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LLM in International Criminal Justice and Law of Human Rights

**COMPENSATION AFTER PROVISIONAL DETENTION
UNDER RWANDAN LAW**

Thesis Submitted in Partial Fulfilment of Academic
Requirements for the Award of the Masters Degree in
International Criminal Justice and Law of Human Rights.

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THESIS CERTIFICATION

.....

Dr Denis BIKESHA

DECLARATION

I, Claudine MWIHOREZE, declare that this thesis is my own work and has been submitted for the Award of the Master's Degree in International Criminal Law and Human Rights from the School of Law of the University of Rwanda.

Claudine MWIHOREZE

DEDICATION

To my Lovely Husband

To my Parents

To my Brothers and Sisters

To all my Friends and Relatives

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Claudine MWIHOREZE

ACRONYMS

Art	: Article
ECtHR	: European Court of Human Rights
ICC	: International Criminal Court
ICCPR	: International Covenant on Civil and Political Rights
ICTR	: International Criminal Tribunal for Rwanda
ICTY	: Internal Criminal Tribunal for Ex-Yougoslavie
OG	: Official Gazette
P	: Page
http	: Hypertext Transfer Protocol
SC	: Supreme Court
UDHR	: Universal Declaration of Human Rights

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ABSTRACT

According to article 2 of the law n°30/2013 of 24/5/2013 relating to the code of criminal procedure the provisional detention is an act aimed at detecting offences, gathering evidence, whether incriminating or exculpatory nature and any act aimed at determining whether to prosecute the suspect. Therefore, the provisions under this law regard only the pre-trial detention without however foreseeing the fate of acquitted person after having served a provisional detention. This should be taken as a legal issue that merits such a legal solution that would result in amendment of certain provisions under the law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure in order to recognize compensation to a person that has been acquitted after a period of provisional detention since he/she had lost some rights while in jail. It is against this reason that this study looked at gaps around the provisions of the law relating to criminal procedure with special attention to provisional detention and associated compensation.

CHAPTER 1: GENERAL INTRODUCTION

I. BACKGROUND OF THE STUDY

In Rwandan criminal justice proceedings, a provisional detention is an imprisonment inflicted to the person who has not yet been convicted but suspected of a criminal offense. Generally, a suspect shall not be put under provisional detention except if there are serious motives for suspecting him/her to escape the justice, preventing the suspect from disposing of evidence, protecting him or her from the public revenge, collecting the evidences, preventing him/her from committing further offences or of maintaining public order etc...

It is important to note that article 96 of the Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure provides that *a suspect shall not be subject to provisional detention unless there are serious grounds for suspecting him/her of an offence and the offence alleged against him/her is punishable with imprisonment of at least two (2) years.*

That detention may take a long period depending on the nature of an offense for which a person is suspected and then the Court realizes that he/ she did not commit that offence¹. Therefore, as the consequence of that victim to the provisional detention will request for compensation or reparation for being incarcerated during that whole period.

Provisional detention is a relevant part of the criminal justice; it plays a major role in limiting crimes and safeguard of human rights. In Rwanda as in other parts of the world, people are arrested and detained suspecting them to have committed criminal offences. These suspects can be detained for weeks, months, or even years before a court renders judgment on their lawsuit. According to articles 96 and 97 of the law n° 30/2013 of 24/5/2013, relating to the code of criminal procedure a suspect shall normally remain free during investigation. However, the suspect may be held in detention if the conditions provided under the above mentioned article 98 of the above said law are not met, that article provides that a suspect may be subject to provisional detention if there are serious grounds for suspecting that he/she has committed an offence even if the alleged offense is punishable with imprisonment of less than two (2) years but more than three (3) months, if : 1°

¹ Article 98 of the law n° 30/2013 of 24/5/2013

there is reason to believe that he/she may evade justice; 2° his/her identity is unknown or doubtful; 3° there are serious and exceptional circumstances that require provisional detention in the interests of public safety; 4° the provisional detention is the only way to prevent the suspect from disposing of evidence or exerting pressure on witnesses and victims or prevent collusion between the suspect and their accomplices; 5° such detention is the only way to protect the accused, to ensure that the accused appears before judicial organs whenever required or to prevent the offence from continuing or reoccurring; 6° given the serious nature of the offence, circumstances under which it was committed and the level of harm caused, the offence led to exceptional unrest and disruption of public order which can only be ended by provisional detention.

This study examines the situation after provisional detention when the person was not found guilty, and has lost his/her rights (e.g. right to freedom, right to security, etc.). Here the situation of analysis regards the possibility of compensation as the article 9 (5) of the International Covenant on Civil and Political Rights (ICCPR) states that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. Referring to this provision of the international covenant on civil and political rights, the study does not only regard fundamental right of citizen on compensation after the pre-trial detention but also to show how the judicial system is built and practice that would have considered rights of the person after a long period of provisional detention. This research carries out a wide analysis of the impact of provisional detention in Rwanda and gives motives that can constitute a legal basis of the right to compensation for an acquitted victim. The study aims at showing the gaps or lacuna into the provisions of the law n° 30/2013 of 24/5/2013 relating to code of criminal procedure in Rwanda for a person who has been detained and acquitted could not claim for his/her compensation.

II. RESEARCH PROBLEM

In Rwanda, criminal proceedings of the pre-trial detention come for some interests of public order and security but pose some legal issues that need also legal interventions so that people who have been victims of provisional detention and acquitted can be able to claim for their compensation. Suspects have two options: either to be released on bail or to remain in the custody awaiting trial. It is a problem since they may fail to abide with imposed money to be deposited.

According to article 98 (5) of the above mentioned law² which provides that “such detention is the only way to protect the accused, to ensure that the accused appears before judicial organs whenever required or to prevent the offence from continuing or reoccurring” it is clear that for crime control model, keeping the suspect in the custody is justified by many factors including the fear that once free he/she may commit other crimes, defaults to appear, intimidate prospect witnesses, etc... Since he/she remains in the custody while had been not convicted, he/she is considered as criminal.

However, in due process model, it is not like that, he is not a criminal. Normally suspect should be free except to the extent necessary to serve the legitimate ends of legal system.³ For the interest of the public, the suspect may be detained during investigation process which means before being tried by the court in order to collect evidences or to prevent him/her to escape the justice and the other related causes of provisional detention. The criminal procedure provides all of those in order to give a fair trial to the suspect but in Rwandan legal system there is nowhere legislator kept a room for the acquitted person to claim compensation for his/her unlawful detention.

