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THE ACTION AND TRIAL OF OFFENCES OF CONTEMPT OF COURT VIS-À-VIS FAIR TRIAL GUARANTEES UNDER RWANDAN LAW OF CRIMINAL PROCEDURE

By

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DECLARATION

I, Robert MANIRAGABA, hereby declare that to the best of my knowledge the work presented in this thesis entitled “THE ACTION AND TRIAL OF OFFENCES OF CONTEMPT OF COURT VIS-À-VIS FAIR TRIAL GUARANTEES UNDER RWANDAN LAW OF CRIMINAL PROCEDURE” is original and that it has not been previously submitted elsewhere for any academic qualification. Any references to other persons’ works have been acknowledged in the footnotes and in the bibliography.

Date: 18th June 2021

Signature: _____

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DECLARATION BY THE SUPERVISOR

I, Dr. Evode KAYITANA, appointed supervisor of the work presented in this dissertation entitled “THE ACTION AND TRIAL OF OFFENCES OF CONTEMPT OF COURT VIS-À-VIS FAIR TRIAL GUARANTEES UNDER RWANDAN LAW OF CRIMINAL PROCEDURE”, hereby confirm that I have supervised this thesis and that submission is made with my approval.

Date: 18th June 2021

Signature: _____

Dr. Evode KAYITANA

DEDICATION

I dedicate this dissertation to my family. A special feeling of gratitude to my loving parents, Minani Gammariel and Mukarutabana Marie whose words of encouragement and push for tenacity ring in my ears. My sisters Pélathie Mukarurangwa, late Jeanette Mukakarisa, Christine Nyiransengimana, Jacqueline Umutesi, Valentine Tuyishime and Vérène Uwamurera have never left my side and are very special. My dedication goes also to my brothers Willy Uwizeye, Pierre Kwizera, Valens Niyomuremyi, Adolphe Rusangwa and Tite Munyehirwe.

I also dedicate this dissertation to my many relatives who have supported me throughout the process. I will always appreciate all they have done, especially in material and moral support.

I also dedicate this work and give special thanks to my best friends and my all-wonderful nephews and nieces, brothers-in-law and sisters-in-law for being there for me throughout the entire master's program.

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LIST OF ACRONYMS AND ABBREVIATION

Art.: Article

Et al: And others

Etc.: Et cetera or and so forth

I.e.: *id est* or in other words

ICCPR: International Covenant on Civil and Political Rights

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for former Yugoslavia

J.O.: Journal Officiel

MICT: Mechanism for International Criminal Tribunals

Nº: Number

OG: Official Gazette

P.: Page

Para : Paragraph

Pp. : Pages

Vol. : Volume

Vs.: Versus

V: Versus

ABSTRACT

Ever since 1977 up to now, Rwandan criminal justice condemned any acts of outrage perpetrated within the course of hearing in a court or tribunal against the court or its officers to the extent that the contemnor could be imprisoned and fined.

From then and hitherto, it was and it is indeed convenient to halt and sanction any behavioral and disobedient practice or manners which could hamper the smooth running of the court work activities since there has to be an absolute order within the court and its regular activities.

However, there are potential challenges to the legal nature of the standards employed in measuring the fairness of a trial. For instance the contemnor is denied of the right to defend oneself in person or through legal counsel, or the right to adequate time and facilities for the preparation of a defense, or the right to a competent, independent and impartial tribunal established by law because he or she may immediately be sentenced by the court notwithstanding its jurisdictional competence; and in addition to respecting no other procedural formalities; he or she is not allowed to take the floor with regard to the offence alleged to commit.

The issue at stake is the approach in which the condemnation of those acts constituting offenses of contempt of court is adjudicated. Some significant range of international and domestic human rights of the defendant were and are compromised despite the fact that they are the key legal norms that ought to be utilized in ensuring that the criminal trial be fair. The present dissertation is all about all issues pertaining the action and trial of offenses of contempt of court in regard with the right to fair trial in Rwanda.

***Keywords*:** offenses of contempt of court, criminal contempt, fair trial, adjudication, fair trial, criminal process.

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CHAPTER 1

GENERAL INTRODUCTION

1. Contextual background

The contempt of court (*contemptus curiae*) means the act of showing a lack of respect to a court, by bad behavior in court or by refusing to carry out a court order. At common law, a conduct tending to interfere with the course of justice in particular legal proceedings constitutes criminal contempt.[1]

The courtroom is like a battlefield on which two opponents face against each other. During the court hearing there must be plenty security for the courtroom activities go smooth without disturbance or diffidence. Otherwise, there is hence a degree of probability of sabotage either between opposing parties or attack against the judges, court registrars, witnesses and any other player in the courtroom. To regulate the conduct of parties in courtroom, legislators of many jurisdictions opt out to penalize hostile conduct. Rwanda is one of those jurisdictions which doesn't tolerate the offences of contempt of court.

Judges typically have much discretion in deciding whom to hold in contempt of court and the type of contempt. Those held in contempt of court can include parties to a proceeding, attorneys, witnesses, jurors, people in or around a proceeding, and officers or staff of the court itself.[2] There are a couple of types of contempt of court: criminal contempt of court and civil contempt. Criminal contemptuous charges become separate charges from the underlying case.[3]

According to Anteneh Geremew Gemeda,[4] criminal contempt embraces the traditional situations of court room disobediences and disturbances. Contempt of court may also be classified as contempt occurring before the court (*in facie curiae contempt*) and

[1] Peter HC, *English Law Dictionary,* 4th Ed (Bloomsbury Publishing Plc, 2000), p. 67.
[2] Anon "Criminal Contempt of Court" https://criminal.findlaw.com/criminal-charges/criminal-contempt-of-court.html [24/04/2020].
[3] Anon, *supra* note 2. See also Carlo, *infra* note 223, pp. 50-52.
[4] Anteneh GG "Contempt of Court: The Interpretative Practice in East Gojjam Courts, Ethiopia" *Elixir Law 133 (2019) 53529-53538* (2019), p. 53529.

contempt not in the face of the court (*ex facie curiae contempt*). The first type includes any disrespectful words and acts in or in the precinct of the court while judges are conducting judicial proceeding.[5]

Under Rwandan law, according to available literature there is one type of contempt of court – criminal contempt.

Trial of offences of contempt of court under Rwandan criminal procedures is not a new criminal concept. It can be guessed that that very concept may be older than or as old as the Decree Law n° 21/77 of 18 August 1977 instituting the penal code of Rwanda[6] (hereinafter referred to as the "Decree").

As far as the crimes of contempt of court were concerned, the Decree posited that:

> Will be punished by imprisonment for a month to a year and a fine of two hundred to five thousand francs or one of these penalties only, whoever has outraged by words, gestures or threats, writings or drawings, a member of parliament ... or a magistrate of the administrative or judicial order or a depository agent...[7]

It continued stipulating that:

> If the contempt took place at a meeting ... or at a hearing of a court or tribunal, the penalties provided for in the preceding paragraph will be doubled.[8]

The Decree also added that:

> If the assaults were hit during a session of… or a hearing of a court or tribunal, the penalty of imprisonment can be increased to five years.[9]

The crimes of contempt of court, as provided for in the Decree, could be aggravated by further circumstances as enshrined therein.[10]

The offences of contempt of court were also punished in the Rwandan civil, commercial, labor and administrative procedures whereby the old Law nº 18/2004 of 20/06/2004

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[5] Anteneh, *supra* note 4.
[6] See for instance Art 234, Decret-Loi n° 21/77 du 18 Août 1977 Portant Code Penal (J.O., 1978, n° 13 bis, p. 1) [*Repealed*] (*Translated from French*).
[7] Art 234, Decret-Loi n° 21/77, *supra* note 6 (Translated from French).
[8] Art 234, Decret-Loi n° 21/77, *supra* note 6 (Translated from French).
[9] Art 235, Decret-Loi n° 21/77, *supra* note 6 (Translated from French).
[10] See for instance aggravating circumstances from the provisions of Art 236 to 239, Decret-Loi n° 21/77, *supra* note 6 (Translated from French).

relating to the civil, commercial, labor and administrative procedure, subsequent to other lenient alternatives to keep order within the court posited that:

> If, during the session of hearing in courtroom, there is committed an offense punishable with an imprisonment penalty not exceeding five years, the court, subject to its material competence; can immediately sentence the offender. If the court has no competence or if the offense exceeds five years imprisonment penalty, the court, after arresting the accused and drawing the statement of fact sends him/her to the prosecutor with incriminating evidence.[11]

The former Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labor and administrative procedure also provided a similar provision[12] to that it substituted – Law nº 18/2004 of 20/06/2004 relating to the civil, commercial, labor and administrative procedure.

The offences of contempt of court under Rwandan criminal procedures were also condemned by the Organic Law nº 20/2006 of 22/04/2006 establishing the criminal procedure code which prescribed that:

> The presiding judge or magistrate is responsible for conducting hearing and keeping order in court. When during trial, any of the persons present disrupts order by whatever means, the presiding judge or magistrate can order for his or her expulsion from the court room.[13]

It further posited that:

> When, in the course of carrying out the above measure, the person resists the expulsion order or causes commotion, he or she is immediately arrested and detained, tried and sentenced to imprisonment ranging from one month to one year, without prejudice to other punishments, which the penal code prescribes for those persons who insult or commit acts of outrage against judges or magistrates in the course of executing their duties.[14]

Until 2013 the offences of contempt of court under Rwandan criminal procedures were rebuked. The then criminal procedural law stated that:

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[11] Art 71, Law nº 18/2004 of 20/06/2004 relating to the civil, commercial, labor and administrative procedure (*OG nº special bis of 30 July 2004*) [*Repealed*].
[12] Art 76, Law n°21/2012 of 14/06/2012 relating to the civil, commercial, labor and administrative procedure (*OG nº 29 of 16/07/2012*) [*Repealed*].
[13] Art 147, Organic Law nº 20/2006 of 22/04/2006 establishing the criminal procedure code [*Repealed*].
[14] Art 147, Organic Law nº 20/2006, *supra* note 13.

> The court may on its own initiative take up a case if an offense of contempt of court is committed.[15] It also stipulated that if a person commits an offence of contempt of court punishable with maximum imprisonment of five (5) years, the court may immediately sentence him/her.[16]
>
> If a person commits an offence of contempt of court punishable with imprisonment of more than five (5) years, the court shall cause him/her to be arrested and draw up a statement of facts and produce him/her before a Prosecutor and submit incriminating evidence for prosecution.[17]

Until now the offences of contempt of court under Rwandan law of criminal procedures and law relating to the civil, commercial, labor and administrative procedure are punishable.

Most particularly the current law relating to the civil, commercial, labor and administrative procedure; the law which applies to any matter not regulated by any other domestic rule, and which, unlike other previous laws, provides for appeal and detailed procedures, accentuates that:

> A person who, during the hearing, commits an offence punishable by a maximum sentence of imprisonment for five (5) years, the court may immediately sentence the perpetrator even if in practice the court has no jurisdiction to hear such an offence in the first instance.[18]

It further emphasizes that:

> In such a case, the judge adjourns the hearing and orders security personnel to take the perpetrator out of the courtroom and calls the public in the hearing to order. The court registrar takes minutes of what has happened. The judge immediately writes a judgement basing on the facts and violated legal provisions, then gets the person having been expelled back to courtroom and reads to him/her the judgement rendered against him/ her in all its provisions, and re-opens the hearing. No other formalities take place and the parties are not allowed to take the floor with regard to the offence committed.[19]

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[15] Art 125, Law nº 30/2013 of 24/5/2013 relating to the code of criminal procedure (*OG nº 27 of 08/07/2013*) [*Repealed*].
[16] Art 160, Law nº 30/2013 of 24/5/2013, *supra* note 15.
[17] Art 160, Law nº 30/2013 of 24/5/2013, *supra* note 15.
[18] Art 81, Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure (*OG nº Special of 29/04/2018*).
[19] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.

It finally reads that:

> If the offence committed in the hearing is punishable by a sentence of imprisonment for more than five (5) years, the court orders security personnel to arrest the perpetrator and makes a statement detailing the facts, and the perpetrator together with his/ her file are taken to the competent public prosecutor in order to prepare the file and submits it to the court. Decisions taken according to the provisions of this Article are enforced with immediate effect.[20]

The current Law nº 027/2019 of 19/09/2019 relating to the criminal procedure provides for almost the similar content[21] with Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure.

These above two laws made the researcher meditate about the legitimacy of the offences of contempt of court under Rwandan law on which I advance their problematic hereafter.

2. Statement of the problem

From all the above assessed legal instruments be it those into force or repealed, it is vivid that offences of contempt of court are of all the categories of felonies, misdemeanors and petty offenses according to the provisions entailed in article 81 of the Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure.

And in the circumstances, the court; without recourse to normal criminal processes of criminal procedural rules, can immediately sentence the offender while there are the fundamental legal values that have to be used and ensured in assessing the fair justice of any penal trial including that concerning offences of contempt of court.

Immediate trial of the offences of contempt of court must be in breach of a norm of international human rights law designed to protect individuals (criminal defendants) from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms – the most prominent of which is the right to liberty of the person while the right to a fair

[20] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[21] Art 137, Law nº 027/2019 of 19/09/2019 relating to the criminal procedure (*OG n° Special of 08/11/2019*).

trial applies to either the resolution of an individual's rights and obligations in a lawsuit and within the scope of determining of any criminal offense charged against them.[22]

On further note, trial of offences of contempt of court as enshrined in the current criminal procedure code is itself arbitrary procedure. Yet nobody ought to be disadvantaged of their rights and freedom unless in accordance with legal procedures as provided for by law.[23] What's the essence of making offences of contempt of court so special to the extent that their trial doesn't abide by normal criminal procedure?

And even in the circumstances, the trial judge plays as all players in criminal trial – the judicial police, the prosecutor, the witness and the judge with concentrated extra power; and whose stance doesn't balance with the accused's, for the most essential condition in weighing how much fair a trial is, there must be observation of the norm of equal standing or equality of arms amid the parties, whereby either parties are assessed in a way guaranteeing their procedurally equal stance in the course and during a trial.[24]

Therefore, the present treatise, aims at analyzing the human rights implication perspective of the trial of offences of contempt of court, most especially with regard to the principle and norm of international human rights law – fair trial.

3. Objectives of the study

The purpose of this study is to demonstrate; by critical analysis, the non-observance of the standard of fair trial as an international human rights law calculated to protect criminal suspects during criminal processes by trial of offences of contempt of court under Rwandan criminal law.

In addition, this study intends to show how procedural criminal standards non-observation violates the accused or the suspect's basic fair trail guarantees and the way forward to put right such substandard in criminal processes in Rwanda.

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[22] Lawyers Committee for Human Rights "What Is a Fair Trial? A Basic Guide to Legal Standards and Practice" (March 2000), p. 1. Accessed at https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf [25/7/2020].
[23] Art 9(1), *International Covenant on Civil and Political Rights* (1966).
[24] Lawyers Committee for Human Rights, *supra* note 22, p. 12.

4. Research questions

4.1. Does the commission of the offences of contempt of court under Rwandan procedural laws debar the offender from the right to fair trial guarantees? If yes, what is the essence of such debarment?

4.2. In the process of adjudication of the offences of contempt of court, doesn't the judge base the committal order on the facts of the case on the basis of his/her personal knowledge thereof?

4.3. Are the offences of contempt of court so special that they be adjudicated by a single trier who cumulates and assumes all the roles and functions actually taken up by the judicial police, judge, victim and the prosecution?

4.4. What are the normal and standard phases of criminal trial which the trial of offences of contempt of court should go through up to the serving of the sentence by the convict or contemnor?

5. Hypothesis

5.1. The present study is based on the hypothesis that to date no specifics of each individual case known either under domestic or international human rights or criminal law which are designed to debar and disfavor the accused from exercising their fair trial guarantees enshrined within the International Covenant on Civil and Political rights or other international legal instruments.[25] And if they might be there, they would be outlawed and they would create inequality unless they were intended to favor the accused's trial.

5.2. The second research question is based on the hypothesis that impartiality is one of the fundamental values inherent in the judicial function. Therefore, nothing could hinder the judge from being biased if they adjudicate the case, they have personal knowledge about. While ethically, the judge who has actual bias or

[25] Art 14, *International Covenant on Civil and Political Rights*, *supra* note 23.

prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings should disqualify themselves.[26]

5.3. As a hypothesis, my take is that the offences of contempt of court are not special offenses which need special trial procedures. Mayhap what is special is the place or scene of the crime – in the courtroom. Nevertheless, as a legal concern; does the scene of a crime affect the trial of criminal processes or make an offense special to the extent that its trial disregards fair trial standards? I don't think any place should influence or impact actual criminal procedures.

5.4. I hypothesize that all criminal cases start from arrest and detention. In nutshell, there follows the pre-trial phase, the trial or the hearing phase and post-trial phase respectively. Each phase having its own judicial activities in the administration of justice.

6. Research methodology

In order to attain the objectives of this dissertation, different techniques and methods have been used.

The documentary technique was used in collecting data from different written documents relevant to the topic including legal texts, text books, journal articles, annual reports, newspapers, etc.

The exegetic method was as well used and helped to interpret the various legal instruments materials in relation to the matter of focus.

The analytic method was as well used for analysis of different elements of data collected regarding the offenses of contempt of court, its legality and implication.

Within the present research, I used doctrinal research too. It consisted of a literature survey of international legal instruments, international and domestic case law; domestic legislation and internet sources.

[26] Art 13, Law nº 09/2004 of 29/04/2004 relating to the code of ethics for the judiciary (*OG no 11 of 01.06.2004*). See also Art 11, Law nº 22/2018 of 29/04/2018, *supra* note 18. See also International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners' Guide* (Switzerland, 2004), p. 29.

7. Structure of the study

This treatise is made up of four sections to name; general introduction, two chapters, a general conclusion, and recommendations at the end.

The introductory part or general introduction which is also the first chapter is comprised of demonstration of the research project, the study background, the statement of the problem, the research questions, and purpose or aim of the study, the method and outline or structural part of the study.

