

UNIVERSITY OF RWANDA

THE SCOPE OF THE PRIVILEGE AGAINST SELF- INCRIMINATION UNDER RWANDAN LAW OF CRIMINAL PROCEDURE

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APPROVAL

I, the undersigned certify that I have read and hereby recommend for Presentation a thesis entitled “**The Scope of The Privilege Against Self-Incrimination Under Rwandan Law Of Criminal Procedure**” In Fulfillment Of The Requirements Of a Master’s Degree in Business Law from University of Rwanda

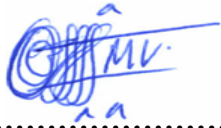


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DECLARATION

I, Théoneste MVUYEKURE, do hereby declare that this is my original which has neither been submitted nor intended to be submitted for a degree in any other university.



Signature.....

DEDICATION

To Almighty God;

To my family;

To my colleagues.

ACKNOWLEDGEMENTS

The completion of this work would not have been possible without the support and encouragement of my family and friends. I wish to express my sincere appreciation to all the people who supported me to make this thesis.

My gratitude first of all goes to GOD the almighty for the guiding light throughout the academic program.

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Théoneste MVUYEKURE

LIST OF ABBREVIATIONS AND ACRONYMS

Art	: Article
AfCHPR	: African Court of Human and Peoples' Rights
EAC	: East African Community
EACJ	: East African Court of Justice
e.g.	: <i>exempli gratia</i> ;(for example)
Et al	: <i>et alii</i> ; and others
GA	: General Assembly
ICCPR	: International Covenant on Civil and Political Rights
MINIJUST	: Ministry of Justice
NPPA	: National Public Prosecution Authority
OFJC	: Organization, Functioning, and Jurisdiction of Courts
O.G.R.R	: Official Gazette of the Republic of Rwanda
O.G	: Official Gazette
RIB	: Rwanda Investigation Bureau
RNP	: Rwanda National Police
P	: Page
p./pps.	: page/pages
para./paras.	: paragraph/paragraphs
Rep.	: Report(s)
Res.	: Resolution(s)
http	: Hypertext Transfer Protocol
SC	: Supreme Court
UDHR	: Universal Declaration of Human Rights
UN	: United Nations

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BSTRACT

The privilege against self-incrimination is a fundamental safeguard to ensure that accused persons are protected from arbitrary or unlawful deprivation of their freedom and human rights. According to international human rights law, the states must respect, protect and fulfil its obligations related to the enjoyment of fair trial rights by the accused persons within their territory and/or jurisdiction.

Thus, Rwanda, as well as other states, must organize their judicial and legal systems well as to align with the requirements of right to a privilege against self-incrimination. This study evaluates the adequacy of Rwandan criminal laws in the light of the right against self-incrimination. It analyzes the legislations which are closely related to the fair trial rights and criminal court proceedings.

In this perspective, the constitution of the Republic of Rwanda, the code of criminal procedure, and the penal code were qualitatively analyzed. This research argues that despite attempts to reform and domesticate international conventions and agreements, Rwandan criminal judicial system still largely falls far too short of complying with the international human rights obligations related to the right to privilege against self-incrimination. This contribution recommends that the current criminal legal framework should be reformed for improvement of the Rwanda's criminal legal frameworks.

Keywords: Rwanda, Privilege , Self-incrimination , Criminal Procedure .

CHAP 1

GENERAL INTRODUCTION

1.1. Background and significance of the study

According to Langbein J H ,the privilege against self-incrimination etiologically originated in the maxim *nemotenetur scrip sumprodere*(“no man shall be compelled to criminate himself”)¹.One of the main objectives of criminal law is to protect the society by punishing the offenders. At the same time, justice and fair play require that no one should be convicted without a fair trial.

The main object of the administration of criminal justice is that justice should not only be done but must also seem to have been done. Therefore, the administration of justice requires that every person accused of an offence should be given a right against self-- incrimination².

The privilege against self-incrimination has always attracted controversy. The duty of the state machinery is, on the one hand, to invoke the criminal process against the offender, on the other hand, to protect the rights of the accused, especially the right against self-incrimination as accorded to him by the constitution and criminal legislations³.

For Glanville Williams, a person against whom criminal proceedings have been instituted must be conceded the right to remain silent about the accusation. The privilege has been conferred upon the accused by the application of the doctrine of presumption of the innocence which is considered as a cardinal principle in the administration of criminal; justice in all the civilized countries⁴.

The principle of immunity from self-incriminating evidence is founded on the ‘presumption of innocence’ which is a well settled rule of English system of criminal trial. In medieval England, an accused could be questioned without any restriction on the inquisitorial powers of the police. This rule of common law was abused by the Star Chamber and by the Ecclesiastical Courts in the sixteenth century by resorting to barbaric inquisitorial methods.

¹Langbein J H, ”The Historical Origins of The Privilege Against Self-Incrimination at Common Law”, *Yale Law School*,(1994),p. 9

²*Ibid.*

³*Ibid.*

⁴ Glanville Williams, *The Proof of Guilt*,(London,3rd ed.,1963).

As a mark of disapproval of such inquisitorial methods, the maxim came to be asserted, “No man is bound to accuse himself (*nemtenetur proder* or *nemotenetur scripsum*).”

There is controversy about the origin of the privilege against self-incrimination. Legal historians continue to disagree over its origins⁵, and its justification has been keenly debated ever since Bentham’s famous attack on it as a misguided concession to the guilty.⁶ This debate has entered a new and critical, phase as the result of diametrically opposed developments by, on the one hand, the courts and legislature in England and, on the other, by the institutions of the European Convention of Human Rights.

This thesis deals with the topic of privilege against self-incrimination of legal entity in offence proceedings. The following reasons led me to the choice of this topic. First of all, it is a multidisciplinary topic involving criminal law, criminal administrative law and constitutional law. Furthermore, with the exemption of decision-making practice of courts, and a few academic essays, attention hasn’t been paid to this topic in its complexity. For this reason, this topic has offered innovation and the possibility of observing the progressive development of judicature, especially the decision-making practice of the Courts of Rwanda.

1.2. Statement of the problem

The right to liberty and security is a fundamental right inherent in the individual, enshrined in international and regional instruments for the protection of human rights. The right to liberty is also recognized in article 24 of the Constitution of the Republic of Rwanda of 2003, revised in 2015, which requires that any deprivation of liberty should be conducted under conditions specified by law.

Whenever a crime is committed, investigations and court proceedings take place before a final decision is made. This is to safeguard that there is justice for the victim and the accused. It is in line with article 11 of the Universal Declaration of Human Rights which says that every person who is charged with a crime has the right to be presumed innocent until proven guilty⁷.

This work is guided by the quote “the entire judicial process should not be looked at as an event or even be perceived as a procedure but rather a serious undertaking that ensures the

⁵J.H. Wigmore, *Evidence (Vol.VIII)*; *Cross on Evidence*, (London, 7th ed., 1990),p.23.

⁶Bentham’s, *Treatise on Judicial Evidence*, (London, 1825), p.24.

country is governed by the rule of law”(H.E Paul KAGAME opening the Judicial Year 2017/18)⁸.

Fair trials are the only way to prevent miscarriages of justice and are an essential part of a just society. Every person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But it is not all about protecting the rights of accused, It also makes societies safer and stronger⁹.

Without fair trials, citizens may end up being victimized, without fair trials, trust in government and its institutional rule of law collapses. In a fair trial, parties before court are treated equal to defend themselves and present evidence. They must be heard impartially and without any prejudice. There must be a neutral and impartial judge who would ensure that all procedural requirements have been met and keep in mind the rights of the parties in the trial¹⁰.

The right against self-incrimination is one the basic tenet of adversarial criminal justice system. The burden of proof beyond reasonable doubt rests on the prosecution and accused cannot be compelled to give evidence against him. This constitutional protection may at many times obstruct effective administration of criminal justice as criminals are very hard nut to crack¹¹.

Hardcore offenders are very often getting off scot free due to lack of evidence of commission of crime. In economic offences, drug trafficking, terrorism and like other high profile cases the perpetrator of the crime uses advanced technology where the conventional methods used by the state to investigate and detect crime seems to be insufficient. Over and above the plea of self-incrimination and the right to remain silent further restricts the power of investigation of the State¹².

⁷ E Buhungiro, "Know your rights: You are innocent until/unless proven guilty", <https://www.newtimes.co.rw/lifestyle/know-your-rights-you-are-innocent-untilunless-proven-guilty>, (18/8/2020).

⁸ K J Kiiza B. Joseph, "Applicability of the Rule of Law and Right to a Fair Trial in Rwanda", retrieved on [https://www.grin.com/document/460931#:~:text=APPLICABILITY%20OF%20THE%20RULE%20OF%20LAW%20ANDRIGHT%20TO%20A%20FAIR%20TRIAL%20IN%20RWANDA&text=In%20a%20fair%20trial%2C%20parties,impartially%20and%20without%20any%20prejudice,\(4th July 2020\)](https://www.grin.com/document/460931#:~:text=APPLICABILITY%20OF%20THE%20RULE%20OF%20LAW%20ANDRIGHT%20TO%20A%20FAIR%20TRIAL%20IN%20RWANDA&text=In%20a%20fair%20trial%2C%20parties,impartially%20and%20without%20any%20prejudice,(4th July 2020)).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Sushila D, *Right Against Self Incrimination In India: A Study Of Legislative And Judicial Trends*, (Phd Thesis, Maharshi Dayanand University, 2005).

¹² *Ibid.*

The invention and use of modern scientific investigation techniques have facilitated state to collect evidence in crimes. But legality and validity of these techniques has to be tested constitutionally. The right against self-incrimination is sacred and various aspects of this right has been discussed in this book in detail along with comparative study of selected other countries of the world. The obvious fact is to reconcile two conflicting interests i.e. preservation of human privacy and the interest of the state to prevent crime¹³.

What is needed is proper understanding of the techniques of brain-fingerprinting, narcotic analysis, polygraph and DNA examination and how does this may help in identifying crime without violating the constitutional protection against self-incrimination. The present work throws light on evidential value, admissibility and reliability of scientific evidence in relation to right against self-incrimination under the Constitution of Rwanda¹⁴.

The research questions which flow from the background and the problem statement are two-fold:

- (1) To what extent the scope of the privilege against self-incrimination under Rwandan law of criminal procedure is effective within international norms?
- (2) What should be done to make effective the privilege against self-incrimination under Rwandan law of criminal procedure within international norms?

1.3.Research objectives

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

In order to achieve this general objective, these specific objectives were set:

- To examine the applicability of the privilege against self-incrimination under Rwandan law of criminal procedure.
- To analyze current legal mechanisms on the applicability of the privilege against self-incrimination under Rwandan law of criminal procedure.

¹³*Ibid.*

¹⁴ *Ibid.*

- To determine remedies for better applicability of the privilege against self-incrimination under Rwandan law of criminal procedure.

1.4. Research methodology

To better tackle the questions raised in the problem statement, we have had recourse to different technique and methods. In the words of the Oxford English Dictionary, method means "a special form of procedure adopted in any branch of mental activity, whether for the purpose of teaching and exposition or for that of investigation and inquiry"¹⁵. In the present study, the following methods have been applied.

The research used mainly qualitative methods. It was primarily a legal doctrinal research, although information and data from other disciplines was of great import- gathered mainly through a desk review of available and relevant literature. The legal doctrinal research adopted hermeneutic, explanatory and evaluative approaches in the examination of legal documents including international and regional treaties, protocols, regulations and declarations; national policies and laws, and the jurisprudence emanating from both regional and national bodies.

1.5. Outline of the study

After the general introduction, this research is composed of four main chapters. The second chapter talks about the conceptual and theoretical framework for which we will point out the key concepts useful during the entire work and the theories advanced by other researchers.

Chapter 3 is the starting point for the analysis of research question; it will set out the standards for applying fundamental rights in Rwandan Criminal law focusing naturally on privilege against self-incrimination.

It will also talk about the proposed solutions to the problems raised throughout the research; solutions are discussed in light of trials with privilege against self-incrimination under Rwandan law of criminal procedure. Finally, the Chapter 4 contains the general conclusion including some recommendations.