Trying to understand those two provisions (article 96 and article 98) under the law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure it’s all done for the interest of public order but this should be reviewed from the heart of the law since acquitted person has deprived his/her rights during his or her detention, thus he /she should be compensated. There is a gap—in the provisions of detention under the law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure in Rwanda due to the fact that a person who has been detained and acquitted cannot claim for his/her compensation since the investigation was conducted in the public interest. Therefore, through this study, the researcher has looked at the legal rationale behind the compensation for damages caused by the pretrial detention after being acquitted.

III. RESEARCH QUESTIONS

1. What rights are alleged to be violated during the provisional detention period of the suspect who is later acquitted in the Rwandan legal system?

² Law N° 30/2013 of 24/5/2013 relating to code of criminal procedure in Rwanda, article 98(5).

³ Parker HL “Two Models of the Criminal Process” 113 University of Pennsylvania Law Review (1964), p.38-68

2. What are the legal merits justifying the compensation after provisional detention in Rwandan legal system?

IV. OBJECTIVE

This study intends to find existing gaps in the criminal justice proceedings of Rwanda concerning practice behind provisional detention that can generate the right to compensation for the victims in case of unlawful provisional detention.

V. SPECIFIC OBJECTIVES

The specific objectives of this study are the following:

- (i) To find out alleged violated rights during the provisional detention period;
- (ii) To assess the legal merits that can justify compensation of someone who has been acquitted after the provisional detention period;
- (iii) To address the legal issues related to provisional detention in Rwanda legal procedure

VI. METHODOLOGY

In order to identify the aforementioned issues in regard to compensation of the person who has been acquitted after his/her provisional detention, involved the review of books, journals, articles, internet sources, decided cases and legislation and other important documents done by different scholars in the same scope of this study. In addition to that, available literature in this study was subject to analysis.

The analysis was done in the perspective of the law n° 30/2013 of 24/5/2013, relating to the code of criminal procedure in Rwanda. The researcher is taken into account the scope of application of provisions relating the provisional detention. This study targets the current Rwandan legal framework on provisional detention and its legal implications to the persons who have later been proved innocent/acquitted. The following ways have been used along this study:

- Gathering information by reviewing laws and other regulations relevant to the subject;

- Collection of information by reviewing academic materials that presented the opinions to improve the impact of provisional detention in Rwanda legal system.
- Review of court judgments that are in the same scope as the topic of this study.

Finally, a comparative method was used where the researcher did a purposive analysis over the provisional detention provisions under Rwandan law and its legal implications comparatively to other legal systems in the world in order to find out similarities and differences in criminal matters to inform legislator the needed reform to improve better provisions on detention.

VII. SCOPE OF THE RESEARCH

This study turns around the compensation of an acquitted/proven innocent after provisional detention period as enshrined in Rwandan criminal procedure law. The study looks at the current existing gaps/lacuna under provisions in Rwanda. Additionally, the study looks at other systems in the world to find out what similarities and differences about compensation of the proven innocent person after provisional detention period.

VIII. RESEARCH OUTLINE

This study is divided into three chapters ended by a general conclusion and recommendations. Chapter 1 treats the general introduction where a background of the study and problem statement are presented. This chapter is devoted to the theoretical aspect and general overview of pre-trial detention and theories of compensation. Chapter 2 treats about provisional detention and related compensation in other legal systems. Chapter 3 discuss about provisional detention, violated rights and related compensation in Rwanda. Through this chapter, researcher has carried out a critical analysis over the provisions on provisional detention and gaps/lacuna in terms of compensation of the person proven innocent after provisional detention. Along this chapter, researcher has pointed out aspects that constitute legal issues that merits reform of some provisions of the law relating to criminal procedure in Rwanda.

CHAPTER 2: GENERALITIES ON COMPENSATION AFTER PROVISIONAL DETENTION OF CRIMINAL SUSPECTS

2.1. Introduction

Takings analogy of different arguments it clear that compensation is a right that a person is entitled to enjoy whenever it proven. Some legal systems recognize that provisional detention is a temporally act which is done by government organ which takes person rights of liberty in the public interest because it is done in order to dissuade criminal behavior and protect the society⁴. Therefore, it would be unfair or wrong to force innocent detainees alone to bear this public burden; they should consequently have a right to compensation for this exceptional harm suffered for the benefit of the whole society.⁵

The payment of compensation to persons who were provisionary detained and acquitted enhances the credibility and legitimacy of the criminal system by showing a willingness to admit mistakes and take the consequences of the application of forceful measures seriously. It gives a kind of moral satisfaction to the acquitted defendants, and try to shift the bearer of wrongful provisional detention to the better party suited to bear it not the wrongfully detained suspect, but the community.⁶

2.2. Compensation of international criminal justice

Article 9 (5) of ICCPR stipulates that “*anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation*”⁷, In few words this article says that, when a person is illegally detained or arrested, he/she is entitled of the compensation, but as it has been mentioned above, provisional detention is lawful but at the end the suspect becomes acquitted. Which means that this article can be used in this situation because provisional detention is lawful but when a person was detained provisionary and be acquitted at the end, it means that he/she was detained illegally (illegal detention), but

⁴ *Armstrong v. United States*, 364 U.S. 40, 49 (1960), *BRATHOLM* (1961), at p. 834; *ROSSEN* (1976), at. pp. 715 and 716; *MANN*S (2005), at pp. 1947 et seq.; *MICHEL*S (2010), at p. 406

⁵ *idem*, at p. 416.

⁶ G.D Pascual, et al; *Compensating acquitted pre-trial detainees*; University of Valencia Law School.

⁷ See ICCPR Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. Art. 9(5).

being acquitted doesn't directly mean that the suspect was arrested and detained illegally, the court has to sit and analyze about the illegality of the arrest and detention as it was mentioned by the *ICC in the case of Prosecution v. MATHIEU NGUDJOLO*.⁸

The applicable solution is this, when a person causes a loss to another, he/she must compensate for the loss, those compensations are they given to the acquitted suspect? In few words, the detention of a suspect and at the end he/she is acquitted, he/she was detained before by looking only on legality but not on the reasonability and necessity of the detention, that's why the suspected people (the acquitted) must receive a compensation. Are those compensation given? The study is going to work both on Rwanda and the rest of the World.