The second section/chapter is about the conceptual and theoretical framework of the action and trial of offences of contempt of court and fair trial guarantees generally. It also briefly refers to the different competing interests in criminal justice regarded with the offenses of contempt of court and the right to fair trial.

The third chapter critically analyzes the action and trial of offences of contempt of court and their nature vis-à-vis fair trial guarantees under Rwandan criminal law framework. Within that very chapter, the researcher demonstrates with emphasis the illegitimacy of trial of those offenses of contempt.

In addition to answering the research questions raised; the third chapter gives the way forward on how to put it right so to rectify the illegitimacy and substandard practice demonstrated within the trial and proceedings of the offenses of contempt of court.

CHAPTER 2

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. Introduction

For the purpose of clarity and better understanding, it is pertinent to provide the full meaning of the concepts that are consistently used in this dissertation. These are contempt of court; the right to fair trial in criminal proceedings and the notions of crime control, due process and judicial integrity as competing values in criminal justice.

2.2. The concept of contempt of court

The power to hold for contempt anyone who interferes the administration of justice is an inherent power vested in the judiciary.[27] This may seem as an arbitrary power because the role of the prosecutor and adjudicator is combined in one person or body of persons. Nevertheless, it is an indispensable power for the protection of the impartial administration of justice to maintain the majesty of the law.[28]

According to Justice J.D Kapoor,[29] contempt of court means civil or criminal contempt.[30] Civil contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.[31]

On the other hand, criminal contempt means the publication (whether by words, spoken or written, or by signs, or visible by representation, or otherwise) of any matter or the doing of any other act whatsoever which – scandalizes or tends to scandalize or lowers or tends to lower the authority of any court; or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to

[27] Balasankaran NK, *Law of Contempt of Court in India* (Atlantic Publishers and Distributors, 2004), p. 8.
[28] Balasankaran, *supra* note 27. See also Richard, *infra* note 226. See also Carlo, *infra* note 223.
[29] Justice Kapoor J.D, *Law of Contempt of Court Act, 1971*, 2nd Ed (Universal Law Publishing Co. Pvt. Ltd, 2011), p. 3.
[30] Anteneh, *supra* note 4, p. 53529.
[31] Justice Kapoor, *supra* note 29. See also Kaley RJ "Life in Jail for Misbehavior: Criminal Contempt and the Consequence of Improper Classification" vol. 71 *Florida Law Review* (2019), p. 603. See also Carlo, *infra* note 223.

interfere with, or obstructs or tends to obstruct the administration of justice in any other manner.[32]

The contempt jurisdiction which is special in character, originated from England[33] and developed over the centuries as a means of enforcing the orders of the court. According to K. Balasankaran Nair,[34] although the contempt of court was criticized as misleading, it still continues to be a good one. It is of ancient origin yet of fundamental contemporary importance. It has always served as a keystone protector of the fundamental supremacy of law.[35]

One of the very basic principles of any civilized system of justice is that a person called to stand trial is entitled to fair trial free from prejudice.[36] One purpose of the law (or legal provision) of contempt is to provide sanctions against any word, behavior or conduct likely to prejudice fair trial although there is no unanimity of opinion as to the purpose of the law of contempt.[37] Another purpose is to safeguard the administration of justice from undue interference and verbal attacks from any agency. The judiciary though competent to use the contempt power uses it only sparingly.[38] The contempt of court is motivated by *bona fide* reasons and it has to be permitted, but scandalous attacks on the judiciary motivated by *mala fides* has to be viewed seriously and should be restricted.[39]

The contempt of court is the act of showing a lack of respect to a court, by bad behavior in court or by contesting to carry out a court order.[40] The contempt of court is also conceptualized as an act of disrespect or disobedience towards a judge or court's officers or interference with its orderly process; and that make up contempt by interference or criminal contempt and contempt by disobedience or civil contempt; all of

[32] Justice Kapoor, *supra* note 29. See also Nicolas, *infra* note 41, p. 273. See also Hock LH "Criminal Justice and the Exclusion of Incriminating Statements in Singapore" in Sabine G and Thomas R (eds), *Do Exclusionary Rules Ensure a Fair Trial?: A Comparative Perspective on Evidentiary Rules*, vol. 74 (Springer, 2019), pp. 227-228.
[33] Justice Kapoor, *supra* note 29. See also Nicolas, *infra* note 41, pp. 260-272.
[34] Balasankaran, *supra* note 27. See also Nicolas, *infra* note 41, pp. 260-272.
[35] Balasankaran, *supra* note 27, p. 8. See also Nicolas, *infra* note 41, pp. 260-272.
[36] Balasankaran, *supra* note 27, p. 8.
[37] Balasankaran, *supra* note 27, p. 8.
[38] Balasankaran, *supra* note 27, p. 41.
[39] Balasankaran, *supra* note 27, p. 41.
[40] Peter, *supra* note 1, p. 67.

which in some jurisdictions contain qualifying elements.[41] For example in monarchical states, if the judge misbehaved or offended against the dignity of the law (i.e. allegorically the king) he was as much liable to punishment, nay, liable to a higher degree of punishment than the ordinary individual defaming the judge, the assembly or the court,[42] and the punishment was also laid down for the clerk of the court for making errors in writing that led to a miscarriage of justice.[43]

In the jurisdictions like in the United States, to qualify as the contempt of court there must be the manifest of misbehavior of a suspect, the person and contempt must be in or near to the presence of the court, the conduct must be the one which obstructs the administration of justice, and it must be committed with the required degree of criminal intent.[44]

Under Rwandan jurisdiction, similar elements must be among the ones constituting the criminal contempt though no Rwandan law details its elements. However, within the Rwandan court which has the power to take up a case of criminal contempt before itself;[45] not every person in the courtroom should be called in contempt and sentenced of contempt of court – the offense and its procedure should be limited to those courtroom players taking active roles and for the rest, there should have been set the other measures like expulsion from courtroom, etc.

Significantly, under Rwandan law, it is obvious that the contempt of court is classified into two. There is criminal contempt since the current Law nº 027/2019 of 19/09/2019 relating to the criminal procedure provides for it and its punishment;[46] and civil contempt since the current Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor

[41] Nicolas K, *Judicial Discretion and Contempt Power: Two Elements of Equity That Would Benefit the EAPO and Future EU-Wide Provisional and Protective Measures*, (PhD-Thesis, University College, 2016), p. 253. See also Adam H "Contempt of Court" https://www.investopedia.com/terms/c/contempt-court.asp [15/7/2020].
[42] Richard CB "Contempt of Court: History" in Bibha T, *Contempt of Court and Freedom of Speech: Exploring Gender Biases* (Readworthy Press Corporation, 2010), p. 84.
[43] Richard, *supra* note 42.
[44] Sec 3691, *Title 18 of the United States Code — Crimes and Criminal Procedure*. Accessed at https://uscode.house.gov/download/download.shtml [15/7/2020].
[45] Art 95, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[46] Art 137, Law nº 027/2019 of 19/09/2019, *supra* note 21.

and administrative procedure provides for it as well and broadly.[47] In Rwandan jurisdiction, these two types of contempt are all crimes which can be the petty offenses, misdemeanors or felonies. They are all punitive.

In other jurisdictions, apart from civil and criminal contempt of court, there is direct or indirect contempt of court. Direct contempt occurs in the presence of the court, while indirect or constructive contempt occurs outside the court's presence.[48]

More to the above, in a contempt case, the presiding judge has the power to summarily punish the contemnor with incarceration or fine. This gives rise to a natural justice objection against the contempt summary and for the sake of the principle of natural justice – one shall not be judge on their own case (*In propri cuus nemo judex*).[49]

However, one who raises the natural justice objection, against the power of a judge to decide on a contempt case in which they are the accuser, may face a difficulty to give natural justice.[50] Finding mechanisms to limit the unlimited discretion of judges in deciding a case as contempt is believed to be the proper way of mitigating possible arbitrariness. In fact, it is claimed that judges, especially in the common law are deemed to have wider power to declare someone in contempt than judges in the civil law.[51]

The broader prerogative in holding a person liable of contempt has a negative repercussion against consistent application of laws and respect for rule of law in that it jeopardizes the norm of fair trial.[52] The law's approach to punish any act which disturbs the proceeding absorbs overwhelming cases into the framework of contempt. The philosophy behind punishing a person manifesting inappropriate behavior before the court of law should be made clear to reduce arbitrariness from courts.[53]

It is clouded whether or not the interest of justice and judicial administration or the dignity of the judge guide the contempt of court cases. Arguably the major source of

[47] Art 81 and 82, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[48] Adam, *supra* note 41. See also Livingston, *infra* note 157, pp. 349-355.
[49] Anteneh, *supra* note 4, p. 53530.
[50] Anteneh, *supra* note 4, p. 53530.
[51] Anteneh, *supra* note 4, p. 53530. See also Carlo, *infra* note 223.
[52] Anteneh, *supra* note 4, p. 53530.
[53] Anteneh, *supra* note 4, p. 53530.

distrust against contempt proceedings, is the power of courts to decide the case summarily whereas recognized fundamental rights are not being observed.[54]

2.3. The concept of fair trial in criminal proceedings

The first reference to fair trial was used in the Oxford English Dictionary in 1623 in the seventeenth century.[55] It might be a mistake to conclude that at the time, it was a relevant topic in the legal aspect like the way it is nowadays.[56] The nineteenth century usage of fair trial refers to the trial as being rightly run instead of an adjudication which safeguards the human rights of a party to it, within the spirit of putting regard to that or what justice seeks.[57]

If there is one absolute right which every decent legal system ought to recognize, it must be the right of the defendant to a fair trial in the criminal proceedings, and certainly, the later should be recognized internationally as a peremptory norm (*jus cogens*) of international human rights law. The prosecution of an unfair trial would surely flout any plausible understanding of the rule of law.[58]

The contemporary legal usage of fair trial embraces the idea of a "regular procedure" or what is commonly referred to as "procedural fairness." It stands on a "check list approach" wherein requests are upraised vis-à-vis the set of rights of the perpetrator in penal proceedings.[59] The principle of fair trial embraces rights of a criminal suspect to a public and fair hearing which takes place in equitable period by an impartial and independent court of law, to the right to be aware of the charges against him/herself, to a period and facilities for the preparation of the defense, to the presumption of innocence, to have witnesses examined and compel their attendance, to defend him/herself personally or by legal counsel, in addition to having access to a translator if need be.[60]

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[54] Anteneh, *supra* note 4, p. 53530.
[55] Langford I "Fair Trial: The History of an Idea" 8:1 *Journal of Human Rights* (2009), p. 43.
[56] Langford, *supra* note 55, p. 44.
[57] Langford, *supra* note 55, p. 47.
[58] Allan TRS "The Concept of Fair Trial" in Elspeth A and David G (eds)**,** *Criminal Justice* (Franz Steiner Verlag Stuttgart, 1995), p. 27.
[59] Langford, *supra* note 55, p. 48.
[60] Langford, *supra* note 55, p. 48.

Nevertheless, scholars seem to be largely in agreement about the legal standards necessary for a trial to be considered fair. For instance, some limit them down to six core guarantees including the right to a public trial; the right to test the evidence against one (the right of confrontation); the related right that judgments will not be based on evidence not heard in court; the right to equality of arms; the right to the presumption of innocence; and the right to an independent and impartial judiciary.[61]

Fair trial guarantees imply that any rights it contains be "possessions" of the suspect then uphold the standard of "equality of arms" whereby the criminal suspect is granted a "reasonable opportunity of presenting his or her case to the court under conditions which do not place him or her at a substantial disadvantage vis-à-vis his or her opponent".[62]

Furthermore, the principles against which a penal trial is to be measured in terms of fairness are various, complex, and constantly evolving. They may constitute binding obligations that are embodied in human rights instruments to which a given state is party.[63] But, they may also be found in documents which are not formally binding but which can be invoked to express the direction in which the law is evolving; such as the UN General Assembly resolutions, the Basic Principles for the Treatment of Prisoners, etc.[64]

According to for Lawyers Committee for Human Rights,[65] to evaluate the fairness of a criminal trial, one has at least to refer to norms of undisputedly legal origin like (*i*) the laws of the country in which the trial is being held; (*ii*) the human rights conventions to which that country is a party, and (*iii*) norms of customary international law.[66]

The African Commission on Human and Peoples' Rights stressed that no circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be

[61] McDermott Y, *Fairness in International Criminal Trials*, 1st Ed (Oxford University Press, 2016), p. 32.
[62] Langford, *supra* note 55, p. 48.
[63] Lawyers Committee for Human Rights, *supra* note 22, p. 2.
[64] Lawyers Committee for Human Rights, *supra* note 22, p. 2.
[65] Lawyers Committee for Human Rights, *supra* note 22, p. 2.
[66] Lawyers Committee for Human Rights, *supra* note 22, p. 2.

invoked to justify derogations from the right to a fair trial.[67] This reflects that the right to a fair trial is non-derogable – some human rights are most important to the extent that no one can restrict or suspend them, although that "no-derogation" in its strict sense runs afoul of the solemn characteristic of "indivisibility" of human rights. But what is really fair trial in terms of criminal processes?

According to Hock Lai Ho,[68] considering the core objective of the criminal proceeding as searching for the reality or the truth to exculpate or convict, the accused's right to a fair trial is primarily viewed as the obligation the court owes to him/her of determining the truth in the criminal process which has been reliably fair and accurate, whilst that owe is undermined when the court has relied upon untrustworthy or defective practice in establishing the suspect's culpability.[69]

Therefore, as Swati Duggal[70]said, the concept of fair trial is based on the basic ideology that a given state and its agencies are constrained to bring the offenders before the law. In their battle against crime and delinquency, a state and its officials cannot in any circumstances forsake the decency of state behavior and resort to use extra-legal methods as a means to their ends, i.e., for the sake of detection of crime and even criminals. For how can they insist on good behavior from others when their own behavior is blameworthy, unjust and illegal? Therefore, the procedure adopted by the state must be just, fair and reasonable.[71]

For the state to subject an accused person to procedures of conviction and punishment of offenders, while showing indifference to their fairness, would be to deny the respect which he or she is owed by the government in virtue of his or her citizenship and

[67] The African Commission on Human and Peoples' Rights "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa" DOC/OS (XXX) 247, p. 23.
[68] Hock LH "The Fair Trial Rationale for Excluding Wrongfully Obtained Evidence" in Sabine G and Thomas R (eds), *Do Exclusionary Rules Ensure a Fair Trial?: A Comparative Perspective on Evidentiary Rules*, vol. 74 (Springer, 2019), p. 293.
[69] Hock, *supra* note 68.
[70] Swati D "Concept of a Fair Trial" https://www.lawctopus.com/academike/concept-fair-trial/ [20/7/2020]
[71] Swati, *supra* note 70.

humanity.[72] The meaning of that requirement of fairness, and the nature of the duty it imposes on the trial judge are nonetheless controversial.[73]

When it comes to defining the 'right to a fair trial', the literature faces serious difficulties. Each author has his or her own idea of what a fair trial should be and of its content, and, although jurists in general agree on the basic features of a fair trial, several aspects still remain controversial.[74]

The right to a fair trial, is a basic principle of the rule of law in a democratic society and aims to secure the right to a proper administration of justice.[75] The right in question includes, therefore, the right to an effective access to justice, to the equality of arms, to a fair composition of an independent court, to a public hearing, to a judgment pronounced publicly within 'a reasonable time', etc.[76]

The right to fair trial is an interconnected set of fundamental rights with constitutional status, protected under the public law jurisdiction of the court.[77] It is an autonomous right and a fundamental principle forming the basis of the other procedural safeguards, including the right to a hearing and legal aid.[78] The right to fair trial has constitutive elements including the right to submit cases to the courts, the right to obtain a decision within a reasonable time and the right to a hearing and free legal aid among others.[79]

Yvonne McDermott[80] said that the concept of the fair trial stands quite apart from the nebulous concept of 'farness' in that it can be defined as the sum of a number of crucial parts.[81]

The concept of fairness, as a safeguard against abuse of the inequality between suspect and state, may be expressed in terms of integrity. It is the judge's function, in

[72] Allan, *supra* note 58.
[73] Allan, *supra* note 58.
[74] Piero L & Ondrej P "The Right to a Fair Trial" *Alphen aan den Rijn: Wolters Kluver* (2014), p. 3.
[75] Piero & Ondrej, *supra* note 74, p. 7.
[76] Piero & Ondrej, *supra* note 74, p. 7.
[77] European Commission for Democracy through Law, Council of Europe, *The Right to a Fair Trial* (Council of Europe Publishing, 2000), pp. 93-94.
[78] European Commission for Democracy through Law, *supra* note 77.
[79] European Commission for Democracy through Law, *supra* note 77.
[80] McDermott, *supra* note 61, p. 31.
[81] McDermott, *supra* note 61, p. 31.

exercise of his or her exclusionary discretion – or his/her duty to prevent an abuse of process – to ensure the fairness of the trial by preserving its integrity.[82]

Henceforth, the defendant has a right that certain minimum standard of conduct be respected in the course of the police investigation and subsequent trial. Where breaches of those standards are serious, or where the rules are manipulated to his or her disadvantages, the court may be obliged to intervene to protect the trial's integrity.[83]

The right to a fair trial is enormous in scope covering all proceedings pending before an official body. It also concerns all procedural stages, right from the committal proceedings to the appeals stage. That set of rights concerns not only courts in strict sense of the term but all state authorities vested with decision-making powers.[84]

That principle and right to fair trial is of broad scope. No formal definition of fair trial itself as a term, although it cannot be inappropriate to indicate, at least in part, that term's content. Right to fair trial reflects a trial which takes place before an impartial bench or impartial judge; in an environment of judicial tranquility. Being impartial implies standing in between or being neutral to either of the opponents.[85]

The right to fair trial also reflects a court trial by a disinterested and impartial tribunal; a trial process which gives the floor to the suspect before it condemns him or her, which proceeds upon inquiry, and which, as a final result, renders judgment only after trial.[86]

An impartial and fair trial by someone's peers contemplates the defense counsel to mind its defense, imperative appearance of witnesses if need be, and a due time according to all prevalent conditions to examine, suitably prepare and present the defense. Fair trial is that in which the accused is allowed assistance by counsel and neither witness nor defense counsel are intimidated[87] or otherwise influenced.

