# INTRODUCTION TO RWANDAN LAW

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AND
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LES ÉDITIONS
YVON BLAIS INC.

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# Introduction to Rwandan Law

United States Agency
for International Development

LES ÉDITIONS
YVON BLAIS INC.

C.P. 180 Cowansville (Québec) Canada
Tél.: (514) 266-1086 FAX: (514) 263-9256

**Canadian Cataloguing in Publication Data**

Schabas, William A., 1950-

Introduction to Rwandan law

Includes index.

ISBN 2-89451-185-X

1. Law – Rwanda. I. Imbleau, Martin. II. Title.

KTD6.3S32 1997 349.67571 C97-940816-4

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Legal Deposit: 3rd trimester 1997
Bibliothèque nationale du Québec
National Library of Canada

ISBN: 2-89451-185-X

# Preface

My first encounter with Rwanda was as a member of the International Fact-Finding Commission that visited the country in early 1993 and warned the international community of the dangers of genocide. Part of that mission's activity involved the judicial system, and we were discouraged to find that courts and judicial officials were unwilling or unable to prosecute offences related to ethnic violence and hatred. Since the genocide in 1994, Rwandans have undertaken determined and serious efforts to break with this tradition of impunity. With the help of foreign aid, training and other activities have worked to put in place an effective judicial system, one that will contribute to the establishment and maintenance of the Rule of Law. This volume is a modest contribution to the campaign for justice in Rwanda. It is hoped that a popular account, available in the English language, will make the general principles of Rwandan law accessible to many for whom technical and linguistic barriers formed a difficult obstacle.

Indeed, the sources of Rwandan law are only available to a large public because of the four volumes prepared, in the French language, by Jan Gorus and Filip Reyntjens in the late 1970s and early 1980s. Copies of the series can still be found in Rwandan bookstores and markets, although the law is now out of date in many respects. The first volume of a revised series appeared in 1995, and the revision should be completed by the end of 1997 with the publication of three additional volumes. Nevertheless, because the volumes are in French only, the problem of access for the English-speaking community remains. This is where we hope that our volume will make a contribution.

Many individuals have helped, directly or indirectly, in the production of this work. First and foremost, we must thank officials and experts within the Department of Justice for their assistance and cooperation: Gerald Gahima, Gerard Ntashimaje and André Samson.

The research, writing and publication were facilitated by a generous research grant from the United States Agency for International Development (Award No. 623-0133-G-00-7001-00). Besides the Agency itself, thanks are due to its representatives in Kigali, Ana Klenicki, Brian Williams and Jane Rasmussen, who conveived the idea of this book. Of course, the work is the exclusive responsibility of its authors, and does not necessarily represent the views or opinions of USAID or the United States Government. Filip Reyntjens read the entire manuscript and made many helpful contributions. It is certainly appropriate, in thanking him for his help, to point out the important contribution he has made to the development of Rwandan law over two decades.

Finally, let me thank the Université du Québec à Montréal, where I am a law professor and where my co-author Martin Imbleau studied before being called to the Quebec Bar. The University's international cooperation department, and particularly Dominique Charron and Jean-Pierre Lemasson, assisted in many important respects and their contribution is appreciated. Additionally, the constant assistance and support of Ginette Dupuis and Rachel Gerbeau of the University's law department is gratefully acknowledged.

The law is up to date as of April, 1997.

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# Abbreviations

| | |
|---|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACRWC | African Convention on the Rights and Welfare of the Child |
| AN | National Army (*Armée nationale*) |
| art. | article |
| Arusha I | Peace Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, August 4, 1993 |
| Arusha II | N'sele Cease-fire Agreement, March 29, 1991, as amended at Gbadotite, September 16, 1991, and at Arusha, July 12, 1992 |
| Arusha III | Protocol of Agreement on the Rule of Law, August 18, 1992 |
| Arusha IV | Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government, October 30, 1992 and January 9, 1993 |
| Arusha V | Protocol of Agreement on Repatriation of Refugees, June 9, 1993 |
| Arusha VI | Protocol of Agreement on Integration of the Armed Forces, August 3, 1993 |
| Arusha VII | Protocol of Agreement on Various Questions and Final Provisions, August 3, 1993 |
| CC | Civil Code |
| CC I | Civil Code, Book I |
| CC II | Civil Code, Book II |
| CC III | Civil Code, Book III |

| | |
|---|---|
| CC PT | Civil Code, Preliminary Title |
| CCCP | Code of Civil and Commercial Procedure |
| CCP | Code of Criminal Procedure |
| CDR | Coalition for the Defence of the Republic (*Coalition pour la Défense de la République*) |
| CEDAW | Convention for the Elimination of Discrimination Against Women |
| CEPGL | Economic Community of the Great Lakes Countries (*Communauté économique des pays des Grands Lacs*) |
| CESTRAR | Trade Union Confederation of Rwandan Workers (*Centrale syndicale des travailleurs rwandais*) |
| CND | National Development Council (*Conseil national de développement*) |
| Const. | Constitution of June 10, 1991 |
| Const. Am. I | Constitutional Amendment of January 18, 1996 |
| Const. Am. II | Constitutional Amendment of August 22, 1996 |
| CRC | Convention on the Rights of the Child |
| CRN | Code of Rwandan Nationality |
| D-L | Decree-Law |
| DLC | Draft Labor Code of 1996 |
| FAR | Rwandan Armed Forces (*Forces armées rwandaises*) |
| FL | Fundamental Law of May 26, 1995 |
| FRW | Rwandan Francs |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IPJ | Inspector of the Judicial Police (*inspecteur de police judiciaire*) |
| LC | Labor Code of 1967 |

| | |
|---|---|
| MDR | Democratic Republican Movement (*Mouvement Démocratique Républicain*) |
| MNA | Member of the National Assembly |
| MO | Ministerial order (*Arrêté ministériel*) |
| MRND | National Revolutionary Movement for Development (*Mouvement révolutionnaire national pour le développement*) |
| NEA | National Education Act |
| OL | Organic Law |
| OPJ | Officer of the Judicial Police (*officier de police judiciaire*) |
| PC | Penal Code (*Code pénal*) |
| PDC | Christian Democratic Party (*Parti démocratique chrétien*) |
| PDI | Islamic Democratic Party (*Parti démocratique islamique*) |
| PL | Liberal Party (*Parti libéral*) |
| PO | Presidential order (*Arrêté présidentiel*) |
| PSD | Social Democratic Party (*Parti social-démocrate*) |
| PSR | Rwandan Socialist Party (*Parti socialiste rwandais*) |
| RPF | Rwandan Patriotic Front |
| RPF Decl. | Rwandan Patriotic Front Declaration of July 17, 1994 |
| s. | section |
| ss. | sections |
| SICTR | Statute of the International Criminal Tribunal for Rwanda |
| UDHR | Universal Declaration of Human Rights |
| UDPR | Democratic Union of the Rwandan People (*Union démocratique du peuple rwandais*) |

# Introduction to Rwandan Law

# Chapter 1
# Constitutional Law

Constitutional law is a branch of public law establishing the norms that govern the political structure of a country, including its head of state, its legislative mechanisms and its judiciary. Within the hierarchy of legislation, constitutional law normally takes precedence over other forms of domestic legislation and for this reason it is also sometimes referred to as "*Fundamental Law*" (Arusha I, art. 3(3)). The *Constitution* is the body of law applicable in this field. According to the *Oxford Dictionary of Law*, the *Constitution* comprises the "rules and practices that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state." A constitution may be both written and unwritten, and may in fact be composed of several elements. This is the case in Rwanda, where the *Constitution* or *Fundamental Law* is made up of a number of distinct written documents. Furthermore, by reference to international treaties and declarations, Rwanda's *Constitution* also incorporates within the *Fundamental Law* various international legal rules and obligations.

In modern societies, constitutions also include the fundamental rights and freedoms of individuals. This serves to emphasize the fact that although the *Constitution* determines the powers of government, it also protects the individual against the abuse of those powers. Furthermore, by enshrining such rights and freedoms in the *Constitution,* they are beyond the reach of normal legislation, and cannot therefore be easily tampered with by elected representatives. In this sense, the *Constitution* is also a form of charter of rights. Rwanda's *Constitution* or *Fundamental Law* contains a lengthy enumeration of rights and freedoms.

## History of the Rwandan Constitution

### *Monarchy*

Prior to the arrival of colonialists, Rwanda's government was a form of feudal monarchy. The Mwami or king was the sovereign ruler, exercising his authority over feudal lords by means of a well-developed central administration. Peasants were bound to their overlords, and required to provide various services as well as a share in the harvest under a contract known as *ubuhake*. Many historians have insisted upon the ethnic nature of the system, in which cattle-herding Tutsi dominated the Hutu majority, who were farmers of traditional crops such as beans, sorgho and bananas. There is no suggestion of any written constitution.

### *Colonial Period*

At the Berlin Conference of July 1, 1890, German hegemony over major portions of East Africa, including Rwanda and neighboring Burundi, was recognized by treaty between the United Kingdom and Germany. In return, Germany accepted British control of Uganda and a sphere of influence in Zanzibar. German colonialists only began to explore Rwanda's territory in 1894. In 1899, a protectorate, known as Ruanda-Urundi, was established under the administration of a Governor, Count von Goetzen. Germany did not initially interfere with existing domestic institutions, governing the territory under what was essentially military command. In 1906, civilian rule was introduced, and the beginnings of a judicial and taxation system put into operation. The German administration relied on the traditional royal oligarchy in place prior to colonization.

The territory fell under Belgian control in 1916, during the First World War, when German East Africa was occupied by British and Belgian troops. Belgium invaded Rwanda in May, 1916 and quickly took the capital, Kigali. The Versailles Treaty, adopted at the Paris Peace Conference in 1919, assigned Ruanda-Urundi to Belgian rule and, on August 31, 1923, Belgium was entrusted with a League of Nations mandate over the territory. The mandate system was created by article 22 of the *Covenant of the League of Nations*, to deal with "those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world..." In 1924, the Belgian Parliament officially accepted the

League of Nations mandate for Rwanda. The following year, an organic law adopted by Belgium combined the administration of Rwanda and Burundi with that of the Belgian Congo, pursuant to legislation originally enacted in 1908 for the Congo. Belgian administration was directed by a Governor-General (*Gouverneur-général*) headquartered in Leopoldville (now Kinshasa, Congo), and a Deputy Governor-General (*Vice-gouverneur général*) for Ruanda-Urundi, who was based in Usumbura (now Bujumbura, Burundi). Laws applicable in the territory were enacted by the Belgian Parliament (Laws or *lois*) or the King of Belgium (Decrees or *décrets*) and, in emergency situations, by the Governor-General (ordonnances or *ordonnances législatives*). Executive power was wielded by the King of Belgium (regulations or *règlements* and royal orders or *arrêtés royaux*), the Belgian Minister of Colonies (ministerial orders or *arrêtés ministériels*), and by orders issued by the Governor and the Deputy Governor, pursuant to delegated powers.

Belgium did not impose its own domestic legislation upon Ruanda-Urundi. Instead, it adopted special codes or laws, generally borrowing these from legislation already enacted for the neighbouring Congo. In the area of criminal law, the Congo Penal Code was made effective within Ruanda-Urundi in 1940. Although inspired by the Belgian Penal Code, it had significant differences with the European ancestor. The same is true for the Congo Civil Code, made applicable to Ruanda-Urundi by Ordonnances in 1927, 1936 and 1951. It differed significantly with Belgian law on such matters as transfer of property and succession although it, too, was inspired by European models. There was no attempt to codify customary law, which continued to have wide application. The legislation did not apply equally to everyone. Although criminal law was universal in application, written civil law applied only to those of European origin, whereas customary law continued to apply to native Rwandans.

The *Charter of the United Nations,* adopted at San Francisco in June, 1945, redefined the former League mandates as trust territories within the United Nations trusteeship system. Among the purposes of the scheme stated in the *Charter* was "their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned." The *United Nations Charter* also affirmed "the principle of equal rights and self-determination of peoples," although the prospect of thorough decolonization in Africa was far from the minds of most of the founders of the United Nations in 1945. Supervision of the trust

territories was handled by the United Nations Trusteeship Council. On December 13, 1946, Ruanda-Urundi was placed under the United Nations trusteeship scheme, with administration of the two territories again assigned to Belgium.

In 1952, Belgium effected a liberalization of local government structures, and the National Council (*Conseil du pays*), a consultative organ, was created. Party structures emerged towards the end of the decade, and were characterized in large part by ethnic issues. Following a period of social and political turmoil in the 1950s, the revolution of November, 1959 provoked the establishment of the first autonomous government, on October 26, 1960, under the direction of Grégoire Kayibanda. In October, 1960, Belgium proposed a provisional *Constitution* and agreed to organize local elections, scheduled for January, 1961, but this move was blocked by the United Nations General Assembly, which proposed a national referendum on the future of the monarchy (GA Res. 1580(XV)). Belgium agreed to cancel the elections, but Rwandan political leaders decided to meet anyway, on the date fixed for the elections, in the town of Gitarama, where they adopted a *Constitution*, proclaimed the end of the monarchy and declared the establishment of a republic. Later in the year, general elections held under the supervision of the United Nations confirmed the end of the monarchy and the establishment of the republic. A Rwanda-Belgium *Protocol*, executed late in December, 1961, granted Rwanda far-reaching powers of self-government within the context of the 1946 trusteeship commitment. In effect, Rwanda's newly elected authorities assumed power for everything but foreign affairs, defence, internal security and financial control. The United Nations set up a Commission on the Rwanda question, which met in early 1962 in Addis Ababa. The Commission concluded that Rwanda and Burundi should acquire independence separately, and this was affirmed in a General Assembly Resolution (GA Res. 1746(XVI)). On July 1, 1962, Rwanda became an independent state and on November 24, 1962 its first *Constitution* was promulgated, under the leadership of President Grégoire Kayibanda.

### *1962 Constitution*

The 1962 *Constitution* confirmed that Rwanda was a republican democracy, and declared the abolition of the mwami monarchy and more specifically the destitution of Kigeri V and his dynasty. It affirmed the equality of all citizens, without distinction based on race, origin, sex or religion. The *Constitution* accorded considerable importance to civil liberties and fundamental freedoms, making explicit

reference to the *Universal Declaration of Human Rights* (which had been adopted by the United Nations General Assembly on December 10, 1948) as a source of legal norms. It declared the abolition of all caste privileges and of slavery. In a section dealing with the family and civil society, the *Constitution* proclaimed the equality of men and women, but added that the man was the natural head of the family. Polygamy was prohibited and divorce allowed. Although freedom of religion and expression were recognized, a specific provision of the *Constitution* prohibited communist activity and propaganda. The 1962 *Constitution* set up three constitutional organs of government, the President, the National Assembly and the Supreme Court. Although the *Constitution* envisaged a pluralist regime with various political parties, president Kayibanda quickly established a single-party system under the Democratic Republican Movement (Mouvement Démocratique Républicain or MDR). In 1963 he tendered his resignation on the grounds that he had not stood for election, as required by the *Constitution*. An amendment to the *Constitution* was adopted almost unanimously, on June 12, 1963, allowing a president at the time of promulgation of the *Constitution* to remain in office.

In August, 1963, the first general elections since independence were held for local government positions. It was a landslide victory for the Parmehutu ("Party for Hutu Emancipation"), which took 139 of 140 communes. The following year, Rwanda and Burundi brought an end to the monetary and customs union that had been set up at the time of decolonization, thereby severing all formal links between them. President Kayibanda was elected in 1965, with 98% of all votes, and again in 1969, with more than 99% of the votes cast. All seats in the National Assembly were won by the Parmehutu, which was the only party to present candidates.

### *1978 Constitution*

An amendment to the *Constitution,* voted on May 18, 1973, allowed the President to be reelected for an indefinite term. It also abolished the position of Vice-president, extended the term of Deputies of the National Assembly, and oriented the Rwandan economy around principles of democratic socialism. Shortly thereafter, a group of officers led by general Juvénal Habyarimana took power in a bloodless coup d'état. On July 5, 1973 they issued a proclamation replacing Kayibanda by Habyarimana as President, dissolving the National Assembly and transferring its powers to the President, replacing the government by a Committee for Peace and National Unity, dissolving all political parties, and suspending several provi-

sions of the 1962 *Constitution*. Two years later, President Habyarimana announced the creation of the National Revolutionary Movement for Development (Mouvement révolutionnaire national pour le développement – MRND), defining its objectives as being to "unify, stimulate and intensify the efforts of the Rwandan People with a view to the realization of its social, economic and cultural development in peace and national unity." In April, 1976, the Convention establishing the Economic Community of the Great Lakes Countries (CEPGL) was signed with the two other members, Zaire and Burundi.

In September, 1977, the MRND Commission for Administrative, Political, Institutional and Legal Affairs prepared a draft constitution, which was based essentially on the Zairean *Constitution*. The following March, the President appointed a three-member Constitutional Commission assigned with preparing a completely new version. The Commission's draft was adopted that October at a joint meeting of the Government and the Central Committee of the MRND. A popular referendum, held on December 17, 1978, approved the *Constitution* by a vote of 89% and three days later, on December 20, 1978, President Habyarimana proclaimed the new *Constitution*. Elections held on December 24, 1978, pursuant to the new *Constitution*, confirmed President Habyarimana, the only candidate, by a majority of 99% of votes cast.