¹⁵ X, *Oxford English Dictionary* ,(second edition, 1989).

CHAP 2

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. Introduction

In order to set ground for the substantive discussions in the next chapter, it is important to first define some key concepts that will constantly be referred to in this study. These concepts are privilege against self-incrimination and the right to a fair trial

2.2. Privilege against self-incrimination

For Mc Cullough Roberston, The privilege against self-incrimination is the right of an individual to refuse to answer any question or to produce any document or thing, if to do so ‘may tend to bring him into the peril and possibility of being convicted as a criminal’. The privilege against self-incrimination is ‘a basic and substantive common law right, and not just a rule of evidence’. Subject to any statutory modification, that common law right is available:

1. To persons suspected of a crime (e.g. a criminal defendant or potential defendant);
2. To persons questioned in civil proceedings (e.g. an individual giving evidence in court proceedings for regulatory offences); and
3. In non-curial contexts (e.g. regulatory and workplace investigations)¹⁶.

The privilege against self-incrimination is related to the principle that, in a criminal trial, the prosecution must prove its case unassisted by the accused defendant. The privilege against self-incrimination relates to, but differs from, the ‘right to silence’. In Australia for example, the privilege against self-incrimination does not hold absolute and there is ‘no free-standing or general right of a person charged with a criminal offence to remain silent’¹⁷. In some cases, the privilege against self-incrimination can be exercised to permit an individual to refuse to answer questions or provide information that the individual may otherwise be compelled to provide a regulator¹⁸.

¹⁶ Mc Cullough Roberston, The privilege against self-incrimination in regulatory investigations, retrieved on <https://www.mccullough.com.au/2019/09/09/the-privilege-against-self-incrimination-in-regulatory-investigations/>, accessed on 30th December 2020.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

In other cases, the privilege against self-incrimination is modified so that an individual is required to answer questions or provide information, even if it would tend to incriminate that person, but that information cannot be used as evidence against that individual¹⁹.

According to C. Peter, self-incrimination means the act of incriminating yourself, or saying something, which shows you are guilty. The right to remain silent constitutes a small but significant part of the defendant's rights as a whole. The right to remain silent and the general right to a fair trial have a strong relation to each other's²⁰.

L. Putkonen in his thesis argues that the right to a fair trial is dealt in Article 6 of the European Convention of Human Rights (ECHR) but that specific article states nothing about the right to remain silent. The right to remain silent is a legal right recognized in many of the world's legal systems. The cover of principle is commonly known as the right of the accused or the defendant to refuse to give any comments or provide answer when questioned prior to or during legal proceedings in a court of law²¹.

This can mean either right to avoid self-incrimination or the right to remain silent when questioned. In criminal investigations, the prosecution must prove its case without forcing the accused to give evidence through coercion and oppression²². For S.Nico, the accused cannot be bound to say where documents are hidden or how other evidence against him may be provided nor be compelled to give access to incriminating evidence or to admit one's part in the crime²³.

In view of Wils Wouter P.J., self-incrimination can occur directly or indirectly. Directly means that the suspect made a statement, which was self-incriminating during the interrogation, while indirectly means that the statement was made voluntarily without the pressure from another person. Hence, the privilege against self-incrimination equals the right not to be obliged to produce evidence against oneself, which encompasses the right to remain silent and not to answer questions²⁴. Article 6 of the ECHR is a provision, which aims to

¹⁹ *Ibid.*

²⁰ C Peter: *Dictionary of Law*, (4rd Edition, Bloomsbury 2005).

²¹ L Putkonen, *Privilege against self-incrimination in EU Competition law – Undertaking's right to remain silent*, (LLM thesis, University of Amsterdam, 2016).

²² *Ibid.*

²³ S.Nico, *Constitutional Criminal Procedure: A Commentary on the Constitution of the Republic of South Africa*, (1996. Butterworths 1998).

²⁴ Wils, Wouter P.J., "Self-Incrimination in EC Antitrust Enforcement: A Legal and Economic Analysis World Competition": *Law and Economics Review*, Vol. 26, No. 4, (2003).

protect the right to fair trial. Article 6(1) protects mainly the public hearing in front of an independent and impartial tribunal, Article 6(2) the presumption of innocence and Article 6(3) other minimum rights for those charged in a criminal case²⁵.

Even though not particularly mentioned in the article, A. Ashworth, states that undertakings privilege against self-incrimination and right to remain silent have been implied into the Article by the ECtHR in various judgments on the fairness of criminal trials, which constitute the main framework for the principle²⁶.

The European Court of Human Rights stated in *Saunders*, that the reasoning of the privilege against self-incrimination” lies, inter alia, in the protection of the accused against inadequate compulsion by the authorities thereby contributing to the avoidance of blunders of justice and to the fulfillment of the aims of article 6”²⁷.

Support for the privilege could also be found from the Chapter VI of the Charter of Fundamental Rights of the European Union. Articles 47 (right to an effective remedy and to a fair trial) and 48 (presumption of innocence and right of defence) prevent the Commission from compelling undertakings to provide answers, which would involve an admission to their participation in competition law infringements²⁸.

In his book, Andrew Choo states that the privilege against self-incrimination is often represented in the case law of England and Wales as a principle of fundamental importance in the law of criminal procedure and evidence. A logical implication of recognizing a privilege against self-incrimination should be that a person is not compellable, on pain of a criminal sanction, to provide information that could reasonably lead to, or increase the likelihood of, her or his prosecution for a criminal offence²⁹.

²⁵ *Ibid.*

²⁶ A Ashworth, "Self-incrimination in European human rights law-a pregnant pragmatism?", *Cardozo Law Review* (2008-2009).

²⁷ *Ibid.*

²⁸ Article 17 of the Charter of Fundamental Rights of the European Union

²⁹ Andrew Choo, *The Privilege Against Self-Incrimination and Criminal Justice*, retrieved on <https://www.bloomsbury.com/us/the-privilege-against-self-incrimination-and-criminal-justice-9781841133171/>, on 30th December 2020

2.3. Notion of the right to a fair trial

The right to a fair trial is a rule of international law intended to defend people from illegal and arbitrary restriction or denial of other fundamental rights and liberties, of which the person's right to life and freedom is the most noticeable³⁰. For Dr.D. Nshimiyimana," it is a fundamental safety device to ensure that accused persons are protected from arbitrary or unlawful deprivation of their freedom and human rights³¹.

Several international documents relating to human rights have given them since the Universal Declaration of Human Rights recognized fair trial rights. Articles 14 and 15 of the ICCPR are the most comprehensive and detailed provisions on fair trial rights among these international documents. The Lawyers Committee for Human Rights³², in its guide-book on fair trial criteria, categorized fair trial in three categories namely pre-trial rights, in-trial rights and post-trial rights.

The pre-trial phase involves the rights to legal counsel, the right to appear promptly before a judge to contest the legitimacy of arrest and detention, prohibition on incommunicado detention, the right to know the reasons for arrest, prohibition on arbitrary detention and arrest, the right to respect the human condition during pre-trial detention and prohibition on torture.

In criminal proceedings, the accused person must enjoy these rights in the stage of pre-trial which consists of the investigation stage usually carried out by the police and the prosecution stage. When considering the safeguard provided in articles 14 and 15 of the ICCPR, it found that the rights to a fair trial are more deeply established in the context of criminal court proceedings.

Additionally, Rwanda has ratified the ICCPR³³, thus it can be applied as a model for the criminal court proceedings and remains the guarantee for ensuring the good administration of justice in Rwanda. According to the ICCPR, three distinct rights are to be found in Rwandan criminal proceedings. First, the criminal proceedings must be fair and the trial must be carried

³⁰Lawyers Committee for Human Rights,"What is a fair trial? A Basic Guide to Legal Standards and Practice", USA, (2000), p.1.

³¹Dr.D. Nshimiyimana,"Critical Evaluation of Right to a Fair Trial in Rwandan Criminal Law", *International Journal Of Law Management & Humanities* ,Volume 3 , Issue 3,(2020)

³²*Ibid.*

³³Decree-Law no8/75 of 12 February 1975 relating to the ratification of International Convention on Civil and Political Rights,1975.

out in public, secondly, the courts must exercise their mandates impartially and independently and being established with a legal act; lastly, the post-trial rights of the accused person have to be proficiently observed and protected.

Actually, the right to a fair and public hearing is provided for and protected by international law. Accordingly, the second paragraph of article 14(1) of the ICCPR states, *inter alia*, that “in determining any criminal charge against him or his rights and responsibilities in a lawsuit, everyone has the right to a fair and public hearing³⁴”. The content of this article is very crucial as it recognizes the equality of individuals before the courts and ensures the publicity of hearing. It establishes and details the specific minimum guarantees in the fairness of criminal proceedings.

In those minimum guarantees agreed in the Article 14(3) there are the rights to be informed of the charge; to communicate with counsel and to have sufficient time and facilities for the preparation of a his defence; to get attendance and examination of witnesses of the accused persons under the same conditions as witnesses to the prosecution, to examine or cross-examine witnesses against the accused; to be tried without undue delay; to be assisted with an interpreter freely, if the accused cannot speak or/and understand the language used in court hearing.

Essentially, this provision is a vital element for safeguarding the public and fair hearing; it encourages the application of equality of arms, the respect of the principle of presumption of innocence, to have adequate facilities of accused person and his counsel to access pieces of evidence, documents, and other materials of the prosecution against the accused person.

The article 14 (1) of ICCPR provides for the independence and impartiality of the court. It is stipulated that “in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by an independent and impartial court³⁵”. This independence and impartiality require constitutional recognition of the doctrine of separation of powers between the legislature and the judiciary as well as the executive.

In this regard, as also posited by Montesquieu, the three arms of Government must create a “system of checks and balances³⁶”, in order to mitigate and prevent abuses of the executive

³⁴ 14(1) of the ICCPR

³⁵ Article 14 (1) of ICCPR

³⁶ Montesquieu, *De l'Esprit des Lois, Book IX, Chapter 6*, Whitefish, KessingerPublishing, (1748).

and the legislative power and the proper execution of the judicial function, linked not only to the decision-making process but also to the decision of the court, this is, thus, of paramount importance in criminal proceedings.

Also, under Article 14, paragraph 6, compensation shall be paid to individuals convicted of a criminal offense by a final judgment and punished as a result of that conviction, where their conviction has been overturned or forgiven on the ground that a new reality has established conclusively that a miscarriage of justice has occurred³⁷.

The rest of the article imposes specific and detailed obligations around the criminal procedures in respect for protecting the rights of an accused person throughout the criminal court proceedings. It establishes the prohibited double jeopardy³⁸ and the presumption of innocence³⁹. It requires that those sentenced of a crime should be allowed to appeal to a higher court⁴⁰. It also establishes rights to a speedy trial, to counsel against self-incrimination and for the accused to be present and to call and examine witnesses⁴¹.

2.4. Asserting privilege against self-incrimination in criminal proceedings

For A Kervick, the notion of privilege against self-incrimination, which is frequently referred to as one distinct protection, actually arises from a number of different protections for defendants and witnesses at common law which are 'concerned with the protection of citizens against the abuse of powers by those investigating crimes'⁴².

Those distinct safeguards can be inaccurately characterized as:

- (a) a privilege against self-incrimination for witnesses in criminal, civil or other non-judicial investigative proceedings (such as coroners' inquests)
- (b) the right of a defendant not to give evidence at trial; and
- (c) the right to silence of a suspect during a pre-trial criminal investigation

As set out below, the privilege is not complete and statute has violated on these various protections in a number of ways. The privilege against self-incrimination is a long-recognized

³⁷ Article 14, paragraph 6 of ICCPR.

³⁸ Article 14.7.

³⁹ ICCPR, Article 14.2.

⁴⁰ *Ibid.* Article 14.5.

⁴¹ *Ibid.* Article 14.3.

⁴² A Kervick and W Hayes, "Asserting privilege against self-incrimination in criminal proceedings", retrieved on <https://www.lexisnexis.co.uk/legal/guidance/privilege-against-self-incrimination.accessed> (30th July 2020).

common law privilege⁴³. The principle comes from common law as a response to prisoners being tortured into answering self-incriminating questions which would lead to their conviction in the Star Chamber.