[82] Allan, *supra* note 58, p. 29.
[83] Allan, *supra* note 58, p. 29.
[84] European Commission for Democracy through Law, *supra* note 77.
[85] Danny JB "The Right to a Fair Trial" vol. 1998 *University of Chicago Legal Forum* (1998), p. 3.
[86] Danny, *supra* note 85, p. 4.
[87] Danny, *supra* note 85, p. 4.

Other authors like Neeraj Tiwari[88] says that the right to a fair trial is a norm of international human rights law adopted by many countries in their procedural laws.[89] It is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of their basic rights and freedoms, the most prominent of which are the right to life and liberty of the person.[90]

The criminal suspect, then, has rights beyond those which serve to secure an accurate verdict. He or she should certainly be accorded the right to a fair trial in the more limited sense of the protection of procedures designed to diminish the risk of wrongful conviction. Like other jurisdictions, Rwandan law properly acknowledges a wider sense of fair trial, which determines fairness in the light of the proceeding process, investigation and interrogation.[91]

Procedural fairness, in the above view, entails the entire range of the relations between suspect and state.[92] A guilt defendant who has been tricked into providing evidence which incriminate him or her, or who is prosecuted in breach of a promise of indemnity, may plausibly claim that he or she has not been fairly tried; and his or her complaint cannot be dismissed without analysis of the requirements of justice or fairness in all the circumstances of the case.[93]

The right to fair trial was also designed for use in the determination of the suspect's civil rights and obligations or for any criminal charge against him or her.[94]

As Nuala Mole and Catharina Harby[95] explain, fair trial guarantees often apply long before an individual has been formally charged with a criminal offence, or, in civil cases and that norm may apply to the administrative stages that precede the initiation of

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[88] Neeraj T "Fair trial vis-à-vis criminal justice administration: A critical study of Indian criminal justice system" vol. 2(4) *Journal of Law and Conflict Resolution* (2010), p. 66.
[89] Swati, *supra* note 70. See also Anon "The right to a Fair Trial" https://www.fairtrials.org/right-fair-trial [21/7/2020].
[90] Neeraj, *supra* note 88.
[91] Art 46, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[92] Allan, *supra* note 58, p. 29.
[93] Allan, *supra* note 58, p. 29.
[94] Nuala M and Catharina H, *The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights*, 2nd Ed (Council of Europe, 2006), p. 4.
[95] Nuala and Catharina, *supra* note 94.

judicial proceedings.[96] The fair trial guarantees do not stop at the delivery of a judgment but apply also to the execution phase in the post-trial. Many of the guarantees enfolded within the principle of fair trial, in particular the concept of fairness, apply to both criminal and civil proceedings.[97]

The shield of procedural protection entailed and afforded throughout fair trial guarantees comes into play as soon as a “criminal charge” is brought against an individual suspect; and it remains in place until the charge is “determined” – until the sentence has been fixed or an appeal decided.[98]

The concept of fair trial is based on the basic principles of natural justice. Though the form and practice of the principles of natural justice may vary from system to system on the basis of prevailing conditions of the society concerned.[99] The formal account of the concept of fair trial has been accepted as human rights jurisprudence in different international and regional human rights instruments such as the Universal Declaration of Human Rights,[100] International Covenant on Civil and Political Rights,[101] African Charter on Human and Peoples' Rights,[102] all to which Rwanda is party; the European Convention on Human Rights and Fundamental Freedoms[103] and American Convention on Human Rights.[104]

2.3.1. Is fair trial for the innocent or for the guilty?

Though the criminal justice utilizes fair trial as a tool intended to grant criminal suspects with a number of rights so to minimize the chance of an incorrect conviction, no indication within the traditional view, shows that the criminal suspect deserves a "sporting chance" at discharge when they are not actually innocent. This understanding

[96] Nuala and Catharina, *supra* note 94.
[97] Nuala and Catharina, *supra* note 94.
[98] Paul M “Right to a Fair Trial in Criminal Matters under Article 6 E.C.H.R.”, 4.2 *Judicial Studies Institute Journal* (2004), p. 109.
[99] Neeraj, *supra* note 88.
[100] Art 10 and 11, *Universal Declaration of Human Rights* (1948).
[101] Art 14, *International Covenant on Civil and Political Rights*, *supra* note 23.
[102] Art 7, *African Charter on Human and Peoples' Rights* (1981).
[103] Art 6, *European Convention on Human Rights and Fundamental Freedoms* (1950).
[104] Art 8, *American Convention on Human Rights* (1969).

can be an effect from a legal structure designed to avoid misuse of government authority.[105]

Criminal courts condemn the perpetrator while they do their best so that no innocent suspect is convicted. Simultaneously it is recognized that “a fair trial is not always a perfect trial”.[106] Criminal justice structure relatively recognizes the idea that a number of people who pretend to be guilty won’t be convicted. That depends on evidentiary elements submitted by confronting parties in the process and how the court assessed and balanced them in addition to their probative value. That very idea of guilt “beyond a reasonable doubt” is contemplated and gloried in this principle.[107]

In lieu of punishing one innocent suspect, it is better that ten guilty escape, and instead of condemning one innocent person, one or two real criminals ought to go free.[108]

Undoubtedly the right to fair trial results in fair trials which are the only way to prevent miscarriages of justice and are an essential part of a just society.[109] Every person accused of a crime should have their culpability or innocence determined by a fair and effective legal process even in contempt cases. But it’s not just about protecting suspects and defendants.[110] It also makes societies safer and stronger. Without fair trials, victims could have no confidence that justice will be done in their case. Without fair trials, trust in government and the rule of law collapses.[111]

Acting on behalf of the government, the judge is permitted a discretion to exclude even relevant and admissible evidence where its effect might be more prejudicial than probative – where the court might misunderstand its significance, or give it more weight than the judge thinks it deserves. However, it is clear that the principle of fairness is not confined to matters of guilt or innocence.[112]

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[105] Danny, *supra* note 85, p. 4.
[106] Danny, *supra* note 85, p. 4.
[107] Danny, *supra* note 85, p. 4.
[108] Danny, *supra* note 85, p. 5.
[109] Anon, *supra* note 89.
[110] Anon, *supra* note 89.
[111] Anon, *supra* note 89.
[112] Allan, *supra* note 58.

Fair trial is not based wholly on instrumental considerations, seeking only to enhance the accuracy of the trial in order to ensure that only the guilt is convicted, it also seeks for the innocent acquitted, for the reason that, even in some instances the exclusionary discretion extends to cogent or strong evidence of guilt whose only convict consists in the unfairness of the manner in which it was obtained.[113]

We hereby talk about the competing interests in criminal justice in regard with the action and trial of offences of contempt of court and fair trial guarantees.

2.4. Crime control, due process and judicial integrity as competing interests in criminal justice

Some competing interests in criminal justice have nigh nexus with fair trial as a guarantee reserved for the defendant in criminal proceedings. Additionally, the offenses of contempt of court and their special adjudication processes become controversial if regarded before the eyes of some competing interests in criminal justice.

Pertinent competing interests or models in criminal justice to define and give overview about, in respect of fair trial and contempt of court are the crime control model; the due process model; and the judicial integrity model.

2.4.1. The crime control model vis-à-vis contempt of court and fair trial

The crime control model; based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process;[114] refers to a theory of criminal justice which places emphasis on reducing the crime in society through increased police and prosecutorial powers.[115]

Nonetheless, on the query whether or not the offenses of contempt of court victimize the whole society the crime control model seeks to protect; arguably one may give a

[113] Allan, *supra* note 58.
[114] Packer HL "Two Models of the Criminal Process" 113 *University of Pennsylvania Law Review* (1964), p. 2.
[115] US Legal "Crime Control Model Law and Legal Definition" https://definitions.uslegal.com/c/crime-control-model/ [24/7/2020]. See also Roger JRL, *The Psychology and Law of Criminal Justice Processes* (Nova Science Publishers, Inc., 2006), pp. 3-5.

negative position. It is rather against justice administration only, unless the latter is the symbol and confused with the society as a whole.

Does the prescribed procedure of action and trial of offenses of contempt of court in Rwanda intend to pursue the aim and purpose of the crime control model? In fact, since the procedural process in criminal contempt differs from other crimes' normal procedures and formalities, then it ends is critical. If such procedures contravene fair trial guarantees, in other words if the defendant was denied some or all of his/her rights recognized in international and national human rights statute, therefore the trial procedures of criminal contempt seem to victimize the defendant in lieu of protecting him or her from the powers of the government responsible to uphold and respect fundamental rights of the criminal suspect.

What is more, some critiques affirm that crime control as a model and competing interest in criminal justice prioritizes the power of the government to protect society, while it puts less emphasis on individual liberties[116] including denial of basic rights of suspects of criminal contempt. For that reason, the reality is that if the government emphasizes on individuals' liberties less therefore it doesn't protect the society – no place of crime control.

In his article, Kent Roach[117] asserted that criminal sanction [which is vitiated when imposed against the offenses of contempt of court] is assumed to be 'a positive guarantor of social freedom' and necessary for the maintenance of 'public order'.[118] It is employed for the liberal purpose of protecting people and their property from harm and for the conservative purpose of promoting order and social stability.[119]

But then again, in view of the above assertion from Kent Roach; can a criminal sanction play a role of guarantying social freedom and public order whereas, specifically, the criminal sanction of contempt of court has been rendered or imposed within a criticized and vitiated procedural processes that did not follow and respect the suspect's fair trial

[116] US Legal, *supra* note 115.
[117] Kent R, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (University of Toronto Press, 1999), p.13.
[118] Kent, *supra* note 117.
[119] Kent, *supra* note 117.

guarantees? The answer must in any way be negative. So, no crime control is achievable if social freedom and public order cannot be enjoyable due to lack of fair trial guarantees in criminal processes.

Shanell Sanchez's[120] viewpoint is that any risk of violating individual liberties would be considered secondary over the need to protect and ensure the safety of the community in the crime control model. Additionally, the criminal justice system should be responsible for ensuring victim's rights.[121]

2.4.2. The due process model vis-à-vis contempt of court and fair trial

The due process model focuses on having a just and fair criminal justice system for all and a system that does not infringe upon constitutional rights.[122] Further, that model would argue that the system should be more like an 'obstacle course,' rather than an 'assembly line'.[123] That reflects that the protection of individual rights and freedoms is of utmost importance and has often been aligned more with a liberal perspective.[124]

Accordingly, due to the fact that the defendant's rights to fair trial in criminal contempt are constitutional rights, and due to the reason that the action and trial thereof infringe or does not respect some contemnor's rights, consequently; according to Shanell Sanchez,[125] *ipso facto* such trial procedures do not respect the due process.

Furthermore, human rights encompass a set of due process and fair trial guarantees that offer a baseline against which to measure criminal proceedings.[126]

Universally recognized elements of fair trial are confounded with due process of criminal law such as the right to an independent and impartial tribunal; the right to a public trial; the right to an expeditious trial; the right to the presumption of innocence and freedom from self-incrimination; the right to challenge the evidence of the prosecution and to

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[120] Shanell S "The Crime Control and Due Process Models" https://openoregon.pressbooks.pub/ccj230/chapter/1-8-due-process-and-crime-control-model/ [25/07/2020].
[121] Shanell, *supra* note 120.
[122] Shanell, *supra* note 120. See also art 29, The Constitution of the Republic of Rwanda, *infra* note 195.
[123] Shanell, *supra* note 120.
[124] Shanell, *supra* note 120. See also Roger, *supra* note 115, pp. 6-8.
[125] Shanell, *supra* note 120.
[126] Jonathan H, *Punishing Atrocities through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism* (Cambridge University Press, 2018), p. 110.

present evidence in one's defense; the right to be informed the case against the suspect; the right to appeal; and the right to be able to effectively present one's arguments, [127] the latter being a "denied right" under Rwandan criminal process according to what is provided for by the provisions of article 81 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure.

Likewise, the due process model was calculated to make sure individuals had their rights portrayed and that they had a fair trial to defend themselves in court[128] even on counts of offenses of contempt of court. That is one of key coherences between the due process model and the right to fair trial.

The above proposition is genuine simply because there has to be observance of fair trial rights from the beginning of investigation against the suspect while waiting for the criminal arraignment, as well as any further appeal have been filed and pronounced.[129] However, under Rwandan procedural law, with the particularity in adjudication procedure of the case of the offenses of contempt of court; it is obvious that not all fair trial guarantees of the defendant are observed.

For instance, since the adjudicator, i.e. the court or the judge assumes all the roles of the judicial police, that of the prosecution and the one of the court and even the witness;[130] the contemnor is not presumed innocent until proved guilty by a competent court as provided for by the Art 29 of the Constitution of the Republic Of Rwanda of 2003 revised in 2015, he or she will be tried by the judge who will tend to be partial simply because the adjudicator will be ruling and basing the committal order on the facts of the case on the basis of his/her personal knowledge thereof; and ridiculously if the offence committed in the court hearing is a felony – punishable by a sentence of imprisonment for more than five years; then the security personnel at the court undertakes the responsibilities of the judicial police of arresting the criminal suspect[131]

[127] McDermott, *supra* note 61, p. 32.
[128] UK Essays "Crime and Control Models of Criminal Justice Criminology Essay" https://www.ukessays.com/essays/criminology/crime-and-control-models-of-criminal-justice-criminology-essay.php [25/7/2020].
[129] Lawyers Committee for Human Rights, *supra* note 22, pp. 4-22.
[130] Art 95, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[131] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18

and we can imagine the validity of such arrest.[132] More will be discussed in the next chapter.

The difference between pre-trial processes, the hearing or trial and post-trial phase is often distorted in fact, whereas the breach of some rights through one phase has adverse consequences on other redressal instance to correct prejudicial grievance.[133]

2.4.3. The judicial integrity model vis-à-vis contempt of court and fair trial

The United Nations Office on Drugs and Crime[134] says that integrity, independence and impartiality are main fundamentals for forming an effective and functional judiciary and judicial system for the peaceful resolution of legal disputes.[135]

Rwanda judicial system may be independent and cope with integrity model both institutional and individual. But its impartiality can be much more criticized when it comes to the action and trial of offenses of contempt of court. It is more probable that impartiality could be compromised than not if either the court may immediately sentence the perpetrator even if in practice the court "has no jurisdiction" to hear such an offence of contempt in the first instance; or if no other procedural formalities take place and if the parties are not allowed to take the floor with regard to the offence committed.[136]

The action and trial of criminal contempt under Rwandan law must be in breach of human rights most especially the rights of the defendant in that; he or she is denied of the right to defend oneself in person or through legal counsel;[137] denied of the right to fair hearing and the right to a competent, independent and impartial tribunal established

[132] Actually, as per Art 10 (1º), Law nº 12/2017 of 07/04/2017 establishing the Rwanda Investigation Bureau and determining its mission, powers, organization and functioning (*OG nº special of 20/04/2017*); arrest is carried out by Rwanda Investigation Bureau. However, art 15, Law n° 09/2017 of 20/03/2017 modifying and complementing law n° 46/2010 of 14/12/2010 determining the powers, responsibilities, organization and functioning of the Rwanda National Police (*OG nº Special of 20/04/2017*); provides that "the Rwanda National Police arrests any person who breaches security or demonstrates suspicious behaviors and hands over the person to the judicial police".
[133] Lawyers Committee for Human Rights, *supra* note 22.
[134] United Nations Office on Drugs and Crime "Judicial Integrity" https://www.unodc.org/unodc/en/corruption/judicial-integrity.html [27/7/2020].
[135] United Nations Office on Drugs and Crime, *supra* note 134.
[136] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[137] Art 14 (d), *International Covenant on Civil and Political Rights*, *supra* note 23.

by law as provided for by the ICCPR .[138] More about the nature of these basic fair trial rights will be analyzed in the next chapter.

Moreover, the concept of judicial integrity may be described as the role of the judiciary in leading by example.[139] A court may not sanction or participate in illegal or unfair acts. A court can invalidate or rectify certain sorts of offensive official action on the grounds of judicial integrity.[140] In this way, judges act as a beacon or a symbol to society for ensuring lawful acts by the organs of government. Then, a court is wise to be acquainted of how its actions will affect the public perception of the judicial system.[141]

Arguably, that public perception can be questionable by the public especially in criminal contempt adjudication processes because of vivid procedural and substantial irregularities such as unlawful arrest yet nobody could be arbitrarily arrested or detained.[142] I call them irregularities due to non-observation of relevant procedures up to issuance of committal order and if comparison is made with the trial processes other crimes go through from the commission of the crime up to the court decision.

The judicial system's cornerstone of the judicial integrity aims at a couple of goals: First, on a public relations level, the court wishes to be seen as an icon of justice and righteousness. Secondly, it has the closely related concern of not appearing to be associated with bad acts,[143] nonetheless it is suspicious if Rwandan courts dealing with the plea of criminal contempt will be regarded as an icon of justice and righteousness.

Ultimately; a judicial system which operates disregarding the professional ethics and practical standards can't build and retain public trust in the fairness and objectivity of its decisions and outcomes devoid of bias or prejudice detrimental to criminal defendants; yet in their function, the judges must be impartial[144] and independent[145] and these fair trial guarantees for the accused are absolute rights that might suffer no exception.[146]

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[138] Art 14 (1), *International Covenant on Civil and Political Rights*, *supra* note 23.
[139] Robert MB "Judicial Integrity: A Call for Its Re-Emergence in the Adjudication of Criminal Cases" 84 *J. Crim. L. & Criminology 462* (1993), p. 464.
[140] Robert, *supra* note 139.
[141] Robert, *supra* note 139.
[142] Art 9 (1), *International Covenant on Civil and Political Rights*, *supra* note 23.
[143] Robert, *supra* note 139.
[144] *Peru vs. Miguel González del Río*, U.N. Doc. CCPR/C/46/D, Communication nº. 263/1987, para

2.5. Conclusion

The purpose of this chapter was to lay a foundation for the substantive chapter that will follow. To do so, the chapter provided a general overview of the concepts of contempt of court, that of fair trial in criminal proceedings; and the notions of crime control, due process and judicial integrity as competing values in criminal justice.

