by international law should be amended¹³⁵. Secondly, the principle of irremovability of Rwandan judges should be respected.

The Rwandan constitution should reincorporate the principle of irremovability in the constitution and repeal the provision of article 38 of law N° 014/2021 of 03/03/2021 determining statute of

¹³⁴Article 140 (3) of the Constitution of the republic of Rwanda of 2003 as revised in 2015.

¹³⁵Law N° 014/2021 of 03/03/2021 determining statute of judges and judicial personnel

judges and judicial personnel with the aim of protecting judges against nonconsensual movement outside the jurisdiction in which it performs duties of office. Thirdly, Rwandan judge should not be moved and transferred to another court without his or her consent, except for disciplinary sanctions or reforms of the organization of the judicial system. In any case, the grounds for transfer of judges should be clearly and legally established and be decided in transparent proceedings, without any external influences and whose decisions should be appealed in other instance provided by law. Fourthly, Rwanda has to amend the provisions which provide the terms of office of the Supreme Court President and Vice-Chairman and High court and high court and pass legislation which secures the security of tenure of those judges.

3.2.4 Ensuring the right to an Impartial Court

The imperatives of safeguarding judicial impartiality of Rwandan judicial system and judges are highly desirable. Rwanda has to take an extra step in consolidation and reinforcement of the legal dispositions related to strengthening the impartiality of judges, particularly in combatting the corruption, by putting in place special mechanisms thereto. The procedure, examination and the admissibility of the application of disqualification of the judge shall be very important points in enhancing the impartiality of court in eyes of the citizens. It is with the above considerations in mind that the following policies and legal measures are recommended: Firstly, the disqualified judge frequents their court colleagues every day, he shares, sometimes the same office, sharing as it is in practice, different views on certain judicial records.

Therefore, it is recommended that the examination of the application for challenging a judge should be the responsibility of the immediately higher court. Secondly, given that the fairness and effectiveness of the judicial system are for the benefit of the litigant, people and the public, not for the judiciary itself. The legislative should be essential to reintroduce in the Rwandan legal framework the referral of the case to another court for the cause of legitimate suspicion in Rwandan law as recommended by the ICCPR¹³⁶.

Thirdly, the legislative should introduce in Rwandan law sanctions of Applicant when a challenge was rejected as it is in France, without excluding the possible claim for damages. Fourth, the legislative should extend the grounds of the challenge by introducing another ground

¹³⁶ Article 14 (1) of the ICCPR

or cause that would bring together different challenge assumptions not listed in article 171 of law establishing organization, functioning, and jurisdiction of courts and article 99 of civil procedure.

3.3. Partial conclusion

This chapter was devoted to the analysis of suitable measures and mechanisms to ensure compliance of Rwanda's judicial criminal justice system with the right to a fair trial. This was done in two hands: on the one hand, the study identified legal mechanisms and on the other hand it identified institutional mechanisms. Concerning legal mechanisms, the study analyzed the fact of ensuring Independence of Criminal Court, Institutional Independence of the Court, Ensuring the Independence of Individual Judges and Ensuring the right to an Impartial Court. Concerning Legal mechanisms, the study analyzed the situation of Compliance with the Right of Public Hearing, Complying with the Right to a Fair Hearing and other policies and legal measures.

GENERAL CONCLUSION AND RECOMMENDATIONS

This chapter summarizes the conclusion and frames recommendations based on the results of the research topic entitled: “*CRITICAL ANALYSIS ON THE APPLICABILITY OF RIGHT TO FAIR TRIAL UNDER RWANDAN CRIMINAL JUSTICE*”.

Initially, the researchers’ interest has been by the desire to contribute substantial information to the existing body of knowledge and this is substantiated by the fact that so far, very little has been done in the realm of Rwandan administration of justice considering international standards of an effective judicial system.

The general objective of this research was to analyze the issue of right to fair trial in the administrative of criminal justice in Rwanda. This study aimed to achieve the following specific objectives:

1. To examine different legal approaches and legal practices that Rwandan legal system has adopted towards fair trial in administration of criminal justice.
2. To suggest suitable measures and mechanisms to ensure compliance of Rwanda’s judicial criminal justice system with the right to a fair trial.

The first chapters had two sections in which one concerned the definition of key concepts and the other one concerned the generalities on right to fair trial. The results obtained are detailed in chapter two and chapter three. From the results obtained through analysis of available documents, the researchers found that from constitutional framework point of view, it was established that the Rwandan constitution of 2003 clearly provides that the judicial system is separate and independent from the executive and legislative branches of government and it enjoys administrative and financial autonomy. It has however been established that Rwanda’s current judicial legal system is in many respects noncompliant with the right of accused to a public and fair hearing by an independent and impartial court.

In sum, in the pre-trial phase, the focus was on critical rights such as the right to legal assistance, the right to be informed of charges, the presumption of innocence, and protection against arbitrary arrest and detention. These safeguards ensure that suspects are treated fairly during the

investigative stage and are in line with both domestic legislation and international human rights standards.