It was summarized in 1942 in *Blunt v Park Lane Hotel Ltd*: the rule is that no one is bound to answer any question if the answer thereto would, in the view of the judge, have a trend to expose the deponent to any criminal responsibility, penalty which the judge regards as reasonably likely to be preferred⁴⁴.

Hence, for Harshit Khare, although an accused person may of his own accord make a voluntary statement as to the charge against himself, a justice, before receiving such statement from him is required to caution him that he is not obliged to say anything and that what he does say may be given in evidence against himself. Hence also arises the rule that evidence of a confession by the accused is not admissible unless it is proved that such confession was free and voluntary⁴⁵.

The privilege against self-incrimination thus enables the maintenance of human privacy in the enforcement of criminal justice. It also goes with the maxim *Nemo Tenetur Seipsum Accusare*, i.e., 'No man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime, he has been accused of.' If the confession from the accused is derived from any physical or moral compulsion (be it under hypnotic state of mind) it should stand to be rejected by the court⁴⁶.

The privilege against self-incrimination parries the general obligation to provide testimony under oath when called upon, but it also applies in police interrogations. In all cases, the privilege must be supported by a reasonable fear that a response will be incriminatory. The issue is a matter of law for a court to determine, and therefore, with limited exceptions, one must claim the privilege to benefit from it⁴⁷.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Harshit Khare, Privilege Against Self-Incrimination, retrieved on <http://www.legalserviceindia.com/article/I466-Privilege-Against-Self----Incrimination.html>, accessed on 30 December 2020.

⁴⁶ *Ibid.*

⁴⁷ US Congress, Amdt 5.3.1.2 General Protections Against Self-Incrimination: Doctrine and Practice, retrieved on https://constitution.congress.gov/browse/essay/amdt5_3_1_2/, accessed on 30th December 2020.

Otherwise, silence in the face of questioning may be insufficient to invoke the privilege because it may not afford an adequate opportunity either to test whether information withheld falls within the privilege or to cure a violation through a grant of immunity. A witness who fails to claim the privilege explicitly when an affirmative claim is required is deemed to have waived it, and waiver may be found where the witness has answered some preliminary questions but desires to stop at a certain point⁴⁸.

However, an assertion of innocence in conjunction with a claim of the privilege does not obviate the right of witnesses to invoke it, as their responses still may provide the government with evidence it may later seek to use against them⁴⁹.

2.5. The right to a fair trial as a human right in international law

According to Rhona K.K, one of the foundations of the rule of law is the concept of fair trial; it is a vital part of all legal systems and requires a fair judicial process administered by an impartial judiciary⁵⁰. J Donnelly, further states that the origins of human rights, as a concept, can be seen in the theory of natural law, which, in history, has been advanced and extended, eventually is getting its present state⁵¹.

A.Al-Hargan in his thesis, says that the participation of states in the topic of obligations nearby human rights has become most important. It was extensively considered that if a country was found to be treating its citizens in such a way which may violate their rights, this would eventually be considered a domestic situation and thus there would be no implementation of intervention⁵². However, the emergent importance assigned to the law of human rights has a number of major consequences in regard to human rights within a certain nation.

For J Rehman, it is well-known that state sovereignty claims and their jurisdiction have witnessed a gradual deterioration due to the fact that acknowledgement of important human rights has become more effective⁵³. At the same time, state interventions which are recognized

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Rhona K.K, Smith, *International Human Rights*, (5th edn, OUP 2012), p.24.

⁵¹ J Donnelly, 'Human rights as Natural Rights' ,*Human Rights Quarterly*,(1982),p. 4

⁵² AAl-Hargan, *The Saudi Pre-Trial Criminal Procedure and Human Rights*, (PhD thesis, University of Kent, 2006), p.40.

⁵³ J Rehman, *International Human Rights Law*,(2nd ed, Pearson Education Limited ,2010),p.22.

as going against and infringing human rights have improved due to the evolution of international organizations geared towards ensuring such rights, including the Human Rights Council. Before this, H J Steiner et al. argue that there had also been the acknowledgment of the list of charters and conventions that place fundamental focus on the protection of human rights, as well as the restriction of state powers in this concern⁵⁴.

It is true to state that a number of political and lawful elements have squeezed the movement of human rights, and thus, when scrutinizing in fact the growth and progression of human rights, there is a necessity to develop a more understanding of history in regard to the human rights undertaking⁵⁵.

On the other hand, after the World War II, the effects of which were felt global-states was stimulated and driven to protect and promote human rights on a worldwide scale. This perfect need for human rights protection has consequently resulted in the formation of numerous outfits in the arena of human rights mostly after the Nazi trials and the complete volume of crimes⁵⁶. Following the creation of the UN, the 1945 UN Charter provided an official and imposing expression of the movement of human rights; this, from one perception, created a basis of the human rights movement, and further created a foundation for any associated tools⁵⁷.

According to S. Muhammed AL-Subaie, the three main tools are considered as being a bill of rights, comprising the ICESCR (the International Covenant on Economic Social and Culture Rights), the ICCPR, and the UDHR (Universal Declaration of Human Rights). Notably, the second of these comprises a number of different topics, including the need for criminal trials, the freedom of conscience, religion and thought, the freedom of movement, the freedom of peaceful assembly, the freedom of family association, and the freedom of involvement in public affairs⁵⁸. Although the fact that there is much resemblance between the ICCPR and the UDHR, it remains that the former includes an obligation to be observed to by state parties;

⁵⁴ H J Steiner, P Alston and R Goodman, *International Human Rights in Context: Law, Politics, Morals*, (3rd edn, OUP 2007), p.59.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ S. Muhammed AL-Subaie, *the Right to a Fair Trial under Saudi Law of Criminal Procedure A Human Rights Critique*, (Doctor of Philosophy in Law, Brunel University, London), 2013.

the latter, on the other hand, provides moral obligations, and thus does not claim to provide a statement of legal obligation or law⁵⁹.

The right to a fair trial is a right that enables the recognition and protection of many other human rights. Its violation can be devastating to an individual defendant, but also damaging to entire societies as unfair trials are used to undermine democracy and oppress minorities. Although the right to a fair trial has been included in all international and regional human rights instruments since the Second World War and 173 states parties to the ICCPR have pledged to uphold it, the international standard for a fair trial can be elusive⁶⁰.

The right to a fair trial is not new; it has long been recognized by the international community as a basic human right. Despite this, it's a right that is being abused in countries across the globe with devastating human and social consequence⁶¹s.

Despite the importance of fair trials being recognized by the international community, this basic human right is being abused day-in-day-out in countries across the globe. We're working to put an end to these abuses, towards realizing our vision of a world where every person's right to a fair trial is respected.

The Right to a Fair Trial is recognized internationally as a fundamental human right and countries are required to respect it. Different countries have developed different ways of doing this, but regardless of how a particular legal system operates, the principles above are core to all fair justice systems and they all form part of the Right to a Fair Trial.

⁵⁹*Ibid.*

⁶⁰ Prof Philippa Webb, 'The Right to a Fair Trial in International Law: Shining a light on a critical human rights protection', retrieved on <https://www.lcil.cam.ac.uk/press/events/2020/10/lcil-friday-lecture-right-fair-trial-international-law-shining-light-critical-human-rights>, accessed on 30th December 2020.

⁶¹ Fair Trials, The Right to a Fair Trial, retrieved on <https://www.fairtrials.org/right-fair-trial>, accessed on 30th December 2020.

CHAPTER3: LEGAL ANALYSIS AND MECHANISMS ON APPLICABILITY OF THE PRIVILEGE AGAINST SELF INCRIMINATION UNDER RWANDAN LAW OF CRIMINAL PROCEDURE

3.1. Introduction

This chapter look at the applicability of the privilege against self-incrimination under Rwandan Law of criminal procedure. It starts by giving a legal framework of the privilege against self-incrimination in the domestic domain, and then examines the right to a fair trial under the international treaties. It also explores some significant treaties such as the International Covenant on Civil and Political Rights (ICCPR) and reflects why Rwanda has preferred to ratify on the same.

The Rwandan bodies connected to the right to a fair trial will be emphasized and to be inspected. The focal purpose of this chapter is to evaluate in theory whether the Rwandan law is in compliance with the international human rights values linked to the right to a fair trial.

3.2. Fair Trial Rights in Current Constitution of Rwanda of 2003 as Revised in 2015

The constitution of Rwanda of 2003 as revised in 2015 like many constitutional frameworks in other countries holds an extensive Bill of Rights. The Bill of Rights in Rwanda's constitution is delimited in Chapter four which compacts with the freedoms and human rights.

It is stated that a human being is sacred and inviolable⁶². This means that individual rights of human being are not favours granted by the States or anyone but are prerogatives of the person by the fact that he is created as such. The constitution states also that a human being must be respected, protected and defended by the State⁶³.

The right to a fair trial is one of the non- derogable fundamental rights under the constitution. In fact, the existing constitution provides provisions associated to the fairness of criminal proceedings. Article 29⁶⁴, titled "right to due process of law", is the operative segment establishing guarantees for people accused of criminal offenses during the court trial.

⁶²Constitution of the Republic of Rwanda of 2003 revised in 2015, Article 13.

⁶³*Ibid.*

⁶⁴ Article 29 of the constitution of 2003 revised in 2015.

It is categorically stated, in this provision, that every individual has the right to appear before a competent Court⁶⁵. It delivers the presumption of innocence to everybody charged with a criminal offense till evidenced guilty or until that person pleads guilty before a competent court, the right to legal representation and defence, and be informed of the cause and nature of charges⁶⁶. It also provides that every person must not be prosecuted, arrested, detained, or punished for omissions or acts that did not constitute a crime under international law or domestic from the time they were committed⁶⁷.

In general, offenses and their penalties are determined by law. In this context, the Constitution obliges that a person should not be responsible for an offense he or she did not commit⁶⁸. As a critical aspect of the right to a fair trial, a person must not be punished for an offense of a severer sentence than the one provided for by the law at the time the offense was committed⁶⁹.

Accordingly, a person should not be imprisoned simply for failure to fulfill a contractual obligation;⁷⁰ and should not be subject to prosecution or punishment for a crime that has been prescribed⁷¹.

In addition, the Constitution also provides provisions related to the impartiality of court and judges. The constitution provides that the justice is done in the name of the people and that no one can judge his own cause⁷².

The constitution also provides in its provisions the right to a public hearing. Article 151 (2) provides that court hearings have to be held in public, except, in circumstances provided for by law, when the camera has been ordered by the court⁷³. Consequently, court rulings are binding on all parties in the case, whether individuals or public authorities, and can only be challenged through procedures provided for by law⁷⁴.

⁶⁵ Ibid, Article 29, 3.

⁶⁶ Ibid, Article 29, 1.

⁶⁷ Ibid.

⁶⁸ Ibid, Article 29, 5.

⁶⁹ Ibid, Article 29, 6.

⁷⁰ Ibid, Article 29, 7.

⁷¹ Ibid, Article 29, 8.

⁷² Ibid, Article 151.

⁷³ Ibid. Article 151, 2.

⁷⁴ Ibid. Article 151, 4.

Moreover, the constitution provides for the court's independence. It provides that the judiciary is distinct and independent from the executive and legislative branches of state's administration. It enjoys administrative and financial autonomy⁷⁵.

Notably, the incorporation of the international standards related to the fair trial rights may demonstrate the high degree of their consideration and its great value in a legal system; considering that, first, although the constitutions can be revised or amended, the process of its amendments is extremely complex than for normal laws.

In Rwanda, the President of the Republic has the power to initiate revision or amendment of the Constitution after approval by two thirds (2/3) of each Chamber of Parliament⁷⁶; moreover the amendment or revision of the Constitution must be accepted after being voted by each House of Parliament by a three-quarters (3/4) majority of its members⁷⁷.

Second, the recognition of those protections of accused persons at constitutional level guarantees that all organs of government, authorities and persons through the country, including criminal courts are bound by those rights in their actions, and that legislation must be consistent with them and must respect these rights due to the hierarchal supremacy of the constitution.