The 1978 *Constitution* effected the replacement of the National Assembly by a new legislative body, the National Development Council (Conseil national de développement). The *Constitution* confirmed that political life was to be organized under the MRND and prohibited all other organized political activity. The *Constitution* stated that the president of the MRND was the only candidate eligible for the presidency of the republic and that if, during a general election, the president of the MRND did not obtain a majority of votes cast, he or she would be relieved of the function of president of the MRND. Every Rwandan was said to be a member of the MRND. The prohibition on communist activity in the 1962 *Constitution* was removed. The 1978 *Constitution* provided for the continuation of customary law, but only to the extent that its rules had not been modified by other legislation or were contrary to public order and good morals.

### *1991 Constitution, Arusha Peace Agreement and Fundamental Law*

On October 1, 1990, war broke out on Rwanda's northern border when forces under the direction of the Rwandese Patriotic Front

invaded. The conflict provoked a period of political instability which prompted President Habyarimana, on November 13, 1990, to announce that political parties would be allowed and that the reference to ethnic origin on identity cards would be eliminated. The next month, on December 28, 1990, the National Synthesis Commission published a draft national political *Charter* (which was never adopted), and recommended that the president of the Republic undertake revision of the *Constitution,* in accordance with article 9. The Commission issued its final report in March, 1991 and, later that month, the MDR was recreated as the first opposition party. The changes were formally recognized by the MRND at an extraordinary convention, held in April, 1991. On April 21, 1991, President Habyarimana submitted the proposed *Constitution* to the National Development Council along with new legislation governing political parties. The new *Constitution* was adopted by the Council on May 30, 1991 and formally promulgated on June 10, 1991, officially authorizing Rwanda to function as a multiparty democracy. The 1991 *Constitution* confirmed Rwanda as a democratic republic, with an elected president and legislative assembly, and an independent judiciary. Under the 1991 *Constitution,* executive power is wielded by the President, but in cooperation with the Government, which is made up of the Prime Minister, the Ministers and the Secretaries of State. Legislative power is exercised by the National Assembly which was designated to replace the National Development Council. The President was responsible for the appointment of judges, after proposition by the Minister of Justice and endorsement by the Supreme Council of Magistrates.

The 1991 *Constitution* was substantially modified by the *Arusha Peace Agreement*, which is actually a collection of seven distinct documents adopted in the course of negotiations between the Government of Rwanda and the Rwandan Patriotic Front. These negotiations began in October, 1990, and concluded on August 4, 1993. The *Arusha Peace Agreement* provides for the creation of transitional institutions that make up the Broad-Based Transitional Government, including a Transitional National Assembly, a very substantial reduction in the power of the President, an increase in the powers of the Prime Minister, and the entrenchment of the existence and powers of the Supreme Court. The National Development Council was to disappear and could not, from the date of signing of the Peace Agreement, enact any further legislation. Participation in the transitional institutions of the executive and the legislative branches was distributed among various political parties, including the MRND, the MDR and the RPF. The *Arusha Peace Agreement* provided that the

transitional period would last twenty-two months, and specified that a new *Constitution* was to be adopted following the transitional period. (Arusha III, art. 41). Because of these substantial modifications to the political institutions, the *Arusha Peace Agreement* formally replaced a large number of provisions of the 1991 *Constitution* (Arusha I, art. 3(1)). The constitutional amendments required by the Arusha Peace Agreement were subsequently put into effect (Law 18/93 of August 3, 1993).

Political forces hostile to the power-sharing that resulted from the *Arusha Peace Agreement* conspired to unleash the genocide and civil war that took place from April to July 1994, and that ended when the RPF took power in July 1994. On July 17, 1994, the RPF issued a Declaration in which it reaffirmed its commitment to the *Arusha Peace Agreement*, to the establishment of the rule of law, to armed forces open to all Rwandans, and to power sharing in the context of an Broad-Based Transitional Government. The *Declaration* recognized the 1991 *Constitution,* subject to amendments "made necessary by the tragic situation in the country." Political parties that had participated in the genocide, specifically the MRND and the Coalition for the Defence of the Republic (Coalition pour la Défense de la République or CDR), were excluded from the new transitional institutions, and the positions attributed to such forces by the *Arusha Peace Agreement* were taken over by the RPF. The Declaration modified the transitional period to five years. It also appointed Pasteur Bizimungu as President of the Republic and confirmed, in accordance with the Arusha Peace Accord, that Faustin Twagiramungu would hold the office of Prime Minister.

The *RPF Declaration* of July 17, 1994 was endorsed in a *Protocol of Agreement* signed November 24, 1994 by representatives of eight Rwandan political parties. The *Protocol of Agreement* also provided for a new distribution of seats in the Transitional National Assembly according to political affiliation, essentially replacing the eleven seats that were accorded to the MRND by the *Arusha Peace Agreement* and redistributing them among the other political parties. Six seats were created for representatives of the armed forces.

On May 26, 1995, the President of the Republic and the Prime Minister proclaimed in force the *Fundamental Law* of the Rwandan Republic, following its adoption by the Transitional National Assembly. The *Fundamental Law* confirms that the Rwandan *Constitution* now consists of the June 10, 1991 *Constitution,* the *Arusha Peace Agreement* of August 4, 1993 (Arusha I, art. 3), the *RPF Declaration*

of July 17, 1994 and the *Protocol of Agreement* of November 24, 1994 between the different political parties (FL, art. 1). Subsequently, there have been two relatively minor amendments to the *Fundamental Law*, on January 18, 1996 and August 22, 1996. In case of conflicts, the *Arusha Peace Agreement* takes precedence over the 1991 *Constitution* (Arusha I, art. 3(2)), and the *RPF Declaration* of July 17, 1994 takes precedence over the *Arusha Peace Agreement* and the *Protocol of Agreement* of November 24, 1994 (FL, art. 2).

## General Principles

Rwandan *Fundamental Law* is based on the fundamental principles of the rule of law, national unity, democracy, pluralism and respect for human rights (Arusha II, art. V(1). The Rwandan State is secular (Arusha IV, art. 80(8)). The *Fundamental Law* of Rwanda is also premised on the separation of executive, legislative and judicial powers. The 1991 *Constitution* declares that Rwanda is a republic (Const., art. 1) and that the monarchy is abolished (Const., art. 2).

### *Rule of Law*

The "Rule of Law" as a fundamental principle has been affirmed in Constitutional and international instruments ranging from the *Magna Carta* to the *Charter of Paris for a New Europe*. On August 18, 1992, the Government of Rwanda and the Rwandese Patriotic Front adopted a *Protocol of Agreement* on the Rule of Law (Arusha III) which was later incorporated into the *Arusha Peace Agreement* (Arusha I, art. 2(II)). The Rule of Law means that nobody is above the law, and that the laws must respect the fundamental rights of citizens. The *N'sele Ceasefire Agreement* declares that the rule of law is "based namely on national unity, democracy, pluralism, and respect for human rights" (Arusha II, art. V(1)). According to the *Protocol of Agreement*, the Rule of Law "does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order." The Rule of Law is "fundamentally characterized by justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression."

### *National Unity*

Because of its history of ethnic conflict and violence, Rwanda has affirmed the importance of national unity in a series of provisions

that form part of its *Fundamental Law* (Arusha III, arts. 1-4). These texts insist on equality of all citizens before the law, the prohibition of ethnicism, regionalism, integrism and intolerance, and the right to return of Rwandan refugees. According to the *Protocol of Agreement on the Rule of Law*, "[n]ational unity must be based on equality of all citizens before the law, equal opportunities in all fields including the economic field and respect for fundamental rights."

National unity implies that the Rwandese people, as constituent elements of the nation, are one and indivisible. It also, states the *Fundamental Law*, implies the necessity to fight all obstacles to national unity, notably, ethnicism, regionalism, integrism and intolerance which subordinate the national interest to ethnic, regional, religious and personal interest (Arusha III, art. 2).

### *Democracy and Pluralism*

Since promulgation of its first *Constitution* in 1962, Rwanda law has formally recognized principles of republican government involving periodic elections. In practice, however, from 1963 until 1991, Rwandan political life was characterized by a single party system and little effective democracy. The *Protocol of Agreement on the Rule of Law* sets out a number of principles to guide democratic development (Arusha III, arts. 5-12).

Government is to be based on the consent of the people, expressed through regular, free, transparent and fair elections. Elections are to include, if the need arises, recourse to international observers, in order to ensure fairness and the elimination of electoral fraud (Arusha III, art. 10). Multipartism is ensured, including the recognition of the "legitimate existence of a democratic opposition." Political parties are expressly provided for in the Rwandan *Constitution* (Const., art. 7). Their creation, organization and activities are provided for in special legislation (Law 28/91 of June 18, 1991). The *Arusha Peace Agreement* notes that multipartism and pluralism are elements of Rwandan democracy, and affirms the legitimacy of a democratic opposition (Arusha II, arts. 6-7, 13). The elections themselves are to be organized by an Electoral Commission (Arusha IV, art. 24).

Communal elections are to be held six months prior to the end of the transitional period (Arusha IV, art. 87), but may be organized earlier should the government decide that circumstances permit. Presidential and legislative elections are to be held at the end of the

transitional period (Arusha IV, art. 5). No sooner than three months before the end of the transitional period, the Prime Minister, following a decision by the Cabinet and after consultation with the Bureau of the National Assembly, may request the President to dissolve the Transitional National Assembly (Arusha IV, art. 76). The Broad-Based Transitional Government is specifically charged with preparing and organizing general elections, which are to follow the transitional period (Arusha IV, art. 23).

### *Human Rights*

Rwanda's *Fundamental Law* contains numerous references to the vital importance of human rights. The 1991 *Constitution* presents an enumeration of fundamental rights and freedoms which is completed by specific provisions in the other instruments making up the *Fundamental Law* of the country. Rwandan human rights law is examined in detail in a distinct chapter in this work.

Specific reference is made to international human rights instruments to which Rwanda is subject, namely the *Universal Declaration of Human Rights* and the *African Charter of Human and Peoples' Rights* (Const., preamble; Arusha III, arts. 1, 6; Arusha VII, art. 17). Attesting to the significance of the international protection of human rights, even where this may encroach upon state sovereignty, the Rwanda *Fundamental Law* states that "the International Community would be justified in expressing concern in the event that [human] rights are violated by anybody on Rwandese territory" (Arusha III, art. 14).

## State Institutions

During the Transitional Period, there are four categories of State Institutions: the President of the Republic; the Broad-Based Transitional Government; the Transitional National Assembly; and the Judiciary (Arusha IV, art. 3).

### *Executive Power*

The Executive Power is composed of the President of the Republic and the Broad-Based Transitional Government. The Broad-Based Transitional Government consists of the Prime Minister, the Deputy Prime Minister, the Ministers and the Secretaries of State (Arusha IV, art. 15). The Executive Power acts collectively through decisions taken in Cabinet meetings by the President of the Republic and the

Government (Arusha IV, art. 4). Although executive decisions are taken by the Cabinet, in cases where the Cabinet is unable to take a decision, the President may decide (RPF Decl., art. 7).

The Government, but not the President, may initiate legislation (Arusha IV, art. 40). The Government is responsible for the implementation of laws and regulations, the negotiation and conclusion of international treaties, presentation of draft legislation to the National Assembly and of orders in council in cases where the Assembly is unable to act, appointment and dismissal of civil servants, and adoption of orders in council relating to the implementation of laws (Arusha IV, art. 16).

**President.** The President of the Republic is the Head of State (Arusha IV, art. 6). Pasteur Bizimungu is designated President of the Republic by the *RPF Declaration* of July 17, 1994.

The 1991 *Constitution* provided the President with extensive powers. These were very substantially reduced by the *Arusha Peace Agreement*, although strengthened considerably by the *RPF Declaration* of July 17, 1994. If the President decides to participate in Cabinet meetings, he replaces the Prime Minister in the chair (Arusha IV, art. 8). The President may also request that matters be placed on the agenda of the Cabinet (Arusha IV, art. 7). However, most of the attributes of Presidential power are subject to approval by the Cabinet, or may be overridden should the President obstruct initiatives from other branches of government. All legal acts performed by the President must be countersigned by the Prime Minister and by the relevant Ministers and Secretaries of State (Arusha IV, art. 10). Nevertheless, according to the *RPF Declaration*, which is at the apex of the country's Constitutional instruments, where the Cabinet is unable to reach agreement and to take a decision, the President of the Republic may rule alone (RPF Decl., art. 8).

The President represents Rwanda in its foreign relations (Arusha IV, art. 6(c)). The President appoints and accredits diplomats, but only after appointment by the Cabinet, and receives the credentials of foreign diplomats accredited to Rwanda (Arusha IV, art. 6(b)). The President is also the Commander-in-Chief of the Armed Forces. However, the Army and the other security forces are accountable to the Cabinet (Arusha IV, art. 6(e)). The President declares war and makes peace, but only after decision by the Cabinet and authorization by the Transitional National Assembly (Arusha IV, art. 6(e)).

The President sanctions and promulgates legislation adopted by the Transitional National Assembly (laws) and by the Cabinet (decree-laws) within ten days of their approval by the Constitutional Court. But failing presidential cooperation, legislation is sanctioned and proclaimed by the Prime Minister (decree-laws), or by the Speaker of the Transitional National Assembly (laws) (Arusha IV, art. 6(d)). The President appoints the Prime Minister and the other members of the government within three days of their designation, failing which they take office of right (Arusha IV, art. 6(a)). The President may initiate cabinet changes and may replace the Prime Minister, with the consent of the Transitional National Assembly (RPF Decl., art. 6).

The *Constitution* entrusts the President with power to make orders concerning pardon, issuance of currency, decorations, execution of laws with which he or she is charged, and ratification of international agreements (Arusha IV, art. 11(6)). The President is responsible for the appointment and dismissal of several high officials, including the various under-secretaries, counsellors and secretaries general in the ministries, the governor of the National Bank of Rwanda, the rector of the National University of Rwanda, ambassadors, and the attorney general of the Supreme Court (Arusha IV, art. 11(5)). These orders must, however, all be examined and adopted by the Cabinet prior to being made by the President (Arusha IV, art. 9, 16).

The president must be at least thirty-five years of age. The president may not occupy any other military or other remunerative activity (Arusha IV, art. 49).

In the event of temporary impediment or incapacity, the President of the Republic is replaced provisionally by the Speaker of the Transitional National Assembly (Arusha IV, art. 47). In the event of resignation or death, permanent impediment or incapacity of the President, the Speaker of the Transitional National Assembly occupies the position temporarily (Arusha IV, art. 48(2)). The President may also, for personal reasons, resign from office (Arusha VII, art. 13). If the vacancy arises within three months of the end of the transitional period, the Speaker of the Transitional National Assembly assumes the functions of President of the Republic pending elections (Arusha IV, art. 48). If not, within three weeks of declaration of the vacancy by the Supreme Court, the political party of the former president must submit two candidates to the Bureau of the Transitional National Assembly. On the fourth week, members of the

Broad-Based Transitional Government and the Transitional National Assembly elect the president, by secret ballot and absolute majority, in an election supervised by the Speaker of the Transitional National Assembly (Arusha IV, art. 48(3)). Should the party of the former president fail to present candidates, or if the former president has left his original political party, each political force represented in the Transitional National Assembly may submit a candidate for election (Arusha IV, art. 48(3)).

**Vice-president.** The office of Vice-President was created by the *RPF Declaration* of July 17, 1994. The Vice-President also holds a portfolio as a member of the Cabinet (RPF Decl., art. 2). The powers of the Vice-President are not defined in the *Constitution*, nor are there any constitutional provisions concerning appointment, resignation, dismissal or replacement of the Vice-President.

**Broad-Based Transitional Government.** The Government is headed by the Cabinet, the Prime Minister and the Deputy Prime Minister. The Government is charged with ensuring the execution of laws, negotiation and conclusion of international treaties, preparation of draft legislation for the National Assembly, adoption of decree-laws in urgent cases, appointment and dismissal of civil servants, and examination and adoption of presidential orders (Arusha IV, art. 16). The *Arusha Peace Agreement* specifically charges the Government with consolidating the democratic process, and organizing the general elections which are to follow the transitional period (Arusha IV, art. 2). The Government is also mandated to consolidate peace and security, to restore national unity, to reconstruct the country, to repatriate and reintegrate refugees, to stimulate the national economy and to promote national ethics (Arusha IV, art. 23).

The Government is charged with setting the State budget, but the budget must be submitted to the Transitional National Assembly for adoption (Arusha IV, art. 43). If the budget is not adopted in time, the Prime Minister, with the authorization of the Cabinet and the Bureau of the National Assembly, may authorize provisional expenditures.

**Prime Minister.** The Prime Minister directs the Government. He or she prepares the Government program, chooses the members of Government, presents the program of the Government and the Cabinet to the Transitional National Assembly, convenes and presides over Cabinet meetings, sets the agenda of Cabinet meetings,

and establishes the attributions of ministers and secretaries of state (Arusha IV, art. 18). The Prime Minister selects candidates for cabinet portfolios, in consultation with the political forces that participate in government (Arusha IV, art. 52). The Prime Minister is also charged with appointing several senior officials, after approval by the Cabinet (Arusha IV, art. 18).