5.2. Accessed at http://hrlibrary.umn.edu/undocs/html/dec263.htm [27/7/2020]. See also Value 2, *The Bangalore Principles of Judicial Conduct* (2002). See also *State of Ohio v*. *Tumey*, Case nº 273 U.S. 510, 532 (1927) (7/3/1927), p. 515. Accessed at https://tile.loc.gov/storage-services/service/ll/usrep/usrep273/usrep273510/usrep273510.pdf [27/7/2020].

[145] Value 1, *The Bangalore Principles of Judicial Conduct*, *supra* note 144.

[146] International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners' Guide nº 1*, 2nd Ed (ICJ, 2007), p. 15. See also Value 1, *The Bangalore Principles of Judicial Conduct*, *supra* note 144.

CHAPTER 3

ANALYSIS OF THE ACTION AND TRIAL OF OFFENCES OF CONTEMPT OF COURT VIS-À-VIS FAIR TRIAL GUARANTEES

3.1. Introduction

The rule of law presupposes that it's vital that the courts could do their work efficiently, and that there avail needful resources to warrant that. The rule of contempt of court has been then legislated so that the administration of justice works out of undue impedimental interference.[147]

The word "contempt" is a very old word to cover any act done in violation of a direct order of the king or of any governmental process.[148] Though the contempt of the court was contempt of the lord of the court; it was not to the king alone that contempt was punishable since we can trace the contempt against the king's officers, against the bishop by disturbance in church; and the contempt of Parliament was also punishable.[149]

The contempt of court; which is the area of law dealing with behavior detrimental to court proceedings and which takes different forms, ranging from disrupting court hearings to disobeying court orders to publishing prejudicial information which might make the trial unfair;[150] is classified into (*a*) interference with proceedings entailing (*i*) improper behavior in court; (*ii*) pressure on parties and others (by means other than

[147] Law Reform Commission "Contempt of Court and other Offences and Torts Involving the Administration of Justice" (2016), p. 11. Accessed at https://www.lawreform.ie/_fileupload/Contempt%20of%20Court%20and%20Other%20Offences%20and%20Torts%20Involving%20the%20Administration%20of%20Justice%20Final.pdf [5/8/2020].

[148] Joseph HB, Jr. "Contempt of Court, Criminal and Civil" vol. 21, No. 3 *Harvard Law Review* (1908), p. 162.

[149] Joseph, *supra* note 148, pp. 162-163.

[150] Law Commission "Contempt of Court, Consultation Paper No 209, Summary for non-specialists" (2012), p. 2. Accessed at http://www.lawcom.gov.uk/app/uploads/2015/03/cp209_contempt_of_court_summary.pdf [5/8/2020]. See also Theresa UA "Criminal Proceedings, the Public and the Media in Nigeria: Influence on Court's Decision?" vol. 5 *KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques* (2018), pp. 128-139.

publication); (*iii*) reprisals; and/or (iv) obstruction.[151] And (*b*) publications which entails (*i*) influence on juries; (*ii*) pressure on judges and parties; (*iii*) breach of jury secrecy; (*iv*) prejudgment or embarrassment; and/or (*v*) scandalizing the court and disobedience to court orders.[152]

Some institutions that cope with law argue that it's almost the common law that governs the rule of contempt.[153] That bestows the judges and courts with more power once applying their contempt rule.[154] On the other side, the undefined extents or bounds regarding the rule of contempt of court are viewed as serving an important objective since it permits the flexibility, and implies that law courts are not excessively restricted in what action they could take in sustaining their supremacy.[155]

In contrast, apart from a critical justification and its procedures; the absence of guiding principles underlying contempt of court can be criticized (as going to be done) for the vagueness and uncertainty that its procedures present[156] most particularly before Rwandan courts.

As I said in previous chapters, there are two types of contempt and each one's purpose differs from another's. While the aim of civil contempt, which is coercive in nature, is compelling the individual to obey the court ruling as declared in the committal order during such period declared in therein; the purpose of criminal contempt is punishing the contemnor.[157] Hence, jurisdictions like Ireland should delimit the punishment of imprisonment for civil contempt instead of making it indefinite period.[158]

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[151] Law Commission "Contempt of Court, Consultation Paper No 209, Appendix C: Contempt in Overseas Jurisdictions" (2012), pp. 3-4. Accessed at https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/cp209_contempt_of_court_appendix-c.pdf [5/8/2020].
[152] Law Commission, *supra* note 150. See also Law Commission, *Law Commission: Contempt of Court (1): Juror Misconduct and Internet Publications*, (The Stationery Office Limited, 2013), p. 8.
[153] Law Reform Commission, *supra* note 147, p. 12.
[154] Law Reform Commission, *supra* note 147, p. 12.
[155] Law Reform Commission, *supra* note 147, p. 12.
[156] Law Reform Commission, *supra* note 147, p. 12.
[157] Law Reform Commission, *supra* note 147, p. 16. See also Livingston M "Disobedience and Contempt" vol. 75:345 *Washington Law Review* (2000), p. 347.
[158] Law Reform Commission, *supra* note 147, p. 16.

Nicolas Kyriakides[159] explains that a distinction has been widely accepted, matching a remedial purpose to civil contempt and a punitive purpose to criminal contempt. Therefore, while civil contempt is forward-looking in the sense that it anticipates future disobedience by the defendant and imposes a sanction until the defendant complies, criminal contempt is backward-looking; the contemnor has already interfered with the court proceedings, and is now being punished for his or her disrespect of the court's authority.[160] However, it is suggested that a civil contempt conviction, though remedial, protects the administration of justice, whereas, a criminal contempt conviction, though punitive, provides the complainant with a degree of satisfaction.[161]

In view of the other jurisdictions practice, it is difficult to distinguish criminal contempt from civil contempt in Rwandan legislations. Whereas in other jurisdictions the offenses of contempt of court are either punitive or coercive which make them criminal or civil subject to their nature; the offenses of contempt of court in Rwanda, according to the Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure and according to the Law nº 027/2019 of 19/09/2019 relating to the criminal procedure, are only punitive.

The available literature shows that the offenses of contempt of court are dealt with summarily as opposed to regularly in many jurisdictions.[162] The institution of summary proceedings is principally legislative; and for the common law is a stranger to it, unless in the cases of contempt of court.[163] Besides that, there has levelled criticisms against contempt of court directed at the resort to summary procedure, which more individuals consider arbitrary since it outlaws the common criminal justice standards since its impression doesn't pay much regard to the rights of suspects of offenses of contempt of court.[164]

[159] Nicolas, *supra* note 41, p. 258. See also John Palmer RB "Collateral Bar and Contempt: Challenging a Court Order after Disobeying It" vol. 88:215 *Cornell Law Review* (2002), pp. 235-236.
[160] Nicolas, *supra* note 41, p. 258. See also John Palmer, *supra* note 159, p. 236.
[161] Nicolas, *supra* note 41, p. 258. See also John Palmer, *supra* note 159, p. 236.
[162] Walter N "The Summary Power to Punish for Contempt" 31 *Columbia Law Review* (1931), p. 957.
[163] Walter, *supra* note 162, p. 957.
[164] Law Reform Commission of Canada, *infra* note 272, pp. 15-16.

Walter Nelles[165] pointed out that it is true both logically and historically that criminal contempt is a crime of the same general nature and punishable with the same objects as other crimes.[166] As such a crime it is, both logically and historically, it should be prosecutable by ordinary criminal procedure.[167]

Rwandan practical case must be the same – summarily as opposed to regularly, due to the fact that the traceable procedures to follow if and in the course of other proceedings as enshrined within Rwandan legislations posit that:

> […] the court may immediately sentence the perpetrator […]; […] the judge adjourns the hearing […]; […] the judge immediately writes a judgement basing on the facts and violated legal provisions, then gets the person having been expelled back to courtroom and reads to him/her the judgement rendered against him/ her in all its provisions, and re-opens the hearing, […].[168]

Although the disposition relating to the procedures through which the offenses of contempt of court are tried, it is clear and vivid that such method is of the summary procedures in nature because the proceeding is conducted without observing all the formalities (such as pleadings) for the speedy disposition of a matter.[169]

And in addition, according to John A. Bauman's[170] point of view, the summary procedures connote those techniques that do not vary appreciably from the ordinary procedure, but expedite litigation by eliminating all formalities and shorten the time limitations for taking various procedural steps[171] to come up with the court decision.

Nevertheless, under Rwandan procedural rules; the technique of summary procedures is used when there is a principal action from which stems an early interim ruling on a

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[165] Walter, *supra* note 162, p. 957.
[166] Terance DM and Hong L, *Punishment: A Comparative Historical Perspective* (Cambridge University Press, 2005), p. 4. See also Mike CM "Criminal Punishment and the Pursuit of Justice" 2 *Br. J. Am. Leg. Studies* (2013).
[167] Walter, *supra* note 162, p. 957.
[168] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[169] Anon "summary proceeding" https://www.merriam-webster.com/dictionary/summary%20proceeding [8/7/2020].
[170] John AB "The Evolution of the Summary Judgment Procedure: An Essay Commemorating the Centennial Anniversary of Keating" vol. 31 *Indiana Law Journal* (1956), p. 345.
[171] John, *supra* note 170.

matter which requires urgent resolution; and an application for summary procedure is instituted through the same procedure as ordinary proceedings.[172]

At that juncture and as far as the offenses of contempt of court and their trial are concerned, they are standalone offenses independent from any principal action with regard to their nature; yet their adjudication procedure is the same as that of the action requiring interim ruling through summary procedures.

In view of that, the trial and procedures followed in adjudication processes of the offenses of contempt of court infringe the Rwandan procedural law for the reason that their trial use the summary procedures whereas no interim judgment is being sought, no need for urgent measures, no principal action from which derives the contempt of court case implying that the latter is or should be indicted as a self-reliant criminal offense.

Moreover, from the abovementioned travesty; the contemnor is more likely to become the victim of the demonstrated treacherous and shortcoming procedures which put fair trial guarantees at peril while they are meant to protect the defendant's rights.

Like in other jurisdictions, in Rwanda as well the fair trial standard doesn't guarantee that the result of trial means the material truth of what really occurred but rather, it endeavors to keep the procedural fairness itself. Even though that might lead to the finding out of material truth, it may not be the case at all times.[173]

The core meaning of the concept of fair trial is broader – it is not easy to gasp it. Nevertheless, practically, the norm of fair trial enfolds some particular objectives, such as addressing compliance with rules of important procedure in criminal process, and requiring and ensuring that antagonist parties be regarded as "subjects rather than objects".[174]

The above reflect that fair trial guarantees bestow the parties with the ability to influence the outcome of the proceedings while effectively exercising their individual rights. The

[172] Art 185, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[173] Laura M "The Potential to Secure a Fair Trial Through Evidence Exclusion: A Swiss Perspective" in Sabine G and Thomas R (eds), *Do Exclusionary Rules Ensure a Fair Trial?: A Comparative Perspective on Evidentiary Rules*, vol. 74 (Springer, 2019), p. 20.
[174] Laura, *supra* note 173.

principle of fair trial encompasses more than just a summation of rights but it can be concretely perceived through parties' distinct procedural rights.[175]

3.2. Constitutional rights infringed by offences of contempt of court vis-à-vis the limitation clause

The trial of the offenses of contempt of court and its procedures infringes the right to fair trial and due process of criminal law. If we analyze the provisions of article 81 of the Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure; it is apparent that, except the right to appeal, other fair trial rights have been infringed, despite the African (Banjul) Charter on Human and Peoples' Rights to which Rwanda is party, which provides that no one may be deprived of his or her freedom except for reasons and conditions previously laid down by law.[176]

By definition, human rights limitation is a variety of techniques to limit the scope of the rights and freedoms or to permit restrictions on rights and freedoms in specified circumstances.[177]

Human rights limitation is also the situation whereby a law legitimately limits a right in the Bill of Rights if it is a law of general application that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.[178] The limitation on the exercise of rights prohibits any person from abusing his/her or others' rights.[179]

In Rwanda, the Constitution of the Republic of Rwanda of 2003 Revised in 2015 stipulates that:

> In exercising rights and freedoms, everyone is subject only to limitations provided for by the law aimed at ensuring recognition and respect of other people's rights

[175] Laura, *supra* note 173.
[176] Art 5, African Charter on Human and Peoples' Rights, *supra* note 102.
[177] Berend H "The Limitation Clauses of the European Convention on Human Rights: A Guide for the Application of Section 1 of the Charter?" vol. 17:213 *Ottawa Law Review* (1985), p. 223.
[178] Johan DW, *The Bill of Rights Handbook* (Jouta & CO LTD, 2001), p.147.
[179] Erica-IAD, *The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights: A Contribution to the Freedom of the Individual under Law* (United Nations Publication, 1983), p. 70.

and freedoms, as well as public morals, public order and social welfare which generally characterize a democratic society.[180]

3.2.1. Law of general application

Law of general application reflects a law that is unrestricted as to time, applicable throughout the entire territory subject to the power of the legislature that enacted it, and applied to all persons in the same jurisdiction. Law of general application must be the reason why the Committee on the Rights of the Child ruled that "Spain must revise the tenth additional provision of Organic Act No. 4/2015 adopted on 1 April 2015 on safeguarding the security of citizens, on the special regime applicable in Ceuta and Melilla borders, which permitted Spain to practice indiscriminate automatic deportations at the border".[181]

For instance, under South African Constitution; only a law of general application can legally limit a right in the Bill of Rights. It's a minimum requirement for the limitation of a right. A limitation must be authorized by a law. The law of general application requirement is the expression of a basic principle of liberal political philosophy and of constitutional law known as the rule of law.[182] There are two components of this principle:

The first is that the power of the government must derive from the law. The government must have lawful authority for all its actions; otherwise, it won't be a lawful government but will be despotism or tyranny.[183] The Constitutional Court of South Africa decided that all administrative action that is not legislative in character cannot qualify as law of general application.[184] The component of the rule of law relates to the quality of the law which authorizes a particular action and the law must be general in its application. At the level of form, this reflects that the law must be sufficiently clear,

[180] Art 41, The Constitution of the Republic of Rwanda of 2003 Revised in 2015, *infra* note 195. See also Berend, *supra* note 177, pp. 224-260.
[181] Anon "General Law" https://www.merriam-webster.com/legal/general%20law [7/10/2020]. See also *DD v Spain*, UNCRC, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, communication No. 4/2016, Application no CRC/C/80/D/4/2016 (15/05/2019), para 15, p. 13.
[182] Johan, *supra* note 178.
[183] Johan, *supra* note 178.
[184] Johan, *supra* note 178, p. 154.

accessible and precise that those who are affected by it can ascertain the extent of their rights and obligations.[185]

3.2.2. Law that is reasonable and justifiable

When is the choice to limit a right indeed legitimate? Or when, in the words used in the South African Constitution, 'reasonable and justifiable', to limit a right is legitimate? Several jurisdictions have answered this question by stipulating a proportionality test, also clearly articulated by the provision in the South African Constitution cited above.

To qualify the law as restricting a right; it requires the courts or any other competent authority to take into account:
(a) The nature of the right;
(b) The importance of the purpose of the limitation;
(c) The nature and extent of the limitation;
(d) The relation between the limitation and its purpose; and
(e) Less restrictive means to achieve the purpose.[186]

For instance in *S v T Makwanyane* 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at paragraph 104, the constitutional court of South Africa held that section 33 required a proportionality assessment: In the balancing process, the relevant considerations will include the nature of the right that is limited, and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such society; the extent of the limitation, its efficacy, and particularly where the limitation has to be necessary, whether the desired ends could reasonably be achieved through other means less damaging to the right in question. (See also *S v Williams* 1995 (3) SA 632 (CC); 1995 (7) BCLR 861 (CC) at paragraphs 58 - 60).[187]

An infringement of a right is not unconstitutional if it justifiable under the criteria set out in § 36(1). The onus rests on the applicant to show that an infringement of a right has

[185] Johan, *supra* note 178, p. 148.
[186] Dubois F, *Rights trumped? Balancing in constitutional adjudication* (University of Cape Town, 1986), pp. 156,157.
[187] *The State v Bhulwana*; *State v Gwadiso*, 1996 1 SA 388 (CC) [CASE NO: CCT12/95 and CASE NO: CCT 11/95], para 17. Accessed at http://www.saflii.org/za/cases/ZACC/1995/11.pdf [10/10/2020].

taken place.[188] The respondent may then justify the infringement as a proper limitation of rights under § 36. Appropriate evidence must be led to justify a limitation of a right.[189] At the first stage of the inquiry the scope of the right ought not to be qualified in order to accommodate the exercise of another right.[190]

From the above indicated constitutional provision limiting individual freedoms and rights to fair trial; my take is that it would be irrational to apply it to the right to due process of law as provided for by article 29 of the same constitution.

So, the fact that the trial of offenses of contempt of court in Rwanda does not respect the constitutional rights of the contemnor to due process of law according and if consideration is given to the procedures enshrined in article 81 of the Law nº 22/2018 of 29/04/2018, article 95 and 137 of the Law nº 027/2019 of 19/09/2019 over cited; the Rwandan lawmaker or competent court should balance and review that trial procedures in respect of the nature of the right of the contemnor; the importance of the purpose of that limitation of the rights in offenses of criminal contempt; the nature and extent of such limitation; the relation between such limitation and its purpose; and assess if that is the less restrictive means to achieve the purpose the lawmaker intended to pursue.

It should as well require the lawmaker or competent court to take into consideration and determine whether the restricted rights in trial of offenses of contempt of court aim at respecting other people's rights, public morals, public order and social welfare which characterize a democratic society otherwise that trial procedure in criminal contempt is not the law of general application, and it is not reasonable and justifiable.

In addition, if the purpose of restricting fair trial rights in criminal contempt proceedings in Rwanda is to preserve (self-preserving) of the administration of justice that very restriction or limitation is not the least restrictive means to achieve the purpose.

