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Critical Evaluation of Right to a Fair Trial in Rwandan Criminal Law

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ABSTRACT

The right to a fair trial is a fundamental safeguard to ensure that accused persons are protected from arbitrary or unlawful deprivation of their freedom and human rights. According to international human rights law, the states must respect, protect and fulfil its obligations related to the enjoyment of fair trial rights by the accused persons within their territory and/or jurisdiction. Thus, Rwanda, as well as other states, must organize their judicial and legal systems well as to align with the requirements of right to a fair trial. This study evaluates the adequacy of Rwandan criminal laws in the light of the right to a fair trial. It analyzes the legislations which are closely related to the fair trial rights and criminal court proceedings. In this perspective, the constitution of the Republic of Rwanda, the code of criminal procedure, and the penal code were qualitatively analyzed. This research argues that despite attempts to reform and domesticate international conventions and agreements, Rwandan criminal judicial system still largely falls far too short of complying with the international human rights obligations related to the right to a fair trial. This contribution recommends that the current criminal legal framework should be reformed for improvement of the Rwanda's criminal legal frameworks.

Keywords: Rwanda, Right to a Fair Trial, Criminal Procedure, Constitution, Penal Code

I. INTRODUCTION

The desire to protect human beings by a serious regulation is a result of an observation like that made by Hume 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 needs.² Among creatures extremely vulnerable, human beings deserve to have a certain protection by everyone, every state and all organs of states. It is in this perspective that the United Nations has adopted the “Universal Declaration of Human

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² Ligue Congolaise des Electeurs (1999). *Bonne gouvernance et Droits de l'homme (good governance and human rights)*, with the support of UNDP, Kinshasa, LWNL Publication, at p. 3.

Rights” in 1942. This Declaration has served as the foundation for two binding³ United Nations human rights covenants: “the International Covenant on economic, social and cultural rights” (ICESCR) which is out of the scope of this article and “International covenant on civil and political rights” (ICCPR). The provisions of this Declaration relating to rights to a fair trial has been given effective legal force and codified specifically in article 14 and 15 of the ICCPR. 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. The denial of fair trial to the accused persons may be considered as a denial of justice.

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 fulfil⁴ its obligations related to the enjoyment of fair trial rights by the accused persons within their territory and/or jurisdiction. With regard to the this 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 *pacta sunt servanda*”.⁵

In fact, Rwanda has adhered to diverse international legal instruments including those relating to the good administration of justice.⁶ Importantly, as also pointed out in *Gunes v. Turkey*⁷ according to the obligation to respect the right to a fair trial, states must organize their criminal legal framework system so that they conform to its requirements.

This study intends to evaluate the adequacy of Rwandan criminal law in the light of the right to a fair trial. It also aims to contribute to the existing scholarship by suggesting measures and mechanisms to ensure compliance of Rwanda’s judicial criminal justice system with the right to a fair trial. Ultimately, this paper provides the right of a fair trial as provided in Rwandan criminal law. The paper used doctrinal method. Hence, main legislations, which are closely

³ Dugard, J. (2009). The Influence of the Universal Declaration as Law, *Maryland Journal of International Law*, 24, p.85.

⁴ The Maastricht Guidelines on violations of Economic, Social and Cultural Rights, “Limburg Principles”, 1997, point 6.

⁵ The doctrine of *pacta sunt servanda* provides that any treaty in force binds the parties. This doctrine is a principle of customary international law and is codified in Article 26 of the Vienna Convention on the Law of Treaties, 1969.

⁶ 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.

⁷ *Gunes v. Turkey*, Application No. 31893/96, ECHR para.31. See also *Pelissier and Sassi v. France*, (2000) 30 EHRR 715, para.74.

related to the fair trial rights and criminal court proceedings, are to be qualitatively analyzed, namely, the constitution of the Republic of Rwanda, the code of criminal procedure, and other laws as code of penal code and evidence act. This article begins with the introduction. It proceeds to examine the notion of the right to fair trial, the Rwandan criminal legal frameworks in the test of fair trial, and the conclusion.

II. NOTION 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.⁸ It is a fundamental safeguard to ensure that accused persons are protected from arbitrary or unlawful deprivation of their freedom and human rights.