The Prime Minister is designated by the MDR (Arusha IV, arts. 56, 57). The *Arusha Peace Agreement* specifies that the parties had agreed to appoint Faustin Twagiramungu as Prime Minister, a position that he filled until his replacement in August, 1995 (Arusha I, art. 6). If the position of the Prime Minister becomes vacant, the MDR shall submit a candidate for the position, whose appointment is approved by consensus of the political formations participating in the Broad-Based Transitional Government (Arusha IV, art. 53). Resignation by the Prime Minister, for personal reasons, becomes definitive if not withdrawn within eight days (Arusha VI, art. 14). The Prime Minister's resignation must be presented to the President of the Republic (Arusha VII, art. 14), and is signed by the latter (Arusha IV, art. 9).

**Deputy Prime Minister.** The Deputy Prime Minister is designated from among the Cabinet ministers associated with the RPF (Arusha IV, art. 57). The Deputy Prime Minister replaces the Prime Minister when the latter is absent or unable to act, or in any interim period when the position of Prime Minister is vacant.

**Cabinet.** There are twenty-one members of the Cabinet. Members of the Cabinet are appointed by the President, after being proposed by the Prime Minister. However, out of respect for the principle of powersharing, the various portfolios are distributed according to political allegiance (Arusha IV, art. 56; RPF Decl., art. 2). The Prime Minister selects the candidates for the ministerial portfolios, in consultation with the political forces participating in the Government (Arusha IV, art. 52). Although the *Arusha Peace Agreement* appears to eliminate any meaningful role for the President in the selection of ministers, the *RPF Declaration* of July 17, 1994 states that they are chosen "in consultation and with the approval of the President." A member of the Cabinet is not allowed to sit as a member of the National Assembly (Arusha IV, art. 70).

The twenty Cabinet portfolios are as follows (Arusha IV, art. 56):

Defence (RPF)

Higher Education, Scientific Research and Culture (RPF)

Public Service (RPF)

Planning (RPF)

Family Affairs and Promotion of the Status of Women (RPF)

Interior and Communal Development (RPF)

Transport and Communications (RPF)

Health (RPF)

Youth and Associative Movement (RPF)

Rehabilitation and Social Integration (RPF)

Foreign Affairs and Cooperation (MDR)

Primary and Secondary Education (MDR)

Information (MDR)

Finance (PSD)

Public Works and Energy (PSD)

Agriculture and Livestock Development (PSD)

Justice (PL)

Industry, Commerce and Cottage Industry (PL)

Labour and Social Affairs (PL)

Environment and Tourism (PDC)

Several of these portfolios were originally assigned to the MRND by the *Arusha Peace Agreement*. The *RPF Declaration* of July 17, 1994 states that positions originally attributed to the MRND devolve to the RPF. In practice, the RPF has accorded some of these portfolios to other political forces or to unaffiliated individuals. Failing participation by one of the political parties, the vacant portfolios are to be distributed among the remaining organizations. New parties may be admitted by consensus (Arusha IV, art. 58).

Ministers present their resignation to the President of the Republic, and inform the Prime Minister (Arusha VII, art. 14). The President must sign the letter of resignation (Arusha IV, art. 14).

Where a portfolio is vacant, the Prime Minister presents a candidate for appointment by the President, after consultation with the political group to whom the portfolio is attributed (Arusha IV, art. 54; *Protocol* of November 24, 1994, art. 3).

Cabinet decisions are taken by consensus. Failing agreement, the issue is sent back to the appropriate minister for further study. If subsequently it is again impossible to reach consensus, a vote is taken requiring a two-thirds majority of members present. Nevertheless, consensus is always required in the case of amendment of the *Arusha Peace Agreement*, declaration of war, exercise of pardon or reduction of sentences and questions relating to defence and security. (Arusha IV, art. 21). If the Cabinet is deadlocked, the President may decide in its place (RPF Decl., art. 7).

In cases of emergency or where the Transitional National Assembly is not sitting, the Broad-Based Transitional Government may enact Decree-Laws (Arusha IV, art. 72). Decree-Laws have the same status as ordinary Laws within the legislative hierarchy, but the former must be confirmed by the Transitional National Assembly during its next sitting, failing which they lose all validity (Arusha VI, art. 20). A Decree-Law may not contradict the terms of Organic Laws (Const., art. 73). Ministers and secretaries of state carry out the laws and regulations for which they have responsibility by means of orders in council (Const., art. 53). In the case of other orders and regulations enacted by organs of the government, pursuant to enabling powers contained in laws, they shall be deemed invalid in the case of conflict with a Law (Const., art. 69).

### *Legislative Power*

The legislative power is exercised in the form of Laws (Const., art. 69), which are voted by the Transitional National Assembly. These may be either ordinary Laws or Organic Laws. Within the hierarchy of laws, an Organic Law ranks immediately beneath the *Constitution*. Organic Laws are adopted with a view to specifying or completing provisions of the *Constitution*, according to special procedures which must be rigorously respected. As the principal legislative organ, the Transitional National Assembly is entrusted with the adoption of ordinary Laws and Organic Laws. The former require an absolute majority of members present, while the latter require a majority of three-fifths (Arusha IV, art. 73). Legislation may be initiated either by the Cabinet or by the National Assembly (Arusha IV, art. 40).

Laws and regulations cannot enter into force until they have been published in the Official Gazette (Const., art. 97; Order no. R/60 of June 28, 1962).

**Composition.** There are seventy seats in the Transitional National Assembly (Arusha IV, art. 60), divided among the political parties as follows (*Fundamental Law* of Nov. 24, 1994, art. 2):

Rwandese Patriotic Front (RPF) – thirteen

Democratic Republic Movement (MDR) – thirteen

Social Democratic Party (PSD) – thirteen

Liberal Party (PL) – thirteen

National Army – six

Christian Democratic Party (PDC) – six

Islamic Democratic Party (PDI) – six

Rwandan Socialist Party (PSR) – two

Democratic Union of the Rwandan People (UDPR) – two

Although Deputies of the National Assembly are designated by political parties, they are expected to vote as individuals, according to their own views and conscience (Arusha IV, art. 65). The need for representation of the National Army in the Transitional National Assembly is specifically recognized in the *Fundamental Law*, and six seats are accordingly attributed to its delegates (RPF Decl., art. 4; *Protocol* of Nov. 24, 1994).

Should one of the political parties withdraw from the Transitional National Assembly, its seats are not filled, and the Assembly is deemed to be composed of the number of Deputies remaining. However, in the specific case of the MRND seats, these have devolved to the RPF (RPF Decl., art. 3). If the number of Deputies remaining falls below forty-eight, the remaining Deputies of the Assembly are to agree on how to reconstitute the body (Arusha IV, art. 63).

If a Deputy of the National Assembly resigns, his or her seat is replaced by the political organization with which he or she is associated (Arusha IV, art. 64, 77). The same applies if a Deputy of the National Assembly is convicted of a criminal offence, as this necessarily results in removal from office (Arusha IV, art. 71). Removal from office of a Deputy of the Transitional National Assembly is ordered by the Supreme Court (Arusha VI, art. 10).

**Powers.** Besides its legislative function, the Transitional National Assembly may also review action undertaken by the Government, using such means as oral questions, written questions, committee hearings, commissions of inquiry, interpellation and motions of censure. Specifically, it may adopt a motion of censure directed against the Government as a whole or one of its ministers (Arusha IV, art. 78; Const. Am. II). Such motions are adopted by a two-thirds majority of Deputies present, on a secret vote. Where a motion of censure is adopted against a minister, he or she is required to resign; where it is directed against the Prime Minister, the entire Government must resign and is replaced (Arusha IV, art. 79).

The Transitional National Assembly is also empowered to charge the President of the Republic with violation of the *Fundamental Law*. Such a measure must be taken by a two-thirds majority of Deputies present, on a secret ballot. The President may only be tried by the Constitutional Court, which is empowered to remove him or her from office (Arusha VI, art. 11).

The Transitional National Assembly is the sole body authorized to provide authentic interpretation of the *Arusha Peace Agreement*, which it does by a three-fifths majority of its Deputies (Arusha VI, art. 18). The Transitional National Assembly is also entrusted with the power to prolong the transition period, which it may do by a three-fifths majority, after consultation with parties involved in implementation of the *Arusha Peace Agreements*, specifically the United Nations, the Organization of African Unity and the Facilitator (Tanzania) (Arusha VI, art. 22). The Transitional National Assembly must vote the State budget, which is proposed by the Government (Arusha IV, art. 43).

**Sittings.** The Transitional National Assembly holds three ordinary sessions per year, each of which is to last three months. Extraordinary sessions may be held as required (Arusha IV, art. 69). The Assembly is convoked by its Speaker, and may be convened in extraordinary session at the initiative of the President of the Republic, the Prime Minister, the Speaker of the Assembly or the absolute majority of its Deputies. Sittings of the Transitional National Assembly are public, although it may decide to meet *in camera* upon the request of its Speaker, the Prime Minister or one-third of its members (Arusha IV, art. 75). The Transitional National Assembly has a quorum of two-thirds of its Deputies (Arusha IV, art. 74).

**Bureau of the Transitional National Assembly.** The Bureau of the Transitional National Assembly is composed of the Speaker, the Deputy Speaker and the Secretary (Arusha IV, art. 67). The members of the Bureau are elected as follows: the PSD and PL each present a candidate for the post of Speaker, who is chosen by secret, majority vote of the Deputies of the Transitional National Assembly. The unsuccessful party then presents two candidates for the position of Deputy Speaker, who is chosen in the same manner. Candidates for the position of Secretary are designated by the PDC and the parties having no portfolios in the Government (Arusha IV, art. 68).

### *Judicial Power*

The principle of judicial independence is enshrined both in the *Fundamental Law* and in ordinary and organic laws (Arusha II, art. 6; Arusha IV, art. 25; D-L 6/82, ss. 37-40). The *Fundamental Law* also states that "[i]n order to maintain the independence of the Judiciary, posts in the Judiciary shall not be subjected to sharing among political forces" (Arusha IV, art. 84). Justice is rendered in the name of the people (Arusha IV, art. 25). The judiciary is identified in the *Constitution* as the guardian of rights and freedoms (Const., art. 33).

The *Fundamental Law* declares that the ordinary courts consist of four levels: canton courts, courts of first instance, courts of appeal and the Supreme Court (Arusha IV, art. 26). Two military tribunals are also recognized by the *Fundamental Law*, the Courts Martial and the Military Court (Arusha IV, art. 26). Military tribunals are competent to judge criminal infractions committed by soldiers (Arusha V, art. 49). Members of the Supreme Court, of the Court of Appeal, and the presidents of the Courts of First Instance must hold a university law degree or its equivalent (Arusha IV, art. 31).

The *Constitution* envisages the establishment of specialized jurisdictions, but it prohibits the creation of special courts (Arusha IV, art. 26). The creation of courts must be authorized by an organic law (Const., art. 91). The creation of specialized chambers of the courts of first instance for the trial of genocide suspects, pursuant to the Organic Law of August 30, 1996, has been ruled to be consistent with the *Constitution* by the Constitutional Court.

**Supreme Court.** The Supreme Court directs and coordinates the activities of the lower courts. It is the final court of appeal for the country. It ensures that judicial independence is respected, and is responsible for the enforcement of professional ethics. The Court carries out judicial review of administrative regulations, orders and decisions, supervises elections and referenda, provides opinions on draft legislation, gives authoritative interpretation of customary rules, and has a specialized criminal law jurisdiction where the President and other high officials are charged (Arusha IV, art. 27).

The Supreme Court is made up of five sections: the Department of Courts and Tribunals, the Court of Cassation, the Constitutional Court, the Council of State and the Public Accounts Court (Arusha IV, art. 28). The Supreme Court is composed of its President, five Vice-presidents (Arusha IV, art. 29) and judges whose number is not specified by the *Constitution*. The President and the Vice-presidents of the Court must hold a university law degree and have practised law for at least five years (Arusha IV, art. 30), and all members of the court must hold law degrees (Arusha IV, art. 31). They may be discharged by a two-thirds vote of the members of the Transitional National Assembly (Arusha IV, art. 29). The Government may designate Commissioners who participate in hearings of the Supreme Court, but who do not participate in the decision-making (Arusha IV, art. 34).

The Constitutional Court is a division of the Supreme Court. All Rwandan laws are examined by the Constitutional Court subsequent to adoption but before coming into force (Const., art. 75; Arusha I, art. 3(3); Arusha IV, art. 27(b)). They must be transmitted to the Court upon adoption by the appropriate legislative body, and the Court must rule on their validity within eight days or, in urgent cases, within four days (Const., art. 75). Once they have been endorsed by the Constitutional Court and proclaimed by the President, they can no longer be contested in legal proceedings. Nevertheless, any level of jurisdiction is required to refuse to apply orders or other regulations that are incompatible with the *Constitution* or with legislation (Const., art. 95).

The Council of State has jurisdiction to give advisory opinions, where requested, on draft legislation, and may propose the amendments that it deems appropriate (Const., art. 89). The Council of State is also the tribunal which exercises judicial review of administrative action (Const., art. 89).

The Court of Cassation is the court of last resort for appeals from trials heard by the courts of first instance. Unless provided by specific legislation, it does not consider the merits of cases (Const., art. 88). For example, under the Organic Law for genocide prosecution, where the court of appeal condemns a person to death following an acquittal at first instance, the condemned person may apply for review to the Court of Cassation which decides the case on its merits (OL 8/96 of August 30, 1996, art. 25).

**Other Courts.** Jurisdiction and organizational matters concerning the Rwandan courts are set out in Decree-Law 09/80 of July 7, 1980.

Canton Courts are created for each canton, of which there are 140. They are the lowest level of jurisdiction, and are only competent to hear minor criminal charges and civil suits involving relatively small sums of money (Law of 24 August 1962, as amended).

Courts of First Instance exist for each prefecture; there are twelve. They have general jurisdiction in all criminal and civil matters, subject to exceptions stated in particular laws. For example, senior officials may only be judged in criminal matters before the Court of Cassation and the Supreme Court (Arusha IV, art. 27(j), 45). The Court of State Security is a specialized tribunal having exclusive jurisdiction to try offences against state security, set out in sections 151 to 192 of the *Penal Code.*

There are four courts of appeal, sitting in Kigali, Nyabisindu, Cyangugu and Ruhengeri (OL 12/85).

The composition and jurisdiction of the military courts was modified by the *Arusha Peace Agreement*, and subsequently by the January 18, 1996 Constitutional amendment. In the latter case, the changes were made to facilitate prosecutions for genocide. It is now possible for military courts to judge individuals who do not belong to the military if they were accomplices in crimes committed by soldiers (Const. Am. I, art. 3). The military court of first instance is the Court Martial, and an appeal from its judgment lies to the Military Court (OL 8/95).

**Supreme Council of Magistrates.** The Supreme Council of Magistrates is composed of the President of the Supreme Court, the Vice-presidents of the Supreme Court, two judges of the Supreme

Court, a judge of the Court of Appeal, a judge from each Court of Appeal, and one judge from a Court of First Instance and from a Canton Court for each appeal district (Arusha IV, art. 37). With the exception of the President and the Vice-presidents of the Supreme Court, the members of the Council are elected by their peers (Arusha IV, art. 38). All candidates for membership of the Council must show at least five years' experience in the field of law (Arusha IV, art. 38).

The Council rules on the appointment, dismissal and functions of members of the judiciary, other than the president and vice-presidents of the Supreme Court (Arusha IV, art. 39(a). Appointment and dismissal of judicial personnel is made by ministerial order, signed by the Minister of Justice (Arusha IV, art. 18(b)). In the case of the president and vice-presidents of the Supreme Court, such orders must be signed by the President of the Republic (Arusha IV, art. 29). The Council also provides advisory opinions on matters relating to judicial personnel and generally on any matter concerning the administration of justice (Arusha IV, art. 39).

The Council's attributions are determined by Organic Law (Arusha VI, art. 21).

The January 18, 1996 Constitutional Amendment authorized the President of the Supreme Court to appoint other members of the Council in order to facilitate its first meeting (Const. Am. I, art. 2). Subsequently, an Organic Law was adopted specifying the composition of the Council: the President and Vice-presidents of the Supreme Court, one judge from each of the four Courts of Appeal, one judge of a Court of First Instance and one of a Canton Court for each appeal district (OL 3/96 of March 29, 1996).

**Languages**

According to the 1991 *Constitution*, Kinyarwanda is the national language of Rwanda (Const., art. 4). The *Constitution* was amended on January 18, 1996 to make English one of Rwanda's official languages, the others being French and Kinyarwanda (Const. Am. I, art. 7). However, the scope of what this involves is not spelled out in detail in any legislation, for example in the form of a law on official languages. Thus, although practice suggests that laws adopted by the National Assembly are published in the official languages, there is no legislative guidance on the role that official languages play in judicial proceedings, for example.

The *Protocol on Refugees* states that lack of knowledge of French or Kinyarwanda shall not be an obstacle to recruitment and employment in the civil service. Refugees shall have three years in which to study French or Kinyarwanda and their employment will be reassessed after that time (Arusha IV, art. 25). This provision was repealed by the January 18, 1996 Constitutional Amendment (Const. Am. I, art. 8).