It is also mentioned that, being acquitted doesn't mean a person must be compensated because the accused was detained in the line of law, by competent organ, that's why the detention doesn't violate the human rights, because it is both substantively justified, and procedurally safeguarded, in addition to this none in the International Human Instruments, it is mentioned that the acquitted accused will be compensated, that's why International Criminal Court don't give compensation to the acquitted accused for instance: Mr Zejnil Delalić who was tried by ICTY (International Criminal Tribunal for Former Yugoslavia) who was detained for the period of two years and be acquitted in all counts in 2001, in addition to this, his business collapsed during his detention, but he received nothing as compensation and also basing on ICTY website, we have other nine who also were acquitted but the answer on compensation is the same with that one of Mr Zejnil Delalić.⁹

The above was about ICTY, but it is the same ICTR (International Criminal Tribunal for Rwanda), in 2006, RWAMAKUBA André was acquitted while spent 11 years because he was detained in 1995 in Namibia, but he didn't receive any compensation for the detention after his acquittal.¹⁰ In few words as it has been mentioned early, in all International Criminal Courts, compensations to the acquitted accused are not given. But in some jurisdictions they are given that's why we're going to see examples of countries in which this kind of compensation is being given.

⁸ The Prosecution v. MATHIEU NGUDJOLO, ICC-01/04-02/12, (16 December 2015). Para. 16.

⁹ J.D Michels, 'Compensating Acquitted Defendants for Detention before International Criminal Courts' (2010) 8 Journal of International Criminal Justice 407-424 at 407&8. Available at: <https://academic.oup.com/jicj/article/8/2/407/848174>. Accessed on 14/November/2018.

¹⁰ The Prosecutor v. André RWAMAKUBA, ICTR-98-44C-T, (20 September 2006), para. 217-20.

2.3. Compensation after provisional detention in some countries

It is quite important to look at practices in other countries' legal systems. This section concerns the different countries cases where similarities and differences with Rwandan system are observed. This chapter looked the situation into two different perspectives which are compensation if proven innocent compensation if not proven guilty.

2.3.1. Case of SWEDEN

The compensation is given not as the violation of International Instrument, because the courts only compensate, those persons who were detained illegally, while in our case a person was detained provisionary and at the end, he/she is acquitted,¹¹ in Sweden, in order to fight against those detentions, especially in our case provisional detention of innocent accused; it established a Compensation Act which is called Act (1998:714) on Compensation for Deprivation of freedom and other restraints. This Act replaced the previous one which was Act (1974:515) on Compensation for Freedom Restrictions and the replaced one, it was also the replaced the early Act (1945:118) on Compensation to Innocently Detained or Condemned Persons. This means that from 1940's in Sweden the imprisonment of innocent accused was being compensated by the Government. In section 2 of the Act is where we found that "a person detained on account of suspicion of a crime is entitled to compensation:¹²

- In the event of acquittal, non-indictment or dropped charges,
- For partially dropped charges if the detention would clearly not have been imposed for the remaining criminality,
- If the defendant was sentenced under a more lenient provision than the indictment,
- If the detention decision was quashed,
- If the detention was otherwise stayed".

In Sweden it doesn't used, this term what to say that even if a person is acquitted, it doesn't mean he/she is innocent that's why in order to receive a compensation, he/she must prove beyond a reasonable doubt that he/she is innocent, because a person can be acquitted due to the lack of evidence

¹¹ H. Tiberg, 'Compensation for Wrongful Imprisonment', Stockholm Institute for Scandianvian Law 1957-2010, pp. 486. Available at: <http://www.scandinavianlaw.se/pdf/48-28.pdf>. Accessed on 15th/November/2018.

¹² Art. 2 of the Swedish Act (1998:714) on Compensation for Deprivation of freedom and other restraints.

giving compensation to everyone who is acquitted, it can be like giving compensation to criminals. This is reason why compensation must be given only to innocent accused rather than acquitted accused. The essential thing is not being guilty, you are entitled for compensation.

2.3.2. Case of SPAIN

In article 294 of the Spanish Judiciary Power Act of 1985, the state is liable when a person was provisionally detained and at the end the court found that, the crime did not exist. The above mentioned article was interpreted by the Spanish Supreme Court, it broadened the meaning to those persons who were accused but at the end managed to prove that they did not commit the crime. But here when a person was acquitted due to the lack of evidence beyond a reasonable doubt, the State is not liable because they are acquitted but not innocent in nature, they are innocent due to the lack of evidence.

2.3.2.1. Compensation if proven innocent

In some legal systems, is the only reason for the payment of compensation to the acquitted person in the pre-trial detention is when he/she proves his/her innocence at a certain level, which is different from the evidence of being acquitted basing on the principle of any doubt should profits a suspect;¹³ otherwise in criminal matters in order a person be convicted the prosecution must prove beyond a reasonable doubt that the accused is the one who committed the crime,¹⁴ which is different from the principle of presumption of innocence because the pre-trial detained suspect must prove beyond a reasonable doubt that he is innocent.

The evidence must be clear and convincing towards the innocence of the pretrial detained suspect who wants to be compensated. The right to compensation arose when a person is being suspected and be detained provisionally domestically for the purpose of being prosecuted but at the end be acquitted by court or be released by the prosecution itself, when he/she manages to prove beyond a reasonable doubt that he/she didn't commit the alleged crime, he/she entitled of compensation

¹³ See, the Judgment of European Court of Human Rights of 6 December 1988 (Barbera, Messegué and Jabardo v. Spain, 10590/83, par 77).

¹⁴ See the Judgment of the U.S. Supreme Court of 31 March 1970 [in re Winship, 397 U.S. 358 (1970)].

but when he/she was acquitted because the prosecution failed to prove beyond a reasonable doubt that he/she committed a crime, he/she can't be compensated.

2.3.3. Case of Norway

The situation above explained in the case of Spain shows similarities compared to the situation of Norway where the Code of Criminal Procedure Act of 1981, because under article 444, it is stipulated that, in the time a detained suspect is acquitted or the prosecution discontinued the case he/she is entitled for the compensation on the loss occurred due to pre-trial detention, after he/she proves that he/she didn't commit act which is the basis of the crime.