Several international documents relating to human rights have given them since the Universal Declaration of Human Rights recognized fair trial rights. Articles 14 and 15 of the ICCPR are the most comprehensive and detailed provisions on fair trial rights among these international documents. The Lawyers Committee for Human Rights,⁹ in its guide-book on fair trial criteria, categorized fair trial in three categories namely pre-trial rights, in-trial rights and post-trial rights. The pre-trial phase involves the rights to legal counsel, the right to appear promptly before a judge to contest the legitimacy of arrest and detention, prohibition on incommunicado detention, the right to know the reasons for arrest, prohibition on arbitrary detention and arrest, the right to respect the human condition during pre-trial detention and prohibition on torture. In criminal proceedings, the accused person must enjoy these rights in the stage of pre-trial which consists of the investigation stage usually carried out by the police and the prosecution stage.

When considering the safeguard provided in articles 14 and 15 of the ICCPR, it found that the rights to a fair trial are more deeply established in the context of criminal court proceedings. Moreover, Rwanda has ratified the ICCPR,¹⁰ thus it can be applied as a model for the criminal court proceedings and remains the guarantee for ensuring the good administration of justice in Rwanda. According to the ICCPR, three distinct rights are to be found in Rwandan criminal proceedings. Firstly, the criminal proceedings must be fair and the trial must be carried out in

⁸ Lawyers Committee for Human Rights, *What is a fair trial? A Basic Guide to Legal Standards and Practice*, USA, 2000, p.1.

⁹ Lawyers Committee for Human Rights, *What is a fair trial? A Basic Guide to Legal Standards and Practice*, USA, 2000.

¹⁰ Decree-Law n°8/75 of 12 February 1975 relating to the ratification of International Convention on Civil and Political Rights.

public, secondly, the courts must exercise their mandates impartially and independently and being established with a legal act; finally, the post-trial rights of the accused person have to be efficiently observed and protected. In fact, the right to a fair and public hearing is provided for and protected by international law. Accordingly, the second paragraph of Article 14(1) of the ICCPR states, *inter alia*, that “in determining any criminal charge against him or his rights and responsibilities in a lawsuit, everyone has the right to a fair and public hearing”. The content of this article is very crucial as it recognizes the equality of individuals before the courts and ensures the publicity of hearing. It establishes and details the specific minimum guarantees in the fairness of criminal proceedings. In those minimum guarantees prescribed in the Article 14(3) there are the rights to be informed of the charge; to communicate with counsel and to have sufficient time and facilities for the preparation of a his defense; to get attendance and examination of witnesses of the accused persons under the same conditions as witnesses to the prosecution, to examine or cross-examine witnesses against the accused; to be tried without undue delay; to be assisted with an interpreter freely, if the accused cannot speak or/and understand the language used in court hearing. Importantly, this provision is an essential element for safeguarding the public and fair hearing, it encourages the application of equality of arms, the respect of the principle of presumption of innocence, to have adequate facilities of accused person and his counsel to access pieces of evidence, documents, and other materials of the prosecution against the accused person. The article 14 (1) of ICCPR provides for the independence and impartiality of the court. It is stipulated that “in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing *by an independent and impartial court*”. This independence and impartiality require constitutional recognition of the doctrine of separation of powers between the legislature and the judiciary as well as the executive. In this regard, as also posited by Montesquieu, the three arms of Government must create a “system of checks and balances”,¹¹ in order to mitigate and prevent abuses of the executive and the legislative power and the proper execution of the judicial function, linked not only to the decision-making process but also to the decision of the court, this is, thus, of paramount importance in criminal proceedings.

Furthermore, under Article 14, paragraph 6, compensation shall be paid to individuals convicted of a criminal offense by a final judgment and punished as a result of that conviction, where their conviction has been overturned or forgiven on the ground that a new reality has demonstrated conclusively that a miscarriage of justice has occurred. The rest of the article imposes specific and detailed obligations around the criminal procedures in respect for

¹¹ Montesquieu, *De l'Esprit des Lois*, Book IX, Chapter 6. Whitefish, Kessinger Publishing, (1748).

protecting the rights of an accused person throughout the criminal court proceedings. It establishes the forbidden double jeopardy¹² and the presumption of innocence.¹³ It requires that those convicted of a crime should be allowed to appeal to a higher court.¹⁴ It also establishes rights to a speedy trial, to counsel against self-incrimination, and for the accused to be present and to call and examine witnesses.¹⁵

III. THE RWANDAN CRIMINAL LEGAL FRAMEWORKS IN THE TEST OF FAIR TRIAL

(A) Fair Trial Rights in Current Constitution of Rwanda of 2003 as Revised in 2015