## Administrative Structure

The *Constitution* declares that Rwanda is divided into prefectures, subprefectures and communes (Const., art. 11). There are twelve prefectures. The name of each prefecture is also its seat. Each prefecture is presided over by a prefect. There are also subprefectures and subprefects, to whom responsibilities are delegated by the prefect (D-L 10/75 of March 11, 1975). Subprefectures are created by legislation (D-L 27/75 of July 31, 1975; Decree Law 29/76 of July 20, 1976).

The prefectures are themselves divided into communes, the number varying between about ten and twenty per prefecture. The territorial divisions of the communes, and the prefectures to which they belong, are set out in legislation adopted in 1963 which has been subject to minor amendments since that time (Law of April 15, 1963, as amended). The commune is directed by a communal council, composed of communal counsellors, who must meet once every month (Law of November 23, 1963). The Council is presided by the burgomaster, who is appointed by the President on the recommendation of the Minister of the Interior. The Communal Council's responsibilities include the administration of communal property and maintenance of roads. Communes are further divided into sectors, which are described in Rwandan law as being "made up of hills (*collines*)".

## Specialized Commissions

The *Fundamental Law* establishes four specialized commissions and defines their tasks.

### *National Commission of Human Rights*

The National Commission of Human Rights is an independent body, whose establishment is envisaged by the *Fundamental Law* (Arusha III, art. 15). The mandate of the Commission is to examine

alleged violations of human rights committed within the territory of Rwanda, and particularly those for which the State may be responsible. The Commission may act before the courts in the case of violations, and is also charged with dissemination, promotion and training of the population in human rights. At its 1997 session, the United Nations Commission on Human Rights adopted a resolution calling upon Rwanda to actually set up the National Commission of Human Rights.

### *International Fact-Finding Commission on Human Rights Violations Committed during the War*

The *Arusha Peace Agreement* provides for the creation of an International Fact-Finding Commission on Human Rights Violations Committed during the War (Arusha III, art. 16). The Commission was never established, although in January, 1993, several prominent international non-governmental organizations set up an international fact-finding commission that warned of the danger of genocide in Rwanda.

### *Joint Political-Military Commission*

The *N'sele Ceasefire Agreement*, which is a component of the *Arusha Peace Agreement* and therefore of the *Fundamental Law*, provides for the creation of a Political-Military Mixed Commission (Arusha II, art. IV), composed of five members of the RPF and five members of the Government of Rwanda. Observer status is accorded to representatives of the Organization of African Unity, Burundi, Tanzania, Uganda, Zaire, Belgium, France and the United States of America. The Commission sits at the headquarters of the OAU in Addis Ababa, Ethiopia.

The Commission's mandate is to ensure follow-up of the *Peace Agreement*. The Commission is required to advise the Transitional National Assembly with respect to charging the President of the Republic with violation of the *Constitution* (Arusha VII, art. 11) and authentic interpretation of the *Arusha Peace Agreement* (Arusha VII, art. 18).

Although not formally abolished, subsequent developments would seem to have rendered the provisions creating the Commission inoperative.

### *Commission for National Unity and National Reconciliation*

The Commission for National Unity and National Reconciliation reports to the Government. It is mandated to prepare the national debate on unity and national reconciliation, and to prepare and disseminate information to the entire population aimed at unity and national reconciliation (Arusha IV, art. 24).

The Commission for National Unity and National Reconciliation reviews the respect of the Political Code of Ethics which binds participants in the transitional regime (Arusha IV, art. 80). Nine principles are set out:

1. Support the Peace Agreement and work towards its successful implementation;

2. Promote national unity and national reconciliation of the Rwandese people;

3. Abstain from all sorts of violence and inciting violence, by written or verbal communication, or by any other means;

4. Respect and undertake to fight any political ideology or any act aimed at fostering discrimination based mainly on ethnic, regional, sexual or religious differences;

5. Promote and respect the rights and freedoms of the human person;

6. Promote political education among their members, in accordance with the fundamental principles of the Rule of Law;

7. Work towards a system whereby the political power serves the interests of all the Rwandese people without any discrimination;

8. Respect the secularism of the Rwandese State;

9. Respect national sovereignty and the territorial integrity of the country.

A political force that breeches these principles may be excluded from the various transitional organs. Following a report by the Commission, the Government is to put such a political organization in default, and then submit the matter to the Supreme Court.

### *Legal and Constitutional Commission*

The Legal and Constitutional Commission is composed of national experts, and is subject to the National Assembly. The Commission is charged with preparing a preliminary draft of the constitution that is to be in force after the transitional period (Arusha IV, art. 24(B)). The Commission is to undertake an extensive consultation of all strata of Rwandan society. Its draft is to be submitted to the Government for advice, and then to the Transitional National Assembly, which shall finalize the draft constitution. The version adopted by the Transitional National Assembly is to be adopted by referendum (Arusha IV, art. 41).

The Legal and Constitutional Commission is also to examine legislative changes required by the *Arusha Peace Agreement*, particularly the provisions dealing with the Rule of Law (Arusha III).

### *Electoral Commission*

The Electoral Commission is mandated to prepare and organize communal, legislative and presidential elections (Arusha IV, art. 24(C)).

## Armed Forces

A distinct *Protocol* making up the *Arusha Peace Agreement* provided for the integration of the RPF forces (RPA) within the regular Rwandan Armed Forces (Arusha V). This was never completed, and when it took power in July, 1994, the RPF declared that only those members of the armed forces who had not been involved in reprehensible acts would be allowed to remain (RPF Decl., art. 8). The Broad-Based Transitional Government is specifically mandated by the *Arusha Peace Agreement* with ensuring internal and external security, and organizing the relevant institutions to this effect (Arusha IV, art. 23).

## Federation

Any federation of Rwanda with one or more democratic States must be approved by referendum (Arusha IV, art. 11(6)).

## State of Siege

A State of Siege or State of Emergency may be proclaimed by the Prime Minister, but only after a decision taken by the Cabinet, and consultation with the Bureau of the Transitional National Assembly and the Supreme Court (Arusha IV, art. 18(10)). The actual powers granted to the authorities during a State of Siege are set out in a Decree and in an Order proclaimed by the Belgian governor in 1959 and still in force. Rwanda is also required, pursuant to its international human rights commitments, to inform the Secretary General of the United Nations of any derogation from human rights norms necessitated by an emergency situation (ICCPR, art. 4(1)). The *International Covenant on Civil and Political Rights* limits the fundamental rights that may be suspended in an emergency situation which threatens the life of the nation and the existence of which is officially proclaimed to those strictly required by the exigencies of the situation. Moreover, under no circumstances may the right to life, the prohibition of torture and cruel, inhuman and degrading treatment or punishment, the prohibition of slavery, the prohibition of retroactive criminal law and freedom of religion be suspended.

## Amendment of the *Fundamental Law*

The *Arusha Peace Agreement* states that amendment of the texts may be proposed by the Broad-Based Transitional Government and the Transitional National Assembly (Arusha VI, art. 19). Where the Government proposes the amendment, it must be adopted by a three-fifths majority of the members of the Assembly (forty-two members), which is the same majority required for Organic Laws. Where members of the Assembly propose the amendment, it must be adopted by consensus.

The 1991 *Constitution* had provided that the president could initiate Constitutional amendments, and that they required a three-quarters majority of the Assembly (Const., art. 96). The *Arusha Peace Agreement* also repeals article 96 of the 1991 *Constitution* (Arusha I, art. 1). Thus, although not stated explicitly, the new amending

provision applies not only to the *Arusha Peace Agreement* itself, but to the entire *Constitution*, including the 1991 *Constitution*. As a result, on January 18, 1996 the Transitional National Assembly adopted a Constitutional Amendment which modifies articles 3 and 12 of the 1991 *Constitution*. The Assembly made specific reference, in the preamble of the amendment, to the new amendment provision of the *Arusha Peace Agreement*.

**Further reading.** In the English language, a chronology of constitutional law together with a translation of the 1978 *Constitution* is published in Albert P. BLAUSTEIN and Gisbert H. FLANZ, *Constitutions of the Countries of the World*, Dobbs Ferry, New York: Oceanea Publications, 1980. See also: Filip REYNTJENS, "Constitutions of Rwanda and Burundi," (1996) 40 *Journal of African Law* 23. In the French language, see: André DURIEUX, «La nouvelle constitution du 20 décembre 1978 de la République rwandaise», (1979) 33 *Rev. Jur. Pol. Ind. Coop.* 237; André DURIEUX, «Les institutions politiques de la République du Rwanda», (1973) 27 *Rev. Jur. Pol. Ind. Coop.* 295; André DURIEUX, «Les réformes constitutionnelles de la République rwandaise», (1975) 29 *Rev. Jur. Pol. Ind. Coop.* 297; Gaspard HARELIMANA, «La commune ruandaise», (1968) 22 *Rev. Jur. Pol. Ind. Coop.* 44.

# Chapter 2
# Criminal Law

Criminal law attempts to establish individual responsibility for anti-social behavior, and to impose penalties for its breach. Although theorists continue to debate the purposes of punishment, they are often said to include retribution, deterrence, protection of the public and rehabilitation. Society is wronged by the unlawful act, and the individual offender may be called to account even if the individual victim is indifferent to prosecution or forgiving. Criminal law often overlaps with civil law, because the same facts may give rise to both criminal sanctions and civil liability. The offender is held responsible to society and sentenced under the criminal law, and at the same time held responsible to the individual victim and ordered to make compensation under the civil law (for the law of civil liability, see pp. 86-95). Some legal systems, notably those derived from the common law, separate the two regimes, and provide for substantially different rules of evidence and procedure before criminal and civil courts. Rwandan law facilitates a relationship between the two areas, allowing civil plaintiffs to intervene in criminal proceedings and to have their claims adjudicated in the same judgment that rules on guilt or innocence of the accused.

The study of criminal law can be divided into four subjects: (1) general principles, which concerns the fundamental elements of criminal liability, as well as rules of participation in criminal activity and defenses; (2) specific infractions; (3) criminal evidence and procedure; (4) sentencing. In recent years, international and domestic human rights norms have come to play a big role in criminal law, notably in requirements of procedural fairness and of proportional penalties. Other specific areas of law and social science are also related to the study of criminal law, such as criminology, policing, the rights of prisoners and international law.



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Rwandan criminal law is derived from the Romano-Germanic legal tradition, which is characterized by the codification of legal norms. If a crime is not expressed in written law, then prosecution is prohibited. Criminal or penal codes were first adopted in Bavaria and Austria in the mid-eighteenth century, and by the end of the century were also in force in France and Switzerland. The French *Penal Code* was adopted at the height of the revolution, in 1791, and was subsequently applied to territories conquered by French armies, including Belgium in 1810. The French *Code* remained in force in Belgium until 1867, when the country promulgated its own *Penal Code*, based largely on the French text. The Belgian *Code* of Criminal Procedure was adopted in 1878. Various attempts to update and refresh the Belgian *Codes* have been unsuccessful.

Belgian criminal law – essentially the *Penal Code* and the *Code of Criminal Procedure* – was introduced to Rwanda during the Belgian mandate, and has continued to influence Rwandan criminal law since decolonization. In fact, it was the *Congo Penal Code*, itself based on Belgian models but having significant differences, that was introduced to Rwanda. The *Congo Penal Code* was adopted on January 30, 1940, and extended to Rwanda on May 18, 1940.

A truly Rwandan *Penal Code* (PC – *Code pénal*) was adopted in 1977, following work directed by the Prosecutor General, Jean Robert. It attempted to take into account both European and African influences. The *Code* was proclaimed in force by the President, to take effect on January 1, 1980, and has been subject to only minor amendments since then. It is composed of two parts, the first dealing with general criminal law (general principles and sentencing) and the second dealing with special criminal law (infractions). The *Penal Code* repealed a large number of decrees and ordinances, many of which had been adopted under the Belgian mandate, although legislation in force at the time that was not in conflict with the new *Code* remains valid. The substantive criminal law system is completed by the Organic Law of 1996 addressed specifically at perpetrators of genocide (OL 8/96 of August 30, 1996), and other specific legislation focused on problems such as narcotic control and juvenile delinquency. Rwanda is also bound by several international legal norms that create criminal infractions or impose obligations related to the enforcement of criminal law, such as the *Geneva Conventions of August 12, 1949* and the *Convention for the Prevention and Punishment of the Crime of Genocide*. Rwandan criminal procedure is covered by the *Code of Criminal Procedure* (CCP – *Code de procédure*

*pénale*), which was adopted in 1963 and which has been amended on various occasions since that time.

## General Principles

### *Principle of Legality*

Certain fundamental principles derived from human rights law are applicable to criminal law. The principle of legality is at the heart of all modern criminal law systems. It requires all criminal prosecutions to be based on pre-existing legal norms, and is often expressed as the Latin maxim: *nullum crimen nulla poena sine lege*. This rule is set out in the Rwandan *Constitution* of 1991 (Const., art. 12) as well as in the *Penal Code* itself (PC, s. 1), the *International Covenant on Civil and Political Rights* (ICCPR, art. 15) and the *African Charter on Human and Peoples' Rights* (ACHPR, art. 6), to which Rwanda is a State party, and the *Universal Declaration of Human Rights* (UDHR, art. 11(2)), whose terms are incorporated into Rwanda's fundamental law (Arusha VII, art. 17). However, the principle is expressed in different forms by different legal systems. The English common law legal tradition relies on judicial precedent, and allows judges considerable discretionary power in defining offenses, even if these have not been set out in written legislation. Critics of the common law occasionally suggest that its tolerance of unwritten or judge-made offenses does not fully respect this rule. Certainly Rwanda's practice of codification of the criminal law contributes to eliminating any uncertainty about the existence and the scope of criminal infractions.

Rwanda's concern with the principle of legality can be seen in the preamble to the Organic Law dealing with genocide (OL 8/96 of August 30, 1996) which notes that although international crimes such as genocide and crimes against humanity have been incorporated into Rwandan law by virtue of the ratification of certain international treaties, the treaties do not set out specific punishments. As a result, the preamble to the Organic Law states that prosecution for genocide and crimes against humanity must be based on the *Penal Code* as it existed at the time the crimes were committed. But it is important to note that this rule applies only to retroactive infractions and to the punishment associated with them. When measures concerning procedure and evidence are changed, they may apply to crimes committed before their adoption without necessarily offending this fundamental norm.

### *Double Jeopardy*

The *Penal Code* also sets out, but only partially, another fundamental human rights norm, the prohibition of multiple prosecutions for the same offense: *non bis in idem*. The Rwandan *Penal Code* states only that an individual may not be punished twice for the same infraction (PC, s. 5). International norms that are binding upon Rwanda go somewhat further, preventing a second prosecution not only where an individual has been condemned, but also where the person has been tried and acquitted (ICCPR, art. 14(7)). These rules do not prevent an individual from being charged, during a single prosecution, with several related offenses. Where in reality it is a case of a single act constituting more than one offense (for example, murder and assault), then the offender may only be sentenced for the more serious of the two. Where two or more crimes are really the result of a common intention and are no more than differing degrees of the same offense, then the offender may be subjected to one and a half times the maximum sentence for the more severe offense (PC, s. 93).

### *Rules of Interpretation*

Because criminal law constitutes a restriction on the liberty of individuals, its provisions must be interpreted restrictively (PC, s. 3). This will generally mean that where there is uncertainly as to the scope of a legal text in criminal law, the benefit of the doubt will be given to the accused. A second rule of interpretation specifies that where two criminal law provisions seem to address the same point, a more specialized text takes precedence over one that is more general (PC, s. 4). Rwandan judges will consult dictionaries, common use, legal scholarship, caselaw and the legislative materials prior to adoption of a law (legislative debates, drafts of legislation) in order to discern the meaning of ambiguous legislation. In theory, at least, the judge should attempt to identify the genuine intent of the legislature that adopted the measure in question.

### *Physical and Mental Elements of Offenses*

All criminal offenses are composed of two elements, one physical and the other mental. The prosecution must establish both elements. Even where the physical elements of a crime are evident, if the individual did not truly intend to breach the law, no crime is committed. On the other hand, having guilty thoughts is not in itself a crime, and for a criminal offense to take place there must be some physical

evidence. The situation is somewhat different in the case of civil liability, where an individual may be responsible even if there is no guilty intent, but simply a degree of negligence that departs from the standard of an ordinary person. But because criminal law results in deprivation of liberty of the offender and, in extreme cases, in the threat of the death penalty, as well as in severe social stigma, nobody will be found guilty under the criminal law without proof of both the physical or material element of the infraction (known as the *actus reus*) and the mental or moral element (known as the *mens rea*).

In the case of the physical element, this is established during a criminal prosecution by proof of the act or the omission that is complained of. The relevant facts will of course vary depending on the infraction charged. Some infractions require proof not only of criminal behavior but also of a result. For example, proof of a homicide will require evidence of acts causing death committed by the accused as well as specific evidence of death, generally in the form of the body of the victim. To elevate homicide to the more serious offense of assassination, the prosecution must also prove physical acts that show premeditation. An accused may rebut evidence of the material acts by proving that he or she was elsewhere when the crime was committed (an alibi defense) or that there is error in the identification of the criminal, or simply by demonstrating that the prosecution has failed to prove to the satisfaction of the court all of the essential acts making up the offense. Where a result is an element of the offense, the prosecution must prove not only commission of the acts by the accused, but also a causal link between the acts and the result. In the somewhat more exceptional case of crimes of omission, such as the offense of failure to assist a person whose life is in danger (PC, s. 256), the prosecution must establish the circumstances of the situation and demonstrate that the accused did not intervene.