There is no difference also in the Spanish Judiciary Power Act of 1985, within this article is where the liability of the state on the harms occurred on the pre-trial detained suspect in the time, the alleged crime didn't exist vested. This article was interpreted by the Spanish Supreme Court, which stipulated that, compensation is granted in both when it is found that the crime didn't exist and when he detained is acquitted because he/she didn't commit the crime. But when he/she is acquitted due to the lack of evidence rather than being innocent, the compensation can't be granted.¹⁵

2.3.4. Case of Germany

According to the Compensation Act of the Germany Criminal Proceedings, anyone who suffers because of being detained provisionary, he/she must be compensated basing on the discretion of the court,¹⁶ and this compensation can be ignored wholly or partially due to some circumstances, for instance when a suspect is not convicted or the case didn't continue due to technical barrier, paragraph 6 (1) (2). In Dutch also it is the same as Germany, because the court may grant compensation on its own discretion depends on the available circumstance of the case.¹⁷ In all the

¹⁵ See, the Judgment of the Spanish Supreme Court of 28 September 1999 (rec. 4712/1995) and 27 January 2003 (rec. 9728/1998).

¹⁶ Paragraph 2 (1) of the compensation Act (8 March 1971) of the Germany Criminal Proceedings.

¹⁷ Article 90 (1) of the Dutch Code of Criminal Procedure

jurisdictions, the compensation can't be granted in the time, the suspects are not convicted but who are acquitted due to the principal on when there is any doubt the benefits should go to the suspect.

Basing on Article 6 of European Convention of Human rights a suspect must be taken as innocent until the court proves otherwise, in this article, there is no where it is mentioned that when some one's innocence rights has violated for instance by provisional detention is entitled for compensation¹⁸, and the European court of Human Rights doesn't have clear case laws on this issue. But this not only way of paying a compensation on the pre-trial detained suspect who are acquitted, the next one is the compensation when proven not guilty.

2.3.5. Compensation when a suspect is not proven guilty

In some jurisdictions, it is enough that not being guilty or convicted leads to the payment of compensation to the concerned pre-trial detained suspect. For example under Swedish laws, in the time a suspect is acquitted while he/she being investigated and tried in jail, he/she is entitled for loss occurred, when judgment acquitted him/her.

And also, in Austria and Norway, they laid down the same principal after many cases from European Court for Human Rights, which said that, those countries were violating the right of the presumption of innocence,¹⁹ they tried to adjust their laws to these case laws towards the granting of compensation to the acquitted individuals while they were investigated and tried, in the time they were provisionary detained. In the same line with the above statement, it is important to note that the current Rwandan constitution provides in its article 19 that "every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defense have been made available"²⁰.

¹⁸ Article 6 (2) of European Convention of Human rights

¹⁹ See, the judgments of European Court on Human Rights of 25 August 1993 (Sekanina v. Austria, 13126/87), of 21 March 2000 (Asan Rushiti v. Austria, 28389/95), 10 July 2001 (Lamanna v. Austria, 28923/95), 20 December 2001 (Weixelbraun v. Austria, 33730/96), 17 October 2002 (Vostic v. Austria, 38549/97) and 11 February 2003 (Hammern v. Norway 30287/96, O. V. Norway, 29327/95).

²⁰ Rwandan Constitution of 2003 as revised in 2015, article 19.

In concluding this chapter, it is quite important to say and admit that as observed in the above section some legal systems recognize provisional detention as a temporary act which is done by the prosecution officer that takes someone's rights of liberty in the public interest because it is done in order to dissuade criminal behavior and protect society. But, it would be unfair to force someone who has been proven innocent to bear this public burden; while he/she should consequently have the right to compensation for this exceptional harm suffered for the benefit of the whole society. This chapter looked at the situation and legal framework of compensation in other countries. The next chapter will look at the situation in Rwanda to find out similarities and differences that would be helpful to the Rwandan legislator for the possibility of criminal procedure law reform and further consideration of the causes that are hindering the persons to access their rights to compensation.

CHAPTER 3: ALLEGED VIOLATED RIGHTS DURING THE PROVISIONAL DETENTION PERIOD IN RWANDA AND POSSIBILITY TO COMPENSATE A SUSPECT PROVEN INNOCENT

3.1. Introduction

A suspect must normally be free during investigation,²¹ this means that a person must be investigated while he/she is free, and this freedom continues to be enjoyed also during trial, in few words in the time a person was free during investigation, it means also he must be free also during trial but it is an opposite when a person was investigated while he/she was detained he/she continued to be detained during trial. However, in order a person be detained there are some conditions which must be fulfilled; this means that a right to be free during investigation and trial is not absolute because a suspect sometimes can be detained.²² In other words, provisional detention refers to the situation of putting a suspect in jail during investigation and/or trial when the required conditions are fulfilled.²³

Conditions which needed in order a suspect be detained are enshrined in the Rwandan Criminal Code, especially under article 96 and 97, article 96 also stipulates that a suspect must be free during investigation and/or trial unless the following conditions are met: when there are serious grounds suspecting him/her of an offense and the offense suspected to be committed must be punished by the imprisonment of more than 2 years.²⁴ In addition to this, article 97 defines what serious grounds are, because it mentions that they are not evidence rather they are what have been reached which caused the investigator to think that the suspected person is the one who committed the crime.²⁵

In addition to these, there are also other conditions which can also be taken under consideration in the time a suspected person is being alleged for committing a crime which is punishable less than 2 years but above three years, those conditions are these which follow: when there is reason to believe that the suspect can escape or evade justice, his/her identity is unknown or doubtful, they

²¹ Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, O.G n° 27 of 08/07/2013. Art. 89 par. 1.

²² Ibid. Art. 89 par. 2.

²³ Extraordinary chambers in the Court of Cambodia, provisional detention. Available at: <https://www.eccc.gov.kh/en/topic/417>. Accessed on 30th/October/2018.

²⁴ Supra Note n° 1, art. 96.

²⁵ Ibid. Art. 97.

are serious and exceptional circumstances requires to hold a suspect under provisional detention in the interest of public safety, it is the only way of protecting evidence from being disposed or not putting pressure to the witnesses by the suspect and to fight against the collusion of suspects and their accomplices, it is the only way of protecting the accused and to give chance judicial organs to have him/her at any required time, and because of serious nature of the offense, its harmful effects, the crime itself led to the exceptional unrest and disruption which can be only ended by provisional detention.²⁶ This means that a provisional detention can be pronounced by the court even if the offense a suspect is being alleged is below 2 years but more than free months in the time one of the above six conditions is met, in few words, those all six conditions are not needed at the same time, one of them is sufficient in order a suspect be provisionally detained.