The constitution of Rwanda of 2003 as revised in 2015 like many constitutional frameworks in other countries contains an extensive Bill of Rights. The Bill of Rights in Rwanda's constitution is contained in Chapter four which deals with the freedoms and human rights. It is provided that a human being is sacred and inviolable.¹⁶ This means that individual rights of human being are not favors granted by the States or anyone but are entitlements of the person by the fact that she is created as such. The constitution states also that a human being must be respected, protected and defended by the State.¹⁷ The right to a fair trial is one of the non-derogable fundamental rights under the constitution. In fact, the current constitution provides provisions related to the fairness of criminal proceedings. Article 29,¹⁸ titled "right to due process of law", is the operative segment establishing guarantees for people accused of criminal offenses during the court trial.

It is emphatically stated, in this provision, that every person has the right to appear before a competent Court.¹⁹ It provides the presumption of innocence to everyone charged with a criminal offense until proved guilty or until that person pleads guilty before a competent court, the right to legal representation and defense, and be informed of the cause and nature of charges.²⁰ It also provides that everyone must not be prosecuted, arrested, detained, or punished for omissions or acts that did not constitute a crime under international law or domestic from the time they were committed.²¹

¹² Ibid. Article 14.7.

¹³ ICCPR, Article 14.2.

¹⁴ Ibid. Article 14.5.

¹⁵ Ibid. Article 14.3.

¹⁶ Constitution of the Republic of Rwanda of 2003 revised in 2015, Article 13.

¹⁷ Ibid.

¹⁸ Article 29 of the constitution of 2003 revised in 2015.

¹⁹ Ibid, Article 29, 3.

²⁰ Ibid, Article 29, 1.

²¹ Ibid.

Generally, offenses and their penalties are determined by law. In this context, the Constitution requires that a person should not be responsible for an offense he or she did not commit.²² As a critical aspect of the right to a fair trial, a person must not be punished for an offense of a severer sentence than the one provided for by the law at the time the offense was committed.²³ Accordingly, a person should not be imprisoned simply for failure to fulfill a contractual obligation;²⁴ and should not be subject to prosecution or punishment for a crime that has been prescribed.²⁵

Additionally, the Constitution also provides provisions related to the impartiality of court and judges. The constitution provides that the justice is done in the name of the people and that no one can judge his own cause.²⁶ The constitution also provides in its provisions the right to a public hearing. Article 151 (2) provides that court hearings have to be held in public, except, in circumstances provided for by law, when the camera has been ordered by the court.²⁷ Consequently, court rulings are binding on all parties in the case, whether individuals or public authorities, and can only be challenged through procedures provided for by law.²⁸

Moreover, the constitution provides for the court's independence. It provides that the Judiciary is distinct and independent from the executive and legislative branches of state's administration. It enjoys administrative and financial autonomy.²⁹ Importantly, the incorporation of the international standards related to the fair trial rights may demonstrate the high degree of their consideration and its great value in a legal system; considering that, first, although the constitutions can be revised or amended, the process of its amendments is extremely complex than for normal laws. In Rwanda, the President of the Republic has the power to initiate revision or amendment of the Constitution after approval by two thirds (2/3) of each Chamber of Parliament;³⁰ moreover the amendment or revision of the Constitution must be accepted after being voted by each House of Parliament by a three-quarters (3/4) majority of its members.³¹ Second, the recognition of those safeguards of accused persons at constitutional level ensures that all branches of government, authorities and persons throughout the country, including criminal courts are bound by those rights in their actions, and that

²² Ibid, Article 29, 5.

²³ Ibid, Article 29, 6.

²⁴ Ibid, Article 29, 7.

²⁵ Ibid, Article 29, 8.

²⁶ Ibid, Article 151.

²⁷ Ibid. Article 151, 2.

²⁸ Ibid. Article 151, 4.

²⁹ Constitution of the republic of Rwanda of 2003 revised in 2015, Article 150.

³⁰ Ibid, Article 175, paragraph 1.

³¹ Ibid, Article 175, paragraph 2.

legislation must be consistent with them and must respect these rights due to the hierarchal supremacy of the constitution.