Under Rwandan law, as in most legal systems, where there is proof that an individual attempted to commit a crime, criminal liability may be incurred, even though the crime itself was not completed. Obvious problems often arise concerning proof of the physical elements of attempted crimes, because there is no evidence of result. Moreover, the acts that suggest attempt may be ambiguous and even, according to some interpretations, entirely innocent. The *Penal Code* specifies that criminal attempt exists "where the resolve to commit a crime has been manifested by exterior and unequivocal acts that constitute the beginning of the execution of the crime and whose direct and immediate consequence would be to consummate the infraction, and where they have been suspended or have failed to

take effect due to circumstances beyond the control of the offender." (PC, s. 21) Where the offender voluntarily retreats from the crime, he or she shall not be punished, unless of course the facts themselves already committed constitute an offense. A violent attack may constitute attempted murder or bodily assault, depending on the circumstances.

The mental or moral element of an offense consists of evidence of a guilty mind. Acts which are truly inadvertent or unintentional incur no criminal liability, although the perpetrator may still be held liable to compensate the victim by the civil courts. Evidence of the guilty mind is normally presumed if there is proof of the material acts; in other words, an individual is presumed to intend the consequences of his or her acts, and thus where there are guilty acts, a guilty mind is deemed to have directed them. But even where the material acts are proven, an individual may rebut the deduction that the acts were intended by presenting a defense such as insanity, duress, necessity, superior orders (PC, s. 70) and self-defense (PC, s. 337). The individual who has physically committed the act but who has no guilty mind is thereby freed from criminal liability. The degree of guilty intent will vary depending on the infraction. For example, certain categories of murder and assault require premeditation, and are punishable by the most severe sanctions. Other crimes, such as manslaughter, require no special intent other than simple negligence. The level of punishment for such crimes generally varies depending on the result, that is, death or injury, even though the level of intent is essentially the same.

### *Defenses*

In a broad sense, a defense is any argument that, if accepted, enables an accused to defeat a criminal charge. A number of defenses are formally recognized by the Rwandan *Penal Code*. From a theoretical standpoint, these are often divided into excuses and justifications. Where the defense is an excuse, the accused admits the material elements of the offense but denies having a guilty mind because he or she did not fully control his or her acts, due to insanity, involuntary intoxication or duress (PC, s. 70). Where the defense is a justification, the accused admits full control over his or her acts, but claims they were justified, for example in the case of self-defense (PC, s. 337). However, error of law is not a defense, following the maxim "ignorance of the law is no excuse" or *ignorantia juris, quod quisque tenetur scire, neminem excusat* (Const., art. 97).

Rwandan law recognizes both general and special defenses. A general defense, such as insanity, is a full answer to any criminal charge. A special defense is only applicable to particular infractions. For example, consent is a valid defense to a charge of rape, but not to a charge of murder. Rape is not defined in the *Code*, but the presence of consent is quite clearly a full defense to the charge, at least in the case of an adult victim. In the case of crimes against public trust (counterfeiting, perjury, corruption, etc.), the *Penal Code* allows civil servants a defense of superior orders, to the extent that the order was not manifestly illegal (PC, s. 229). Certain crimes provide a defense for relatives. For example, spouses and close relatives are not required to denounce a criminal, unless the victim is a child of less than fourteen years (PC, s. 258). In the case of assault, the courts have recognized a defense to parents who discipline their children using corporal punishment, although this defense is not codified. A doctor has a special defense to a charge of abortion, where the continuation of pregnancy constitutes a serious threat to the health of the woman, and where certain formalities have been respected (PC, s. 327).

Where an accused has voluntarily deprived himself of his faculties, by for example the consumption of alcohol or narcotic drugs, then he has no excuse. If, however, the intoxication is involuntary – the case of someone who has been poisoned comes to mind – then the accused has a valid defense. A defense also exists in cases where the accused has been provoked by blows or serious violence (PC, s. 79).

Some defenses do not result in full exoneration, but reduce the seriousness of the offense. Provocation by serious violence constitutes a partial defense to murder and assault (PC, s. 333). Defense of a private dwelling is also a partial defense to a charge of murder or assault (PC, s. 334). If accepted by the court, the sentence is reduced significantly (PC, s. 335).

### *Exemptions and Immunities*

Certain categories of persons are excluded from any criminal liability. The most important category is children, who cannot be held responsible for crimes committed while fourteen years of age or younger (PC, s. 77). This is in harmony with Rwanda's international obligations, notably the *Convention on the Rights of the Child*, which requires States parties to establish a minimum age below which children (who are defined as being under eighteen years of age) shall be presumed not to have the capacity to infringe the penal law (art.

40(3)). Children aged fifteen, sixteen and seventeen are subject to the *Penal Code*, but sentences imposed are reduced significantly (PC, s. 77).

Diplomatic immunity shields accredited diplomats and consular officials from criminal as well as civil prosecution, and is provided for by international conventions and customary rules. The rule of diplomatic immunity derives from principles of state sovereignty, and forbids one State from exercising criminal jurisdiction over the representative of another. Diplomats who commit serious crimes are normally ordered to leave the country of accreditation, and are often punished under their own laws when they return home. Section 6 of the *Penal Code* specifies that diplomatic immunity is an exception to the general rule of prosecution for offenses committed in Rwanda. A special form of this immunity was set out in the Host State Agreement executed between Rwanda and the United Nations in November, 1993, and providing for the presence and activities of UN Peacekeeping Forces in Rwanda.

Some particular cases of immunities exist based on family relationships. Spouses, parents, children and persons related by marriage cannot commit theft against each other (PC, s. 397). Similarly, relatives cannot incur criminal liability as accomplices after the fact (PC, s. 257). Although Rwandan law is silent on this point, judges will often imply a form of *de facto* immunity to husbands charged with raping their wives (a similar rule once existed in the common law, but it has since been changed), although there is nothing to prevent a charge of assault where violence has been involved.

Corporations are not subject to prosecution under Rwandan criminal law.

### *Parties to an Infraction*

Under most criminal law systems, individuals who participate in the offense incur criminal liability even if they are not the principal or direct perpetrator of the crime. In Rwandan law, rules governing criminal participation have been codified. An individual who has assisted or cooperated with the principal offender is deemed an accomplice or accessory, and incurs the same criminal responsibility (PC, s. 89). An accomplice may participate in criminal activity by using gifts, promises or threats in order to incite the principal offender, or by encouragement in the form of public speeches or documents. Complicity also exists where there is proof that an individual

procured arms or other equipment that assisted in commission of the infraction, or aided and abetted the offense in any other material way (PC, s. 91). An individual also participates in the commission of a crime where assistance is provided to the offender after it has been committed, subject to special rules excluding relatives from liability (PC, s. 257). Criminal liability of participants exists even where the principal offender cannot be punished, for example because he or she is fourteen years of age or younger, because he or she is dead, or where a defense such as insanity or duress has been successfully established.

The Organic Law of 1996 dealing with prosecution for genocide creates a new form of criminal participation, known as command responsibility. It imposes criminal liability on a superior for the acts committed by a subordinate, where "he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to punish or prevent such acts while these measures were available to him." The text of the provision is borrowed from the *Statute of the International Criminal Tribunal for Rwanda*. Command responsibility has been recognized in international prosecutions for war crimes since the end of the Second World War, but Rwanda may well be the first State to introduce the notion into its domestic criminal legislation.

### *Statute of Limitations*

Rwandan law provides a statute of limitations for offenses (PC, ss. 111-116). Different rules apply depending on the category of offenses, of which there are three: crimes, delicts, and contraventions. The only possible exception to this rule is the case of serious international crimes, such as genocide, war crimes and crimes against humanity, which both conventional and customary international law consider to be not subject to statutory limitations. Rwanda is a party to the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, which has the effect in Rwandan law of neutralizing the *Penal Code* provisions dealing with limitations with respect to crimes defined as war crimes and crimes against humanity. Under Rwandan law, a "crime" is punishable by more than five years' imprisonment or by the death penalty. Prosecution for a crime is time barred after ten years. A "delict" is punishable by from two months' to five years' imprisonment, or by a fine of more than 2,000 francs, and is time barred after three years. A "contravention" is punishable by up to two months' imprisonment,

and a fine not to exceed 2,000 francs. Offenses for which no penalty is specified are deemed to be contraventions. A contravention is time barred after one year.

### *Liability of Senior Officials*

The *Constitution* of 1991 specifies that the President of the Republic, members of the government and the National Assembly, and senior judicial officials are all personally liable for breaches of criminal law (Const., art. 38). However, they are not subject to preventive detention, and must be tried before the Supreme Court (Arusha III, art. 45). Moreover, they can only be charged with criminal offenses upon the vote of a three-quarters majority of the members of the Transitional National Assembly, held by secret ballot (Const., art. 38).

## Infractions

Rwanda's *Penal Code* classifies specific infractions into four categories: offenses against the State; offenses against the person; offenses against property; and military offenses. The *Penal Code* does not provide an exhaustive list of offenses. Offenses are also set out in various special laws, as well as in regulations, orders and other forms of administrative measures for which sanctions are provided.

### *Offenses against the State*

Offenses against the State are set out in sections 151-309 of the *Penal Code*. Offenses against the State include crimes directed against national security, such as treason and espionage, crimes against public trust, such as corruption of public officials, crimes against public order, such as rebellion, crimes against public security, such as escaping from prison, and crimes against human rights, such as interfering with religious practices.

**Offenses against National Security.** The category of offenses against the State contains a series of very detailed provisions addressing the issue of state security and comprising, essentially, the crimes of treason and espionage. Crimes against external as well as internal security are set out. They include conspiracy to commit such crimes. In some cases, these crimes are punishable by death where committed in wartime. Generally, extensive prison terms, up to and including life imprisonment, are provided for. Exceptionally, such

crimes are punishable even where committed outside Rwandan territory. Offenses directed against foreign heads of state and diplomats are also provided for in the *Code*. The Court of State Security is a specialized tribunal having exclusive jurisdiction to try such offenses (D-L 22/75 of June 9, 1975).

**Offenses against Public Trust.** Crimes against public trust are aimed at protecting public property, and at ensuring honesty of public servants and in dealings with the state. This part of the *Code* includes such offenses as counterfeiting, perjury, violation of professional secrecy and corruption of public officials.

**Offenses against Public Order.** Crimes against public order include rebellion, contempt or violence directed against public officials, breaking of seals, interference with public works, interference with trade or navigation, and gambling, public drunkenness and loitering. This category also includes a crime of omission, which is the failure to assist an individual who is in danger. But intervention to assist another person is not required where the individual may be at some risk (PC, s. 256). The *Penal Code* also imposes an obligation to denounce criminals (PC, s. 258). Cultivation, sale, possession and production of prohibited drugs is covered by the *Penal Code* (PC, ss. 271-277). Sentences may range from three months to five years, and may be doubled in the case of trafficking.

**Offenses against Public Security.** This chapter of the *Code* includes such crimes as organizing a criminal association, escape from prison, vagabondage and begging. In fact, vagabonds are not punished with a criminal sanction, but are detained according to special rules under colonial-era Belgian legislation. Belgium's laws concerning vagabondage have been challenged unsuccessfully before the European Court of Human Rights (*De Wilde* v. *Belgium*).

**Offenses against Individual Rights.** This chapter criminalizes certain encroachments on individual rights and freedoms, including threats or other acts of interference with religious practices. Its provisions are also used to prosecute officials for illegal arrest, detention or other abuse of power.

### *Offenses against the Person*

Offenses against the person are contained in sections 310-395 of the *Penal Code*. Many criminal law systems, and the Rwandan system is no exception, classify the bulk of their offenses as either

crimes against the person or crimes against property. Crimes against the person include homicide, assault and sexual offenses, as well as other crimes such as abandonment (PC, ss. 380-387), kidnapping (PC, ss. 388-390) and slander (PC, ss. 391-395).

**Homicide and Assault.** Rwandan law recognizes various forms of murder. As a general rule, murder is subject to a sentence of life imprisonment (PC, s. 311). However, in cases of premeditated murder, patricide, and murder by poisoning, the *Code* provides for the death penalty (PC, ss. 312-317). When murder is committed in conjunction with another crime, it is also subject to the death penalty. Murder that is accompanied by torture or acts of barbarism is considered as assassination, and is punishable by death (PC, s. 316). Involuntary homicide or manslaughter is punishable by three months to two years in prison (PC, s. 343).

The Organic Law dealing with genocide prosecution modifies some of these general rules for genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994. It divides offenders charged with homicide into two categories, the first reserved for "planners, organizers, instigators, supervisors and leaders," and the second for "perpetrators, conspirators or accomplices" (OL 8/96 of August 30, 1996, s. 2). While the death penalty remains applicable to those in Category I, it has been eliminated for Category II offenders (OL 8/96 of August 30, 1996, s. 14). Category I offenders whose names have not yet been published on a list of suspects may reclassify themselves into Category II by making a full confession of their crimes (OL 8/96 of August 30, 1996, s. 9).

Rwanda's *Penal Code* recognizes different degrees of assault, depending principally on the result, that is, the degree of injury caused to the victim, although other factors are also relevant. For example, assault is deemed to be aggravated where the victim is a relative of the accused, as well as in the case of particularly vulnerable victims, such as children of less than fourteen years of age (PC, s. 323). Where assault results in death, but where death was not intended, the sentence ranges from five to ten years' imprisonment, as well as a fine; if there is premeditation, the range of sentences increases from ten to fifteen years (PC, s. 321). The Organic Law dealing with genocide prosecutions puts perpetrators of serious assault against the person causing death into Category II, where the maximum sentence is life imprisonment (OL 8/96 of August 30, 1996, s. 2).

Abortion is prohibited by Rwandan law, except where conducted by a physician, and where the pregnancy constitutes a serious threat to the woman's health (PC, s. 327). The sentence varies depending on whether or not the women has consented. The woman herself, if she has voluntarily aborted herself, is punishable by two to five years' imprisonment (PC, s. 325). Publicizing the means of abortion is also a crime (PC, s. 379).

**Sexual Offenses.** The sentence for rape and indecency varies depending on whether or not the victim is less than sixteen years of age. Rape of a child of less than sixteen years is punishable by twenty years' imprisonment. Clearly, consent of the "victim" is a full defense to a charge of rape where adults are the only participants, although nowhere is this stated in the *Code*. As for sexual relations with children, Rwandan law creates no special offense of statutory rape, by which consensual sexual relations with a child constitute a crime. In practice, judges would take into account the age of the "victim" in assessing whether or not the child was really in a position to give a valid consent. Sentences are also increased where the victim is a relative of the offender, or where there is a relationship of power or authority, and in the case of teachers or employers (PC, s. 361). In cases where rape or indecency result in death, the offender is subject to capital punishment (PC, s. 360).

Although the *Code* is silent on this subject, it appears that Rwandan courts consider rape and indecency to be limited to male offenders and female victims. Homosexual acts, involving either sex, are punishable if one of the participants is aged less than eighteen years (PC, s. 362). The Human Rights Committee has concluded that a similar text, enacted in the criminal law of Australia, violates provisions of the *International Covenant on Civil and Political Rights* because it is an intrusion on the right to privacy of the individual.

The Organic Law dealing with genocide prosecutions creates a new offense of "sexual torture", which is subject to the death penalty (OL 8/96 of August 30, 1996, art. 2). As the offense was unknown to Rwandan law prior to enactment, it may be argued that this constitutes *ex post facto* criminal legislation, contrary to the principle of legality (see *supra*, at p. 35). However, the prohibition of such legislation does not apply where the crime existed in international law or was recognized as criminal according to general principles of law. There can be no doubt that this is the case with sexual torture, although it is far from certain that such a crime was punishable by

death, which in any case is no longer recognized by international law as an appropriate punishment.

Some of the offenses are more in the nature of crimes against morality than crimes against the person, in that there are often no victims in the classic sense of the word. For example, adultery is punishable under Rwandan law (PC, ss. 353-354). The sentence for adultery varies depending on whether the offender is a woman (maximum of one year) or a man (maximum of six months) (PC, s. 354). Such a discrepancy is probably contrary to the *Constitution* (art. 16) as well as to international norms prohibiting discrimination (CEDAW, art. 2(g)).

Prostitution as such is not a crime, and neither prostitute nor client commit an offense. The Rwandan *Code* is directed against procurement and other forms of incitement or exploitation of prostitution (PC, ss. 363-373). Sentences are aggravated in a number of cases, such as where the prostitute is under sixteen years of age, and where the "client" is a civil servant or religious official (PC, s. 374).

Acts committed in public which scandalize, such as exhibitionism, are punishable by a maximum of three years' imprisonment (PC, s. 377).

### *Offenses against Property*

Offenses against property are contained in sections 396-450 of the *Penal Code*. The principal crimes against property are theft, extortion, fraud, destruction of property and arson. The Organic Law dealing with genocide prosecutions declares that those guilty of offenses against property are subject only to "civil damages determined by amicable agreement between the parties with the assistance of the community," and excludes the possibility of imprisonment (OL 8/96 of August 30, 1996, s. 14(d)).