For P.D Marshall, although the constitution guarantees the right to fairness in criminal proceedings, unfortunately some citizen guarantees to the fairness of the criminal court proceedings are not provided in constitution and others are not well expressed. The right to appeal, which is important feature of the modern criminal process, is not provided in the constitution⁷⁸.

The right to appeal allows wounded party another chance for his case to be heard by another independent judge or judges. Furthermore, the right to be compensated for unlawful conviction, right to be tried within a reasonable time, right to the protection against self-incrimination and equality of arms are not provided for anywhere in the current constitution.

⁷⁵Constitution of the republic of Rwanda of 2003 revised in 2015, Article 150.

⁷⁶Ibid., Article 175, paragraphe 1.

⁷⁷Ibid., Article 175, paragraphe 2.

⁷⁸P.D Marshall, "Comparative analysis of the rights to appeal", *Duke Journal of Comparative and International Law*, Vol.22, No.1, (2011), p.1.

Likewise, the right to be tried by and an independent court and judge are not well expressed in the constitution⁷⁹.

Therefore, the non-incorporation of fair trial standards in the constitution is a great disrespect of the international human rights obligations of State as far as ensuring fair trial rights are concerned. Moreover, the constitution fails to guarantee in somehow the right to be tried by an impartial and independent court.

In this context, the principle of judicial immovability of judges has been removed in the constitution of 2003. Normally, the judicial immovability is considered by international law as one of the main pillars guaranteeing the court's independence⁸⁰, it guarantees the independence of the court because it protects the judges against any arbitrary measurement of suspension, retro gradation, displacement, even in advance and revocation without having liberally consented thereto.

For L Favourer, it is in this regard that favourer clearly pointed out that "the judge, not only cannot be revoked, suspended or retired from office without guarantees provided by statute but still it may receive without his consent, a new appointment"⁸¹.

Thus, the judges seem to benefit in this regard of a special guarantee, except in the context of disciplinary proceedings. Unfortunately, in Rwanda, the principle of immovability has been let down by the constitutional revision no 04 of 17 June 2010⁸². In fact, the article 142 of constitution of 2003 provided that the judges appointed definitively is irremovable, cannot be suspended, transferred, even in progress, retired or dismissed from their functions except in the cases provided for by law.

In the revision of the constitution of 2010, the content of this article has been deleted. Despite other different amendments of Rwandan constitution, no such express provision has been re-inserted in it. Importantly, in contrast to the ordinary official, a judge cannot be the subject of automatic transfer.

⁷⁹Constitution of Republic of Rwanda of 2003 revised in 2015, Article 151 (5).

⁸⁰ UN Human rights Council, "11th session, promotion and protection of all human rights, civil, political, economic, social and development". A/HRC/11/41 (24 March 2009), para 57.

⁸¹L Favoreu, *Droit constitutionnel*, Dalloz, Précis, Paris,(11e édition, 2008), p. 523; Manson, *La notion S, d'indépendance en droit administratif*, (PhD Thèses, Université de Paris, France, 2008), p. 38

⁸²Amendment no 04 of the 17 June 2010 of the Constitution of Rwanda. In Official Gazette of the Republic of Rwanda no special of 17 June 2010.Article 31.

As also noted by Metrofanis, a judge should not be transferred to another judicial function without having expressly consented to it⁸³, except in cases of reform of the organization of the justice system or disciplinary sanctions⁸⁴. We find this privilege is not in the own interests of judges but in the interests of the rule of law and protection of individual rights.

The current remark rests a serious handicap to the freedom of judges, during the decision-making process for fear of not being muted or relocated without their agreement. In this respect, the grounds for transfer of judges could be clearly and legally established and be decided in transparent proceedings, without any external influences and whose decisions can be appealed in other instance provided by law.

More importantly, even those guarantees of the right to a fair trial protected in the ICCPR and the African Charter are not explicitly provided for or covered in Article 29 of the constitution and are protected by virtue of articles 168 of the Constitution. The article 168 provides that, “Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of this Constitution.(Article 95 paragraph 1 : The hierarchy of laws is as follow: 1° Constitution; 2° organic law; 3° international treaties and agreements ratified by Rwanda; 4° ordinary law; 5° orders.)⁸⁵”.

To this extent, the Rwandan criminal courts may cite and apply the international human rights law related to a fair trial, namely for instance, ICCPR, ACHPR, this position has also elucidated in *Akagera Business Group v State of Rwanda*⁸⁶. In this case, the Supreme Court has made reference and considered the international principles and decisions of United Nations human rights committee (UNHRC) in interpreting the right to equality of arms which was not expressed anywhere in the Rwandan constitution.

The Supreme Court held that equality of arms before the court is considered as part or portion of the right to equal treatment before courts as provided for by article 14 of international

⁸³F, Mitrofan, "The Independence of Judge - a guarantee of the rule-of-law state", *Journal of Law and Administrative Sciences*, Special Issue 2015, (2015), pp.94-102.

⁸⁴Council of Europe, Recommendation no 52, Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency, and responsibilities. (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

⁸⁵ Article 168 of the Constitution of 2003 revised in 2015.

⁸⁶*Akagera Business Group v State of Rwanda*, Case no RS/SPEC/0001/16/CS of 23 September 2016, Supreme Court, (Unreported).

covenant on civil and political rights which must be respected and observed as part of the constitution of Rwanda.

From the above-mentioned, it can securely be decided that at least in general, Rwanda's constitution has not suitably incorporated the guarantees of the right to a fair trial as understood in international legal frameworks. The guarantees of the right to a fair trial in the ICCPR and the African Charter are therefore, part of Rwanda's national law and are binding on all persons and authorities in Rwanda in accordance with articles 168 of the Constitution.

3.3. Fair trial rights in Code of Criminal Procedure

The law relating to criminal procedure sets rules for the fair trial process and above all protects the rights of the accused during the criminal court proceedings. Rwandan Code of Criminal Procedure has been published in 2019⁸⁷. The objective of the Criminal Procedure code is to govern investigation and prosecution acts constituting a violation of the penal law⁸⁸.

The penal code dedicates several provisions connected to the respect of fair trial rights. It contains provisions which are associated to the time limits that judges must respect. In this connection, a judgment must be in writing and delivered within thirty (30) days of the close of the hearing⁸⁹; and in case of provisional detention, the judge must render his decision within three (3) working days from the closure of the hearing, after having heard the public prosecutor and the pleadings of the suspect assisted by an advocate if he wish⁹⁰.

It also states provisions connected to the principle of non-retroactivity of criminal actions, as well as the obligation to motivate judicial decisions⁹¹ and being informed of charges. Article 46 of the criminal procedure states that any person detained by the judicial police has the right to be informed of his charges and his rights, including the right to inform his lawyer or any other person of his choice.

In addition, the code of criminal procedure evidently gives the considerable principles of criminal matters. It provides that the criminal cases must be held in public⁹²; respect for the

⁸⁷Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure(*OG* n° Special of 19/09/2019).

⁸⁸Article 1.

⁸⁹Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure, Article 138.

⁹⁰ *Ibid*, Article 77.

⁹¹ *Ibid*, Article 139.

⁹² *Ibid*, Article 126, 1.

right to defense and to have an advocate⁹³; being impartial and fair⁹⁴; equality of parties before the law and adversarial procedure⁹⁵; on the basis of evidence legally found, delivered within the legal time-limits, and judgment and delivered in the language of oral argument⁹⁶.

Also, the right to a public hearing is also provided. It is provided in article 155 of the Code of Criminal Procedure that the hearing must be conducted in public; however, it is also provided that when the public hearing may be prejudicial to good morals or public order, the court may order that a case be heard in camera. In any case, the judgment on the merits will always be pronounced in public.

Other guarantees provided for in the Code of Criminal Procedure include the presumption of innocence⁹⁷, cross-examination of witnesses⁹⁸; and the right to appeal⁹⁹. It is also stated in article 69 that a person detained by the judicial police must in no case be detained in a prison or in a place other than the place of detention corresponding; those relevant custody facilities must be located in the jurisdiction of the judicial police officer¹⁰⁰.

With regard to the protection of the presumption of innocence, the criminal code spaces the burden of proof on the prosecutor¹⁰¹, an accused is not required to prove his innocence before the establishment of his guilt¹⁰². Lastly, as part of the package of the fair trial rights, the criminal procedure protects the right to legal counsel and right against self-incrimination¹⁰³. In the case of administration of proof, the law on criminal procedure establishes the right of adversarial hearing¹⁰⁴.

More prominently, in the Rwandan context, fair trial guarantees are extremely important, because they are closely related to the protection of other rights of people, comprising the prohibition of torture and the right to life. This proves the importance that Rwandan legal system and definitely the people of Rwanda could attribute to the fair trial rights.

⁹³ Ibid, Article 126, 3.

⁹⁴ Ibid, Article 126, 2.

⁹⁵ Ibid, Article 126, 4.

⁹⁶ Ibid, Article 126, 5.

⁹⁷ Ibid, Article 107.

⁹⁸ Ibid, Article 127, 10.

⁹⁹ Ibid, Article 180, 1.

¹⁰⁰ Ibid, Article 49.

¹⁰¹ Ibid, Article 107, paragraph 2.

¹⁰² Ibid.

¹⁰³ Ibid, Article 46, 68.

¹⁰⁴ Law n° 027/2019 of 19/09/2019 relating to the code of criminal procedure, article 108.

On the other hand, some provisions of the code of criminal procedure seem not to be in harmony with the spirit of international law pertaining to the fair trial rights. For example, there is no provision which can protect an accused person during the collecting of evidence in prosecution phases. This is because all pieces of evidence should be collected in the presence of the accused or, when his presence is impossible, in the presence of his lawyer.

3.4. Absence of the legal protection of an accused during the collecting of evidence

From the above-mentioned, it can prudently be concluded that the code of criminal proceedings has incorporated many safeguards of the right to a fair trial as understood in international human rights law. On the other hand, it contradicts the principle of fair trial. The absence of the legal protection of an accused person during the collecting of evidence is a great handicap to the consistence of criminal code procedure with the legal standards of fair trial, because, the fair trial must be taken as a whole.

It is in this perspective that Human Right Commission has highlighted that it is not acceptable to make general reservations to the right to a fair trial under article 14 of the ICCPR as a whole¹⁰⁵. In the same respect, the African Commission on Human and People Rights in *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*¹⁰⁶ has held that the right to a fair trial is non-derogable, the state must not make any derogation from their treaty obligations even during emergency situations. Consequently, the failure of criminal procedure to meet the requirements of one element is sufficient to establish non-conformity with the right to a fair trial.

3.5. Fair trial rights in Rwandan Penal Code

In the Rwandan legal system, there are other laws which contain some provisions aimed at protecting personal accused to the procedural fairness of criminal court proceedings. The Penal code¹⁰⁷ devotes various provisions in connection with the respecting of rights to a fair trial.

¹⁰⁵ Human Right Commission General Comment 32 (2007), para.5.

¹⁰⁶ *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, African Commission on Human and Peoples' Rights, Comm. No. 74/92 (1995), paragraph.21.

¹⁰⁷ Law N°68/2018 of 30/08/2018 determining offenses and penalties in general.

As part of fair trial rights, the penal code also provides that it is prohibited to enforce a heavy sentence on the accused than that which was in force at the time of the commission of the offense¹⁰⁸. Supplementary, it is provided that no person may be punished for the same offense for more than once¹⁰⁹. As part of the package of the fair trial rights, the penal code provides that except for contempt of court, no offense is punished by a penalty that was not prescribed by law before the commission of the offense¹¹⁰.

In relation to this, the penal codes protected accused against the expansive interpretation by the criminal courts of criminal laws and make the judgment by analogy¹¹¹, and also provides that no one may be convicted of an omission or an act which did not constitute an offense under international or national law at the time of his commission¹¹².

To conclude, the law on fighting against corruption¹¹³ provides an incentive for the impartiality of judges. It establishes heavy sentences for judges convicted of corruption, accepting or asking bribes or using other methods of corruption. In that case, he may be punished by imprisonment between seven and ten years and a fine of two to ten times the value of the illegal benefit solicited¹¹⁴; this is different to other any judicial officer, prosecutor, police officer or any other judicial police officer who may be sentenced to imprisonment for not more than seven years but more than five and a fine of two to ten times the value of the illegal benefit demanded¹¹⁵.