Although the constitution guarantees the right to fairness in criminal proceedings, unfortunately some citizen guarantees to the fairness of the criminal court proceedings are not provided in constitution and others are not well expressed. The right to appeal, which is important feature of the modern criminal process, is not provided in the constitution.³² The right to appeal enables aggrieved party another chance for his case to be heard by another independent judge or judges. Additionally, the right to be compensated for wrongful conviction, right to be tried within a reasonable time, right to the protection against self-incrimination and equality of arms are not provided for anywhere in the current constitution. Likewise, the right to be tried by and an independent court and judge are not well expressed in the constitution.³³ Consequently, the non-incorporation of fair trial standards in the constitution is a great disrespect of the international human rights obligations of State as far as ensuring fair trial rights are concerned. Moreover, the constitution fails to guarantee in somehow the right to be tried by an impartial and independent court. In this context, the principle of judicial irremovability of judges has been removed in the constitution of 2003. Normally, the judicial irremovability is considered by international law as one of the main pillars guaranteeing the court's independence,³⁴ it guarantees the independence of the court because it protects the judges against any arbitrary measurement of suspension, retro gradation, displacement, even in advance and revocation without having freely consented thereto. It is in this regard that Favoreu clearly pointed out that "the judge, not only cannot be revoked, suspended or retired from office without guarantees provided by statute but still it may receive without his consent, a new appointment".³⁵

Thus, the judges seem to benefit in this regard of a special guarantee, except in the context of disciplinary proceedings. Unfortunately, in Rwanda, the principle of irremovability has been thwarted by the constitutional revision n° 04 of 17 June 2010.³⁶ In fact, the article 142 of constitution of 2003 provided that the judges appointed definitively is irremovable, cannot be

³² 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.

³³ Consitution of Republic of Rwanda of 2003 revised in 2015, Article 151 (5).

³⁴ UN Human rights Council, 11th session, promotion and protection of all human rights, civil, political, economic, social and development. A/HRC/11/41 of 24 March 2009, para 57.

³⁵ Favoreu, L, *Droit constitutionnel*, Dalloz, Précis, Paris, 11^e édition, 2008, at p. 523; Manson, S, *La notion d'indépendance en droit administratif*, PhD Thèses, Université de Paris, France, 2008, at p. 378; Pluen, O, *L'inamovibilité des magistrats : un modèle ?* Ph.D. Thèses, Université Panthéon-Assas, France, 2011.

³⁶ Amendment n° 04 of the 17 June 2010 of the Constitution of Rwanda. In Official Gazette of the Republic of Rwanda n° special of 17 June 2010. Article 31.

suspended, transferred, even in progress, retired or dismissed from their functions except in the cases provided for by law. In the revision of the constitution of 2010, the content of this article has been deleted. Despite other different amendments of Rwandan constitution, no such express provision has been re-inserted in it. Importantly, in contrast to the ordinary official, a judge cannot be the subject of automatic transfer. As also noted by Mitrofan, a judge should not be transferred to another judicial function without having expressly consented to it,³⁷ except in cases of reform of the organization of the justice system or disciplinary sanctions.³⁸ This privilege is not in the own interests of judges but in the interests of the rule of law and protection of individual rights.

The present observation remains a serious handicap to the freedom of judges, during the decision-making process for fear of not being muted or moved without their agreement. In this respect, the grounds for transfer of judges could be clearly and legally established and be decided in transparent proceedings, without any external influences and whose decisions can be appealed in other instance provided by law. More importantly, even those guarantees of the right to a fair trial protected in the ICCPR and the African Charter are not explicitly provided for or covered in Article 29 of the constitution and are protected by virtue of Articles 168 of the Constitution. The article 168 provides that,

*“Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of this Constitution. (Article 95 paragraph 1 : The hierarchy of laws is as follow: 1° Constitution; 2° organic law; 3° international treaties and agreements ratified by Rwanda; 4° ordinary law; 5° orders.)”*³⁹

To this extent, the Rwandan criminal courts may cite and apply the international human rights law related to a fair trial, namely for instance, ICCPR, ACHPR, this position has also elucidated in *Akagera Business Group v State of Rwanda*.⁴⁰ In this case, the Supreme Court has made reference and considered the international principles and decisions of United Nations human rights committee (UNHRC) in interpreting the right to equality of arms which was not

³⁷ Mitrofan, F, *The Independence of Judge - a guarantee of the rule-of-law state*, Journal of Law and Administrative Sciences, 2015, Special Issue/2015, pp.94-102, at p.96.

³⁸ Recommendation no 52, Council of Europe, Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency, and responsibilities. (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

³⁹ Article 168 of the Constitution of 2003 revised in 2015.