**Theft and Extortion.** Common theft is punishable by a maximum of five years' imprisonment and a fine, or one or the other of these sanctions (PC, s. 399). The punishment is increased in the case of theft by breaking and entering, or if it takes place at night in a dwelling house, or if it is committed by a civil servant (PC, s. 400). Robbery is theft accomplished with violence or threats. It is punishable by five to ten years' imprisonment, and this is increased to fifteen and even twenty years in the presence of aggravating factors (PC, ss. 401-403). Armed robbery is punishable by twenty years' imprison-

ment; where it is committed by two or more persons and, in the presence of other aggravating factors, it may be punishable by life imprisonment and even the death penalty (PC, ss. 403*bis*-403*ter*).

**Fraud.** The fraud provisions of the *Penal Code* are aimed principally at insolvent merchants and traders who have made preferential payments or in some other way deceived their creditors (PC, ss. 414-415). Similar offenses govern the conduct of corporate officials (PC, ss. 417-423). Other provisions govern fraud committed by individuals who obtain items using false pretenses or checks without sufficient funds (PC, ss. 428-436).

**Destruction of Property.** Arson, destruction of buildings and monuments, destruction of trees and harvests, and destruction of animals are covered in a final series of provisions (PC, ss. 437-450).

### *Military Offenses*

The *Penal Code* contains a special section dealing with military offenses. There are nine specific military offenses. In the case of treason or espionage, the offenses are the same as for civilians, but the punishment is more severe (PC, ss. 459-460). A series of provisions sets out the definition of offenses and the punishment in the case of dereliction of duty, insubordination and mutiny, desertion, voluntary mutilation, unauthorized use of arms and theft (PC, ss. 461-495). Where a Rwandan soldier is on duty on the territory of another state, violation of that State's legislation may result in breaches of Rwandan law (PC, ss. 496-499).

## Procedure and Evidence

The Rwandan criminal justice system is based on inquisitorial, rather than accusatorial, procedure. Under the accusatorial procedure, which is the general rule in common law countries, the authorities responsible for prosecution prepare a criminal charge inspired either by a private complaint or on their own initiative. Although generally bound to respect standards of fairness and the presumption of innocence, their efforts focus on building a case against the accused. When the trial begins, there is no evidence before the judge. Evidence is admitted in accordance with specific and often quite restrictive rules, and its admission may be contested by the defense. The prosecution will attempt to lead incriminating evidence. Under certain national systems, the prosecution must provide the defense with any favorable evidence that is in its possession, but the obligation does

not go any further. When the prosecution's case is complete, if the evidence is insufficient to establish guilt, the defense may move to dismiss the charges. Where the evidence appears sufficient, the defense may then decide to reply with its own evidence, whose admissibility is subject to the same rules as for the prosecution.

Under the inquisitorial system, instructing magistrates prepare the case by collecting evidence and interviewing witnesses, often unbeknownst to the accused. They are bound to complete their job with neutrality and impartiality, and must collect evidence of both guilt and of innocence. The evidence they compile, including witness statements, is then filed in court. The trial judges may then assess the evidence based on the contents of the case file, or, at the request of one or other of the parties or on their own initiative, require that additional evidence be presented. Rules of evidence are not nearly as technical under the inquisitorial as under the adversarial system, mainly because the evidence is being assessed exclusively by professional judges rather than, in the case of the common law system, by lay jurors.

Trials under the inquisitorial system are generally much shorter than their common law counterparts because most of the evidence has already been produced in the court record before the trial begins. Common law trials tend to be much longer and probably more thorough, although there are fewer or them. Because they are so complex, only a minority of cases actually get to trial. Most are resolved by agreement between prosecutor and defense counsel, and then simply endorsed by a trial judge who imposes a sentence, usually following a recommendation from both counsel. The inquisitorial system does not allow for such "plea bargaining", and a conviction is impossible until the instructing magistrate has prepared evidence that satisfies the trial judges of guilt.

The Rwandan system is actually a mixture of both inquisitorial and adversarial approaches. The preparation of the case file, or "instruction", is carried out by a magistrate with certain judicial powers, including the power to compel testimony of witnesses and to effect search and seizure. But when the matter goes to trial, the proceedings become more adversarial in nature. Both sides are represented by counsel and they debate the issues before the trial judge. Witnesses may be heard at the request of the defense and questions may be posed to them by the judges, although there is no real cross-examination as this is contemplated by common law procedure.

It should be noted that Rwanda is bound, as a question of international human rights law, to observe certain basic standards of procedural fairness.

### *Jurisdiction*

States are entitled to establish their own rules concerning the scope of jurisdiction of their criminal law, providing they do not interfere with the jurisdiction of other States. Domestic legal systems generally recognize the principle of territorial jurisdiction, which is completed, in some cases, by special rules concerning jurisdiction over individuals for crimes committed outside the territory of the state.

**Territorial Jurisdiction.** As a general rule, Rwandan criminal law is applicable to offenses committed on Rwandan territory, irrespective of the nationality of the offender (PC, s. 6). Criminal or penal laws apply to all persons found on Rwandan territory (CC PT, art. 7). An offense is deemed committed on Rwandan territory if one of the elements that constitute it is committed in Rwanda (PC, s. 7). The principle of territorial jurisdiction is derived from public international law, and is a manifestation of respect for the sovereignty of other states (*Lotus Case*). However, international law also tolerates the exercise of jurisdiction outside the territory of a State in certain cases. This applies in both directions, and it is also possible for other States to prosecute offenses committed within Rwanda under certain conditions. Recently, Belgian courts assumed jurisdiction to prosecute cases of genocide committed in Rwanda in 1994. Moreover, the International Criminal Tribunal for Rwanda, established in November, 1994 by the United Nations Security Council, has jurisdiction over crimes committed within Rwanda between January 1 and December 31, 1994, as well as crimes committed in neighboring states by Rwandan nationals during the same period (SICTR, art. 1).

Exceptionally, Rwandan law permits prosecution for certain acts committed outside the territory of Rwanda. Rwandan criminal law may also be applied to crimes committed on aircraft and vessels flying the Rwandan flag but outside of Rwandan territory (PC, s. 8). In the case of crimes against State security or counterfeiting, Rwandan courts have jurisdiction even if the crime was committed outside Rwanda (PC, s. 13).

**Personal Jurisdiction.** Rwandan law recognizes a degree of "active" personal jurisdiction. Accordingly, Rwandan courts may exercise criminal law jurisdiction in some cases for crimes committed

outside Rwandan territory where the offender is a Rwandan subject. A Rwandan who commits a serious crime or felony outside of Rwanda may be punishable by Rwandan law (PC, s. 9). A Rwandan who commits a less serious crime or misdemeanor outside of Rwanda may be punishable by Rwandan law, on the condition that the offense is also illegal in the country where it was committed (PC, s. 10). Of course, if the person has already been tried and either acquitted or convicted for an offense in another country, Rwandan courts cannot assume jurisdiction, as this would violate the international norm prohibiting double jeopardy (ICCPR, art. 14(7); also PC, s. 14). These rules concerning personal jurisdiction apply to Rwandan citizens, even if they have obtained Rwandan citizenship since the crime was committed (PC, s. 11).

Rwandan criminal law applies to any territory which is not the sovereign territory of another state, providing the perpetrator or the victim is of Rwandan nationality (PC, s. 8). Also, where a Rwandan soldier is on duty in the territory of another state, violation of that State's legislation may be deemed a breach of Rwandan law, even in the absence of a specific infraction in Rwandan law itself (PC, ss. 496-499).

**Universal Jurisdiction.** Universal jurisdiction exists with respect to a handful of particularly heinous offenses qualified as international crimes by either customary or conventional international law. Universal jurisdiction means that the courts of a given state may judge such international offenses, even in the absence of any personal or territorial link. Universal jurisdiction is justified by the need for such international cooperation in the repression of crime (for example, in the case of piracy) and by the utter horror of the infraction itself (genocide, crimes against humanity and war crimes). The *Convention for the Prevention and Punishment of the Crime of Genocide* does not recognize universal jurisdiction, because States were hesitant to accept this encroachment upon their sovereignty at the time the *Convention* was being drafted, in the late 1940s. However, in the Eichmann Trial of 1961, the Israeli courts recognized that universal jurisdiction existed in the case of genocide despite the text of the *Convention*, and this principle is now generally accepted as a customary rule. Universal jurisdiction is also recognized in the case of grave breaches of the *Geneva Conventions of August 12, 1949* and of *Protocol Additional I to the Conventions.*

In the case of crimes of universal jurisdiction, States may be obliged to see that suspects found on their territory are brought to

justice, either by trying them before their own courts or extraditing them to States that are prepared to hold trials. This obligation, known by the Latin term *aut dedere aut judicare*, appears in the *Geneva Convention of August 12, 1949*, for crimes defined as grave breaches, and may also be considered a customary rule of international law.

Although universal jurisdiction is authorized under international law, and although *aut dedere aut judicare* is an obligation under international law in certain cases, from the standpoint of domestic law these principles must be implemented by legislation. Rwandan criminal law does not yet authorize universal jurisdiction, and therefore lacks the means to respect fully the duty to try or to extradite.

### *Investigation and Instruction*

As explained above, Rwanda's system of criminal procedure is essentially based on the inquisitorial model used in continental Europe and in many countries of Africa, Asia and South America. The inquisitorial procedure relies heavily on written documents, in that the purpose is the preparation of a case file composed of declarations and other documents which will eventually be studied by the trial judges. The procedure is in principle secret; the secrecy is often justified in the interests of protecting the independence of the examining or instructing magistrate, as well as ensuring the presumption of innocence of the suspect. The procedure is also non-adversarial. The case file is prepared for submission to the presiding judge or judges by an investigating or instructing magistrate. Most of the work of the actual investigation is carried out by officers of the Judicial Police (OPJ), who act under the direction of the Office of the Public Prosecutor or *parquet*. The OPJs are charged with investigating crimes and collecting evidence (D-L 09/80, ss. 47-55). They are distinct from police officers involved in maintaining public peace, and their role, in common law systems, is somewhat comparable to that of a police detective, although their powers are more extensive. Besides police who are designated as OPJs as such, several other officials have the status of OPJ, including investigating magistrates (*magistrats du parquet*), inspectors of the judicial police, officers of the gendarmerie and burgomasters (*bourgmestres*).

In Rwandan law, the function of instructing magistrate and of prosecutor is assumed by the same body, the Office of the Public Prosecutor or *parquet*. Despite its apparent neutrality, because the

parquet is concerned with prosecuting the offense and obtaining a conviction, there may be questions about its fairness in carrying out the instruction and preparing the file which is then submitted to the trial judge. Because of these concerns, in Belgium the two functions are now separated. A recent judgment of the European Court of Human Rights has underlined the danger of unfairness to the accused where the two roles are assumed by the same body (*Pauwels* v. *Belgium*, May 26, 1988). The *Arusha Peace Agreement* commits the parties to "[m]ake a distinction between the Jurisdiction of the Public Prosecution Department and of other services charged with criminal investigations" (Arusha VII, art. 1).

**Preliminary proceedings.** Where an officer of the Judicial Police (OPJ) is informed of a crime that has been committed, he or she must identify the complainant, complete the declaration, and proceed to examine other witnesses, as well as the suspects. The witnesses and suspects do not actually make formal statements; rather, the notes of their examination are recorded in a record or *procès-verbal* by the OPJ, who swears to its sincerity (CCP, s. 2). When an offense has just been committed that is subject to six months' imprisonment or more, the OPJ may order any individual to provide information under oath, may also order any individual not to leave the scene of the crime, and may require any individual to act as interpreter, translator, physician or expert (CCP, s. 5). If an OPJ personally observes a crime being committed, he or she notes the time and place of the infraction, and records any relevant evidence or indications of the crime. The records prepared by the OPJ are subsequently produced in the court file and are admissible in evidence as proof of the facts stated. The OPJ may also seize objects that are subject to confiscation, according to law, or that may be relevant as evidence (CCP, s. 3).

The OPJ may also, where judged appropriate in the case of relatively minor offenses, propose a fine or confiscation of property, and invite the suspect to make payment as well as to compensate the victim (CCP, s. 9). This form of settlement of a criminal matter is subject to the subsequent approval of the Public Prosecutor. If it is accepted, the case is settled and the suspect is not deemed to have admitted guilt. This is a simple and effective way of decriminalizing matters of secondary importance, and relieves the judicial system of unnecessary case loads.

**Instruction.** Criminal prosecution is initiated by the Public Prosecutor, who acts on the basis of the materials submitted by the

OPJ or in cases where an individual has made a complaint. In some cases, such as adultery, the Public Prosecutor cannot act unless their is a formal complaint. After completing his or her investigation, the OPJ submits the file to the Office of the Public Prosecutor or parquet for the laying of a formal charge (CCP, s. 21). The Public Prosecutor may decide that the OPJ should conduct further investigations, for example the questioning of accomplices or witnesses who may be confronted with each other, and their reactions observed by the investigating officer (CCP, s. 22). The accused may be asked to appear for questioning and, failing appearance, arrest may be ordered (CCP, s. 25). The Public Prosecutor may then order witnesses to appear and provide sworn testimony (CCP, s. 26-31) and undertake search and seizure in order to gather evidence (CCP, s. 32-35). Special authorization is required where the Public Prosecutor wishes to examine a human body (CCP, s. 36).

During the instruction of the case, the suspect will be questioned by the investigating magistrate. The suspect is of course entitled to refuse to participate in this, in accordance with article 14 of the *International Covenant on Civil and Political Rights*. Normally, however, the suspect will present his or her grounds of defense to the investigating magistrate, as well as the identity of witnesses likely to provide corroboration. The magistrate should question the defense witnesses and follow up on any other leads suggested by the suspect.

**Arrest.** An individual can only be arrested if the offense is subject to six months' imprisonment or more, or when there are serious reasons to believe that the suspect will flee, or when the identity of the suspect is doubtful or unknown (CCP, s. 4(1)). A citizen's arrest may be made in the absence of peace officers, if the offense has just been committed and where it is subject to imprisonment of three years or more (CCP, s. 6).

**Preventive Detention.** When the offense is punishable by six months' imprisonment or more, the *parquet* may arrest the suspect with a view to detention prior to trial "if there are serious indications of guilt", even in the case of offenses punishable by only seven days' imprisonment or more, where there are serious reasons to believe that the suspect will flee or that his or her identity is unknown or doubtful (CCP, s. 37)). The requirement of "serious indications of guilt" reflects the presumption of innocence, and implies that preventive detention is an exceptional measure rather than the general rule. Before arresting the suspect, the latter is entitled to be heard (CCP, s. 38(1)); this is more than a mere formality, and allows the suspect

to explain to the instructing magistrate arguments that may support a defense.

The accused must be brought before a judge within five days of issuance of the arrest warrant by the Office of the Public Prosecutor, a period that may be extended to the extent strictly necessary if there is not a judge in the same locality (CCP, s. 38). Preventive detention may then be ordered by the president of the Court of First Instance or, in the case of minor offenses, by the president of the Canton Court (CCP, s. 39). An order of preventive detention is valid for thirty days, and may be renewed on a month-to-month basis as long as the public interest and the requirements of the investigation require (CCP, s. 41). In the case of offenses for which the sentence is two months' imprisonment or less, preventive detention may only be renewed once (CCP, s. 41). The Office of the Public Prosecutor may also authorize release from preventive detention if the file has not yet been submitted to the trial court (CCP, s. 43(1)).

Exceptions to these general provisions were enacted following the genocide of 1994 because the entire system broke down under the enormous caseload created by the crisis. Tens of thousands of prisoners were detained for extensive periods in open breach of the *Code of Criminal Procedure*. Initial legislation adopted by the National Assembly in order to regularize the situation was declared contrary to the *Fundamental Law* by the Constitutional Court. The *Constitution* was amended in January, 1996 (Const. Am. I), and new measures enacted which suspend the provisions of the *Code of Criminal Procedure*. These authorize detention of genocide suspects despite the irregularity of their files (Law 9/96 of September 8, 1996). The special legislation provides, for example, that an arrest record for a suspect must be prepared no later than the end of 1997, which means that an individual may have been detained for more than three years without ever having a proper arrest record. The legislation also suspends the right to appeal decisions concerning pre-trial detention.

International norms applicable to Rwanda require that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him or her (ICCPR, art. 9(2)). Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release (ICCPR, art. 9(3)). These norms may be suspended in time of public emergency which threatens the life of the nation and the existence of which is

officially proclaimed, to the extent strictly required by the exigencies of the situation (ICCPR, art. 4(1)).

**Provisional Release.** The judge before whom the accused appears may also order the provisional release of an individual for whom preventive detention is authorized, subject to conditions that may be imposed such as residence in a specific locality or a prohibition to leave the locality (CCP, s. 42). Provisional release may be reviewed at the request of the Office of the Public Prosecutor and even canceled where the conditions are not respected (CCP, ss. 43-44). Once the trial has begun, the accused may ask the trial judge to review the question of provisional release (CCP, s. 55). After the hearing, but before judgment, the presiding judge may order that the accused be detained until judgment is rendered (CCP, s. 82). Both the Office of the Public Prosecutor and the accused may appeal orders by the court concerning provisional release (CCP, ss. 46-53).