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[188] *The State v T Makwanyane and M Mchunu*, (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6/06/1995), para 102. Accessed at http://www.saflii.org/za/cases/ZACC/1995/3.pdf [8/10/2020].

[189] Woolman S "Limitations on the Bill of Rights under the South African Constitution: From Constitutional Law of South Africa" https://www.researchgate.net/publication/313423411_Limitations_on_the_Bill_of_Rights_under_the_South_African_Constitution_From_Constitutional_Law_of_South_Africa [9/10/2020].

[190] Robinson JA "Provisional Thoughts on Limitations to the Right to Procreate" vol. 18 nº 2 *PER / PELJ 2015(18)2* (2015), p. 343.

3.3. The nature of rights of the offender of the offences of contempt of court before Rwandan courts

The offender or the criminal defendant reflects the subject to whom the criminal procedure is conducted, who has a threefold meaning and is used for the defendant, the accused and the convict. The offender is a person against whom criminal proceedings are conducted[191] and like any other criminal suspect; the contemnor has right to fair trial guarantees and due process as accorded to him or her by international human rights law[192] and Rwandan law.[193]

That subject has been granted the rights during and along the case against them. Customarily in Rwanda, the offender and the civil party appear before court in person or represented.[194] In addition, the offender, the suspect or the accused has the right to legal counsel[195] and of course to have private communication with him or her.[196]

Nonetheless, even though there are such prescribed rights for and to protect the offender, it is clear that in case of criminal contempt it's too challenging for the suspect to exercise those rights simply because the defendant can never enjoy the right to legal counsel while he or she was denied of the right to defend themselves in that he or she is not allowed to take the floor with regard to the offence committed.[197]

Likewise, and in terms of the offender's rights as applied even to other offenses; the offender or the suspect of criminal contempt has the right to have adequate time and facilities for the preparation of the defense and to communicate freely with counsel of his or her choice in confidence;[198] but Rwandan trial procedure in criminal contempt doesn't allow it. That is proven by the fact that the court has the power to immediately

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[191] Adelina R "The Protection of the Rights of the Defendant by the Constitutional Court-the Kosovo Case" vol. 9 *Perspectives of Law and Public Administration* (2020), p. 5.
[192] Art 14, *International Covenant on Civil and Political Rights*, *supra* note 23.
[193] Art 29, The Constitution of the Republic of Rwanda, *infra* note 195.
[194] Art 124, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[195] Art 29 (1°), The Constitution of the Republic of Rwanda of 2003 Revised in 2015 (*OG n° Special of 24/12/2015*).
[196] Art 46, Law nº 027/2019 of 19/09/2019, *supra* note 21. See also Art 68, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[197] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[198] Art 68, Law nº 027/2019 of 19/09/2019, *supra* note 21. See also McDermott Y and Schabas W "Article 67: Rights of the Accused" *Reemers Publishing Services GmbH* (2015), p. 1650.

sentence the perpetrator who committed a criminal contempt in category of petty offenses or misdemeanor.[199]

It is universally known without exception that within the country that abides by the rule of law; like any other criminal suspect, the contemnor is entitled to the right to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.[200]

Conversely, under Rwandan criminal process in course of settling criminal contempt issues; a judge was granted the complete discretion to act as complainant, prosecutor and witness simultaneously (the topic for the next section). Therefore, apart from the absence and examination of witnesses exculpating the contemnor; the concentration of full authority within the hands of the 'so-called judge' has the proclivity or breaches the rule against bias in criminal proceedings; the principle of presumption of innocence;[201] the right to confront a witness since the witness is at the same time the judge; and violates the principle that criminal offences should be defined with precision.[202]

Then; in the light of the above view, it is common that the significant condition when weighing how [much] fair a trial is, the respect of the norm of equality of arms of the parties is a cornerstone – the defendant (in present context I refer to the contemnor in the criminal contempt trial) and the prosecutor.[203] And such principle is enshrined in the Rwandan criminal procedure code as well[204] though its realization is at stake and critical in the course and terms of the offenses of contempt of court.

The credibility of the outcome from the trial of criminal contempt is questionable due to the ostensible imbalance or inequality of arms – the judge who acts as complainant, prosecutor and witness is not at the same position with the contemnor who; given that

[199] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[200] McDermott and Schabas, *supra* note 198, p. 1650. See also art 14(3(e)), *International Covenant on Civil and Political Rights*, *supra* note 23.
[201] Art 29 (2°), The Constitution of the Republic of Rwanda, *supra* note 195.
[202] Rolston FN "Judicial Continuing Education Workshop: Recusal, Contempt of Court & Judicial Ethics" (2012), p. 2. Accessed at https://ccj.org/wp-content/uploads/2013/05/CONTEMPT-OF-COURT-Presentation.pdf [9/8/2020].
[203] Lawyers Committee for Human Rights, *supra* note 22, p. 12.
[204] Art 126 (4°), Law nº 027/2019 of 19/09/2019, *supra* note 21.

he or she is not assisted by legal counsel, he or she is a weaker party and repudiated of other rights of the defendant and due process of law.[205]

What is more, that equality of parties which needs to be respected along the trial implies that both litigants are assessed in a way that ensures their procedural equal standing in the course of a trial.[206] In Rwandan criminal procedural context, to realize the enjoyment of the right to equality of arms, might range in the present perspective, from where the law denied the contemnor/defendant of a period to organize a case in that the 'so-called judge' was bequeathed with the authority to immediately write a judgement basing on the facts and violated legal provisions without the contemnor defending him or herself.[207]

In the circumstances, in the process of trial of offenses of contempt of court in categories of either petty offenses or misdemeanor wherein all the roles including that of the prosecutor are undertaken by the trial judge; there is no obligation on the prosecution to prove that the contemnor acted with guilty intent despite the fact that the burden of proof is on the public prosecution or the state to prove it acting on more roles.[208]

So, it is more likely that the sentencing powers of the 'so-called judge' are unlimited given that he or she acts as the judge on their own case and therefore, it is hard to trust criminal justice system in matters concerning the offenses of contempt of court.

Further, among other pre-trial rights entitled to all criminal suspects normally in criminal proceedings; the contemnor also has the right to a swift appearance or presence before a judge to contend the legitimacy of detention and arrest.[209]

However, it is still problematic to enjoy the abovementioned right under Rwandan criminal processes in matters concerning the settlement of offenses of contempt of court for the reason that, aside from the Rwandan procedural law permitting the deliberate disregard of the jurisdiction and competence of criminal courts in such proceedings

[205] Art 29, The Constitution of the Republic of Rwanda, *supra* note 195.
[206] Lawyers Committee for Human Rights, *supra* note 22, p. 12.
[207] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[208] Art 107, Law nº 027/2019 of 19/09/2019, *supra* note 21. See also Dickson, *infra* note 219, p. 140.
[209] Art 9 (4), *International Covenant on Civil and Political Rights*, *supra* note 23.

which is illegal by itself[210] since such provision flouts with both the Constitution of the Republic of Rwanda of 2003 Revised in 2015 which clearly puts that everyone has the right to appear before a competent Court;[211] and the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts; the contemnor cannot enjoy the right to challenge that lawfulness in view of the fact that he or she is not allowed to take the floor with regard to the offence committed tried by a competent court of law.[212]

In settling issues of criminal contempt, the Rwandan criminal process embraces the breach of the defendant or the contemnor's basic right to fair hearing. In addition to that, the current Law nº 027/2019 of 19/09/2019 says little about what that means in practice. For instance, it states that the criminal cases must adhere to the principles of being fair and impartial and respect for the right to defense and to legal counsel[213] but that is not enough to signify the right to fair hearing and what that entails.

The right to fair hearing is a general principle applicable to all legal proceedings everyone against whom the criminal charge was instituted, is entitled to.[214] That principle enfolds more rights reserved for the defendant.[215]

Fair hearing reflects a judicial proceeding that is conducted in such a manner as to conform to fundamental concepts of justice and equality.[216] It also entails that an individual will have an opportunity to present evidence to support his or her case and to discover and challenge what evidence exists against him or her.

According to Trevor R. S. Allan,[217] if a criminal verdict of guilt should be properly justified to the offender it condemns, his or her right to a fair hearing must be a necessary feature of any criminal proceeding, properly so called – a right whose infringement must destroy the integrity of both trial and verdict.[218] And besides that, the

[210] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[211] Art 29 (3°), The Constitution of the Republic of Rwanda, *supra* note 195.
[212] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[213] Art 126 (2°&3°), Law nº 027/2019 of 19/09/2019, *supra* note 21.
[214] The African Commission on Human and Peoples' Rights, *supra* note 67, p. 1.
[215] The African Commission on Human and Peoples' Rights, *supra* note 67, p. 2.
[216] Anon "Fair Hearing" https://law.jrank.org/pages/6720/Fair-Hearing.html [13/8/2020].
[217] Allan TRS, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press, 2001), p. 271.
[218] Allan, *supra* note 217, p. 271.

'so-called judge' of Rwandan criminal court should know that his or her main function is to ensure that parties (although he or she is a party in criminal contempt trial too) to court proceedings benefit from a fair hearing, hence a just decision.[219]

Perhaps Rwandan practice in the perspective of criminal contempt issues may be justified by the crucial need for rapid suppression of the misbehavior manifested in courtroom.[220] (Yet the judge has another alternative – removal of the contemnor from the Courtroom!) It may as well be motivated by the reason that there is need for condemning the disdainful behavior, whose intent is to reinstate the disturbed directives, to have the interrupted trial hearing brought to normalcy and to stop all endeavors likely to reiterate the demeanor or trigger judicial disorder,[221] like the Canadian legal system does. It might also be justified as an absolutely essential to the protection of the courts in the discharge of their orderly functions[222] though whatever justification contravenes the rights of the defendant to fair trial and due process of criminal law.

Other justification might be the courts' necessity of self-preservation, or of preventing obstruction of their due administration of justice on the motive that laws without a competent authority to secure their administration from disobedience and contempt would be vain and nugatory.[223]

The above motive must even be truer. In addition to what I mentioned earlier that the real victim of criminal contempt is the administration of justice throughout its personnel – the judge; for instance, the Mechanism for International Criminal Tribunals (MICT) Rules of Procedure and Evidence stipulate that:

> The Mechanism in the exercise of its inherent power may, with respect to proceedings before the ICTY, the ICTR, or the Mechanism, hold in contempt

[219] Dickson B, *Human Rights and the United Kingdom Supreme Court*, 1st Ed (Oxford University Press, 2013), p. 190.
[220] Law Reform Commission of Canada, *infra* note 272, p. 16.
[221] Law Reform Commission of Canada, *infra* note 272, p. 16.
[222] David SR "Double Jeopardy and Summary Contempt Prosecutions" vol. 69 *Notre Dame Law Review* (1994), p. 696.
[223] Walter, *supra* note 162, p. 959. Richard, *infra* note 226; emphasizes that the summary contempt is the "necessity" and the need to maintain order as the necessity that justifies summary punishment. See also Carlo VG "Disobeying Courts' Orders — A Comparative Analysis of the Civil Contempt of Court Doctrine and of the Image of the Common Law Judge" vol. 10 *Journal of Civil Law Studies* (2017), p. 49.

those who knowingly and willfully interfere with the administration of justice[224]
[…]

In any case, Rwandan legislator and the judiciary in particular should put that the criminal courts should make sure that they accord the defendant any guarantees and rights they are owed under the criminal law tradition[225] and human rights, otherwise any other idea that they might advance would be wrong if it was contrary to the tradition and fair trial of criminal justice.

3.3.1. Is Rwandan criminal court observing the right to a speedy or prompt trial in criminal contempt trial procedure?

Normally in a criminal contempt case before Rwandan courts, the trial judge punishes the contemnor summarily, though such punishment procedure is questionable in that the mere fact that the judge personally observed the contumacious conduct should not be a sufficient justification for summary punishment[226] and Richard B. Kuhls's[227] "judicial restraint argument" is not a sufficient justification for depriving a contemnor of important procedural safeguards. To ascertain whether or not such summary punishment has inferences with the right to a speedy trial it is imperative to know this right in depth.

The trial without undue delay or a speedy trial entails that a criminal defendant must be brought to trial for his or her alleged crimes within a reasonably short time after arrest, and that before being convicted of the crimes, the defendant has a constitutional right to be tried by a court, which must find the defendant guilty 'beyond a reasonable doubt'.[228]

In addition, the right to a trial without undue delay means the right to a trial which produces a final judgement and, if appropriate a sentence without undue delay.[229] Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is

[224] Rule 90, *Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals* (2016). See also *The Prosecutor vs. Augustin Ngirabatware*, Decision on a Motion to Initiate Contempt Proceedings, Case Nº MICT-12-29-R (26/4/2017), p. 1515.
[225] Law Reform Commission of Canada, *infra* note 272, p. 16.
[226] Richard BK "The Summary Contempt Power: A Critique and a New Perspective" vol. 88 *The Yale Law Journal* (1978), pp. 70-71. See also Anteneh, *supra* note 4.
[227] Richard, *supra* note 226, p. 75.
[228] Anon "Right to a Speedy Jury Trial" https://criminal.findlaw.com/criminal-rights/right-to-a-speedy-jury-trial.html [13/8/2020].
[229] The African Commission on Human and Peoples' Rights, *supra* note 67, p. 15.

detained pending proceedings, and the interest of the person at stake in the proceedings.[230]

In General Comment nº 13, the Human Rights Committee stated that the right to be tried without undue delay is a guarantee that relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; and when all stages have been exhausted without undue delay.[231]

That statutory limitation starts running from the time the accused or defendant (in the present context the 'contemnor') is informed that the authorities are taking specific steps to prosecute him or her.[232]

Hence, to determine whether or not the criminal contempt trial procedure in Rwanda aims at observing the right of the contemnor to speedy trial; it is masterful to make out and assess the intensity of complexity of the criminal contempt case, the conduct of the parties, the detention of the contemnor pending proceedings, and the interest of the person at stake in the proceedings.

In the light of the above, it is negative to affirm that it was the insurance by the legislator for the Rwandan criminal courts to set that the contemnor will be tried and sanctioned summarily [I mean it since, subsequent to the court registrar's taking minutes of what has happened; the judge immediately writes a judgement[233]] while, in the process, criminal courts breach the contemnor's other inter-reliant and basic rights which should be rather protected by the courts bearing in mind that all basic fair trial rights which presuppose a kind of reciprocity;[234] are interdependent in that the enjoyment of any right

[230] The African Commission on Human and Peoples' Rights, *supra* note 67, p. 15. See also Johnston Z, *Remedies for Breach of the Right to Be Tried without Undue Delay: To Stay or Not to Stay?* (LLM – Dissertation, University of Toronto, 2009), p. 11.
[231] Anon "Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. The Right to a Fair Trial: Part II – From Trial to Final Judgment", p. 267. Accessed at https://www.ohchr.org/Documents/Publications/training9chapter7en.pdf [14/8/2020].
[232] Lawyers Committee for Human Rights, *supra* note 22, p. 16.
[233] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[234] Elisabeth IK, *Human Rights as Indivisible Rights: The Protection of Socio-economic Demands under the European Convention on Human Rights* (Martinus Nijhoff Publishers, 2009), p. 3.

or group of rights requires enjoyment of others – which may or may not be part of the same category.[235]

In addition to the above disposition; although any reasonable person wish that justice be served expeditiously or promptly, ordinarily no crucial cause to use summary procedure on traditional contempt cases.[236] Breaching the *sub judice* rule,[237]or committing outrage against the judicial authority or attempting to exert pressure to the result of a proceeding; could be prosecuted like most cases as applicable under statutes governing ordinary method, setting aside other prejudices and for the sake of criminal justice which has to be rendered swiftly and expeditiously. These offences have to be in principle, treated like any other offences[238] without skipping relevant stages that help to safeguard the contemnor's rights within the perspective of criminal trial of offenses of contempt of court.

3.4. Effects of adjudication of the case by the judge on the committal order the facts of which they have personal knowledge

It is impliedly vivid that when trying the offenses of contempt of court, the Rwandan judge has personal knowledge about all the facts underlying the case given that:

> If a person commits an offence of contempt of court punishable with a maximum of imprisonment of five (5) years, the court can immediately sentence him or her even if in practice the court has no jurisdiction to hear such an offence in the first instance.[239]

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[235] Daniel JW, *Indivisible Human Rights: A History* (University of Pennsylvania Press, 2010), p. 3. See also Helen Q "A Further Dimension to the Interdependence and Indivisibility of Human Rights?: Recent Developments Concerning the Rights of Indigenous Peoples" vol. 25 *Harvard Human Rights Journal* (2012), pp. 49-51.

[236] Law Reform Commission of Canada, *infra* note 272, p. 17.

[237] Ministry of the Attorney General "Sub Judice Rule" https://www.attorneygeneral.jus.gov.on.ca/english/legis/subjudicerule.php [20/8/2020]. Accordingly; the term *sub judice* literally means "under judicial consideration". The *sub judice* rule is part of the law relating to contempt of court and is not only limited to parties in a case or their lawyers but extends even to the public. Its breach can include, for instance, statements urging the court to reach a particular result in a matter, comments on the strength or weakness of a party's case or particular issue, or comments on witnesses or evidence in a case.

[238] Law Reform Commission of Canada, *infra* note 272, p. 17.

[239] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18. See also Art 137, Law nº 027/2019 of 19/09/2019, *supra* note 21.

While the Rwandan judge has the power to condemn the contemnor with 'immediate sentence', implying that that judge is the one who has been in his or her separate court function in the courtroom, or elsewhere as the law stipulates that:

> In a court or in any other place where a public court hearing is held, if one or more persons present make noise, express approval or disapproval by causing or stirring up trouble in any way, the presiding judge calls them to order and expel them if they persist and, if necessary, seek intervention of law enforcement forces without prejudice to other penalties provided by law.[240]

The code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal posits that judges must recuse or boycott themselves from a case if they have personal knowledge of disputed evidentiary facts concerning the proceedings.[241] Maybe unless those facts are so notorious that they are not dubious (judicial notice).[242]

In reality, a judge who brings pre-conceptions to a criminal contempt trial may not appear, or be impartial. They may pre-judge issues and their information could be wrong.[243]

In addition, normatively, a Rwandan judge should be disqualified from presiding over any case and especially over criminal contempt wherein he or she has prior personal knowledge of evidentiary facts concerning the case.[244] Rwandan legislator should have adopted the similar practice of recusal[245] like other jurisdictions and legislate that it also be applied evenly in offenses of contempt of court as it is applied on other crimes.