⁴⁰ *Akagera Business Group v State of Rwanda*, Case no RS/SPEC/0001/16/CS of 23 September 2016, Supreme Court, (*Unreported*).

expressed anywhere in the Rwandan constitution. The Supreme Court held that equality of arms before the court is considered as part or portion of the right to equal treatment before courts as provided for by article 14 of international covenant on civil and political rights which must be respected and observed as part of the constitution of Rwanda. From the foregoing, it can safely be concluded that at least in general, Rwanda's constitution has not sufficiently incorporated the guarantees of the right to a fair trial as understood in international legal frameworks. The guarantees of the right to a fair trial in the ICCPR and the African Charter are therefore, part of Rwanda's domestic law and are binding on all persons and authorities in Rwanda in accordance with articles 168 of the Constitution.

(B) Fair trial rights in Code of Criminal Procedure

The law relating to criminal procedure sets rules for the fair trial process and above all protects the rights of the accused during the criminal court proceedings. Rwandan Code of Criminal Procedure has been published in 2019.⁴¹ The objective of the Criminal Procedure code is to govern investigation and prosecution acts constituting a violation of the penal law.⁴² The penal code devotes various provisions related to the respect of fair trial rights. It includes provisions which are related to the time limits that judges must respect. In this connection, a judgment must be in writing and delivered within thirty (30) days of the close of the hearing;⁴³ and in case of provisional detention, the judge must render his decision within three (3) working days from the closure of the hearing, after having heard the public prosecutor and the pleadings of the suspect assisted by an advocate if he wish.⁴⁴

It also asserts provisions related to the principle of non-retroactivity of criminal actions, as well as the obligation to motivate judicial decisions⁴⁵ and being informed of charges. Article 46 of the criminal procedure provides that any person detained by the judicial police has the right to be informed of his charges and his rights, including the right to inform his lawyer or any other person of his choice. Furthermore, the code of criminal procedure clearly affords the substantial principles of criminal matters. It states that the criminal cases must be held in public;⁴⁶ respect for the right to defense and to have an advocate;⁴⁷ being impartial and fair;⁴⁸ equality of parties

⁴¹ Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure. Published in Official Gazette n° Special of 19/09/2019.

⁴² Article 1.

⁴³ Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 138.

⁴⁴ Ibid, Article 77.

⁴⁵ Ibid, Article 139.

⁴⁶ Ibid, Article 126, 1.

⁴⁷ Ibid, Article 126, 3.

⁴⁸ Ibid, Article 126, 2.

before the law and adversarial procedure;⁴⁹ on the basis of evidence legally found, delivered within the legal time-limits, and judgment and delivered in the language of oral argument.⁵⁰ Moreover, the right to a public hearing is also provided. It is provided in article 155 of the Code of Criminal Procedure that the hearing must be conducted in public; however, it is also stated that when the public hearing may be prejudicial to good morals or public order, the court may order that a case be heard in camera. In any case, the judgment on the merits will always be pronounced in public.

Other guarantees provided for in the Code of Criminal Procedure include the presumption of innocence,⁵¹ cross-examination of witnesses;⁵² and the right to appeal.⁵³ It is also stated in article 69 that a person detained by the judicial police must in no case be detained in a prison or in a place other than the place of detention corresponding; those relevant custody facilities must be located in the jurisdiction of the judicial police officer.⁵⁴ With regard to the protection of the presumption of innocence, the criminal code places the burden of proof on the prosecutor,⁵⁵ an accused is not required to prove his innocence before the establishment of his guilt.⁵⁶ Finally, as part of the package of the fair trial rights, the criminal procedure protects the right to legal counsel and right against self-incrimination.⁵⁷ In the case of administration of proof, the law on criminal procedure establishes the right of adversarial hearing.⁵⁸

More importantly, in the Rwandan context, fair trial guarantees are extremely important, because they are closely linked to the protection of other rights of citizens, including the prohibition of torture and the right to life. This demonstrates the importance that Rwandan legal system and indeed the people of Rwanda could attach to the fair trial rights. However, some provisions of the code of criminal procedure seem not to be in harmony with the spirit of international law pertaining to the fair trial rights. For example, there is no provision which can protect an accused person during the collecting of evidence in prosecution phases. This is because all pieces of evidence should be collected in the presence of the accused or, when his presence is impossible, in the presence of his lawyer. From the foregoing, it can carefully be concluded that the code of criminal proceedings has incorporated many safeguards of the right

⁴⁹ Ibid, Article 126, 4.

⁵⁰ Ibid, Article 126, 5.

⁵¹ Ibid, Article 107.