### *Trial*

Pursuant to international human rights norms applicable in Rwanda, an accused who is detained is entitled to trial within a reasonable time or to release (ICCPR, art. 9(2)). The accused is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (ICCPR, art. 14(1)), and to be presumed innocent until proved guilty according to law (ICCPR, art. 14(2)). Procedural guarantees include the right to be informed promptly and in detail in a language which the accused understands of the nature and cause of the charge, to have adequate time and facilities for the preparation of the defense, to counsel of choice, including state-funded counsel where justice requires, to be tried without undue delay, to be present at trial, to summon witnesses, to an interpreter where the language of trial is not understood, and not to be compelled to testify against himself or to confess guilt (ICCPR, art. 14(3)).

**Rules of Evidence.** The Public Prosecutor bears the onus of proof, and the accused is presumed innocent until proof of guilt has been established. The *Code* specifies that until proof of guilt has been made, the accused is not required to present proof of innocence (CCP, s. 16). However, because serious evidence of guilt will normally be included in the file before the trial begins, in practice the accused must answer the charges or face conviction. According to the *Code*, if the evidence leaves a doubt as to the facts, the accused must be acquitted (CCP, s. 20).

Proof may be made by all means, on the condition that it is submitted to debate (CCP, s. 17). Unlike the common law with its very technical rules of evidence, aimed at shielding lay jurors from unreliable proof, the Romano-Germanic system allows all evidence to be admitted providing it is relevant. It is for the judge to assess the weight to be given to particular items of evidence. The trial court may order, at the request of the prosecution, the accused or the civil parties, that any relevant evidence not already in the file be presented (CCP, s. 18). The trial court seeks the truth, and has the duty to complete the proof should the prosecution, the civil plaintiff or the accused fail to do this (CCP, s. 19). Here too, then, it differs from common law courts, which normally will not intervene to complete the evidence where lawyers for the prosecution and the defense have either neglected or simply decided not to explore certain aspects of the facts at issue.

**Initiation of Trial.** When the Public Prosecutor considers that it is appropriate to proceed with criminal charges, the exhibits are then transmitted to the judge so that a hearing may be scheduled (CCP, s. 58). If the accused is in detention, he or she is brought before the court at the date set for hearing. If the accused is not detained, a notice of hearing is served upon the accused. Service of the accused is made by bailiff (CCP, s. 63), or by alternative means specified in the *Code of Criminal Procedure*, such as mail or public notice (CCP, ss. 64-70).

***In absentia* Proceedings.** The accused is required to appear personally, except in cases where the maximum sentence is two years or less, in which case the accused may appear by attorney (CCP, s. 73). Where the accused is served with notice of the hearing and does not appear in court, the trial proceeds *in absentia* (CCP, s. 74). If an accused is condemned *in absentia*, the judgment must be served on the accused. The accused is entitled to attack the judgment within ten days of service of the judgment (CCP, s. 92). If the accused then appears in order to challenge the judgment, it is considered to be inoperative, and the judge must review the whole case from the beginning (CCP, s. 98). However, the accused is required to assume the costs caused by failure to appear for the initial trial (CCP, s. 98). *In absentia* proceedings are controversial, and some common law jurists consider them to be offensive to fundamental principles. The *International Covenant on Civil and Political Rights* grants the accused the right to be tried in his presence, but this has been interpreted by the Human Rights Committee as permitting *in absen-*

*tia* proceedings provided that the accused has been properly informed of the hearing and summoned to appear.

**Civil Parties.** Rwandan criminal law allows for active participation by private plaintiffs, known as civil parties, in the criminal trial (CCP, art. 71). The civil party may appear in the case at any stage of the proceedings, and may lead evidence and present argument. The private plaintiff may also summon an accused to appear to answer a criminal charge, even if the Office of the Public Prosecutor has refused to take this step. Private plaintiffs may be ordered to deposit a sum as security for the costs of the case. In the event that they are successful, a sum equal to 4% of the award must be paid to the State. The civil party may choose to take the matter to the civil courts rather than to the criminal courts, but is prevented from doing so as long as the matter is before the criminal courts.

Final judgment of guilt in criminal proceedings will bind the accused on a civil basis to compensate the victim, and will include an adjudication of the indemnity to be paid. A criminal judgment condemning the accused is viewed as *res judicata* in any subsequent civil matter, even where the civil party does not participate in the criminal case. If the accused is acquitted, a civil plaintiff may still return before the civil courts.

**Hearing.** The rules in the *Code of Criminal Procedure* provide only the most sketchy details of the conduct of the hearing itself. When the case is called, the accused is asked to identify him or herself, the charge is read by the clerk (*greffier*), and the accused is asked whether or not the charges are admitted (CCP, s. 76). Witnesses both favorable (*à décharge*) and unfavorable (*à charge*) to the accused may be heard; however, their appearance is not essential, as the court file prepared by the investigating magistrate may already be quite sufficient. Cross-examination of witnesses is not specifically provided for in the *Code of Criminal Procedure*, and it is not normally practiced in courts based on the inquisitorial model. If witnesses are heard at trial, counsel for both prosecution and the defense may direct questions, but these are presented to the presiding judge who actually conducts the interrogation.

After hearing the witnesses, the accused is questioned by the presiding judge (CCP, s. 76). Pursuant to article 14 of the *International Covenant on Civil and Political Rights*, the accused may refuse to testify. Then, the Public Prosecutor presents a summary of the case

and indicates the conclusions that are sought. The accused then presents final argument.

Hearings are not normally recorded or transcribed, and a summary record of the proceedings prepared by the clerk is the only element added to the court file aside from the exhibits already submitted by the investigating magistrate or added during the hearing.

All hearings are public, unless the court authorizes proceedings *in camera* where this is justified by the nature of the case (D-L 09/80, s. 199).

**Judgment.** Judgment must be delivered publicly, even if the hearing itself has been held *in camera* (D-L 09/80, s. 200). The judgment must be read in court, in the presence of the accused. It must be delivered no later than eight days after the conclusion of the hearing (CCP, s. 83), although it appears that this may be prolonged by the court without any legal consequence. The judgment must provide reasons, and must specify its legal and factual basis (D-L 09/80, s. 200; CCP, s. 90; Const., art. 94).

**Costs.** Rwandan courts are authorized to condemn the parties to assume the costs of the trial, including the costs of the investigation and the instruction. If the accused is acquitted, the costs are borne by the State or, if the case was initiated by a private plaintiff, by the latter. An indigent party may be dispensed from paying costs upon proof of this condition, normally in the form of an attestation signed by the burgomaster of the commune where the individual normally lives. A decree-law sets the amount of costs that may be ordered (D-L 08/82 of January 7, 1982).

**Legal Aid.** No provision in Rwandan law is made for legal aid. The proposed Rwandan Bar will be responsible for seeing that indigent defendants receive legal assistance, where justice requires. Most lawyers consider themselves bound to provide assistance to the indigent as a matter of professional ethics. The *International Covenant on Civil and Political Rights* requires that counsel be provided by the State "in any case where the interests of justice so require" (art. 14(3)). The Human Rights Committee has said that this rule is mandatory in capital cases. However, the Organic Law on genocide prosecutions says that while defendants enjoy the right to defense counsel of their choice, this is "not at government expense" (OL 8/96 of August 30, 1996, s. 36).

**Appeal.** Appeal may be taken by any of the parties (CCP, s. 99), and must be filed within ten days of judgment (CCP, s. 100). The appeal is filed automatically in the case of a death sentence (CCP, s. 99). The appeal is based on the contents of the file at the trial, although the Court of Appeal may also consider new evidence at the request of the parties or on its own initiative. The grounds of appeal are not set out in the *Code*, but practice allows the Court of Appeal a wide latitude in reviewing matters of law and fact. Appeals of genocide cases under the Organic Law are limited to questions of law or flagrant errors of fact (OL 8/96 of August 30, 1996, s. 24).

A second level of appeal, known as *cassation*, is also permitted; it is not concerned with errors of fact but with violation of fundamental principles or procedural matters, such as lack of jurisdiction or violation of the rule against double jeopardy (CCP, s. 112).

In prosecutions for genocide under the Organic Law, there is an additional review by the Court of Cassation if the Court of Appeal reverses an acquittal and sentences an accused to death (OL 8/96 of August 30, 1996, s. 25).

## Sentencing

The Rwandan *Penal Code* allows for sentences of death, of imprisonment up to life imprisonment, fine, civil degradation, confiscation of property and restriction on mobility. The available sentences are set out in specific provisions of the *Code* concerning the infraction charged. Usually, the *Code* defines both a minimum and maximum sentence of detention and fine. Within the range set out in the legislation, judges are left with an enormous degree of discretion. Like most legal systems, Rwanda's legislation has little to say about principles to be applied by judges in fixing sentences.

Certain general principles of law apply, such as the rule that sentences be proportional ("the punishment must fit the crime") and that they take into account the individual characteristics of the offender, including any relevant mitigating or aggravating factors. International human rights norms prohibit punishments that are cruel, inhuman and degrading.

**Death Penalty.** The death penalty is imposed by firing squad (PC, s. 28). The condemned person is taken to the place of execution accompanied by a chaplain of his or her choice, and executed imme-

diately (PC, s. 29). Death sentences are not carried out on statutory holidays (PC, s. 30). The death penalty may not be imposed on a pregnant woman, who can only be executed after giving birth (PC, s. 31). Children under the age of eighteen at the time of the offense who would otherwise be subject to the death penalty are sentenced to ten to twenty years' imprisonment (PC, s. 77). The body is remitted to the family, if it so wishes (PC, s. 32). If the offender has previously been sentenced to a term of life imprisonment, and a second offense is subsequently committed which is also subject to life imprisonment, the death penalty shall be imposed (PC, s. 85).

Like many African countries, Rwanda has not imposed the death penalty for many years. Although its courts continued to pronounce punishment of death, since 1982 justice ministers have refused to issue execution orders and presidential decrees of commutation were issued periodically. Rwanda is also bound by international human rights norms concerning imposition of the death penalty. These limit use of the death penalty to the most serious crimes, require that capital punishment only be imposed after the most stringent procedural safeguards have been observed, and prohibit execution of pregnant women, juveniles, the mentally ill and mentally handicapped. Rwanda has not yet ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, which abolishes the death penalty, although in the *Arusha Peace Agreement* it undertook to ratify all international human rights treaties (Arusha VII, art. 15).

**Imprisonment.** Imprisonment is set at a minimum of one day and a maximum of twenty years, unless a sentence of life imprisonment is imposed (PC, s. 35). Time served in preventive detention is deducted automatically from the sentence (PC, s. 37). In cases where an offender has already been convicted, if a second offense is committed within ten years of the expiry of the sentence, the offender shall be sentenced to the maximum provided for by law, which may be doubled at the discretion of the trial court (PC, s. 85).

An individual may also be incarcerated for failure to pay a fine, court costs and other forms of award or sentence rendered in favor of the State. A civil party who participates in a criminal case and who is awarded damages may also seek to have the debtor imprisoned in order to compel payment (CCP, s. 124). Detention in order to effect payment can never exceed one year, and may not be ordered against a minor of less than sixteen years at the time the infraction was

committed, or an individual aged sixty-five years or older at the time the crime was committed (PC, ss. 48, 50). It may not be imposed against husband and wife at the same time (PC, s. 50).

**Other Forms of Punishment.** Sentence may also take the form of a fine, which is paid to the public treasury (PC, ss. 42-47). The law entitles the state to confiscate objects which have been involved in the offense, or which have assisted in its commission, or which have been produced as a result (PC, s. 52). Courts may also prohibit criminals from being found in certain localities, or may order them to live in a certain place (PC, s. 54). Such a prohibition may extend over a period of from two to ten years (PC, s. 55).

**Withdrawal of Civic Rights.** An offender may also be deprived of various civic rights, including destitution or exclusion from any public office, withdrawal of the right to vote and a number of other restrictions (PC, s. 66). The court may impose these measures at the time it sets sentence, but the period of degradation may not exceed twenty years, unless specifically authorized by law (PC, s. 67). Sentence of life imprisonment or of death automatically results in civil degradation (PC, s. 68). Withdrawal of civil rights is specifically provided for in the case of persons found guilty of genocide (OL 8/96 of August 30, 1996, s. 17). A convicted criminal who has successfully been rehabilitated may have the civil consequences of the conviction eliminated by rehabilitation (PC, ss. 141-150).

**Pardon and Commutation.** Pardon is the total suppression of sentences, or their reduction by commutation (PC, s. 124). Pardon and commutation are exercised by the Cabinet, and require consensus of its members (Arusha III, art. 21), although it is the President who signs the Presidential Order giving effect to the Cabinet decision (Arusha III, art. 11; PC, s. 124). The offender may initiate an application for pardon (PC, s. 131). The application is investigated by the Public Prosecutor's Office before being submitted to the Minister of Justice (PC, s. 132).

## Prison Law

Prisons have existed in Rwanda since the beginnings of colonization. The *Penal Code*, adopted in 1980, assigns responsibility for the prison regime to the executive, and it is organized by the Penitentiary Service pursuant to Ordinance 111/127 dated May 30, 1963. Prisons are organized on both a prefectural and communal level. They hold people in preventive detention and those serving penal sen-

tences, as well as beggars and vagabonds, persons held to secure civil judgments (*contrainte de corps*) and individuals subject to a medical order. Children and women are to be held in separate quarters (PC, s. 40) to the extent that facilities permit this. Separate areas are also reserved for the mentally ill, those in preventive detention, dangerous offenders and undisciplined offenders.

International human rights norms, and specifically the *United Nations Standard Minimum Rules*, establish a large range of minimum conditions. Rwandan prison authorities consider that because of available resources, these standard minimum rules simply cannot in fact be applied, although they may stimulate the improvement of prison conditions. The *Arusha Peace Agreement* pledged to "[u]pdate the legal provisions and regulations governing prison warders and guards" and to "[e]valuate and improve on prison services...taking into consideration the principles underlying the Rule of Law" (Arusha VII, art. 1).

**Records.** Each place of detention is required by law to keep a certain number of records. The prisoner's file should contain the record (*procès-verbal*) of the arresting officer, the arrest warrant, orders of preventive detention, judgment and sentence, as well as a medical certificate for psychiatric prisoners. An inmate register contains the inmate number, the identity of the inmate, the origin of the inmate, profession, date of beginning of detention, nature and date of documents justifying detention, length of sentences, date of end of detention, date of release and grounds for release. Specific registers are also maintained for the mentally ill, vagabonds, the daily journal, the books of account, the register of escapes, and the death register.

**Visits and Correspondence.** Inmates are entitled to be visited by a family member, as well as a doctor, lawyer and chaplain. Inmates are entitled to correspond with the outside, subject to censorship by the Prison Director. Official paper provided by the establishment is to be used.

**Prison Discipline and Conditions.** Disciplinary rules prohibit use of tobacco or drugs, beards and mustaches, and anti-social or anti-administration behavior. Violations may result in deprivation of prison privileges, including exercise, visits, correspondence, and confinement to a punishment cell for a maximum of thirty days. Inmates are responsible for the cleaning of their own clothing. Food is distributed twice per day. Regulations ration the amount of food given to inmates: 500 gm/day beans; 400 gm/day manioc flour;

50 gm/day palm oil; 15 gm/day kitchen salt; 500 gm meat twice per month; 500 gm green vegetables four times per month; and 300 gm rice once per month; family members may bring additional food to inmates. Inmates are provided with a prison uniform, consisting of a shirt and a pair of shorts, both of them pink. Prisoners sentenced to fixed terms of detention are required to work in prison

**Parole.** Inmates are eligible for parole after service of two months of their term, if the sentence is six months' imprisonment or less, and after service of one-quarter of their sentence in other cases (PC, s. 134). Parole is granted based on evidence of good behavior, serious chances of rehabilitation and a favorable recommendation by the Public Prosecutor's Office and the prison warden (PC, s. 135, 136). In the case of those sentenced to life imprisonment, they are eligible for parole after service of ten years (PC, s. 135). Parole may be revoked in cases of misconduct or if another offense is committed during parole, in which case the inmate serves not only the sentence for the newer offense, but must also complete the existing sentence.

**Further reading.** In the English language, readers are invited to consult works describing the Belgian and French judicial systems. On the genocide prosecutions, see: William A. SCHABAS, "Justice, Democracy and Impunity in Post-Genocide Rwanda: Searching for Solutions to Impossible Problems", (1996) 7 *Criminal Law Forum* 52. In the French language, see: Robert KINT, *Droit pénal spécial*, Kigali: Université nationale rwandaise, 1993; Tharcisse GATWA, «L'organisation judiciaire de la République rwandaise en matière pénale», (1969) 23 *Revue juridique et politique* 449.

# Chapter 3
# Civil and Commercial Law

Civil or private law refers to the legal rules that govern the relationships between individuals in their dealings with one another. Taken in its broad sense, this area of law refers to a wide range of subjects, including family law, estates and liability for negligent acts. Rwanda's system of civil or private law is governed by legal principles that can be traced back to the Romans, and before. Some of them were codified by the emperor Justinian, whose efforts influenced the development of a variety of customary legal systems in Europe during the Middle Ages. At the time of the French revolution, Napoleon conceived the importance of compiling these rules in a unified system. The result was the *Civil Code*, a document that Napoleon considered to be his greatest achievement. The *Civil Code* spread rapidly throughout Europe and was adopted in essentially the same form by legislatures in many countries, including Belgium. During the mandate over Ruanda-Urundi, Belgium introduced a version of its *Code* into Rwandan law.