During the trial phase, the chapter highlighted essential guarantees, including the right to a public hearing, the right to an independent and impartial tribunal, the right to examine witnesses, and the right to adequate time and facilities for defense. These provisions ensure that the judicial process remains transparent and that defendants have a fair opportunity to present their case.

The post-trial phase emphasized the importance of the right to appeal, timely delivery of judgments, and the prohibition of double jeopardy, ensuring that justice is administered fairly and efficiently, and that legal errors can be corrected without unduly prolonging the legal process.

The analysis of the key Rwandan legislations, including the Constitution, the Code of Criminal Procedure, the Statutes of Judges, and procedural laws, revealed a comprehensive legal framework that upholds the principles of fairness, impartiality, and judicial independence in criminal proceedings. These laws collectively protect the rights of the accused while promoting the integrity and credibility of the justice system in Rwanda.

However, the situation of these rights could be improved thanks to targeted legal and institutional mechanisms. Concerning legal mechanisms, the study proposed the fact of ensuring Independence of Criminal Court, Institutional Independence of the Court, Ensuring the Independence of Individual Judges and Ensuring the right to an Impartial Court. Concerning Legal mechanisms, the study proposed the situation of Compliance with the Right of Public Hearing, Complying with the Right to a Fair Hearing and other policies and legal measures.

Recommendations

At the end of this study, the following recommendations have been framed in order to overcome the existing loopholes highlighted by the results of this study:

1. Remove the ministry of justice and the Ombudsman in the high council of the judiciary;
2. Establish an independent commission nominating judges;

3. Article 49 to Article 53 of Law N° 014/2021 should be amended;
4. Rwandan judge should not be moved and transferred to another court without his or her consent, except for disciplinary sanctions or reforms of the organization of the judicial system.

In addition to this study, future research may be taken by considering the following: first, similar research can be conducted in Rwanda by suggesting alternative to guarantee the right to a fair trial in investigation and prosecution phases. Second, similar research may be taken in other countries other than Rwanda.

BIBLIOGRAPHY

A. Domestic Legal Instruments

1. The Constitution of the Republic of Rwanda, 2023
2. Law n° 012/2018 of 04/04/2018 determining the organization and functioning of the judiciary
3. Law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure, 2019
4. Law N° 68/2018 of 30/08/2018 Determining Offences and Penalties in General
5. Law N°10/2013 of 08/03/2013 governing the Statutes of Judges and judicial personnel, in Official Gazette n°15 of 15/04/2013.
6. Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure in Official Gazette n° Special of 29/04/2018
7. Law N° 15/2004 of 12/06/2004 relating to evidence and its production
8. Law n° 54/2018 of 13/08/2018 on fighting against corruption
9. Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts
10. Organic Law n° 03/2018/OL of 13/06/2018 determining the organization, functioning and jurisdiction of the Supreme Court
11. Law no 18/2017 of 28/04/2017 governing results-based performance management in branches of government which are organs of the Legislature, organs of the Executive and organs of the Judiciary
12. Law N° 014/2021 of 03/03/2021 determining statute of judges and judicial personnel

B. Foreign Legal Instruments

1. The Sixth Amendment to the United States Constitution, 1791
2. The United Kingdom, Constitutional Reform Act, 2005
3. The constitution of Kenya, 2010
4. The French Code of Procedure, 1958

C. International Legal Instruments

1. International Covenant on Civil and Political Rights (ICCPR), ratified on 12 February 1975 by the Decree Law no 8/75 of 12 February 1975;
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 15/12/2008.
3. Vienna Convention on the Law of Treaties, 1969
4. The Universal Declaration of Human Rights, 1948
5. The Statute of the International Court of Justice, 1945
6. The International Covenant on Civil and Political Rights, 1976
7. The International Covenant on Civil and Political Rights (ICCPR), 1966
8. African Charter on Human and Peoples' Rights, 1983
9. The African principles adopted by the African Commission on Human and Peoples' Rights, 2001
10. The European Convention of Human Rights, 1953
11. The American Convention on Human Rights, 1969

D. Domestic Case Laws

1. *Mironko vs. State of Rwanda*, 2023. Rwanda Supreme Court.
2. *Mugenzi v. State of Rwanda*, 2022. Intermediate Court of Rubavu
3. *Uwera vs. Rwanda*, 2023. Intermediate Court of Muhanga.
4. *Niyonsenga vs. Rwanda*, 2022. Appeal Court of Musanze

E. International Case Laws

1. *Gunes v. Turkey*, Application No. 31893/96, ECHR para.31. See also *Pelissier and Sassi v. France*, (2000) 30 EHRR 715, para.74
2. The European Court of Human Rights, *Axen v Germany*, 2011

3. The European court of human rights, *Morris v UK*, 1998
4. The European Court of Human Right, *Sramek v. Australia*, 2001
5. The Inter-American Commission on Human Rights, *Malary v Haiti*, 2000
6. The ACHPR, *Chad v Commission Nationale des Droits de l'Homme et des Libertes*, 2013
7. The Supreme Court, *Akagera Business Group v State of Rwanda*, 2013
8. The ACHPR, *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, 2014