⁵² Ibid, Article 127, 10.

⁵³ Ibid, Article 180, 1.

⁵⁴ Ibid, Article 49.

⁵⁵ Ibid, Article 107, paragraph 2.

⁵⁶ Ibid.

⁵⁷ Ibid, Article 46, 68.

⁵⁸ Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 108.

to a fair trial as understood in international human rights law. However, it contradicts the principle of fair trial. The absence of the legal protection of an accused person during the collecting of evidence is a great challenge to the consistence of criminal code procedure with the legal standards of fair trial, because, the fair trial must be taken as a whole. It is in this perspective that Human Right Commission has highlighted that it is not acceptable to make general reservations to the right to a fair trial under article 14 of the ICCPR as a whole.⁵⁹ In the same respect, the African Commission on Human and People Rights in *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*⁶⁰ has held that the right to a fair trial is non-derogable, the state must not make any derogation from their treaty obligations even during emergency situations. Therefore, the failure of criminal procedure to meet the requirements of one element is sufficient to establish non conformity with the right to a fair trial.

(C) Fair trial rights in Rwandan Penal Code

In the Rwandan legal system, there are other laws which contain some provisions aimed at protecting personal accused to the procedural fairness of criminal court proceedings. The Penal code⁶¹ devotes various provisions in connection with the respecting of rights to a fair trial. As part of fair trial rights, the penal code also provides that it is forbidden to impose a heavier sentence on the accused than that which was in force at the time of the commission of the offense.⁶² Further, it is provided that no person may be punished for the same offense for more than once.⁶³ As part of the package of the fair trial rights, the penal code provides that except for contempt of court, no offense is punished by a penalty that was not prescribed by law before the commission of the offense.⁶⁴ In relation to this, the penal code protected accused against the broad interpretation by the criminal courts of criminal laws and make the judgment by analogy,⁶⁵ and also provides that no one may be convicted of an omission or an act which did not constitute an offense under international or national law at the time of his commission.⁶⁶ Finally, the law on fighting against corruption⁶⁷ provides an incentive for the impartiality of judges. It establishes heavy sentences for judges convicted of corruption, accepting or soliciting bribes or using other methods of corruption. In that case, he may be punished by imprisonment

⁵⁹ Human Right Commission General Comment 32 (2007), para.5.

⁶⁰ *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, African Commission on Human and Peoples' Rights, Comm. No. 74/92 (1995), paragraph.21.

⁶¹ Law N°68/2018 of 30/08/2018 determining offenses and penalties in general.

⁶² Penal code, Article 3, para 2.

⁶³ Ibid, Article 7.

⁶⁴ Ibid, Article 3, para 2.

⁶⁵ Ibid, Article 4.

⁶⁶ Ibid, Article 3, para1.

⁶⁷ Law n° 54/2018 of 13/08/2018 on fighting against corruption, Article 5, para 1 and 2.

between seven and ten years and a fine of two to ten times the value of the illegal benefit solicited,⁶⁸ this is different to other any judicial officer, prosecutor, police officer or any other judicial police officer who may be sentenced to imprisonment for not more than seven years but more than five and a fine of two to ten times the value of the illegal benefit demanded.⁶⁹

IV. CONCLUSION

It comes to light that this paper has critically analyzed the compliance of the Rwandan criminal legal framework with the right to a fair trial. 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 criminal legal framework is in many respects noncompliant with the right of accused to a public and fair hearing by an independent and impartial court. It has been established that Rwanda's constitution framework did not sufficiently incorporate the provisions-pertaining to the right to a fair trial. For instance, the right to compensation for wrongful conviction, rights to appeal, equality of arms, right to be tried within a reasonable time, right to the protection against self-incrimination are not provided for anywhere in the current constitution. Furthermore, the current Rwandan law devotes several of its provisions in respect of fair trial; however, some provisions seem not to be in harmony with the spirit of international law relating to the good administration of justice.

What is needed now, first of all the Rwandan constituent should reincorporate the principle of irremovability in the constitution and incorporate in the constitution other procedural guarantees of accused, namely the right to compensation for wrongful conviction, rights to appeal, equality of arms, right to be tried within a reasonable time, right to the protection against self-incrimination. Second, the constituent could also expressly include in the constitution the right to independent court. Finally, the legislator must update the criminal laws in order to be in harmony with international guarantees of the right to fair trial.

⁶⁸ Ibid, Article 201.

⁶⁹ Ibid, Article 201, para 3.

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