3.6. Value of Out-of-Court Confessional Statements in Rwandan Criminal law

Principally pieces of evidence are the basis of justice. For J Murray, this principle is often referred to as the free assessment of evidence and is seen as a corollary of the search for material truth¹¹⁶. Rwandan law provides that judges decide cases according to the pieces of evidence¹¹⁷ and basing their decisions on the relevant law or, in the absence of such a law, on

¹⁰⁸Penal code, Article 3, para 2.

¹⁰⁹Ibid, Article 7.

¹¹⁰ Ibid, Article 3, para 2.

¹¹¹Ibid, Article 4.

¹¹² Ibid, Article 3, para 1.

¹¹³ Law N° 54/58 of 13/8/2018 on fighting against corruption, Article 5, para 1,2.

¹¹⁴ Ibid, Article 201

¹¹⁵ Ibid, Article 201, para 3.

¹¹⁶ J Murray, "Assessing Allegations: Judicial Evaluation of Testimonial Evidence in International Tribunals", *Chicago Journal of International Law*, (2010), p.72.

¹¹⁷Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 4.

the rule they would have enacted, had they to do so, guided by judicial precedents, customs and usages, general principles of law and written legal opinions¹¹⁸.

Decisions regarding the admissibility of evidence are left entirely to the discretion of the judge, who determines both the admissibility and the weight of the evidence presented¹¹⁹. The Rwandan criminal law provides that evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present exculpatory evidence¹²⁰. They are produced using papers or documents, witness testimony, confessions, scientific evidences, and physical proofs¹²¹.

As pointed out by O I Tajudeen, a confession is the best evidence that can be produced in a court. Before a confession can be received as such; it must be shown that it was freely and voluntarily made¹²². A confession is worthless if it relates to matters outside of that knowledge or experience¹²³. As point out by Murray¹²⁴, at least in theory, all countries agree that involuntary confessions must be excluded.

Beyond that the rationales, evaluative standards and the rigor of exclusionary practices vary greatly. Rwandan tribunals have different views on the values of extrajudicial confessions. In *Prosecutor v. Tumushime*¹²⁵, the accused, charged of the rape of a minor, has confessed before an official of police that he has violated a minor.

The court decides at its sole discretion on the legitimacy and admissibility of incriminating or the accused has withdrawn his confession. He was alleged to have threatened with further torture including being beaten during interrogations by officers of police, in order to make a confession. The judge has based his decision on the confession made in police and convicted to him to imprisonment for 15 years.

¹¹⁸Law n° 21/2012 of 14 Jun 2012 relating to the civil, commercial, labour and administrative procedure, Article 6

¹¹⁹*Ibid.*

¹²⁰Law n° 027/2019 of 19/09/2019, Article 86; Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 119.

¹²¹Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 9.

¹²²O I Tajudeen, "The Relevance of Confessions in Criminal Proceedings", *International Journal of Humanities and Social Science*, p.291.

¹²³*Ibid.*

¹²⁴Murray, *J.op.cit.*p.12.

¹²⁵*Prosecutor v. Tumusime*, Intermediate Court of Nyagatare, Case RP 00049/2016/TGI/NYG, Judgement of 24 April 2017

In the same vein, in *Prosecutor v. Sekamana*¹²⁶, the case of rape, even the accused has told to the court that he had been induced and beaten to confess in the police. The court has recognized the challenged confession as true and sentenced to him to life imprisonment.

In those judgments, the courts reflected the contents of the extrajudicial confession before determining whether it is admissible or non-admissible. This consideration can, in some cases, create potential prejudice to the accused. The court would find his decision to the prescribed requirements for admission of the confession and extrajudicial confession as valuable evidence.

It is not intended that this dissertation will put an end to the enormous challenges of the inadmissibility of pieces of evidence by the Rwandan courts and tribunals. Nevertheless, this study aims to contribute to the existing scholarship by suggesting alternative legal analyses that could be used by criminal courts and tribunals in the admissibility of confessional statement, particularly in the case of extrajudicial confession in Rwanda.

Ultimately, this thesis examines the provisions governing the admissibility of extrajudicial confessions made in the stage of investigation, their judicial considerations and how their application should be proficiently assessed in aim to defend the rights of the accused person.

3.7. The legitimacy of confessions in Rwandan criminal law

A confession is well-defined as an indisputable acknowledgment[by an accused or suspect] of his guilt, the equivalent of a plea of guilty before the court¹²⁷. The confessions could be made liberally and willingly by accused, without any undue influence. The suspect should not be subjected to fear, prejudice or hope of advantage exercised by a person in authority¹²⁸.

Tajudeen¹²⁹ points out that a confession is the best evidence in criminal proceedings if made in court hearing is of greater force or value than all other proofs. Rwandan law refers

¹²⁶ *Prosecutor v. Sekamana*, Intermediate Court of Nyamagabe, case no RP 0094/15/TGI/NYBE, Judgment of 25/09/2015.

¹²⁷ R.J Victor Cole, *Equality of Arms and Aspects of the Right to a Fair Criminal Trial in Botswana*, (PhDthesis, Stellenbosch University, 2010), p.23.

¹²⁸ *Ibid.*

¹²⁹ Tajudeen, OI. *supra* note 17.

confession to the statements of accused makes before the court and such statements serve as plaintiff arguments¹³⁰.

When there are two or several co-accused any judicial or extrajudicial confession by one of them is a confession on his side only and does not bind the other co-accused¹³¹. A judicial confession may be taken in whole and may be conclusive and absolute evidence against the suspect or accused, confined to him, and would be binding to a court or tribunal. According to article 110 al 2 of 2004 Rwandan Evidence Act, it is prohibited to the court to retract portions of statements and to use them as counterarguments against the party.

The confession of guilty has many benefits in Rwandan criminal proceedings, in judging and on the accused himself. Firstly the processing of those criminal cases are accelerated thus the court must try the case on merit within fifteen (15) days of receipt of the case file¹³². Secondary, it absolves the court from having to provide evidence against the accused and allows it simply to determine the penalty after verifying the legality and sincerity of the confession.

Lastly, the penal code provides it as a cause of mitigating circumstances. The judge may reduce penalties when the accused, at the outset of the trial in the first instance, the accused pleads guilty in a sincere confession¹³³. In *Ruramugaruye v. Prosecutor*,¹³⁴ the Supreme Court has interpreted and enlarged the benefit of confession in appeal. The Supreme Court has pointed out that the reduction of penalties could be done also in appeal when an accused sincerely confesses to have committed a crime.

Even if judicial confession may be simplified and accelerated court procedures, judges have to evaluate the credibility of confessional statements for its veracity and its relevance to the matter at issue. A voluntary false confession may appear before the trial court.

Ottmar wrote that one can speak of a false confession when a person falsely admits to having committed or abetted a crime, or falsely incriminate others¹³⁵. As it has been experienced in

¹³⁰Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 110.

¹³¹ Ibid, Article 111.

¹³² Ibid, Article 35.

¹³³Organic Law N°01/2012/OL of 02/05/2012 instituting the penal code, Article 77, 3.

¹³⁴*Ruramugaruye Eric v. Prosecutor*, Judgement N° RPAA 0024/14/CS , Supreme Court, at paragraph 17, (19 May 2017).

¹³⁵K. Ottmar, True and False Confessions under Interrogation. *Journal for Police Science and Practice*, International Edition, (2015), p.40.

Gacaca courts, people¹³⁶ can make voluntary false confessions when he happen feelings of guilt over past transgressions, the inability to distinguish fact from fiction and to help or protect the real criminal.

A false confession can quickly lead to a wrongful conviction if not handled with a great attention. A judge may not refer only to his sovereign appreciation but should look at the totality of the circumstances surrounding the infringement acts or offense and other pieces of evidence which corroborate the confession.

An extrajudicial confession is referred to confession made to a police officer, prosecutor or to any other person. Anisuzzaman and Jahan Efat suggested that the rules of prudence would be used in the admissibility of an extra-judicial confession, thus it should not be the basis of conviction unless corroborated materially¹³⁷.

3.8. Lack of provisions on extra-judicial confession

In Rwandan legal system, there is not a provision as to whether an extra-judicial confession can be the basis of conviction or not. Even though, the fair trial guarantees, respect for human dignity and privacy, protection against inhumane or degrading treatment and the right to remain silent or not to incriminate oneself must be respected in court as well as in criminal investigation process.

The Rwandan legal system provides the extrajudicial confession as only a motif of mitigation of penalties when before the initiation of prosecution, the suspect pleads guilty and openly look for forgiveness from the victim and the Rwandan society and expresses sorrow and repairs the damage triggered as much as likely and in the case of the accused reports himself to a competent authority before or during the investigation process¹³⁸.

¹³⁶ During Gacaca court, some accused voluntarily confess falsely without any external pressure but in aim to protect the real or the co accused. This has known on the term “Kugura agasozi (To buy a hill)” where a suspect who recognized himself to commit a crime of genocide, with the desire to aid and protect the real perpetrators, group of criminals, the co-accused or in aim to conceal the truth, confess to have committed alone the crime. Those co accused or real perpetrators of crime promised him the aid of his family, to help him in the court or other benefit. (Icyizere News Paper, a newspaper of National Commission for the Fight against Genocide, CNLG) no 34 of July 2013, p.12.

¹³⁷ S Anisuzzaman, S.I.J. Efat, "Admissibility and evidentiary value of confession: conflicts and harmony between rules of law and rules of prudence in Bangladesh, India and Pakistan", *South East Asia Journal of Contemporary Business, Economics and Law*, (2015), page 48.

¹³⁸ Organic Law N ° 01/2012/OL of 02/05/2012 instituting the penal code, Article 77, 1, and 2.

The extrajudicial confession statements made in police and before prosecution authority are frequently retracted by the suspect. This situation would be motivated by different causes as treats, torture, inhuman or degrading treatments, inducement, promise or any other improper method, take account that those confessional statements are made while the suspect is in police custody governed by those police officials¹³⁹.

Even if the legislator has provided it as a mitigating circumstance, the Rwandan law does not provide the value of the extrajudicial confession of guilty made in the investigation phase, and how those statements would be evaluated by the courts on the decision of his admissibility as valuable evidence. The following analyses are focused on how the Rwandan courts consider and evaluate the extrajudicial confession.

Admissibility and evidentiary value of statements made to Rwandan police and prosecution authority amounting to confession Rwandan law provides that a Judicial Police Officer¹⁴⁰ and prosecutor¹⁴¹ have the primary responsibility to conduct a preliminary investigation. In this perception, a Judicial Police Officer interrogates a suspect and makes a written record of the statement made by the suspect¹⁴².

When preliminary investigation is finished, the judicial police directly submit a case file to the Public Prosecution¹⁴³. In this stage, a suspect may confess to committing a crime before those authorities and then, in the court trial, opposite his statement asserting diverse reasons which have inspired him or her to confess.

3.9. Legal responses when accused rise that the extra judicial confession has been obtained through torture or other mistreatments

Generally, a retracted confession is always open to suspicion; the court must be careful and make a great attention to the evaluation of those questionable confessions. However, in all the cases a confession cannot be regarded as involuntary simply because it has been retracted afterward.

¹³⁹ Article 2 of Ministerial Order No 01/Minister/14 of 28/05/2014 Determining judicial police custody facilities provides that Judicial Policy custody facilities are established at Police stations and posts. Any person the judicial Police decide to prosecute while under detention must be detained in Judicial Police custody.

¹⁴⁰ Law no 30/2013 of 24/5/2013 relating to the code of criminal procedure, Article 21 paragraph 2.

¹⁴¹ Ibid, Article 21 paragraph 3.

¹⁴² Ibid, Article 25.

¹⁴³ Ibid, Article 43.

As provided in Convention Against Torture, the torture is defined an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for with purposes to obtaining from him or a third person information or a confession inflicted by or with the consent or acquiescence of a public official or other person acting in an official capacity¹⁴⁴.