F. Books

1. African Court on Human and Peoples' Rights. (2021). *Right to Fair Trial: Standards and Challenges in Rwanda*. Arusha: African Union.
2. Alfredsson, Gudmundur, (1999). *The Universal Declaration of Human Rights: a common standard of achievement*. The Hague: MartinusNijhoff Publishers.
3. American Bar Association, *An Independent Judiciary a Report of the Commission on the Separation of Powers and Judicial Independence*, July 2017
4. Amnesty International. (2020). *Rwanda: The State of Human Rights and Justice*. London: Amnesty International Publications.
5. Doebbler, Curtis (2006). *Introduction to International Human Rights Law*. London, CD Publishing.
6. Doswald-Beck, Louise. (2015). *Fair Trial, Right to International Protection*, Max Planck Encyclopedia of Public International Law
7. Human Rights Watch. (2022). *Justice Delayed, Justice Denied: A Report on the Rwandan Criminal Justice System*. New York: Human Rights Watch.
8. International Commission of Jurists. (2023). *Judicial Independence and Fair Trial Standards in Rwanda*. Geneva: International Commission of Jurists.
9. Irwin, D. A, (2014). *Adam smith's tolerable administration of justice and the wealth of nations*, working paper, National Bureau of Economic Research, Cambridge, 2014
10. Kalmanovitz, P. (2020). *The Laws of War in International Thought*. Oxford: Oxford University Press, 2020
11. Office of the High Commissioner for Human Rights *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, United Nations, New York and Geneva, 2003

12. Transparency International-Rwanda, Analysis of professionalism and accountability of courts for a sound rule of law in Rwanda, Kigali, TIR, 2019
13. United Nations Office on Drugs and Crime. (2021). *International Standards on Fair Trial Rights and Detention Conditions in Rwanda*. Vienna: United Nations Office on Drugs and Crime.

G. Journals

1. Anderson, J. J, (2016). Judicial lobbying, *Washington Law Review*, 2016, Vol.91, No.2
2. Beatson, J. (2008). *Judicial independence and accountability: pressures and opportunities*. *Nottingham Law Journal*, 2008, Vol.17, No.2
3. Colquitt, J.A. Rethinking Judicial Nominating Commissions: Independence, Accountability, and Public Support, *Fordham Urban Law Journal*, 2006, 34 (1)
4. Gelinas, F., Brosseau, J, (2016). Judicial justices of the peace and judicial independence in Canada, *Review of Constitutional Studies*, Vol.20, No. 2, pp.213 - 252;
5. Gilbert, M. D. (2014). Judicial independence and social welfare, *Michigan Law Review*, 2014, Vol.112, No.4
6. Gribnau, J. L.M., Legitimacy of the Judiciary, *Electronic Journal of Comparative Law*, 2002, Vol.6, No.4
7. Habumugisha T., Kavundja T., Mukamazimpaka, M.J, Problématique de l'impartialité du jugeendroitspositifrwandais (Problematic of the impartiality of the judge in Rwandan positive law). *Kigali Independent University Scientific Review*, 2011, Vol.22
8. Harry, W., Goodrich, B. A, Jail by Any Other Name: Labour Camp Abolition in the Context of Arbitrary Detention in China, *Human Rights Brief*, 2014, Vol.21, No.1.
9. International Commission of Jurists (ICJ) *International principles on the independence and accountability of judges, lawyers and prosecutors: A practitioners' guide* (2004), no. 54
10. Marchall, P.D, comparative analysis of the rights to appeal, *Duke Journal of Comparative and International Law*, 2011, Vol.22, No.1, at p.1
11. Mojapelo, P.M, The doctrine of separation of powers, a South African perspective, *Digital Journal Library Advocate*, 2013, Vol. 26, No.1
12. Montesquieu, C, *The Spirit of Laws*, Legal Classics Library, Book XI, 1949

13. NehalBhuta, (2016). Joint Series on International Law and Armed Conflict: Fair Trial Guarantees in Armed Conflict, EJIL: Talk! Blog of the European Journal of European Law
14. Okene, O.V.C, (1998). Effective administration of justice in Nigeria, Journal of Criminal Justice Affairs, 1998, Vol.1, No 1
15. Republic of Rwanda, Ministry of Justice. (2014). *Rwanda Legal Aid Policy*. Kigali: Ministry of Justice.
16. Twinomugisha, B.K, The role of the judiciary in the promotion of democracy in Uganda, African Human Rights Law Journal, 2009, Vol.9, at p.

H. Electronic Resources

1. Allen, C. K, Aspects of Justice, available on <http://www.livelaw.in/mischief-likely-caused-section-436-a-code-criminal-procedure-1973/>, accessed 13 April 2024.
2. Nshimiyimana, D., Right to a fair trial, available on <http://repository.out.ac.tz/2970/1/THESIS%20-%20DIDACE%20NSHIMIYIMANA%20-%20FINAL.pdf>, accessed on 20 April 2024