Provisional detention has the time limit depends on the crime the suspect is being alleged, this means that the court pronounces 30 days as a period of provisional detention but it can be renewable,²⁷ even if it can be renewable it depends on the type of the crime a suspect is being alleged, for instance one month of provisional detention on petty offenses is unrenovable, while one month of the misdemeanor can be renewable up to 5 times, in few words a suspect who is being alleged for committing a crime of misdemeanor, he/she can be In jail for the total of six months as provisional detention, in the time a suspect is being alleged for committing a crime of felony, he/she can serve twelve months in jail because one month of provisional detention can be renewable many times.²⁸

3.1.1. Definition of Provisional Detention

A provisional detention refers to detaining of an accused person in a criminal case before the trial has taken place, either because of failure to post bail or due to denial of release under a pre-trial detention stature. The provisions under the code of criminal procedure allow the judge to detain a defendant if the judge determines that conditions exist that raises doubt as to whether the defendant will appear at trial or whether the defendant may cause harm to the community. However, in determining whether the accused constitutes a danger to the community, each case must be

²⁶ Supra note n° 1. Art. 98.

²⁷ Ibid. Art. 104 par. 1.

²⁸ Ibid. Art. 104 par. 2.

considered on its own merits and a court must determine whether the need to protect the community becomes so sufficiently compelling that detention is appropriate.²⁹

The pre-trial detention undermines the chance of a fair trial and the rule of law in a number of ways. The majority of people who come into contact with criminal law know little about their rights. Many countries do not have an adequate legal aid system, and many people cannot afford to pay for a lawyer. Even when they can, it is much harder to prepare well for a trial in prison cell.

People in pretrial detention are particularly likely to suffer violence and abuse. As well as the risk of violence from guards and fellow prisoners, police sometimes use illegal force or torture to gain a statement or confession. Without the protection of legal assistance, and isolated from their family and friends, it is not easy to withstand such pressure. High rates of pre-trial detention contribute to widespread prison overcrowding, exacerbating poor prison conditions and heightening the risk of torture and ill-treatment. The pretrial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. Unhindered by scrutiny or accountability, police, prosecutors, and judges may arrest, detain, and release individuals based on their ability to pay bribes.

Pretrial detention has a hugely damaging impact on defendants, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community. Because of its severe and often irreversible negative effects, international law states that pre-trial detention should be the exception rather than the rule and that if there is a risk, for example, of a person absconding, then the least intrusive measures possible should be applied. A range of non-custodial measures are available, including bail, confiscation of travel documents, reporting to police or other authorities, and submitting to electronic monitoring or curfews.

Not only are such alternatives less expensive, but savings made could be better invested in creating a just and effective criminal justice system, with more thorough investigations, more judges, quicker procedures, and improved prison conditions. However, in many countries pre-trial detention continues to be imposed systematically on those suspected of a criminal offence without

²⁹Legal definition of pre-trial detention. Available at <https://definitions.uslegal.com/p/pre-trial-detention/>

considering whether or not it is necessary, proportionate, or whether less intrusive measures could be applied³⁰.

3.1.2. Legal framework of provisional detention in Rwanda

In Rwanda when the Criminal Procedure law says that in the time there is evidence which shows that the suspect can escape the justice, there is evidence which shows that the suspect is the one who committed a crime and the crime which was committed is above 2 years of punishment, this means that when the suspect is provisionary arrested, he/she is lawfully detained but the problem comes when the suspect was detained and at the end becomes acquitted, what are compensations which can be given to him/her. This goes together with the principal of legality, it can be granted by the law but when it is granted by the law and the suspect acquitted in a full dressed trial, he/she is detained illegally because there were some elements which were not given consideration during the hearing on provisional detention, in few words a suspect was detained illegally because when a person is being detained, he/she must be the one who committed the crime with the evidence which means that at the end he/she will be convicted, when he/she is acquitted, automatically he/she was detained illegally.

Provisional detention, in principal in the time a person is under investigated, he/she must be free during that period, in few words no one who can be investigated in the time he/she is detained.³¹ But in the time the required conditions are met, the suspect must be detained provisionary.³² The required conditions in order a suspect be provisionary detained during investigation are these which follow, when, they are serious grounds for suspecting him/her of an offence, the offense alleged against him/her is punishable with imprisonment of at least two (2) years,³³ *“If: there is reason to believe that he/she may evade justice; this means that, the prosecution proves that the suspect may have some chances of going outside of the country as the way of escaping justice, when his/her identity is unknown or doubtful; this means that in the time a suspect has unknown address or doubtful one, it can be problem for justice in the time she/he can be released, the*

³⁰Issues around pre-trial detentions. Available at; <https://www.penalreform.org/priorities/pre-trial-justice/issue/>

³¹ Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, O.G n° 27 of 08/07/2013. Art. 89 par. 1.

³² Ibid. Art. 89 par. 2.

³³ Ibid. Art. 96.

problem is this, where can justice find him?; *there are serious and exceptional circumstances that require provisional detention in the interests of public safety*; this also can be a reason why a person can be provisionally detained, for instance, because the courts are not ordering provisional detention criminals are committing more crimes because they think that at the time of trial I will be out and I have a chance of going outside during the pronouncement and there are examples of some suspects who did it in the past, the court can order a provisional detention because it.³⁴

In addition to these which have been described above also the following can be the reason of being provisional detention of the suspect: the provisional detention is the only way to prevent the suspect from disposing of evidence or exerting pressure on witnesses and victims or prevent collusion between the suspect and their accomplices; a suspect is being detained because, such detention is the only way to protect the accused, to ensure that the accused appears before judicial organs whenever required or to prevent the offence from continuing or reoccurring and given the serious nature of the offence, circumstances under which it was committed and the level of harm caused, the offence led to exceptional unrest and disruption of public order which can only be ended by provisional detention. This is one of the main reasons of private detention the suspect can dispose evidence or threaten witnesses and even the victim, which is a big problem on justice, this can be only way of protecting them. When all the above reasons are available, a suspect must be investigated and be tried by the court while he/she is detained provisionally for the above reasons, in few words for the interest of justice.