A suspect who is happened to be arrested by police has difficulty to prove that he has been tortured. In *Akimana and Other v. Prosecutor*¹⁴⁵, a case of rape of a minor, two accused have retracted their confessional statements made in the police.

They raised an issue that they have confessed of guilty with the aim of saving their lives because they had been tortured and maltreated by officials of police. The High Court has recognized the challenged confession as true and sentenced him to life imprisonment. The court held that the accused did not prove that they have been tortured or maltreated by any person.

In *Ndabaruzi Emmanuel v. Prosecutor*¹⁴⁶, the Supreme Court has rejected the plea of the accused who asked to do further investigations when he rose that his confessional statements in the police have been obtained through torture against him. The Supreme Court held that it is not necessary to do other investigations because the accused has confessed in police and has explained how he has committed the crime.

In this perspective, it is obligatory on each Rwandan judge to make sure that the evidence admitted to the court has not been illegally obtained. Even if no complaint is made by an accused person, in the case of confession, judges should ask the prosecution to prove if such evidence was not obtained by torture or in other forms of ill-treatment.

In those judgments, the accused stated in court that they had been tortured and forced to make confessions in police or during the preliminary investigation. However, the courts failed to investigate these allegations. Those courts held that the accused have not found the evidence of those maltreatments.

¹⁴⁴ United Nations Convention Against Torture (1984), Article 1.

¹⁴⁵ *Akimana and Other v. Prosecutor*, High Court, case no RPA 0345/11/HC/KIG–RPA 0417/11/HC/KIG, judgment (27 April 2012).

¹⁴⁶ *Ndabaruzi Emmanuel v. Prosecutor*, Supreme Court, Case no RPAA 0086/09/CS, judgment (08 July 2011).

It is idle to expect that an accused should produce definite proof about torture, beating or pressure done in police take account that those confessions have been made by the accused while they were in the custody of a police officer. Article 13 of the Convention against Torture, to which Rwanda is a party, provided that each State party must ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case examined impartially by competent authorities¹⁴⁷. There is no need for a formal complaint to be lodged to trigger this obligation from the State.¹⁴⁸

In this perspective, it is obligatory on each Rwandan judge to make sure that the evidence admitted to the court has not been illegally obtained. Even if no complaint is made by an accused person, in the case of confession, judges should ask the prosecution to prove if such evidence was not obtained by torture or in other forms of ill-treatment.

As recommended with special Rapporteur for torture, in case of confessional statements made in investigation phase are retracted by accused during court trial, alleging that has been tortured or ill-treated in different forms, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment¹⁴⁹.

Even if the Rwandan law of mode of administration of evidence provides that each party has the burden of proving the facts it alleges¹⁵⁰, in case of torture and other ill-treatment, the court may refer to international customary law and convention against torture, taking account that the convention has been ratified by Rwanda¹⁵¹ and is, therefore, part of Rwanda's domestic

¹⁴⁷ The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention", Committee against Torture, *Blanco Abad v. Spain*, Communication No 59/1996, paragraph 8.6.

¹⁴⁸ *Ibid.*

¹⁴⁹ E/CN.4/2003/68, para. 26., The Special Rapporteur for torture

¹⁵⁰ Law N°15/2004 of 12/06/2004 relating to evidence and its production, Article 3.

¹⁵¹ Law no 002/2008 of 14 Jan 2008, authorizing the accession to the convention against torture and other cruel, inhuman or degrading treatments or punishments.

law and are binding on all persons and authorities in Rwanda in accordance with article 168¹⁵² of the Constitution.

In all the cases, an accused who was assisted by a lawyer during a preliminary investigation would not challenge the confessional statement as obtained by torture or other ill-treatment when it was made in presence of his council.

In sum it is the right of the accused to have the confession obtained by torture being excluded and equally the duty of the court to exclude it. When the accused alleged that the confession was obtained as a result of torture, violence or other forms of physical compulsion, the court trial has to exclude the confession statements unless the prosecution adduces such evidence as will satisfy the judge beyond reasonable doubt that the confession was not so obtained.

The Human Rights Commission has also stated that an involuntary confession made as a result of ill-treatment is unacceptable¹⁵³. This exclusion is important for the reason that the accused may confess the guilt without regard to the truth in order to avoid the danger of torture or other ill-treatment and in order to save his life.

3.10. Towards a confession without torture or in other circumstances

A confession is one of the most powerful types of evidence that exists. This conclusive proof, when are not voluntarily, can be gotten without physical or mental coercion but with other different forms, for instance, in the case of inducement, promises, fear, the accused health, age, as well as intelligence.

Thus when an accused confesses in a court trial or when has confessed out of court, the first impressions of the best judge or court trial could be always to treat extra-judicial confession as suspicious evidence. In case, the court finds that the accused has confessed to police or in prosecution without any ill-treatment or other influence, the court would also evaluate the circumstances which surround the confessional statements.

In the modalities for conducting the hearing in Rwanda, in the commencement of hearing in a criminal case, the court registrar reads the offense alleged against an accused, then

¹⁵² Article 168 of the Rwanda Constitution of 2003 provides that "Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation".

¹⁵³ Communication 139 of 1983, UN.Doc.Supp.40 (A40/40), *Conteris v Uruguay*, (1985)

the court asks the accused whether he pleads guilty or not guilty¹⁵⁴. When he pleads guilty, the legislator has not provided that the accused is automatically guilty of the offense or the Prosecution remains exempt to provide evidence on his side.

In this perception, in case of the accused plead guilty or not, the Public Prosecution would present evidence evidencing the guilt of the accused and the accused clarifies the circumstances in which he committed the offense¹⁵⁵.

The accused even in police and prosecution has voluntarily confessed and then pleads guilty in the court trial, can be acquitted. In *Migambi v. Prosecutor*¹⁵⁶, even if the accused has confessed of guilty of a crime of genocide ideology before the court trial, the Supreme Court has passed to examine the confessional statements and ruled that the accused is not guilty of the crime of genocide ideology. The court held that the confessional statements of Migambi could not be qualified as a constituent element of the crime of genocide ideology.

When voluntary confessional statements are retracted, even in appeal level, the court trial has to pass to its evaluation and to know the surrounding reasoning of this situation. In *Nsabumuhe. Prosecutor*¹⁵⁷, a case of poisoning, Nsabumuhe has confessed to police and in the prosecution that she poisoned different children of members of her family.

The Intermediate Court and High Court had convicted her to life imprisonment based on her voluntary confessional statements. Nsabumuhe in Supreme Court has retracted his confession statement; the Supreme Court held that even the accused voluntarily confessed of guilty in prosecution, there is not any evidence which shows that the said victims have been really poisoned, because there are not the exhibits of those poisoning substances and other pieces of evidence which prove beyond any doubt that the accused has committed the offences charged. In this case, the courts convicted the accused to commit the crime of poisoning without passing to the examination and evaluating the confessional statement.

In all the same, a conviction on a retracted or no retracted confessional statement would be supplemented with independent evidence which makes the confessional statement true and consistent. It is wrong for the Rwandan courts or judges to have acted on the extra-

¹⁵⁴*Ibid* Article 153, paragraph 2 and 3.

¹⁵⁵ *Ibid*, Article 153, paragraph 4 and 5.

¹⁵⁶*Migambi v. Prosecutor*, Supreme Court, Case no RPAA0127/11/CS, judgment (21 Jun 2013).

¹⁵⁷*Nsabumuhe v. Prosecutor*, Supreme Court, Case no RPA 0064/08/CS, judgment (06 March 2009).

confessional statements without testing the truth thereof. The court has to properly evaluate all pieces of evidence placed before him, find outside the confession some evidence be it slight of circumstances which make it probable that the confession was true.

The Supreme Court laid down certain guidelines in this regard, which require being followed by the courts in such cases, take account that the judgments and decisions of the Supreme Court are binding on all other lower courts of the country¹⁵⁸. In *Sgt Ntaganira and Others v. Prosecutor*, the court ruled that when an accused retracts or repudiates the confessional statements made out of court, does not mean that those statements are automatically not true or false, the court trial must pass to their test and evaluation of their credibility¹⁵⁹.

The Court must be cautious in appreciating the evidence and can convict an accused on the basis of the extra-judicial confession only if such evidence inspires confidence and is corroborated by other materials¹⁶⁰. Hence, a conviction based solely on an extrajudicial confession should be clear, specific and unambiguous. A retracted confession would create in mind of court trial the rule of prudence which suggests that an accused should not be convicted on the basis of his confession without any satisfactory corroborative evidence.

The prosecution has the burden of proving beyond a reasonable doubt that the confession was made voluntarily, and its causality and real relation to the charge against the defendant. The New Zealand Evidence act provides that where the complaint is that the confession was or misleading¹⁶¹. The Rwandan courts and tribunals trial must pay attention to the admissibility of the confessional statements and satisfy himself that it was voluntary before admitting it into evidence, if admitted, the court trial decides what weight and value to give to the confessional statements.

¹⁵⁸Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, Article 47.

¹⁵⁹*Sgt Ntaganira and Others v. Prosecutor*, Supreme Court, Case no RPAA 0010/06/CS - RPAA 0011/06/CS - RPAA 0012/06/CS, judgment (18 July 2008).

¹⁶⁰ *Ibid.*

¹⁶¹ New Zealand, 1908 Evidence Act, Section 20 as substituted by Section 3 of the Evidence Amendment Act 1950.

3.11. Value of extra-judicial confession made by a co-accused against another co-accused

By principle, a voluntary confession is evidence only against the person who made it and not against his co-accused. Under 2004 Rwandan Evidence Act, in its article 111, it is provided that an extrajudicial confessional statement by one accused is an admission or confession on his side only and does not bind the other co-accused. In its severe legal sense, the evidence is defined as the demonstration of the truth of fact; for that reason the confession of a co-accused does not come within this definition.

Even those, the confessional statements of a co-accused would not be considered by the criminal court as a piece of evidence without any values in a case given. In *Prosecutor. Nduguyangu and Others*¹⁶², the accused have been prosecuted for a murder, in investigation stage and before the court trial, Nduguyangu has pleaded of guilty. In his confessional statements,

Nduguyangu explains that Karemera has helped him in this bad action in procuring a firearm weapon and has promised to give him five hundred Rwandan Francs (500.000Frw) after finishing the action. The Supreme Court held that even the statements of Nduguyangu might be considered by the court to assist it in arriving at the truth, cannot be made the foundation of conviction in case of lack of other valuable pieces of evidence, it could be used as corroboration if there are other materials brought in support of the charge¹⁶³.

It would be dangerous to convict acting on the confessional statements of a co-accused alone. The confession of a co-accused is a fragile type of evidence against other accused. The court, as it was done in *Prosecutor v. Nduguyangu and Other*, can be put into the balance and evaluated with the other pieces of evidence. The confession of a co-accused can be used only in support of other evidence and cannot be alone made the basis of a conviction.

Moreover, in the absence of any other substantive evidence, Rwandan courts and tribunals, as well as other courts of another country, cannot base their judgment of conviction only on the confession of a co-accused, be it an extra-judicial confession or a judicial confession. In case of evidence against a co-accused is adequate to base a conviction, confessional statement

¹⁶²*Prosecutor v. Nduguyangu and Other*, Supreme Court, Case no RPA 0330/10/CS, judgment (16 September 2011).

¹⁶³*Ibid*, at p.5.

of the co-accused may be treated as a rationale for that evidence and the assurance to the conclusion of guilt which the court or tribunal has reached on the said evidence.

It is in this vein that the Indian Supreme Court in the case of *Panchov. State of Haryana*¹⁶⁴, held that confessions of a co-accused are not the substantive piece of evidence and that it can only be used to confirm the conclusion drawn from other pieces of evidence in a criminal trial.

In other circumstances, a co-accused might confess him-self and be a witness for or against an accused person. Article 68 of Criminal Procedure states that any person having contributed in the commission of an infraction may be heard as a witness. If any co-accused becomes a witness, his testimony takes effect under the tests ordinarily applicable to the evidence of a witness.