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[240] Art 135, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[241] Provision 2 (c (iii)), *Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal* (2009). See also Art 13, Law nº 09/2004 of 29/04/2004, *supra* note 26. See also Art 11, Law nº 22/2018 of 29/04/2018, *supra* note 18. See also International Commission of Jurists, *supra* note 26.
[242] Legal Information Institute "Rule 201. Judicial Notice of Adjudicative Facts" https://www.law.cornell.edu/rules/fre/rule_201 [16/8/2020]. See also Colin M "Judicial Notice and Personal Knowledge" vol. 42 *The Modern Law Review* (1979), pp. 22-28.
[243] Anon "Can Judges Use their Personal Knowledge when Deciding Cases?" https://www.provincialcourt.bc.ca/enews/enews-16-02-2016#:~:text=Judges%20still%20can%27t%20substitute,accessible%20sources%20of%20undisputable%20accuracy. [16/8/2020].
[244] Jeffrey MS, *Judicial Ethics: Independence, Impartiality, and Integrity*, (Inter-American Development Bank Publications, 1996), p. 17.
[245] John and Vikram, *infra* note 251.

For instance, even in the American legal system, facts are to be determined on the basis of evidence presented in court within the adversary process, so that each side have the opportunity to present its version of the facts.[246] The question is to know whether or not that is the practice in criminal contempt as well.

Prior personal knowledge of facts is likely to cause a judge to predetermine a case or to evaluate facts on a one-sided basis, which *ipso facto* precludes the plaintiff or defendant from having an equal opportunity to present their view of the facts.[247] That is the reason why the Rwandan judge should not sit and adjudge the criminal contempt case he or she got personal knowledge of facts he or she personally noticed when the contemnor committed the contempt during the hearing the judge was presiding over. That would trigger the judge's impartiality.

Even in cases where the bench and not the judge sits as the finder of fact, the judge should not possess prior knowledge concerning the facts of a case;[248] and if a judge is disqualified to sit as judge alone, he is also disqualified to sit with members[249] because that knowledge could unfairly influence the judge's rulings and other actions in the case. Where a judge sits as fact-finder, there is all the more reason to prohibit his or her prior knowledge of factual matters about the case.[250]

In fact, the reason for recusal[251] from the matter is that a judge is reputed to have a duty of fairness when imparting justice and making judgements as they preside over a case,[252] including that of criminal contempt. As a consequence, at the time a judge learns of their assignment to a case, they are believed to review the facts of the case

[246] Jeffrey, *supra* note 244, p. 17.
[247] Jeffrey, *supra* note 244, p. 17.
[248] Jeffrey, *supra* note 244, p. 17.
[249] Judge Advocate General's School, *The Army Lawyer, Issues 193-204* (Judge Advocate General's School, 1989), p. 48.
[250] Jeffrey, *supra* note 244, p. 17.
[251] John BO and Vikram DA, *American Civil Procedure: A Guide to Civil Adjudication in US Courts* (Kluwer Law International, 2009), p. 50. Accordingly, '*recusal*' refers to a judge voluntarily abstaining from the adjudication of a case in which the judge may have, or may appear to have, a persona interest.
[252] LegalMatch "Consequences of Judges Not Recusing Themselves" https://www.legalmatch.com/law-library/article/consequences-of-judges-not-recusing-themselves.html [17/8/2020].

and decide whether there are any conflicts of interest regarding the case that would prevent them from being able to be impartial, ethical, and fair.[253]

If a judge negates recusal even though they were aware that proper grounds to boycott existed, then there may be significant repercussions.[254] And doubt of a judge's impartiality sufficient to require recusal may be established by demonstrating that a judge has personal bias stemming from extrajudicial sources, has personal knowledge of disputed evidentiary facts and has been connected with the proceeding in another capacity.[255]

In many jurisdictions' adjudication processes; besides the disqualification of the judge due to the grounds such as the interest in the subject matter in controversy, his or her affinity or consanguinity with one party;[256] a judge must recuse in any proceeding in which his or her impartiality might reasonably be questioned; in which his or her personal bias or prejudice concerning the subject matter or party is probable; and in which he or she has personal knowledge of disputed evidentiary facts concerning the proceeding.[257]

In most instances, the result of the case can be reviewed by an appellate court, and an entirely new trial may be ordered. This means that the judge's decision regarding a criminal conviction (or monetary award in other jurisdictions other than Rwanda) may be reversed or set aside.[258]

In line with the above, Rwanda criminal procedure in settling the offenses of criminal contempt; stipulated that the contemnor who has been unsatisfied with the previous court ruling or committal order may appeal to the next upper court within five days.[259]

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[253] LegalMatch, *supra* note 252.
[254] LegalMatch, *supra* note 252.
[255] John and Vikram, *supra* note 251, p. 50.
[256] Rule 18.2. (a), Order Amending Rules 18a and 18b of the Texas Rules of Civil Procedure (*Misc. Docket No. 11-9064*). Accessed at https://www.txcourts.gov/All_Archived_Documents/SupremeCourt/AdministrativeOrders/miscdocket/11/11906400.pdf [19/8/2020].
[257] Rule 18.2. (b), Order Amending Rules 18a and 18b of the Texas Rules of Civil Procedure, *supra* note 256.
[258] LegalMatch, *supra* note 252.
[259] Art 82, Law nº 22/2018 of 29/04/2018, *supra* note 18.

It is therefore apparent that the Rwandan legislator thought and posited that the unfair procedural and substantive practice in adjudging of the criminal contempt matters at the first instance, would be corrected and brought into normative trial procedures by the appellate court to the extent that the legislator then gave the contemnor the opportunity to be invited to the hearing, facing the National Public Prosecution Authority which might have conducted further investigation on the matter.[260]

Getting back on track here, having personal knowledge of the facts by the judge is the reason why the Rwandan judge ruling on criminal contempt should withdraw themselves. Unless there are specific circumstances where it is unfeasible for a Rwandan judge to recuse from a particular case such as that of contempt of court — including the unavailability of any other judge to adjudicate the case;[261] otherwise they would be biased and tempted to rule relying upon what they have personal knowledge about. Unavailability of any other judge to adjudicate the case is an exception to the norm of recusal, which is also known as the 'rule of necessity'.[262]

Hence, whereas the 'rule of necessity' is an exception to the norm of recusal in other jurisdictions (like in the USA); Rwandan practice most especially in matters of trial of offenses of contempt of court made that exception a principle since a Rwandan judge was bequeathed with the capability of instantaneously drawing a judgement against the suspect of criminal contempt basing on the facts he or she has seen or has knowledge of, as if either, the offenses of contempt of court are incidental[263] or exception to the main action; or/and as if they cannot be separated and tried apart by another judge or jury where applicable who has no direct ties with what happened in the course of hearing of another unrelated case. In addition, the offenses of criminal contempt are independent offenses which have nothing to do with another case the proceeding over which criminal contempt has derived or stemmed from.

[260] Art 82, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[261] Mark SH "Judges and the Rule of Necessity: Ignacio and the Ninth Circuit's Judges" vol. 28 *The Justice System Journal* (2007), p. 241.
[262] Mark, *supra* note 261.
[263] The term '*incidental*' derivative of incident in Law nº 22/2018 of 29/04/2018 means any issues which arise in the hearing that led to the suspension of the proceedings or to changes in the nature of the claim. The incidents provided under therein are objections and pleas of inadmissibility of a claim.

An illustrative inspirational instance can be traced in the International Criminal Tribunal for Rwanda (ICTR) case that opposed the ICTR Prosecutor against the pseudonym GAA[264] (*The Prosecutor vs. GAA*) who was accused of giving false testimony under solemn declaration, and contempt of the Tribunal. The case was not adjudicated by the same jury before which GAA committed the mentioned allegations. There was set another jury which, after plea bargaining with the Prosecutor; held guilty and confined GAA for the two counts with an imprisonment penalty of nine months.[265]

And from the case *the Prosecutor vs. GAA*, it is comprehensible that *GAA* was accorded all rights to fair trial and due process of criminal law since; unlike Rwanda's practice in trial of criminal contempt charges, *GAA* had been assisted by legal counsel or got the right to defense,[266] and got the right to plead (guilty).[267]

Jurisdictionally; some jurists, especially in Islamic law; are of the view that the judgment of a judge who decides a case on the basis of his/her personal knowledge of the facts of the case, is a valid and enforceable judgment.[268] Nonetheless, they have differences of opinion among themselves about the time and place of the knowledge of the judge on which the judgment is based.[269]

They are all unanimously of the view that the judge cannot go beyond the limits of his or her territorial jurisdiction but differ to the time they acquired the personal knowledge; in that some say that the decision of a judge on the basis of his or her personal knowledge gained by him or her before the time of his or her appointment as judge is valid whereas others say that a judge can validly make a judgment on the basis of the knowledge gained by him or her before or after his or her appointment as a judge since there is no

[264] The Accused is a protected witness who testified in different trial under the pseudonym *GAA*. Therefore, the real name of the Accused could not be disclosed. He/she was in the cause *Prosecutor vs. GAA* held for giving false testimony and contempt of court, over the promise of reward of 1.000.000 Rwandan francs by another witness.
[265] *The Prosecutor vs. GAA,* Judgement and Sentence of Trial Chamber III, Case Nº. ICTR-07-90-R77-I (4/12/2007), pp. 2-6.
[266] *The Prosecutor vs. GAA, supra* note 265, para 9.
[267] *The Prosecutor vs. GAA, supra* note 265, para 12.
[268] Hayat S "The Decision by a Judge on the Basis of His Personal Knowledge" vol. 19 *Iium Law Journal* (2011), pp. 245-246.
[269] Hayat, *supra* note 268, p. 253.

difference between the knowledge gained by a judge before his or her appointment or after his or her appointment as such.[270]

More to the above, those Muslim jurists are of the opinion that a judge can validly base the judgment on his or her personal knowledge in all the cases involving the rights of human beings but there are other cases he or she is not allowed to do so.[271]

To finish, the appearance and testimony of the same judge in proceedings for contempt of court is not necessary, since seeing the judge testifying against an accused, rare as that might be, is really awkward.[272] The Rwandan legislation should at least provide that on no account the judge is allowed to adjudicate criminal contempt committed during their presence or court session.

As a final point; the same Rwandan judge ruling on another separate petition should not try any offenses of contempt so to avoid probable partiality or preconception. His or her powers should be limited in the trial of criminal contempt. Worth noting, the trial judge should only be permitted to immediately interfere to avoid recurrence if likely to be, to bring back the sense of impartiality and trust in the court processes and then order the proceedings to continue at the earliest,[273] likewise it proceeds if the party to the proceedings causes trouble, the presiding judge calls them to order and warn them that if they persist, he or she will expel them and continue the hearing as if they are present.[274]

A final note to mention is that in criminal justice system like Canadian criminal process; the judge can proceed to sentence the accused without the public defender or another attorney representing him or her.[275]

And only the similar understanding might be applied to cases of outrage against the judicial administration, not in criminal contempt, since once they disrepute the judge's

[270] Hayat, *supra* note 268, p. 253.
[271] Hayat, *supra* note 268, p. 256.
[272] Law Reform Commission of Canada "Report on Contempt of Court" (1982), p. 39. Accessed at https://www.ncjrs.gov/pdffiles1/Digitization/92415NCJRS.pdf [19/8/2020].
[273] Law Reform Commission of Canada, *supra* note 272, p. 17.
[274] Art 135, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[275] Peter AJ "Judges' Misuse of Contempt in Criminal Cases and Limits of Advocacy" vol. 50 *Loyola University Chicago Law Journal* (2019), pp. 918-919.

honor, she/he may hesitate to rule on a case unless real facts were found and publicly exposed.[276]

3.5. The cumulative roles of the judge in the action against the offenses of contempt of court

Erwin Chemerinsky and Laurie L. Levenson[277] assert that in the criminal justice system, a number of people play a central role. The relevant procedural rules were set trying to shade light on the wants of those partakers but also with regard to the rights or benefits of others participants.[278]

Those participants include the defendant, the defense counsel, the prosecutors, the judges, corrections officials and the public.[279]

Henceforth, over the Rwandan court's privilege of "on its own initiative" to take up a case if an offence of contempt of court is committed;[280] the Rwandan trial judge can *summarily* sentence the suspect of a criminal contempt if such an offence is punishable with a maximum penalty of incarceration of five years,[281] in other words if an offense of contempt of court is either in category of petty offense[282] or that of misdemeanor.[283]

The sentencing procedure against the contemnor in the above paragraph by the Rwandan judge who does it summarily and immediately, can be qualified unconstitutional given that the National Public Prosecution Authority responsible for investigating and prosecuting offences[284] including of course those of contempt of court has been sidelined in the process to carry out its constitutional mandate.

In addition, the fact that a Rwandan court was bequeathed with the power, on its own initiative, to take up a case if an offence of contempt of court is committed;[285] is as well

[276] Law Reform Commission of Canada, *supra* note 272, p. 17.
[277] Erwin C and Laurie Levenson L, *Criminal Procedure: Adjudication*, 3rd Ed (Wolters Kluwer, 2018), p. 1.
[278] Erwin and Laurie Levenson, *supra* note 277, p. 1.
[279] Erwin and Laurie Levenson, *supra* note 277, pp. 2-5.
[280] Art 95, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[281] Art 137, Law nº 027/2019 of 19/09/2019, *supra* note 21. [Italics added]
[282] Art 19, Law nº 68/2018 of 30/08/2018 determining offences and penalties in general (*OG no. Special of 27/09/2018*).
[283] Art 18, Law nº 68/2018 of 30/08/2018, *supra* note 282.
[284] Art 142, The Constitution of the Republic of Rwanda, *supra* note 195.
[285] Art 95, Law nº 027/2019 of 19/09/2019, *supra* note 21.

implicitly unconstitutional due to the fact that nobody may be a judge in his or her own cause[286] since if justice is rendered in the name of the people,[287] represented by the court or the judge who acts on their behalf he or she therefore becomes part in the cause of criminal contempt.

Most of criticisms on criminal contempt demonstrate that the roles of victim, prosecutor and judge are dangerously commingled.[288] There is no or defiance of both procedural and substantive due processes in determining punishments for criminal contempt. More to that in criminal contempt, the contempt charges become a separate matter, but in jurisdictions like Rwanda, they are or may be heard by the judge who made them.[289] In addition, the same judge may commence punishment immediately. Critics have argued that judges who are the principal offended party may be too harsh to punish.[290]

Further, the luck of the precise definition of what it is meant by offenses of contempt of court by Rwandan law creates a broad ample for a judge or the court to call and qualify any act they deem unpleasant on their behalf when committed in or near the courthouse – contempt of court. And that may raise a number of questions: Could an unintentional but unauthorized entry into the courtroom constitute a contempt? Or only if there is an attempt to talk to the judge? Or only if there is an attempt to talk to the judge about a matter related to the case?[291] What about attack to opposing parties' personalities, causing chaos, fighting, etc. so that their gravities differ?

Arguably, there is a compelling or fascinating need for Rwandan legislator to enact and adopt a separate legislation specifically regulating the issues of contempt of court in details hence restricting the Rwandan judge's roles; and regulate the contempt in which

[286] Art 151 (1°), The Constitution of the Republic of Rwanda, *supra* note 195.
[287] Art 151 (1°), The Constitution of the Republic of Rwanda, *supra* note 195.
[288] The Free Dictionary "Contempt" https://legal-dictionary.thefreedictionary.com/Criticisms+of+the+Contempt-of-Court+Power [22/8/2020].
[289] The Free Dictionary, *supra* note 288. See also Anon "Contempt" https://law.jrank.org/pages/5669/Contempt-Criticisms-Contempt-Court-Power.html [22/8/2020].
[290] The Free Dictionary, *supra* note 288. See also Anon, *supra* note 289.
[291] Victorian Law Reform Commission "General issues with the law of contempt of court" https://www.lawreform.vic.gov.au/content/3-general-issues-law-contempt-court [21/8/2020].

a court employee may cause trouble or otherwise take part in as per the provisions of Article 135 of Law nº 027/2019 of 19/09/2019 apply.[292]

Any conduct which amounts to contempt of the authority of the court or disturbance of the court should be referred by the civil law system judge (including that of Rwandan legal system) to the public prosecutor for standard prosecution within the relevant competent court.[293]

The confusion of roles whereby the judge in contempt proceedings is complainer, prosecutor and judge all rolled up into one has also been into Rwandan legal tradition for so long and has been the basis of summary jurisdiction I consider quite dreadful[294] due to its specificity – it is not only prejudicial to standards of criminal processes and fair trial, but also to human rights norms.

Nonetheless, the unusual nature of contempt proceedings has given rise to considerable uncertainty about the laws, principles and procedures that apply with it.[295] Before analyzing how the Rwandan judge plays all the roles, it is worth to mention that criminal contempt case should be dealt with by another judge other than the presiding one in a distinct case.[296]

A further problem is that the procedure, swift as it is, appears to offend natural justice. The common law procedure in relation to contempt is vulnerable to the criticism that because it imposes such an accumulation of responsibilities upon the judge, the result is then to deny the accused contemnor the basic protection of several principles and

[292] Art 135, Law nº 027/2019 of 19/09/2019, *supra* note 21 reads that "In a court or in any other place where a public court hearing is held, if one or more persons present make noise, express approval or disapproval by causing or stirring up trouble in any way, the presiding judge calls them to order and expel them if they persist and, if necessary, seek intervention of law enforcement forces without prejudice to other penalties provided by law.
If the person who causes trouble is a party to the proceedings, the presiding judge call him or her to order and warn him or her that if he or she persists, he or she will expel him or her and continue the hearing as if he or she is present. If he or she is expelled and refuses to leave the courtroom, the presiding judge seeks intervention of law enforcement forces to expel the party by force without prejudice to other penalties provided by the law.
If the trouble is caused by a court employee, the provisions of Paragraph One of this Article apply".
[293] Spencer JR "The Codification of Criminal Procedure" in James C, Fiona L and Farmer L (eds), *Essays in Criminal Law in Honor of Sir Gerald Gordon* (Edinburgh University Press, 2010), p. 334.
[294] Spencer, *supra* note 293, p. 334.
[295] Victorian Law Reform Commission, *supra* note 291.
[296] Spencer, *supra* note 293, p. 332.

guarantees of human rights as well as the constitutional protections before the law and natural justice[297] of criminal law.