Basing on the above explanations, a suspect must be investigated and tried without being detained, but when the above reasons are fulfilled, a suspect must be investigated and tried by court while he/she is provisionally detained, when a prosecutor sees that the case of provisional detention is necessary, he/she lodges the case in a court³⁵ which is near the Police Station in which a suspect is arrested, but he/she can't lodge a case the High Court, Military High Court or Supreme Court,³⁶ this means that a prosecutor is allowed to lodge a case in the nearest court, except Military High Court, High Court and Supreme Court.

³⁴ Ibid. Art. 98.

³⁵ Ibid. Art. 34 par. 3.

³⁶ Ibid. Art. 99 par. 1.

Provisional detention is a spending of thirty (30) days in jail while the concerned person is being investigated or tried by the Court, in few words, it “*means to keep a charged or accused person temporarily in custody during pre-trial and/or trial stage.*”³⁷ It is being ordered in the time there are one of the reasons which were elaborated above, but there are two cross cutting reasons which must present in each case while others comes to support these ones, the crime must have the punishment which is above 2 years and there must be grounds which show that the suspect is the one who committed the offense.³⁸

When a court receives a case on “provisional detention” it has to try that case within fifteen (15) days from the date the case file was received,³⁹ and the judge to the case must deliver a decision within 3 days.⁴⁰ The provisional detention is ordered by the court for thirty days or one month including the date on which the order was rendered, in addition to this, it can be renewed on monthly continuing basis.⁴¹ But this renew of the period of the provisional detention depends on the type of the crime, for instance: on petty offences, this period of one month can’t be renewed, on the misdemeanor offences, the period of one month can’t be renewed after six months of detained provisionally, this means that on this kind of crime, the period of provisional detention can only be renewed six times, while on the crimes of felonies, the detention can’t be renewed after one year of detention, this means that, it can be renewed up to twelve times. When the above mentioned renewable times ended without the lodging of the case in Court, the suspect under the provisional detention shall be granted interim release.⁴²

The ways the order the provisional detention is granted at the first stage are also apply on the renewable stages, the judge must render an order within 72 hours (3 days),⁴³ when a suspect is a minor aged between fourteen (14) and eighteen (18), he/she must be together with his/her legal counsel,⁴⁴ everything in this trial such as submissions and defense must be written, the accused

³⁷Extraordinary chambers in the Court of Cambodia, provisional detention. Available at: <https://www.eccc.gov.kh/en/topic/417>. Accessed on 30th/October/2018.

³⁹ *Ibid.* Art. 34 par. 4.

⁴⁰ *Ibid.* Art. 96.

⁴¹ *Ibid.* Art. 104 par. 1.

⁴² *Ibid.* Art. 104 par. 2.

⁴³ *Ibid.* Art. 101 par. 1.

⁴⁴ *Ibid.* Art. 101 par. 2.

must be notified the exact court order by the judge read it or a judge notifies the suspect through the competent authority.⁴⁵

As a result, when a person is provisionary detained, he/she losses some important rights which are being normally enjoyed by a free person, here these are examples of some of those rights: right to job, financial loss during detention, and other losses which are occurring due to provisional detention, but those losses mean nothing in the time the accused was convicted by what he/she committed, the problems come when the suspected person was acquitted or because a prosecutor has a task of investigating on both incriminating and exculpatory evidence, he/she sometimes requests the court to order the provisional detention of the accused during the investigations but at the end the prosecutor found that the concerned person is innocent and he/she decided to close the case, from these two examples, one of the suspected person was acquitted by the court, while the second is when the prosecutor after a given time a suspect spent in jail by provisional detention close the case, what can be done by the acquitted person, in order to regain his/her lost rights, is it possible? Those lost rights and their different ways of recovering through the compensation are discussed in this study.

3.2. Alleged violated rights during the provisional detention

In order to understand very well the applicability of the provisional detention period and its related compensation, it is important to note that, when the case was submitted in court before the expiry of the period he/she remains detained during the court trial. Therefore, even if the law states that the maximum period of provisionary detention is one 30 days for minor offenses, six months for misdemeanor and one year for felonies; a suspect can be detained up to five years due to the length of the court because a suspect who was under provisional detention continues to be detained during court hearing.⁴⁶

When a person is being provisionary detained some of his/her basic human rights are being infringed, those rights which can be infringed some are these which follow, but the list is not an exhaustive list because depends on the case and the concerned suspects. Some of those rights are:

⁴⁵ *Ibid.* Art. 101 par. 3.

⁴⁶ *Supra Note* n° 8.

the infringement of the right to be free as enshrined in the international instruments and over all the Constitution of Rwanda also stipulate this kind of right,⁴⁷ right to property also infringed by the provisional detention, while it is granted by also by the Constitution,⁴⁸

For example a suspect can have a business when he/she is provisionary detained, the business can be bankrupted, and also the detained suspect meet with mental problem or mental suffering, and it comes with moral damages, because some people lost confidence in them because of being imprisoned and also in some cases a detained person loses a job. This means that from all the above, a person suffers a lot, are they needed to be compensated for all those losses, in few words, the acquitted person must be compensated for the whole above harm we've seen in the above.

This is a problem not to the suspect who has been convicted because the period they spent in jail during provisional detention is deducted from the main imprisonment period; it is a problem on those persons who have been detained provisionary, but at the end be acquitted. In this study it important to see if these compensations are being granted in Rwanda, if they can be granted and how they can be granted. All those issues are going to be elaborated along this study especially about under what conditions the payment of compensation of the wrongfully pretrial detainees can deter the commission of crimes, what is the standard evidence required for compensating those concerned detainees. Couple of rights are alleged to be violated when a suspect is under provisional detention. This section highlights basic rights that constitute a rationale of equal compensation by the time of liberation especially when the person is declared innocent after a long period of detention.

3.2.1. Deprivation of the rights to liberty and security

When a person is detained for instance, he/she committed a misdemeanor which its provisional detention can be at maximum six months of detention, he/she has no rights to liberty (to be wherever he/she wants at the time he/she wants, to do whatever he/she wants, etc.). This is the first

⁴⁷ The Constitution of the Republic of Rwanda of 2003 revised in 2015, O.G n° Special of 24/12/2015. Art. 24.