Furthermore, in case of false testimony, he must be prosecuted for the crime of giving false testimony provided by the article 579 of the organic law instituting the penal code¹⁶⁵. However, the co-accused would not be forced to be a witness; he has to take this step only on his own consideration.

Therefore, the disposition of Rwandan criminal code which provides punishment to any person who willingly rejects to give evidence to judicial authorities cannot be applicable to the accused¹⁶⁶. For Lyndon's views, this would be motivated on the one hand by the right to remain silent and the other hand the privilege against self- incrimination, which precludes a person from being required to testify against himself at trial¹⁶⁷.

The court may evaluate differently the admissibility of confessional statements and weight and value of testimony. In any case, an apparent extra-judicial confession of the co-accused cannot be treated as substantive evidence against the other accused.

¹⁶⁴ *Pancho v. State of Haryana*, Supreme court of India, 10 SCC 165, (2011)

¹⁶⁵ Article 579 of organic law instituting the penal code: Any person who gives false testimony before judicial organs shall be liable to a term of imprisonment of two (2) years to five (5) years and a fine of one hundred thousand (100,000) to one million (1,000,000) Rwandan francs.

¹⁶⁶ Organic Law of n° 01/2012/OL of 02/05/2012 instituting the penal code, Article 576.

¹⁶⁷ M, Lyndon, the Supreme Court and Criminal Code and Ors, the Supreme Court of Canada case compilation, (2015), page 47.

3.12. Towards a DNA Law in Rwanda

As said by Dr B. Murangira in his article, law and science are two diverse disciplines but complementary that is gradually becoming interrelated. Their complementarities and cooperation were felt as science and technology advances. The prevention of crime through scientific means is the prerequisite of the hour, hence, the spread of crimes that have been forbidden from happening with the help of practical investigative techniques would make for an additional notable record for law enforcement agencies such as Rwanda Investigation Bureau¹⁶⁸.

According to N.A Bennett, in situations where the victim is in impossibility to recognize the culprit due to various factors such as mental, physical insufficiency and vanishing memories, there is still the chance that the wrongdoer will be known through the use of DNA sketching when there is DNA database)¹⁶⁹. We have realized that the relation between science, technology and law is not given the weight it deserves under Rwandan legal system. The latter is based on the investigative system to find out the truth, while the scientific community uses experimental analysis.

Law and science often meet in the courtroom, where judges, prosecutors and advocates often find themselves stuck in scientific notions which they may not fully understand. Also, judges, having less knowledge due to lacking scientific background, are in impossible position to decide whether scientific evidence is precise and dependable¹⁷⁰.

The enactment of DNA law will offer the legality of DNA evidence and the same will enable law enforcement agents and prosecutors to focus investigations in more successful directions and to the judges, DNA law will help them to settle problems involving scientific evidences as it will be admissible in Rwandan legal system¹⁷¹.

Hence, Dr B. Murangira in his article, further states that the enactment of DNA law is very much desired at this time because the irrevocability of court judgments regarding DNA evidence in criminal cases is being questioned. Laws are advanced to give the answer to what

¹⁶⁸B Murangira, "Thierry, Improving Rwandan Criminal Justice through Forensic DNA Evidence: An Appraisal", *BLR Vol.7 No.4*, , <https://m.scirp.org/papers/73130>, (December 2016)

¹⁶⁹ NA, Bennett, "A Privacy Review of DNA Databases", *I/S: A Journal of Law and Policy for the Information Society*, (2012) Pp. 81-84.

¹⁷⁰*Ibid.*

¹⁷¹*Ibid.*

society needs based on societal evolution and keep in pace with the scientific development which is happening around the country.

It is very significant to understand the situation of crime trend in Rwanda as far as forensic investigation is concerned. There is migration/shift from violent crimes to white collar crimes. The tendency is not absolutely new phenomena. White-collar criminals increase on being able to avoid detection in order to carry out their criminal operations; they have the aptitude to adapt to a given criminal environment such as taking advantage of development of information technology. Crimes like computer crime, fraud and identity theft are more rewarding and easier to conceal¹⁷².

DNA Law will accord the power to the law enforcement or public prosecution to collect and guarantee effective use of DNA evidence in solving criminal and civil matters. The act shall protect misuse of biological information and to protect individuals' biological evidence from unnecessary or avoidable damages¹⁷³.

Information from DNA samples are personal possessions and arbitrarily collection and storage/retention of DNA information constitutes the intrusion of right to bodily integrity. Any such imposition of bodily integrity must be balanced with public interest and the community ruled with purpose to be attained¹⁷⁴.

The lack of legal framework on protection of genetic privacy creates ambiguity or space for third parties to possibly access personal genetic information in illicit manner. In general, the right to privacy is protected under article 23 of the Constitution.

As a result, the enactment of DNA legislation must be reinforced by protection and precaution of DNA sample collection clarifying in which circumstances and context DNA evidence should be collected or when the suspect should be bound to provide DNA sample for testing in the absence of consent. The DNA law should also establish who should have access and use DNA information, limitations or restrictions and time limit of retention of DNA information¹⁷⁵.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ Murangira B., *op.cit.* p.5.

¹⁷⁵ *Ibid.*

Another significant motive is that during 13th National Leadership Retreat held on 12th and 13th March, 2016, “speeding up of the establishment of Rwanda Forensic Laboratory for DNA test and other related issues “was among resolutions adopted. To meet this 14th resolution there are several significant developments that simultaneously can influence the establishment of Rwanda Forensic Lab to provide professional forensic service. These developments add value to its establishment, profession and benefit the whole justice community¹⁷⁶.

For these benefits to be achieved completely, preliminary works such as enactment of DNA law, quality assurance standard operating procedure, lab security policy, chain of custody and working guidelines, etc all these support at the policy level are required. It becomes essential to note that the Parliament of Rwanda should enact DNA law to deal with the aforesaid issues and benefit from the advantages brought about by DNA technology. This is the only way to prevent the possible misuse and to break the cycle of lack of admissibility in regard of DNA evidence and make stakeholders accustomed with forensic science in general¹⁷⁷.

3.13. Effectiveness of DNA Evidence as Tool of Forensic Science in Crime Reduction

DNA evidence is one modern way of investigating and prosecuting criminals. DNA evidence has been proven as the best, accurate and effective evidence available in the hand of Judiciary to investigate and prosecute crime. It is also used as tool to establish the guilt or innocence of an individual. DNA evidence is a powerful tool due to the fact that each person has unique DNA; except monozygotic twins¹⁷⁸.

Therefore, old cases that people earlier thought cannot be solved, can now be solved through appreciated DNA evidence with the ability of establishing the culprit¹⁷⁹. DNA technology is often significant factor in prosecuting the guilty and exonerating the innocent. Utilized

¹⁷⁶*Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ Although identical twins are genetically identical due to the fact that they originate from a single fertilized ovule (egg) but they have different fingerprints because the latter are not totally a hereditary features. Fingerprints are a portion of a phenotype which connotes that they are characterized by the collaboration of personal genes and other intrauterine factors such as sustenance, pressure of blood and the level and speed of development of the foetus's fingers in the womb towards the expiration of first trimester.

¹⁷⁹ Krimsky, S., & Simoncelli, T. Genetic Justice: DNA Data Banks, Criminal Investigations, and Civil Liberties.

tactically, DNA evidence can improve prosecution rates, increase rates of clearance, plays the role of deterrence, and then play the part in efficient crime decrease¹⁸⁰.

DNA technology as the latest method of forensic science is the outcome of tremendous development of genetic science. It is based on objective experimental knowledge that the pattern of chemical signals, i.e. genetic code that is discovered within DNA molecule in the cells of each individual is unique and different in every individual. This is the unique characteristic to identify individual from others¹⁸¹.

The development of recent biological and genetic technology is applied in the field of forensic science by evolving of DNA technology which plays a pivotal role not only in identification of offender but also in criminal and civil cases¹⁸². This scientific evidence is speedier, specific, accurate and conclusive than any other human evidence and can stand the scrutiny of the court to determine the innocence or guilt of a person accused of any crime¹⁸³.

The value of DNA evidence to prosecute a suspect in every case depends on unbroken strong chain of custody from crime scene to court (collection; packaging, transport, storing, testing, interpretation of DNA test report, etc.). Mostly; the defense challenges the prosecution based on human procedural error¹⁸⁴. To increase in the volume of DNA evidence, legislation, innovation and funding are essential. Crime reduction strategies and solutions must note that Prosecutors and JPOs should work together building on one case at a time.

Every JPOs, Crime Scene Evidence Collection Technician, Forensic Analyst etc. are under the obligation that every time they collect, handle, transport, or analyze DNA evidence they have to do it in harmony with accepted procedures within approved standard of prosecution. Therefore, all these steps in the process are interconnected and have to be done in the appropriate manner and each step must also be in harmony with the others as united approach¹⁸⁵.

In Rwanda, there is need for an integrated approach to fund training of JPOs in appropriate DNA collection, handling and funding of DNA laboratories to perform DNA tests properly.

¹⁸⁰ *Ibid.*

¹⁸¹ J Adhikary, *DNA Technology in Administration of Justice*, Burtterworths: Lexis Nexis, (2007).

¹⁸² *Ibid.*

¹⁸³ L Alleyne. et al., *Interpol Handbook on DNA Data Exchange and Practice*, (2009).

¹⁸⁴ *People of the State of California v. Orenthal James Simpson* (1994).

¹⁸⁵ Parikh, & Mishra, *The Principles of Medical Jurisprudence, Medical and Forensic Science, DNA test and Toxicology*, (3rd ed.), Delhi: CTJ Publications, 2007.

For instance, the US Government developed training materials for actors of justice such as Prosecutors and Police Officer to be acquainted with the effective use of DNA in investigation and prosecution¹⁸⁶.

Murangira B., appreciates the great effort and audacious positive step of Rwanda National Police to have introduced the Legal Aspect of Forensic Science in their Professional Courses through CID School to train JPOs on the impact of forensic DNA evidence in administration of justice¹⁸⁷.

The author humbly submits that legal aspect of forensic science should not be overlooked rather it should be introduced in all law curriculum of colleges/universities in Rwanda and other institutions having mandates of training in the domain of law such as ILPD. This is one of mechanisms wherein actors of justice will get accustomed with legal aspect of forensic science in general and break the circle of lack of awareness, admissibility of DNA evidence in Rwandan legal system¹⁸⁸.

¹⁸⁶*Ibid.*

¹⁸⁷Murangira B.,*op.cit.p.5.*

¹⁸⁸*Ibid.*

CHAPTER 4

GENERAL CONCLUSION AND RECOMMENDATIONS

4.1. General Conclusion

As we have seen, the substantive scope of the privilege against self-incrimination is highly challenging issue. But that is not our only concern, the question of to what extend the privilege should be extended to cover the people using the privilege, meaning the personal scope, is also multidimensional and there does not seem to be unequivocal answer for that.

The privilege against self-incrimination outlined in this study shows that it is the fairly well-established procedural protection in both common law and civil law traditions. Almost universally is shared the perception that suspects and defendants should not be coerced into making incriminating statements and more or less extensive procedural rules are prescribed in most instances as safe guards against overreaching.

We have seen that the right against self-incrimination avoids an innocent person from jeopardizing himself because of his timidity and nervousness and the strange atmosphere of the courts. This right in its application to witnesses persuades them to come forward and help the courts in ascertaining the truth. The privilege protects the privacy of the individual by shielding him from judicial inquisition.

This dissertation has critically analyzed the compliance of the Rwandan criminal legal framework with the right to a fair trial on the privilege against self-incrimination. From constitutional framework point of view, it was established that the Rwandan constitution of 2003 clearly provides that the judicial system is separate and independent from the executive and legislative branches of government and it enjoys administrative and financial autonomy.

It has however been established that Rwanda's current criminal legal framework is in many respects non-compliant with the right of accused to a public and fair hearing by an independent and impartial court. It has been established that Rwanda's constitution framework did not sufficiently incorporate the provisions pertaining to the right to a fair trial.

For instance, the right to compensation for wrongful conviction, rights to appeal, equality of arms, right to be tried within a reasonable time, right to the protection against self-

incrimination are not provided for anywhere in the current constitution. Furthermore, the current Rwandan law devotes several of its provisions in respect of fair trial; however, some provisions seem not to be in harmony with the spirit of international law relating to the good administration of justice.