Like other common law judge in criminal contempt adjudication processes, the Rwandan judge acts as complainant, witness and prosecutor; then combines the role of judge in determining the factual and legal issues of liability from contempt that occurred before the court and then, the "so-called judge" has the task of punishing the contemnor.[298]

According to Spencer JR *et al*,[299] the combination of several responsibilities in one single person causes two main difficulties. The first is in relation to bias: how can the victim and prosecutor be the judge? To allow that, the argument runs, offends against the principle that one cannot be the judge in a cause in which he or she has an interest as earlier mentioned (*nemo judex in causa sua*)[300] since the judge trying on criminal contempt is one of potential victims offended on his or her judicial functions.

Normally and on the one hand, the role of the judge in criminal proceedings should be limited to presiding over the proceeding and making sure there is orderly process and a fair trial.[301] He or she assesses the facts and evidence presented by both sides to ensure that it was legally obtained then after assessment, he or she comes with a legal decision about a given case.[302] His or her role should also be limited to determination whether the defendant's (in the present context, the contemnor's) admission or plea is legally acceptable; and makes orders for evidence to be produced and decides for provisional detention[303] where deemed necessary. Finally, he or she decides on the acquittal or conviction of the defendant and decides the applicable and proportional sentence.[304]

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[297] Spencer, *supra* note 293, p. 334.
[298] Spencer, *supra* note 293, p. 334.
[299] Spencer, *supra* note 293, p. 334.
[300] Spencer, *supra* note 293, p. 334.
[301] Dr. Lyn KS and Kara RF, *Social Work Practice and the Law* (Springer Publishing Company, 2012), p. 143.
[302] Dr. Lyn and Kara, *supra* note 301, p. 143.
[303] Dr. Lyn and Kara, *supra* note 301, p. 143.
[304] Dr. Lyn and Kara, *supra* note 301, p. 143. See also Hock, *supra* note 32, p. 224.

On the other hand, the role of the prosecutor should not be ignored in criminal contempt since the prosecution is established as the representative of the state in criminal litigation.[305] He or she responds to various crime problems through the efficient processing of criminal cases. He or she decides based on judicial police reports, who is charged and ultimately whether a case will go to trial or be pled out.[306]

In addition, the prosecutor's roles should not be marginalized in criminal contempt proceedings since he or she reviews all the evidence against the accused, including the contemnor, of committing a crime and with the help of judicial police, victims of crime and other witnesses, build a case against that accused; besides bringing criminal charges against the suspect and presenting the evidence that would result in a conviction[307] or exonerating the innocent.[308]

The prosecutor has the power to offer plea bargains which may also apply in criminal contempt proceedings – reducing the seriousness of a charge in return in a guilty plea or for other forms of cooperation with the prosecution. He also conducts trial for the state and makes sentencing recommendations.[309]

But, according to the provisions of Art 26 of Law nº 027/2019 of 19/09/2019 relating to the criminal procedure (about plea bargaining); plea bargains cannot work out particularly in the process of trial of offenses of contempt of court, given that the Rwandan legislator did not permit the prosecution to play or assume its role on the first instance of trial of criminal contempt, as per Art 81 over cited. This reflects that plea bargaining is only feasible at the appeal level since that is where the prosecution was permitted to take part although I am unsure if plea bargaining can be made at appeal.

The prosecutor also may play a role at the investigative stage in two important ways: He or she may provide advisory assistance to the police in an investigation to make sure

[305] John LW and Elaine MN-B (eds), *The Changing Role of the American Prosecutor* (State University of New York Press, 2008), p. 4.
[306] John and Elaine, *supra* note 305, p. 3. See also Momanyi B, *Procedures in Criminal Law in Kenya* (East African Educational Publishers Ltd, 1994), pp. 129-134.
[307] Dr. Lyn and Kara, *supra* note 301, p. 143. See also Momanyi, *supra* note 306. See also Hock, *supra* note 32, p. 222.
[308] Anthea H and Azrini W (eds), *Criminal Justice*, 2nd Ed (Oxford University Press, 2013), p. 84.
[309] Philip H and Carol P (eds), *What's Changing in Prosecution?: Report of a Workshop* (National Academy Press, 2001), p. 8.

that the evidence required for conviction is present and that investigators have access to certain tools that the prosecutor controls such as requests to the court for warrants for searches or electronic surveillance.[310] He or she may as well assume the responsibility for the lawfulness of investigative activities.[311]

Using these powers even in criminal contempt cases under Rwandan jurisdictions; a traditional prosecutor would say that his or her chief role in any criminal case is to 'see that justice is done' by convicting those who have violated the law by conduct that is widely recognized to be very harmful or immoral.[312]

Nevertheless, in most jurisdictions including Rwanda, the roles actually undertaken by both the judge, the prosecutor, the witness or the victim, the later who plays a vital role in giving evidence in court which forms the basis of successful prosecution;[313] are concentrated within the hands of a single person – the judge.

Back to Spencer JR *et al*[314] point of view, the second difficulty is a problem with the presumption of innocence.[315] The Rwandan potential contemnor is required to meet, not a case which is presented against him or her in evidence, but a case which exists in the mind of the judge at the commencement of the inquiry, even though such a case may be explained progressively and orally to the contemnor by reference to various matters which form the basis of the judge's feeling that contempt of court has happened.[316]

Critics to Rwandan practice of "immediate sentence" as enshrined in article 81 of the Law nº 22/2018 of 29/04/2018 earlier over cited, can only mean that the Rwandan court commences, not with the presumption of innocence but the presumption of guilt and

[310] Philip and Carol, *supra* note 309, p. 8.
[311] Philip and Carol, *supra* note 309, p. 8.
[312] Philip and Carol, *supra* note 309, p. 8.
[313] Noel C, *Criminal Law & Criminal Justice* (SAGE Publications Ltd, 2010), p. 28.
[314] Spencer, *supra* note 293, p. 334.
[315] Spencer, *supra* note 293, p. 334. See also Art 29 (2°), The Constitution of the Republic of Rwanda, *supra* note 195.
[316] Spencer, *supra* note 293, p. 334.

such procedures are not easily reconcilable with fundamental principles criminal of justice.[317]

Another issue with trial procedures of offenses of contempt of court in Rwanda particularly, is that the person accused of contempt will not be able to cross-examine[318] the judge who will be the main witness against him or her, whereas it is the right of parties to cross-examine each other or witnesses against them.[319]

Despite the fact of accumulating the roles of the judge and the prosecutor, the judge trying the offenses of contempt in Rwandan court assumes the roles played by the witness in criminal court.

Hence, in any criminal trial, witness testimony proves to be an absolute necessity since no actual evidence can be introduced without a witness who can be either lay or expert.[320] Witnesses serve as essential link in bringing physical and documentary evidence to the court for consideration. Their testimony paints a picture of the operative facts of the prosecution or the defense case.[321]

Rwandan law provides that, for better trial process, any witness may be called to present what they know about the case to the extent that the court cannot hinder an important witness from submitting whatever information they know about the case and parties cannot disqualify them unless their testimony is likely or proved to be prejudicial to the parties.[322]

Under Rwandan criminal process, any person having participated in the commission of an offence or a victim of offence may be heard as a witness.[323] However, that very practice raises problems in criminal contempt trials as to whether the judge, who may even be the victim of criminal contempt, or victim-witness according to Malgorzata

[317] Spencer, *supra* note 293, p. 334. See also Livingston, *supra* note 157, p. 361. According to him, criminal contempt requires at least some of the aspects of criminal procedure, such as the presumption of innocence, the proof of guilt beyond a reasonable doubt, and the privilege against self-incrimination.
[318] Art 127 (10°, 12° and 13°), Law nº 027/2019 of 19/09/2019, *supra* note 21.
[319] Art 14 (3(e)), International Covenant on Civil and Political Rights, *supra* note 23.
[320] Jefferson Ll, *Criminal Evidence*, 12th Ed (Anderson Publishing, 2015), p. 96.
[321] Jefferson, *supra* note 320, p. 96.
[322] Art 71, Law n° 15/2004 of 12/06/2004 relating to administration of evidence and its production (*OG nº Special of 19/07/2004*).
[323] Art 48, Law nº 027/2019 of 19/09/2019, *supra* note 21.

Wasek-Wiaderek[324] becomes also the witness in his or her own cause against the contemnor alongside whom he or she may enter into confrontation as per the Law nº 027/2019 of 19/09/2019 relating to the criminal procedure.[325]

Furthermore, other potential issues may as well arise while conducting trials of criminal contempt under Rwandan criminal processes. Like in many jurisdictions, the Rwandan judge or court may resort to using adversarial system of conducting criminal contempt trial whereby, the Rwandan judge who, by law became one of the opposing sides in offenses of contempt and who should act as adversary when competing to convince the judge that their version of the facts is the most convincing[326] in other cases under trial, is the victim, the judge, the witness, and so forth. Nonetheless, it is challenging if he or she will compete to convince him or herself, in lieu of the counterpart, if the adversarial method is to be applied. Who else will he or she be convincing yet he or she is at the same time the judge utilizing adversarial method and his or her counterpart or opponent is the contemnor?

Concerns will even persist if the judge in Rwanda makes use of inquisitorial method of conducting criminal contempt trial. Habitually, the role of the judge in an inquisitorial system is to conduct inquiry into the case and adduce parties to address specific points[327] for further clarification or lucidity of the case.

Unlike the adversarial system, the role of the inquisitorial system is not to determine guilt or innocence of the contemnor in this context but to find the truth.[328] This fact comes back to the probe as to which image of reflection and presumption the contemnor is entitled to before the judge in Rwandan in criminal contempt trial processes. He or she is vividly presumed guilt not innocent at all – his or her presumption of innocence is eroded,[329] which breaches his/her or fair trial rights.

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[324] Malgorzata W-W, *The Principle of "Equality of Arms" in Criminal Procedure Under Article 6 of the European Convention on Human Rights and Its Functions in Criminal Justice of Selected European countries: A Comparative View* (Leuven University Press, 2000), p. 33.
[325] Art 52, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[326] All Answers Ltd. "Adversarial and Inquisitorial Systems of Justice" https://www.lawteacher.net/free-law-essays/criminal-law/adversarial-and-inquisitorial-systems-of-justice.php#citethis [25/8/2020].
[327] All Answers Ltd, *supra* note 326.
[328] All Answers Ltd, *supra* note 326.
[329] All Answers Ltd, *supra* note 326.

As a final point, in the course of the trial process of criminal contempt under Rwandan courts, whether the “so called judge” resort to using either adversarial, inquisitorial or mixed system in conducting the trial, his or her position of multiparty roles as the judge, prosecutor, witness, and victim within the contempt proceeding; aside from breaching the general rules and principles underlying criminal justice, it puts in peril human rights of the contemnor to due process of criminal law and fair trial, and may potentially render the administration of justice into disrepute by the public.

3.6. The normal and standard phases of criminal trial the offences of contempt of court should go through

The trial processes of offenses of contempt of court be it under Rwandan or other jurisdictions should be conducted regard given to traditional standards and norms of criminal justice likewise it is done evenly to other criminal offenses provided that nothing and no special nature within the offenses of criminal contempt, and the place of commission of criminal contempt does not make any offenses of contempt of court special unlike other crimes.

When the contemnor has committed criminal contempt allegation, his or her fair trial guarantees should not be deemed to run from the formal seizure of the court, but from the time by when substantial effects started affecting his or her situation.[330]

In actual sense and depending on the factual circumstances of the case, that very period of time could obviously concur with the moment of arrest; although Rwandan procedural laws tacitly and without remorse provide that no arrest if the defendant is suspected of the offense of contempt of court punishable with imprisonment penalty of less than five years.[331]

Therefore, fair trial guarantees of the contemnor have to be respected from the time by when enquiry against him or her commenced up to when the criminal contempt proceedings, plus all appellate ones have ended or been closed.[332] As stated earlier,

[330] Lawyers Committee for Human Rights, *supra* note 22, p. 4. See also Hock, *supra* note 32, pp. 215-216.
[331] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[332] Lawyers Committee for Human Rights, *supra* note 22, p. 4.

the standards against which a criminal contempt trial is to be assessed in terms of fairness are numerous, complex, and constantly evolving. They commonly range from pretrial standards, trial or hearing standards, and post-trial standards.[333]

The dissimilarity of pre-trial phase, the trial hearing phase and post-trial phase is occasionally biased in fact, yet the infringement of any guarantee in one phase has *ipso facto* adverse concerns on the following stage to rectify detriments occasioned.[334]

Hence, the appropriate and respective provisions in international bill of human rights[335] most especially the International Covenant on Civil and Political Rights may lightly be trisected since that classification is certainly useful when ascertaining what issues need specific interest in the course of distinct periods of time along the judicial procedure.[336]

Ordinarily for other crimes, according to Johannes Keiler, Michel Panzavolta and David Roef[337] in what they termed "the tripartite structure of crime", criminal liability takes place in three stages. In the first stage, there must be assessed whether or not the legal elements of the statutory offense definition (i.e., *actus reus* and *mens rea*) have been fulfilled.[338] Secondly, the wrongfulness of the conduct in question has to be weighed; while the third stage is devoted to assessing the blameworthiness of the defendant.[339]

Obviously, the offenses of contempt of court conforms to the point of view of Johannes Keiler *et al* and have to be assessed on the same terms and basis as those in the tripartite structure of crime they evoke.

Rwandan criminal justice still has a lacuna in the meaning and extent to which the criminal contempt is to be measured despite some eminent legal scholars put that when

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[333] Lawyers Committee for Human Rights, *supra* note 22, pp. 4-22.
[334] Art 81, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[335] International Bill of Human Rights is made up of Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), and International Covenant on Civil and Political Rights (1966) with its two Optional Protocols.
[336] Subject to regional human rights instrument a given state is party to, the respective obligations in that instrument has to be considered too. For the African states it will be the African Charter on Human and People's Rights (1981); For Latin and North American states it would be the American Convention on Human Rights (1969); while to European states the applicable instrument must be the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
[337] Johannes K, Michel P and David R "Criminal Law" in Jaap H and Bram A (eds), *Introduction to Law* (Springer, 2014), p. 130.
[338] Johannes, Michel and David, *supra* note 337, p. 130.
[339] Johannes, Michel and David, *supra* note 337, p. 130.

it can be proven that a person has committed an act that falls within the definition of an offense, the presence of wrongdoing and blameworthiness is generally assumed.[340]

Henceforward, the first and foremost phase the offences of contempt of court should go through is the phase of pre-arrest investigation. In that stage performed by the judicial police who collect the preliminary necessary evidence to carry out arrest; mostly occurs after the suspect (or contemnor in this perspective) has already been detained.[341] This stage can be made of the victim and witness interrogations, suspect interviewing/questioning, their ID processes, searches and finding any other necessary evidence.[342]

The second phase should be arrest of the suspected contemnor. That stage is done by the judicial police who has enormous discretion to arrest a suspect or not.[343] Arrest may be with or without an arrest warrant depending on the circumstances. Once a contemnor has been arrested and taken into custody; that is when their journey through the criminal justice begins.[344] He or she appears before the judge and get educated about her/his statutory human rights, counselled about the allegations against him or her then be granted a lawyer if he or she can't afford one.[345]

Rwandan practice stipulates that a suspect normally remains free during investigation. It adds that he or she may be held in provisional detention if there are sufficient grounds to believe that he or she committed an offence which is punishable with imprisonment for a term of at least two years.[346] However, the contemnor cannot enjoy these rights in Rwanda due to the way he or she is treated by Rwandan law, and one can wonder the reason why the contemnor was denied of the pretrial rights enjoyed by other criminal suspects.

The third stage should be filing the complaint with charges against the suspect, by the prosecution for the judicial police to keep holding the suspect if need be. If the

[340] Johannes, Michel and David, *supra* note 337, pp. 130-131.
[341] Erwin and Laurie Levenson, *supra* note 277, p. 6.
[342] Erwin and Laurie Levenson, *supra* note 277, p. 6. See also Hock, *supra* note 32, pp. 217-218.
[343] Erwin and Laurie Levenson, *supra* note 277, p. 6.
[344] Erwin and Laurie Levenson, *supra* note 277, p. 6.
[345] Erwin and Laurie Levenson, *supra* note 277, p. 6.
[346] Art 66, Law nº 027/2019 of 19/09/2019, *supra* note 21.

prosecution resorts to that, the judicial police are deprived of the decision-making power process, then decides which allegations to file to court.[347] Similar practice exists under Rwandan procedural rules since:

> If the public prosecution decides to prosecute an accused, it submits a complete case file to the competent court. The case file submitted to the court contains the following: *1°* the public prosecution's statement submitting the claim; *2°* indictment; *3°* the list of documents that make up the case file; *4°* a statement notifying the civil parties, if any, that the claim was lodged to the court; *5°* the list of attached documents on the annex. The public prosecution may withdraw the case if it considers unnecessary to prosecute the accused.[348]

The fourth stage should be the judge review. In this stage, the judge in charge of criminal contempt should review the prosecution's complaint against the contemnor and determine if there are plausible grounds backing the allegations against him or her.[349] That is based on filings alone – no evidentiary hearing is required. That review may also occur by the defendant's first appearance before the judge.[350]

The fifth stage should be first appearance or arraignment on complaint wherein the defendant appears in front of the judge to be counseled on accusations against him or her then gets a chance to look for bail[351] then be directed on the right to legal assistance or to have a lawyer allocated to him or her[352] depending on the circumstances.