⁴⁸ *Ibid.* Art. 34.

rights which are deprived by the provisional detention, and which are granted and prohibited by different human rights instruments.⁴⁹

In few words, when a person is provisionally detained, his/her right to liberty is being infringed, and all instruments accept that this kind of infringement is allowed when it is done in the line of laws (principle of legality), which means that in the time it is done within the limit of the law, it is not prohibited, but in addition to this kind of right to liberty also other rights which are attached to it are deprived such as: right to work, moral respect in the society, etc. This is good when the law says it and the one who is provisionally detained is the one who did wrong (convicted person), but it becomes another issue when a person who is provisionally detained is innocent.

3.2.2. Loss of Good Reputation and Work

This detention can lead to some reparable and irreparable harms to him/her, some of those harms include the loss of reputation and work. According to the judgment RPAA0048/12/CS of 6th May 2016 by the Supreme Court of Rwanda, it is quite clear that a provisional detention can affect a person in different ways including reputation in the community. For example, the judgment talks about the case of someone called Nsanzintwali Pascal a resident of the Nyanza district, southern province who was accused of a crime of rape to a child under 5 years of age. The alleged rape was reported to police and prosecution and the suspect did not admit to have committed that crime.

The high court of Nyanza sentenced him with 20 years of imprisonment due to the fact that the suspect in prosecution admitted to be the perpetrator in that alleged crime but the suspect said that he admitted because of fear and for the purpose of seeking less sanctions but he convinced that he's not guilty of that crime as he said. He decided to appeal the Supreme Court against the decision of the high court that had confirmed 20 years of imprisonment.

The Supreme Court examined the case and found that there has been a big error to condemn a suspect when there was no convincing evidence (doubt benefit to defendant) Nsanzintwali is the one who

⁴⁹ Rwandan Constitution of 2003 as revised in 2015, article 24; UDHR, art. 10, ICCPR, art. 9(1); African (BANJUR) Charter on Human and People's Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), art. 6.

committed the crime. The medical report was also showing a rape that has occurred but with no impact on the life of the child. There was also uncertainty about the relationship between the crime and Nsanzintwali Pascal which led the court to decide that the defendant is innocent and has to be released. Taking the example to the above said case it is important to note that Nsanzintwali Pascal lost a reputation with the community where he lives. Also, the time he spent to the prison.

During the provisional detention of a suspect it is quite clear that a suspect can be affected in his/her community reputation even if in his/her relatives, the severing of family ties or end of family relationships suddenly or completely. Also, the loss of work can led to his/her company insolvency or the jeopardizing of a career and it undermines the prisoner's health and mental balance.⁵⁰ The general issue is that many legal system including the current legal system in Rwanda does not recognize that kind of lost rights and opportunities while in jail paying a period of provisional detention and they no compensations that are granted to those who are convicted while they provisionary detained during investigations and during the court hearing.

3.3. Possible Compensation after provisional detention

Many arguments have been put forward to justify this kind of compensation. But the most frequently invoked argument is the takings analogy. From the Rwandan Constitution, especially the specific law on compensation because the constitution grants right to property only and other international instruments in many cases when the government expropriated people in the public interest, it compensated fairly and at a reasonable time the expropriated persons,⁵¹ this means that if a person receives compensation because the public interest activities infringes his/her rights, also a person who his/her rights of being at the first place was infringed by provisional detention while he/she is innocent, he/she also entitled for compensation because the government wants to maintain and deter the criminals by the use provisional detention, when a person is provisionary detained but at the end becomes acquitted, the government pay compensation as it is paid during expropriation because they all done in the public interest.

⁵⁰ See Doc. 7094, 1403-30/5/94-1-E, report of Rapporteur Mr ROKOFYLLOS, Greece Socialist Group on the detention of persons pending trial. Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8093&lang=EN>. Accessed on 5th/November/2018.

⁵¹ Id, the law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest, O.G n° 35 of 31/08/2015. Art.4

The pre-trial detention affects all members of society detainees, their families and the larger community resulting in a broad range of personal, social and financial costs. Ironically, pretrial detention has an undesirable impact on factors that have been found to correlate with future criminal offenses future employment and socializing with criminals.⁵² However, during the whole period of detention they may have lost some rights that will not be necessarily recovered after being released when the judge found no guilty to the person which merit compensations. Those rights ca include right job lost during the period of detention.

The requirement for provisional detention in international human rights law is a reasonable doubt of committing an offense, no further ground required for provisional detention;⁵³ the prosecution has the burden to prove a reasonable doubt, which is based on the existence information that would satisfy an objective observer that the person concerned might have committed an offense⁵⁴. In addition to this, there must be a target to bring the concern person to trial.⁵⁵ Criminal process comprise three phases which are pre-trial, trial and execution of the sentences, in this study we will focus on pretrial phases especially on provisional detention and its reparation or compensation after being acquitted in Rwanda criminal legal system.

Pretrial justice demands the right to be free from arbitrary arrest, the provision of information to the accused of the nature of their arrest; access to legal representation and the rights to bail until tried therefore the issue of pretrial justice is separated into two parts which are arrest and evidence gathering and detention pending trial. The failure to apply the rule of law and a failure to satisfactorily for protecting these practices can result the grave human rights abuses. The power to arrest suspect, detain him/her against his/her will, issue a judgement upon his/her behavior, and to impose punitive measures is very important in criminal justice system. The use of such measures are among the most powerful instruments a country has against its nations but the abuse of such powers forms the basis for so many human rights abuses.

⁵² <http://www.americasquarterly.org/aborn-prisons>, accessed on 2 August 2016

⁵³ International criminal tribunals and human right law (ECtHR) judgment, Murray V. United Kingdom (App N°14310/88). 28 October 1994, 60; ECtHR judgment, ilijikov V. Bulgaria (App N°33977/96), 26 july 2001,85

⁵⁴ ECtHR judgment, Fox, Campbell and Hley V. United Kingdom (App Nos 12244/86; 12245/86,12383/86), 30 August 1990,32; ECtHR judgment, K-F V. Germany (App N°25629/94) 21 November 1997, 57; Bleichrodt 2006,473; Harris and others 2009,148.