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

It comes to light that a confession is substantive evidence against its maker if it has been voluntarily done and suffers from no legal infirmity. In criminal proceedings, the confession is the best evidence and is of greater force or value than all other proofs.

The Rwandan law refers confession to the statements of accused makes before the court and such statements serve as plaintiff arguments; about the extrajudicial confession of accused, extrajudicial confession of a co-accused, there is not a provision as to whether can be the basis of conviction or not. This situation may create a legal loophole to the protection of accused because of the different views and considerations of extrajudicial confession by Rwandan courts and tribunals.

Normally a confession made under torture, degrading treatment or other forms of coercion, is inadmissible. When an accused raised that he has been tortured or ill-threatened the court could not ask him the proof of the veracity of his statement but the burden of proving that the accused has not been tortured or ill-threatened shifts to the prosecution.

In other circumstances, a retracted confession would create in mind of court trial the rule of prudence; the court trial must pass to their test and evaluation of their credibility as it has been recently clearly developed by the Supreme Court in *Sgt Ntaganira and Others v. Prosecutor*. Thus a conviction on a retracted or no retracted confessional statement would be sustained with independent pieces of evidence which corroborates it and makes the confessional statement true and reliable.

4.2. RECOMMENDATIONS

In the light of the above findings, the following recommendations are made: Firstly, the legislator has also to amend article 110 of the 2004 Rwandan Law on Evidence in line with the convention against torture, including by expressly stating that confessions obtained by mental, as well as physical, torture are inadmissible in any proceedings, and by ensuring that the burden is on the State to prove that such statements have been given of the person's free will.

Secondary the legislator could also expressly include in the provisions of Evidence Act that confession whether extrajudicial as well as judicial must pass to the exam of court trial and must be corroborated with other reliable pieces of evidence as well as the confession and extrajudicial confession of a co accused. Lastly, is needed the judges' awareness on avoiding the use of non-examined confessional statements as sufficient evidence to convict an accused person. Such procedures invite coercion and force to extract such a confession.

Legal system has to grow in order to satisfy the needs of the fast changing society and keep up-to-date with the scientific developments taking place in the country. With the evolution of DNA technology judicial review should ensure that justice is served and public protected. Law cannot continue to remain rigid and static.

In Rwanda, statutory provisions relating to physical and medical examination of the accused are inadequate and there is no comprehensive statute which provides too various types of the examination made possible by modern scientific advancement. The various statutory provisions providing for physical and medical examination of the accused are of general applicability. A balance is to be struck between the individual right against self-incrimination and the right of the society to be protected by the state.

BIBLIOGRAPHY

I.LEGISLATION

1. Constitution of the Republic of Rwanda of 2003 (revised in 2015),
2. Law n° 027/2019 of 19/09/2019 relating to the code of Criminal Procedure, published in *Official Gazette* n° Special of 19/09/2019.
3. Law N°68/2018 of 30/08/2018 determining offenses and penalties in general.
4. Law No 54/58 of 13/8/2018 on fighting against corruption,
5. Law n° 21/2012 of 14 Jun 2012 relating to the Civil, Commercial, Labour and administrative procedure,
6. Organic Law n° 03/2012/OL of 13/06/2012 determining the Organization, Functioning and Jurisdiction of the Supreme Court,
7. Law no 002/2008 of 14 Jan 2008, authorizing the accession to the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments.
8. Law N° 15/2004 of 12/06/2004 relating to evidence and its production,
9. Ministerial Order No 01/Minister/14 of 28/05/2014 Determining Judicial Police custody facilities provides that Judicial Police custody facilities are established at Police stations and posts. Any person the Judicial Police decides to prosecute while under detention must be detained in Judicial Police custody.
10. Decree-Law no8/75 of 12 February 1975 relating to the ratification of International Convention on Civil and Political Rights,(1975).
11. United Nations Convention Against Torture of (1984),
12. New Zealand, 1908 Evidence Act, Section 20 as substituted by Section 3 of the Evidence Amendment Act (1950).

II.CASE LAW

1. *Akagera Business Group v State of Rwanda*, Case no RS/SPEC/0001/16/CS ,Supreme Court, (23 September 2016).
2. *Akimana and Other v. Prosecutor*, High Court, case no RPA 0345/11/HC/KIG–RPA 0417/11/HC/KIG, (27 April 2012).
3. *Prosecutor v. Tumusime*, Intermediate Court of Nyagatare, Case RP 00049/2016/TGI/NYG, Judgement of 24 April 2017

4. *Prosecutor v. Sekamana*, Intermediate Court of Nyamagabe, case no RP 0094/15/TGI/NYBE, 2(5/09/2015).
5. *Ruramugaruye Eric v. Prosecutor*, Judgement N° RPAA 0024/14/CS,, Supreme Court, paragraph 17, (19 May 2017).
6. *Ndabaruzi Emmanuel v. Prosecutor*, Supreme Court, Case no RPAA 0086/09/CS, (08 July 2011).
7. *Migambi v. Prosecutor*, Supreme Court, Case no RPAA0127/11/CS, (21 Jun 2013).
8. *Nsabumuhe v. Prosecutor*, Supreme Court, Case no RPA 0064/08/CS, (06 March 2009).
9. *Sgt Ntaganira and Others v. Prosecutor*, Supreme Court, Case no RPAA 0010/06/CS - RPAA 0011/06/CS - RPAA 0012/06/CS, (18 July 2008).
10. *Prosecutor v. Nduguyangu and Other*, Supreme Court, Case no RPA 0330/10/CS, (16 September 2011).
11. *Pancho v. State of Haryana*, Supreme court of India, 10 SCC 165,(2011,)
12. *People of the State of California v. Orenthal James Simpson* (1994).
13. *Commission Nationale des Droits de l'Homme et des Libertes v. Chad*, African Commission on Human Rights,

III. BOOKS

1. Adhikary, J., *DNA Technology in Administration of Justice*, (Burtterworths: Lexis Nexis, 2007)
2. Alleyne, L. et al., *Interpol Handbook on DNA Data Exchange and Practice*, (2009).
3. Beintham's, *Treatise on Judicial Evidence*, (London, 1825)
4. Collin, Peter: *Dictionary of Law*, (4rd Edition, Bloomsbury 2005)
5. Favoreu, L, *Droit Constitutionnel*, Dalloz, Précis, Paris, (11e édition, 2008)
6. Glanville Williams, *The Proof of Guilt*, London, (3rd ed., 1963)
7. Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals*, (3rd edn, OUP 2007)
8. J.H. Wigmore, *Evidence (Vol. VIII); Cross on Evidence* (London, 7th ed., 1990)
9. Javaid Rehman, *International Human Rights Law*, (2nd edn, Pearson Education Limited, 2010)
10. Montesquieu, *De l'Esprit des Lois, Book IX, Chapter 6*, (Whitefish, Kessinger Publishing, 1748).

11. Oxford English Dictionary ,(second edition, 1989).
12. Parikh, &Mishra,*The Principles of Medical Jurisprudence, Medical and Forensic Science, DNA test and Toxicology* ,(3rd ed., Delhi: CTJ Publications, 2007).
13. RhonaKK ,Smith, *International Human Rights* ,(5th edn, OUP 2012).
14. Steytler,Nico:*Constitutional Criminal Procedure: A Commentary on the Constitution of the Republic of South Africa*, (Butterworths 1998).

IV.THESIS AND DISSERTATIONS

1. Abdulhamid Al-Hargan, '*The Saudi Pre-Trial Criminal Procedure and Human Rights*, (PhD thesis, University of Kent, 2006)
2. LauriPutkonen, '*Privilege against self-incrimination in EU Competition law – Undertaking's right to remain silent*, (LLM thesis, University of Amsterdam, 2016)
3. Manson, S, '*La notion d'indépendance en droit administratif*, (PhD Thesis, Université de Paris, France, 2008)
4. Salman Muhammed AL-Subaie, '*The Right to a Fair Trial under Saudi Law of Criminal Procedure A Human Rights Critique*, (Doctor of Philosophy in Law, (Brunel University, London, 2013)
5. SushilaDeoi , '*Right Against Self Incrimination In India: A Study Of Legislative And Judicial Trends*, (PhD Thesis, Maharshi Dayanand University, 2005)
6. Victor Cole, R.J. 2010, '*Equality of Arms and Aspects of the Right to a Fair Criminal Trial in Botswana*, (PhD Thesis, Stellenbosch University)

V.JOURNALS AND ARTICLES

1. Anisuzzaman, S, Efat S.I.J , "Admissibility and evidentiary value of confession: conflicts and harmony between rules of law and rules of prudence in Bangladesh, India and Pakistan", *South East Asia Journal of Contemporary Business, Economics and Law*, (2015),
2. Ashworth, Andrew: "Self-incrimination in European human rights law—a pregnant pragmatism?", *Cardozo Law Review* (2008-2009)
3. Bennett, N., A , "Privacy Review of DNA Databases. I/S": *A Journal of Law and Policy for the Information Society*, (2012)

4. Dr.NshimiyimanaDidace,"Critical Evaluation of Right to a Fair Trial in Rwandan Criminal Law", *International Journal Of Law Management &Humanities* ,Volume 3 , Issue 3,(2020)
5. Jack Donnelly, 'Human rights as Natural Rights' ,*Human Rights Quarterly*,(1982)
6. Langbein J H,"The Historical Origins of The Privilege Against Self-Incrimination at Common Law", *Yale Law School*,(1994)
7. Lawyers Committee for Human Rights,What is a fair trial?A Basic Guide to Legal Standards and Practice, USA, (2000)
8. Marchall, P.D,"comparative analysis of the rights to appeal", *Duke Journal of Comparative and International Law*,2011,Vol.22, No.1,
9. Mitrofan, F,"The Independence of Judge - a guarantee of the rule-of-law state, Journal of Law and Administrative Sciences", *Special Issue/2015*, (2015)
10. Murray, J,Assessing Allegations: Judicial Evaluation of Testimonial Evidence in International Tribunals, *Chicago Journal of International Law*,(2010).
11. Ottmar, K,'True and False Confessions under Interrogation'.,*Journal for Police Science and Practice, International Edition*,(2015)
12. Tajudeen,O I,"the Relevance of Confessions in Criminal Proceedings, " *International Journal of Humanities and Social Science*,3(21):291-300, (2013),
13. Wils, Wouter P.J.: 'Self-Incrimination in EC Antitrust Enforcement: A Legal and Economic Analysis,' *World Competition: Law and Economics Review*, Vol. 26, No. 4,(2003)

VI.REPORTS

1. Recommendation no 52, Council of Europe, Recommendation CM/Rec of the Committee of Ministers to member states on judges: independence, efficiency, and responsibilities. Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies, (2010)
2. UN Human rights Council, 11th session, promotion and protection of all human rights, civil, political, economic,and social and development. A/HRC/11/41 of 24 (March 2009), para 57.

VII. INTERNET SOURCES

1. Aine Kervick and Will Hayes, Asserting privilege against self-incrimination in criminal proceedings, retrieved on
2. <https://www.lexisnexis.co.uk/legal/guidance/privilege-against-self-incrimination>,
3. Elizabeth Buhungiro, Know your rights: You are innocent until/unless proven guilty <https://www.newtimes.co.rw/lifestyle/know-your-rights-you-are-innocent-until-unless-proven-guilty>,
4. K J KIIZA B. JOSEPH, Applicability of the Rule of Law and Right to a Fair Trial in Rwanda, retrieved on <https://www.grin.com/document/460931#:~:text=APPLICABILITY%20OF%20THE%20RULE%20OF%20LAW%20AND%20RIGHT%20TO%20A%20FAIR%20TRIAL%20IN%20RWANDA&text=In%20a%20fair%20trial%2C%20parties,impartially%20and%20without%20any%20prejudice>,
5. Murangira B., Thierry, Improving Rwandan Criminal Justice through Forensic DNA Evidence: An Appraisal, BLR Vol.7 No.4, December 2016, <https://m.scirp.org/papers/73130>

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