The sixth stage should be preliminary hearing[353] before the contemnor stands trial, whereby there is the screening of the case and determination of the charges the contemnor will face at trial.[354] The Rwanda law practice is that the preliminary hearing is conducted by the bench which can, if it considers it necessary, and after consultations

[347] Erwin and Laurie Levenson, *supra* note 277, p. 7.
[348] Art 92, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[349] Erwin and Laurie Levenson, *supra* note 277, p. 7.
[350] Erwin and Laurie Levenson, *supra* note 277, p. 7.
[351] In Rwanda, the bail is based on bailable offense though it may be deposited on all offences. For more see Art 80, 81, 82 and 83, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[352] Erwin and Laurie Levenson, *supra* note 277, p. 7.
[353] Art 125, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[354] Erwin and Laurie Levenson, *supra* note 277, p. 7.

with the president of the court, confirm that the preliminary hearing precedes the trial of the case and determine the date of hearing.[355]

The seventh stage should be discovery usually between the prosecution and the contemnor or the defendant. This stage entails examination of pieces of evidence likely to be used by either party in the proceedings.[356] Rwandan legal provisions stipulate that the draft pretrial conference report must indicate among others, any allegation of each party with respect to each matter at issue in the case, evidence and legal basis;[357] and in case of discovery of any other proof after the parties exchange submissions and before proceedings commence, they are required to exchange the submissions.[358]

That provision testifies that each party has the responsibility to exchange or disclose pieces of evidence to the other before the end of hearing since:

> […] Any time before the hearing, if there is a new and relevant document or fact which can help to demonstrate the truth that is discovered by one of the parties, the concerned party may present it to the court for it to decide on its admission. If the hearing is closed, the party applies for the re-opening thereof. The court determines at its sole discretion whether it is necessary to re-open the hearing when it finds that it will rely on the new fact to decide the case.[359]

The eighth stage should be pretrial motions. Either the prosecution or the defendant contemnor can lodge pre-trial motion *in limine litis* to have pre-trial judgements on evidential elements of the complaint.[360] This stage helps parties to define and delimit the bounds of the case while assessing the opponent case's respective strength.[361] Under Rwandan procedural law, the notion and purpose of pretrial motion can be envisaged in article 125 of Law nº 027/2019 of 19/09/2019 relating to the criminal procedure, in preliminary hearing and in articles from 24 to 27 of Law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure.

[355] Art 125, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[356] Erwin and Laurie Levenson, *supra* note 277, p. 9.
[357] Art 25 (7°), Law nº 22/2018 of 29/04/2018, *supra* note 18.
[358] Art 94, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[359] Art 75, Law nº 22/2018 of 29/04/2018, *supra* note 18.
[360] Erwin and Laurie Levenson, *supra* note 277, p. 9.
[361] Erwin and Laurie Levenson, *supra* note 277, p. 9.

The ninth stage should be arraignment on indictment and plea bargaining and guilty plea process in which prosecutors may reduce the accusations or sentence term for a perpetrator as a reward for his or her plea of guilty, and most of the times the offender's collaboration.[362] A formal hearing is held once a defendant chooses to enter the guilty plea. [363] Pleading guilty is a confession made by the accused that he/she has perpetrated the criminal act alleged, hence forsaking the offender's procedural rights if he/she would progress to court hearing.[364]

At the commencement of the trial, the charge would be read and explained to the accused and his or her plea will be taken. Judges are conscious of their duty to ascertain the truth even in cases where the accused elects to plead guilty.[365] The court must be satisfied, before recording his or her plea, that his or her choice is free and informed, in particular, that the accused 'understands the nature and consequences of his/her plea' and 'intends to admit to the offence without qualification'.[366]

In practice, before the court accepts the defendant's plea of guilty, the prosecution should read to the defendant the statement of facts describing the conditions in which the crime alleged has been committed and then, require hi/her to admit such statement. The judge in charge of trial must make a statement of evidence and facts then scrutinize it to assure that incriminating elements of the allegation do match with and are comprehensible to those facts.[367]

That is to trigger the ascertainment that the suspect is aware of the nature of their plea of guilty then really wants to confess knowing the effects from the offence alleged

[362] Ratalal and Dhirajlal, *infra* note 363, p. 610. See also Art 26, Law nº 027/2019 of 19/09/2019, *supra* note 21. See also Erwin and Laurie Levenson, *supra* note 277, p. 8 and 9. See also Ashworth A and Mike R, *The Criminal Process*, 3rd Ed (Oxford University Press Inc., 2005), pp. 269-274. See also Albert, *infra* note 363.
[363] Ratalal and Dhirajlal, *The Code of Criminal Procedure*, 20th Ed (LexisNexis Butterworths Wadhwa, 2012), p. 610. See also Albert A "The Trial Judge's Role in Plea Bargaining, Part I" vol. 76 *Columbia Law Review* (1976), pp. 1059-1154.
[364] Erwin and Laurie Levenson, *supra* note 277, p. 9. See also Albert, *supra* note 363, pp. 1059-1154.
[365] Hock, *supra* note 32, p. 218. See also Albert, *supra* note 363, pp. 1059-1154.
[366] Hock, *supra* note 32, p. 218. See also Albert, *supra* note 363, pp. 1059-1154.
[367] Hock, *supra* note 32, p. 219. See also Albert, *supra* note 363, pp. 1059-1154.

against them, hence assisting the court to decide the suitable punishment.[368] The court resorts to hearing the case if the defendant has refused to plead or is claiming trial.[369]

The tenth stage should be trial whereat the judge or bench determine if "there is evidence beyond reasonable doubt" for every allegation.[370] The case proceeds with this stage and triggered by the defendant who has not pleaded guilty.[371] So, the government represented by the prosecution must prove, within the structures and confines of constitutional and human rights that the defendant is guilty of the crime.[372] According to Guido Aquaviva, Nancy Combs, Mikaela Heikkilä, Suzannah Linton, Yvonne McDermott and Sergey Vasiliev,[373] the trial stage is seen as a central event in the criminal process, a forum for the court's examination of the evidence on which it decodes the issue of innocence or guilt and renders the appropriate sentence.[374]

The eleventh stage should be sentencing. This phase occurs after the court declares conviction and normally this happens at a pronouncement of judgment session at another hearing. Within it, the contemnor would have an opportunity to address the court.[375] The sentencing judge with a plenty of latitude to set a punishment, can consider any evidence of the defendant's wrongdoing, regardless of whether the conduct formed the basis of the criminal charges.[376]

The last phase should be appeals whereat the contemnor should get the occasion of challenging their sentence via immediate appeal or "collateral proceedings".[377]

[368] Hock, *supra* note 32, p. 219. See also Albert, *supra* note 363, pp. 1059-1154.
[369] Hock, *supra* note 32, p. 219. See also Albert, *supra* note 363, pp. 1059-1154.
[370] Erwin and Laurie Levenson, *supra* note 277, p. 10.
[371] Erwin and Laurie Levenson, *supra* note 277, p. 10. See also James RA and David CB, *Criminal Procedure: A Contemporary Perspective*, 2nd Ed (Jones and Bartlett Publishers, 2004), p. 501.
[372] James and David, *supra* note 371, p. 501.
[373] Guido A *et al* "Trial Process" in Göran S *et al*, (eds), *International Criminal Procedure: Principles and Rules*, 1st Ed (Oxford University Press, 2013), p. 489.
[374] Guido, *supra* note 373, p. 489.
[375] Erwin and Laurie Levenson, *supra* note 277, p. 11.
[376] Nora D *et al*, *Sentencing Law and Policy: Cases, Statutes, and Guidelines*, 4th Ed (Wolters Kluwer, 2018), p. 207.
[377] Erwin and Laurie Levenson, *supra* note 277, p. 11.

Everyone convicted of a crime shall have the right to his or her conviction and sentence being reviewed by a higher tribunal according to law.[378]

On the appeal phase, the defendant contemnor challenges mistakes the prosecution or the court committed during the proceedings or challenges constitutional violations in his or her case.[379] There, the burden of proof shifts to the contemnor to submit why and how their fair trial rights were vitiated or that no convincing supporting evidence to the judgement.[380]

The appeal phase should aim at warrantying as a minimum two stages of legal analysis of a complaint; the second taking place in front of an upper or appellate court. Analysis deepen by that court has to be genuine[381] minding particular rules that may be in place to govern appeal. In addition to other things, it reflects that appellate processes, which must also be timely, confined only to a scrutiny of issues of law raised by a first instance judgement might not always meet that criterion. The exercise of the right to appeal immediately compels the tribunal of the first degree that passed the verdict to adjourn its execution till appellate examination has been decided.[382] This standard should apply in a phase of or pending appeal unless the contemnor willfully consents that the punishment be executed before.[383]

Unlike the Lawyers Committee for Human Rights' point of view with regard to the putting on hold of execution of the sentence, the Rwandan criminal procedure law posits that:

> […] When a judgment is appealed, its execution is stayed until the expiration of the time limits for appeal or, if the appeal is filed, until the decision on appeal is

[378] Art 14 (5), *International Covenant on Civil and Political Rights*, *supra* note 23. See also Art 8 (2(h)), *American Convention on Human Rights*, *supra* note 104. See also Art 2 (1), Protocol nº. 7 to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1984). See also Para 3, *Resolution on the Right to Recourse Procedure and Fair Trial of the African Commission on Human and Peoples' Rights* (1992). Accessed at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjf_LuihMHrAhVx5OAKHVbhDz4QFjAAegQIBBAB&url=https%3A%2F%2Fwww.ru.nl%2Fpublish%2Fpages%2F688602%2Fresolutionfairtrial-eng.pdf&usg=AOvVaw34wK7FSogtmVmFbJWoOKoH [29/8/2020].
[379] Erwin and Laurie Levenson, *supra* note 277, p. 11.
[380] Erwin and Laurie Levenson, *supra* note 277, p. 11.
[381] Lawyers Committee for Human Rights, *supra* note 22, p. 21. See also Orfield LB "The Scope of Appeal in Criminal Cases" 84 *University of Pennsylvania Law Review* (1936), pp. 825-845.
[382] Lawyers Committee for Human Rights, *supra* note 22, p. 22. See also Orfield, *supra* note 381.
[383] Lawyers Committee for Human Rights, *supra* note 22, p. 22. See also Orfield, *supra* note 381.

> rendered. The appeal against the award of damages does not stay the execution of criminal convictions.[384] […]

All criminal convicts have the right to appeal against the charges against them including those of contempt of court regardless of the severity of the crime and penalty imposed by the court of the first instance. In all appellate processes, the fair trial guarantees have to be respected as well.[385]

3.7. Conclusion

Coming closer to the end, the third chapter was concerned with the analysis of the action and trial processes of offences of contempt of court. It was addressing also the particular concerns such trial raises with regard to fair trial guarantees and rights of the defendant or contemnor in this perspective.

It analytically scrutinized and demonstrated much about the nature of the rights of the contemnor when facing the charges of the offense of contempt of court before Rwandan court and judge. After proving the effects on a criminal contempt case by the Rwandan judge whom the law deliberately allowed to sit having personal knowledge thereof; this end illustrated the way the judge in Rwandan criminal court plays and cumulates all the proliferative roles of all persons in criminal justice when adjudicating criminal contempt case.

This chapter also elucidated the standard stages the trial of offenses of contempt of court; like any other criminal trial; should go throughout so to ensure due process of criminal laws and fair trial for the contemnor.

[384] Art 188, Law nº 027/2019 of 19/09/2019, *supra* note 21.
[385] Lawyers Committee for Human Rights, *supra* note 22, p. 22.

CHAPTER 4

GENERAL CONCLUSION AND RECOMMENDATIONS

4.1. General conclusion

This study was concerned with the question regarding the action and trial of offences of contempt of court vis-à-vis fair trial guarantees under Rwandan law of criminal procedure.

It was found that Rwandan criminal processes entrust the judge with the extra power within the action and trial of matters concerning offenses of contempt of court, and that contends the principle of natural justice that “one shall not be judge on their own case”.

Into the bargain, it was figured out that, while other jurisdictions disperse from criminal contempt to civil contempt and regulate these two distinct domains in a defined and more detailed way; Rwandan law considers any contempt as criminal offense and sanctions it as such whereas some acts of contempt of court may constitute criminal offenses and other might qualify as civil or administrative faults.

It was also found that, while ordinarily criminal charges are brought before the competent criminal court by the prosecution which, after receiving the investigation file from the judicial police, opts out to indict the suspect or not depending on incriminating pieces of evidence; Rwandan procedural rules set aside the prosecution and its roles along the trial or adjudication of offenses of contempt of court at the first instance. Rwandan law calls for the prosecution and its roles at appeal level.

It was made out that besides to denying the contemnor of his or her basic fair trial rights like the right to a competent, independent and impartial tribunal established by law; the right to adequate time and facilities for the preparation of a defense and more importantly the right to defend oneself in person or through legal counsel; bearing in mind that those rights are interdependent; the contemnor’s opponent is the judge who; over and above trying a case the evidence or facts of which he or she has personal knowledge, he or she acts as the judge, the witness, the prosecutor, and the victim, and punishes the contemnor summarily.

4.2. Recommendations

In the light of the above findings, and owing to the fact that offenses of criminal contempt are not *sui generis* offenses, the following recommendations are made:

(1) The law maker of Rwanda should enact a separate act prescribing civil and criminal contempt and punishing acts constituting these offenses in a clear and detailed manner in lieu of adjudicating all of them as criminal contempt in summary proceedings.

To this end, it shall be easy identify and qualify any conduct as criminal or civil contempt hence uniform applicability of the sentencing mechanism under Rwandan jurisdiction.

(2) Or the law maker should amend the provisions on offenses of contempt in a way to enable every person easily understand the gist of the crime of contempt of court and refrain themselves from conducts which might reasonably be considered by the judges as contempt of court. The law should specifically provide the actions and conduct or behavior that may be included in manners which are subject to criminal or civil punishments.[386]

(3) Rwandan law of contempt of court should be detached from Rwandan procedural law so to bring it into conformity with the right to fair trial and other human rights standards applicable in criminal justice processes in addition to making offenses of criminal contempt prosecutable or indictable.

(4) The procedural law should be observed in that the suspect contemnor be arrested, interrogated, investigated, prosecuted and tried by a competent criminal court; instead of being immediately sentenced by the court of the jurisdiction he or she perpetrated the offense even if that very court has no jurisdiction to hear such an offence in the first instance.

(5) Rwandan law should permit the suspect contemnor defending themselves either through legal counsel or in person and it should permit them taking the floor with regard to the offence they are alleged to have committed.

[386] Anteneh, *supra* note 4, p. 53537.

(6) Judges monitoring Rwandan courts should also ensure that the due process constitutional rights including freedom of expression, presumption of innocence and the right to cross examine evidences brought for proving contempt are protected. The contemnor should also be allowed to express his or her opinion on what to be considered as extenuating circumstances.[387] The contemnor should as well be accorded the opportunity for plea bargains.

(7) The Rwandan criminal procedural law should be amended so the Rwandan court be deprived of the precarious authority entrusted with it, of upon its own initiative to take up a case if an offence of contempt of court is committed. That is not only against equity for anyone to be judge in his or her own cause (*Iniquum est aliquem rei sui esse judicem*) but also the outcome of such case would be critical and the court acting on behalf the state would be tempted to decline the mandate entrusted with the judicial police and that of the prosecution.

(8) The Rwandan judge; who, in addition to being impartial, fair, unbiased and who has to follow the laws of the state and respect of standards of criminal processes; his or her roles must be limited to safeguarding both the rights of the contemnor and the interests of the public in the administration of criminal justice.[388]

(9) An offence of contempt of court should at least be tried by the same presiding judge either where the alleged contemnor consents to that very special procedure, or where the following conditions are satisfied:

(*a*) The conduct the subject of the alleged contempt offence has occurred in the presence of that judge;

(*b*) The judge considers that the alleged contempt presents a direct or imminent danger to the administration of justice/court or the veracity of the court proceedings in progress unless dealt with in a summary manner.[389]

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[387] Anteneh, *supra* note 4, p. 53538.

[388] American Bar Association "Special Functions of the Trial Judge (Contents)" https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_trialjudge/ [9/9/2020].

[389] Law Reform Commission of Western Australia "Report on Review of the Law of Contempt" (June 2003), p. 64. Accessed at https://www.lrc.justice.wa.gov.au/_files/P93-R.pdf [7/9/2020].

(10) The judiciary or the legislator should adopt clear and precise rules of courtroom management applicable to any court attendant in order to regulate the possible scenarios of contempt of court. The rules should be as specific as possible to mitigate the hitherto overpowering and excessive prerogatives of judges in contempt matters.[390]

(11) Rwanda courts should create public awareness for court attendants in day-to-day basis on what behavior or conduct or manners that may be considered as a disgrace of court and administration of justice. The types and extents of punishments should also be communicated to the court attendants or audience through daily channeled legal education which might be already adopted by the judiciary.[391]

(12) Judges, who are courtroom moderators, should before the initiation of any proceedings, ensure that contempt of court is interpreted in the narrowest sense possible as it has a repercussion on financial and personal liberty of the accused person. The acts that might be considered as contempt should show direct nexus with the disturbances of courtroom proceedings and influence on proper performance of the judge. Due to low level of legal literacy and particular cultural underpinnings, judges should expect some disturbing acts might be committed with ignorance of law and facts, negligence, education and experience.[392]

(13) The Rwandan courts should resort to balancing of the various competing interests in criminal justice at stake in contempt proceedings. This end should make crosscutting interests like due process, crime control, victim satisfaction, public interest and judicial integrity models coincide hence enhancing the end result of criminal justice to the society.

(14) Lastly, courtrooms should be built in a reasonable distance from awaiting court attendants. This should help the court to perform its functions properly and it should be a good preventive technique against the commission of contemptuous acts with a disturbance from outside or inside the courtroom.[393]

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[390] Anteneh, *supra* note 4, p. 53537.
[391] Anteneh, *supra* note 4, p. 53537.
[392] Anteneh, *supra* note 4, pp. 53537-53538.
[393] Anteneh, *supra* note 4, p. 53538.

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