⁵⁵ Harris and others 2009,147

During investigation of criminal case, provisional detention can only be a maximum period of one year at a time but it can be extended twice, not exceeding a total of three years before the issuance of an indictment against a charged person. The extremely prolonged pretrial detention may also violate the presumption of innocence.⁵⁶ Many persons spent time in provisional detention may be acquitted or released without being tried. some of them may be found guilty of lowest crimes that do not require a prison sentence or may be sentenced an imprisonment which is less than period they spent in detention, it is in that sense a deprivation of the right of free movement and the other related rights for the public interest requires the payment of compensation. Generally, any person who has unlawfully deprived of his or her liberty is entitled under international human rights law to compensation.

In some countries, for example in Uganda where a person has been subjected to an unlawful detention, they are entitled to compensation but many victims of such violations are not compensated or if it's happen it's not done at time. The Ugandan human rights commission has handled several cases where victims of unlawful detention expressed concern about the slow payment of the damages by attorneys general.⁵⁷ The code of criminal procedure of Rwanda does not provide about the compensation for the damages as a result of the acts of provisional detention for a person who will be acquitted after the investigation or any other motive that led his or her detention. Normally, under civil code of Rwanda any act of man which causes damage to another obliges the person by whose fault it happened to repair it and as we have seen above if a suspect is detained provisionally and passed a length period more than one year and then after they realize that the person is not guilty for committing that offenses his/her right to free movement, liberty, he/she can be traumatized, lost his/her employment etc...

3.3.1. Compensation for unlawfulness or illegal Detention

In some countries or jurisdictions, an acquitted pre-trial detainee is entitled for the compensation in the time he/she was detained illegally. For instance under European Convention of Human Rights within its article 5(5), it is stipulated that “Everyone who has been the victim of arrest or detention in contravention of the provision of this article shall have an enforceable right to

⁵⁶ 788/1997, Cagas v. Philippines, para. 7.3

⁵⁷ Uganda human right commission, 2011, annual report 2010, Kampala; Uganda human right commission

compensation”.⁵⁸ This means that this rights of compensation is not granted to those persons who were detained in conformity with the Convention but at the end who are acquitted, even though they were provisionally detained legally. Under Rwandan Criminal Procedure, to detain a person or a suspect illegally is prohibited, but nowhere, this Criminal Procedure says about the payment of compensation to those who were detained illegally, and liable persons are those who detained him/her illegally rather than the government.⁵⁹ In this article, a judge must criminally punish a person who detained another illegally; this means that he/she is criminally liable only without compensation and the concerned person or defendant is the detainer rather than government.

3.3.2. Compensation for negligence

Here a negligence which can be on both side (government agents or detainees), this can be also a reason for the payment of compensation on the acquitted pretrial detainees. This means that a detainee can be detained not only for violation of the law because it can happen because the lack of due care on the side of government agents, and it can also happen for example as the result of unclear law, but at the end the court clarifies the law, after the detention was carried out. Taking the example to European Union, in which the European Union itself and its member states are liable for the breach European Union Law only if the breach is serious sufficient,⁶⁰ and this expression can be understood as negligent. Basing on how European Union Courts stipulated, even though the concept of fault is different in countries,⁶¹ but the national meaning of fault must prevail in order to know if the fault committed is serious or not.⁶² When the government agents exercising ordinary care and diligent during detaining a person, the community must not bear that loss or suffer because all the required care and diligent were used during the act.⁶³

On the other hand also this kind of compensation can't also be granted to a person who caused his/her detention negligently, for instance a suspect who confessed the commission of the crime with the purpose of protecting the third one. This rule is obvious encourages potential suspects to

⁵⁸ European Convention of Human Rights of (Rome 4 November 1950). Art. 5(5).

⁵⁹ Law n°30/2013 of 24/5/2013 relating to the code of criminal procedure, O.G n° 28 of 08/07/2013. Art. 91(3).

⁶⁰ See the judgment of the Court of Justice of 5 March 1996 (Brasserie du pecheur and factortame and others, C-46/93, par 51 et seq).

⁶¹ Ibid. par 76.

⁶² Ibid. Par 78.

⁶³ See the judgment of the General Court of 3 March 2010 (Artegoda, T-429/05, par 62).

act diligently in order to prevent being wrongfully detained. This rule is well established in a lot of countries.⁶⁴

⁶⁴ See, for instance, Art. 294 of the Spanish Organic Act of the Judiciary Power of 1 July 1985 (Ley Organica 6/1985, del poder Judicial), par 5 no 2 and 3 of the German Gesetz Uber die.

GENERAL CONCLUSION

Based on different arguments mentioned in this study, compensation is important and legally justified for person who has spent time in pretrial detention due to loss occurred to that person during the provisional detention such as the violation of the right to be free, financial loss, psychological/moral loss, community perception, etc...

Furthermore, the Rwandan legal system does not recognize the fact of compensating acquitted suspect who has spent a time in jail for criminal charges. However, the perceived legitimacy of international criminal courts is essential to their ability to strengthen a sense of accountability for international crimes by exposure and stigmatization of such crimes through their judgments.

Compensation may provide a sense of moral satisfaction to the acquitted accused who has lost many of its advantages relating to job/business, liberty, and financial means during the process. In the same line, legislator should not think that compensation could involve only money but could also include non-monetary aspects because example in Japan, the detained and then acquitted accused may have the award of compensation publicized in an official journal and three newspapers of his choice. Thus, compensation may assist in alleviating the mental strains and damages to reputation associated with being accused of crimes. Compensation might also assist the moral rehabilitation of the accused by freeing him from any persistent suspicions.

RECOMMENDATIONS

The national legal criminal systems including Rwandan system should consider adopting the international courts' standard. Compensating the acquitted accused may enhance the credibility and legitimacy of national criminal courts and procedures by showing a willingness to admit mistakes and take the consequences of the application of forceful measures seriously

In light with achieved findings in this study, the following recommendations can improve the legal framework of provisional detention and its legal implications in Rwandan administration of criminal justice.

In this study, findings have shown that couple of rights are alleged to be violated during the period of provisional detention. I'm of the view that when a right violated there must be an equal compensation to allow the victims to enjoy their rights. Rwandan legislator should consider to include some provisions in the law n° 30/2013 of 24/5/2013 relating to the compensation so that persons who have been proven innocent/acquitted to enjoy their right to compensation. It is important to recommend that compensation should base on the loss that occurred during the period of provisional detention.

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