The Rwandan *Civil Code* consists of a Preliminary Title, containing general principles, and three Books, covering the law of persons and the family (Book I), the law of property (Book II) and the law of contracts (Book III). Altogether, it totals some 1,203 provisions or articles. The Rwandan *Code* is not a thoroughgoing replica of the Napoleonic *Code*. For example, it lacks chapters dealing with estates (*successions*) and marriage contracts, subjects which remain covered by customary rules which developed over the centuries in Rwanda. The *Code* is completed with much highly specific legislation, in the form of ministerial or presidential orders and laws or decree-laws covering matters normally found in civil codes such as calculation of compensation for civil liability, registration of real property, mortgages (hypothecs) and liens, and estates (of foreigners).



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Commercial and civil law overlap considerably, because the heart of commercial law is the law of contracts. The rules concerning the law of contracts apply, virtually without any significant differences, to commercial and civil matters. However, it is often important to distinguish between civil and commercial contracts, that is, contracts in which traders and merchants participate and to which special rules apply. A trader or merchant is defined as an individual who ordinarily carries out acts that the law defines as commercial (Decree of August 2, 1913, s. 1). A contract which is made during commercial activities is a commercial transaction. Examples of commercial transactions are the purchase of goods in view of their resale, lease or sublease of moveable property, banking operations, bills of exchange, and in fact all other obligations assumed by merchants, unless it is shown that the obligation had no relationship or bearing on the business (Decree of August 2, 1913, s. 2). Commercial transactions are the exception, and thus all transactions not falling under their scope are deemed to be civil. It should be noted that commercial law applies not only to individual merchants but also to the various forms of commercial companies recognized by Rwandan law.

Originally, the distinction between commercial and civil transactions was made in order to facilitate simpler rules of evidence and procedure for the former. The purpose of this exception is to expedite commercial transactions. The distinction is also relevant to certain specific obligations imposed upon businesses by the law, such as the requirement that books of account be maintained (D-L 19/78 of August 14, 1978). A number of specific areas of law, also frequently covered by chapters in civil codes, are of special concern in commercial law, such as bankruptcy and insolvency, cheques and bills of exchange and forms of security designed to facilitate financing of businesses. In Rwanda, these areas are governed by special legislation.

The Preliminary Title of the *Civil Code*, consisting of fourteen provisions, was introduced by law that came into force in 1989. It states general principles applicable not only to the *Code* itself but to Rwandan law in general, and is in a sense quasi-constitutional. For example, the Preliminary Title contains fundamental rules of interpretation, declaring that the law is only prospective in effect, and can only have a retrospective effect if this is provided for in a contrary stipulation (CC PT, art. 2). The judge may not refuse to rule because he or she believes the law to be insufficient, silent or obscure, and in such cases may be charged with an offense (CC PT, art. 3). Where

there is no applicable legislative provision, the judge is to rule on the basis of customary law. Failing an applicable rule in customary law, the judge may establish rules that he or she deems fit, as if he or she were empowered to enact legislation, relying for inspiration on notions derived from case law and legal literature (CC PT, art. 3). The Preliminary Title also contains some basic rules of private international law, whose purpose is to regulate the application of foreign law within Rwanda, and Rwandan law outside the country, when civil matters are concerned.

## The Law of Obligations

Civil law considers contracts, as well as torts or delictual liability, within the general theoretical framework of the law of obligations. The law of obligations covers pecuniary relationships between individuals. Every transaction, whatever its nature and the parties to it, involves the creation of obligations which must be respected by the parties who have assumed them. An obligation may be defined as the legal bond between two persons by which one is bound to the other to perform an act or to abstain from doing an act, or to create a right over something or to transfer its ownership. The two basic parties to an obligation are the debtor, who is required to carry out the obligation, and the creditor, to whom the obligation is due. Of course, most contracts involve reciprocal obligations, each party being required to do something in favor of the other – deliver the merchandise, pay the price, compensate for damage caused, etc.

There are two fundamental categories of obligation, contractual obligations and extracontractual obligations. Contractual obligations arise from the consent of parties to perform certain acts. Contractual obligations are divided into pure contracts and quasi contracts. An example of a quasi contract is the obligation assumed by someone who takes charge of the management of the affairs of another, but without the other authorizing this. The debtor of the obligation is bound to respect certain legal standards once the management has been assumed. The fundamental rules of contract law apply whether or not the parties are engaged in purely private dealings, or whether there exists a commercial aspect to their relationship. The second category of obligations, known as extra-contractual obligations, concerns obligations that result from negligent or illegal acts, and they consist essentially of a requirement that the debtor compensate the creditor. In the common law system, this area of law is generally covered by tort law.

Civil law makes a fundamental theoretical distinction between obligations of means and obligations of result. The debtor of an obligation of means must exercise care and diligence in attempting to effect a result. However, the obligation is respected even if the result is not obtained. An example would be the obligation of a surgeon to remove a dangerous tumor; the surgeon must exercise care in keeping with his or her expertise, but cannot of course guarantee that the patient will survive the operation. The creditor of such an obligation of means can only complain that it has been breached when it can be shown that the debtor was at fault, and did not exercise appropriate care and diligence. Where the obligation is one of result, the creditor will be liable for its breach where the result is not obtained, irrespective of the means. An example is an obligation to deliver merchandise in exchange for payment of the price. Both sides are, in effect, held to ensure a result. In the absence of a result, the debtor is deemed to be at fault, and can only defeat a charge that the obligation is breached where it can be shown that the result was rendered impossible by some external cause, such as *force majeure*.

Civil law also distinguishes between ordinary obligations and real obligations. An ordinary obligation attaches itself to the assets of the debtor in general, and its breach or inexecution entitles the creditor to sue and recover against this property. A real obligation, on the other hand, is associated with a specific piece of property, with some tangible object, such as a building. Its breach will entitle the creditor to claim performance of the debt against the object or property specifically contemplated by the real obligation, no matter who is the actual owner.

A distinction is also made between civil obligations and natural obligations. The inexecution of a civil obligation can be enforced by the courts, whereas a natural obligation escapes sanction by the judicial system. Where a natural obligation exists, performance by the debtor is not required, either by law or by contract. An example would be a debt that once existed, and has since been time-barred. Its recovery can no longer be compelled by the courts, even if the debtor continues to recognize a moral obligation to make good. The distinction may be of some importance where an individual makes payment of support to a dependant relative, despite the absence of any legal duty to do so. In such cases courts have viewed such payments as the respect of a natural obligation, rather than a mere gift.

Obligations may be conditional, in that they depend on some future and uncertain event. A conditional obligation suspends the obligation until an event occurs (CC III, arts. 79-89), or it dissolves and revokes the obligation accordingly as the event does or does not happen (CC III, arts. 81-82). An obligation that depends upon an event which has actually happened but which is unknown to the parties is not conditional. An obligation with a term is not conditional, although it suspends payment for a specified period of time (CC III, art. 83). The obligation exists from the moment it is incurred, and it is only its execution that is delayed. A debtor who has gone bankrupt or insolvent can no longer invoke a term, and must pay the debt immediately (CC III, art. 86).

Sometimes, obligations are alternative, in that the debtor may choose between two or more ways of executing the obligation (CC III, art. 88). Obligations are considered to be joint and severable when they benefit two or more creditors, and allow each of them to exact full performance of the entire debt (CC III, art. 95). The debtor of a joint and several obligation may choose which of the creditors to pay (CC III, art. 96). Debtors may also be joint and several, meaning that the creditor can sue the debtor of his or her choice for the totality of the obligation (CC III, art. 98). As a general rule, for an obligation to be joint and several, this must be clearly expressed in the contract.

Finally, obligations may either be legal, in that they result from the law, or conventional, in that they are a consequence of the will of the parties, established by convention (or contract). A legal obligation is created by legislation (law, ministerial order, decree, etc.).

Because so many of the rules in the law of obligations set out principles applicable to civil law in general, the Preliminary Title of the *Civil Code* states that general provisions in Book III, which concerns contracts, are applicable to other areas of civil law (CC PT, art. 6).

## Contracts

Book III of the Rwandan *Civil Code* deals with the law of "contracts and conventional obligations", and consists of 660 articles. The Book was originally prepared for the Belgian Congo, and is based on Belgium's *Civil Code*. It was introduced into Ruanda-Urundi in 1927 and has been modified occasionally since that time.

Article 1 of Book III provides the following definition of a contract:

> **Article 1.** The contract is a convention by which one or several persons bind themselves in favor of one or several other persons, to give, to do, or not to do, something.

The term "to give" is used technically, and really means any transfer of ownership of something. Thus, a contract is a legal act created by the will of the contracting parties by which they make certain undertakings. It should be noted at the outset that there is no requirement of form in the definition. A contract may be written or unwritten, although an unwritten contract may be difficult or even impossible to prove. The law requires proof of a debt exceeding 2,000 FRW to be in writing (CC III, art. 217). Any act that meets the definition is considered to be a contract. The simple purchase of a newspaper or a bottle of milk in a store constitutes a contract. Contracts go by various names, including conventions or covenants and, in the case of special or named contracts, by such terms as lease.

Good faith is an essential element of contract law. The parties are deemed to act in good faith in their dealings with one another. The *Civil Code* requires this (CC I, art. 1(1); CC III, art. 33(3)). Because the parties are deemed to be in good faith, the party who claims this is not the case bears the burden to prove absence of good faith (CC, arts. 4-5; CC III, art. 650).

The contract is the law between the parties. The *Civil Code* states: "...contracts legally formed form the law between those who have made them" (CC III, art. 33). For a contract to bind the parties and establish the law between them, it must be valid. As we shall see, even a contract that has been legally formed may subsequently become invalid if certain conditions come to pass. Furthermore, contracts must not violate a rule that is deemed to be of public order (*ordre public*) or public policy. For example, a contract for the sale of narcotics could not be interpreted and enforced by the courts as comprising the law between the parties, as it has an invalid or immoral object.

### *Interpretation of Contracts*

Where disputes arise, the courts are required to interpret contracts, just as they are required to interpret the law when difficulties arise in its application. Contracts, like legislation, are not always

crystal clear. Here we are speaking principally of written contracts, although problems of interpretation may also arise in the case of verbal or unwritten agreements. Essentially, the courts must endeavor to determine the common intention of those who made the contract. In the exercise of interpreting contracts, the law requires that the courts exercise a degree of restraint. Rather than applying the literal text of an agreement, the courts are called upon to attempt to discern the genuine intent of the parties at the time the contract was concluded (CC III, art. 54). Obviously, when the parties include a clause in their convention, this is so that the clause may have some effect. Thus, where a clause may be interpreted in two ways, one which gives it an effect and the other that denies it any effect, the judge must favor the former interpretation (CC III, art. 55). Along the same lines, where terms are ambiguous, they must be interpreted in a way that is appropriate to the subject matter of the contract (CC III, art. 56). Common use or practice is another guide to the courts in attempting to interpret ambiguous clauses (CC III, art. 57). Common usage in Rwanda will be used to assist in interpreting contracts even where this is not provided for in the document (CC III, art. 58). It is a secondary source for the purposes of interpretation.

The contract must be treated as a single, coherent and indivisible unit (CC III, art. 59). Clauses in a contract are not be treated as autonomous entities, but must be interpreted in relationship to one another, giving each clause the meaning that results from the contract as a whole. Finally, use of an example within a contract in order to illustrate the obligation assumed by one of the parties does not limit the contract's scope, and does not exclude its application to categories that are not expressed within the contract (CC III, art. 62).

### *Effects of Contracts*

By definition, a validly formed contract binds the parties. In other words, it has mandatory legal effect between them. From this principle results the possibility for the creditor to require that the obligation which is due be executed, either in kind or in some equivalent, generally monetary compensation. A contract which has binding force cannot be changed or revoked unless the parties agree, and for causes that are authorized by the law (CC III, art. 33(2)). Furthermore, the scope of the contract is broader than what it actually states. Article 34 of the *Civil Code* declares that the contract binds the parties not only for what is explicitly set out in it, but also for what results from it implicitly. However, care must be taken not to stretch a

contract so that it covers matters that were never initially intended by the parties. This principle is set out in article 61 of the *Civil Code*:

> **Article 61.** No matter how broad the terms of a contract, they only include matters that it appears the contracting parties intended.

**Relative effect of contracts.** Contracts are deemed to produce effects only between the parties (CC III, art. 63). Consequently, they in no way encroach upon the rights of third parties, either to their benefit or prejudice, and have no effect *erga omnes*. An individual can only contract for him or herself (CC III, art. 19). But even if a contract does not affect the rights of third parties, the latter cannot remain totally indifferent to it, because the contract is a legal act which may be set up against third parties. Generally, the only persons affected by a contract, aside from the contracting parties themselves, are the beneficiaries or successors. Article 22 of Book III creates a presumption that the parties to a contract have stipulated not only for themselves, but also for their heirs and successors. A party to a contract who does not wish this effect, must therefore state the contrary in the contract. Heirs of a party to a contract are bound to respect the obligations assumed by the deceased (also known as the *de cujus*). This is only normal, because the successors merely continue the legal personality of the *de cujus*.

Because of this principle concerning the effects of contracts, a creditor does not ordinarily intervene in contractual relationships between his or her debtor and third parties. But this may be of immense prejudice to a creditor, in cases for example where a debtor disposes of important assets and thereby imperils recovery of the debt by the creditor. Civil law allows creditors to challenge contracts to which they are not a party in such cases. The specific remedies are known as Paulian action and oblique action (CC III, arts. 64-65). The Paulian action comes directly from Roman law (*actio Pauliana*) where it was well recognized. Such remedies permit the creditor in effect to take the place of or stand in for his or her debtor, and to exercise legal rights on behalf of the latter, or simply to have the courts declare that the impugned contract is of no legal effect with respect to the creditor. For example, where a debtor had sold a house to a third party for a ridiculously low price in order to dispose of his or her assets, the original creditor may sue the third party (the purchaser) and have the transaction canceled. As a result, the property will return to the estate of the debtor, and the creditor will be in a position to recover the debt against the property.

**Exceptions to the principle of the relative effect of contracts.** The *Code* recognizes two exceptions to the rule by which contracts only apply to the contracting parties, the stipulation for the benefit of third parties and the contract of *porte-fort*. These are types of contracts that affect not only the contracting parties but also the rights of third parties. In effect, they create rights in favor of third parties without the intervention of the latter, and without the third parties assuming any corresponding obligations.

Under the stipulation for the benefit of third parties, a party to the contract undertakes to give something or to do something, or to refrain from doing something, in favor of a third party. For example, an individual makes a gift to someone else, on the condition that the recipient will pay a third party an annuity. Perhaps the most common example is an insurance policy, by which an individual contracts with an insurer to compensate dependents in the event of death. In such cases, the stipulant can obviously insist upon performance of the contract, and sue for its inexecution. But in addition, the third party, in whose favor the stipulation has been made, may also take legal action for enforcement of the contract. The stipulant cannot revoke the rights that the contract gives to the third party beneficiary once the latter has declared an intention to profit from them (CC III, art. 21).

By the contract of *porte-fort*, an individual undertakes to ensure performance of an obligation by a third party (CC III, art. 20). The person making the obligation undertakes to execute the contract, or to make compensation, should the third party fail to do so. For example, a father agrees to pay a debt for his daughter should she be unable to do so herself. In such a case, until the third party has in fact made a contractual commitment to the creditor, the individual has no obligation.

### *Classification of Contracts*

Contracts may be classified in a number of ways. A contract is described as being reciprocal or bilateral when it requires each party to execute a commitment in favor of the other (CC III, art. 2). In reciprocal contracts, each party is both creditor and debtor. For example, an employment contract is reciprocal; the employer is creditor of a right to have work performed and debtor of an obligation to pay wages; the worker is creditor of a right to receive wages and debtor of an obligation to perform work. If one of the parties stops executing the contract, the other may also cease. Contracts may also

be unilateral. Unilateral contracts bind one or several persons to execute an obligation in favor of one or several others, without the latter undertaking any commitment whatsoever (CC III, art. 3). Voluntary deposit, by which the debtor undertakes to return something to the creditor, is a unilateral contract, because the creditor has no obligation whatsoever (CC III, art. 482).

Contracts may be defined as being onerous or gratuitous. An onerous contract requires both parties to give or to do something, whereas in a gratuitous contract, one of the parties receives an advantage at no charge or cost (CC III, art. 6). A gift or donation is a gratuitous contract, but a contract just the same. Onerous contracts may be further subdivided into commutative and aleatory contracts.

A contract is commutative when it consists of an obligation upon each party to do something or to give something that is viewed as being equivalent (CC III, art. 4). A contract is deemed aleatory when there is a chance of profit or loss for one of the parties based on the occurrence of an uncertain event (CC III, art. 4). The purchase of a tomola or lottery ticket is an aleatory contract. A commutative contract can be set aside where it is abusive (*lésion*), whereas this is not possible in the case of an aleatory contract, because the risk was contemplated by the parties.

Finally, a distinction is made between named and unnamed contracts. Unnamed contracts are governed by the general rules set out in the *Code*. Named contracts are identified in the *Civil Code*, and special rules apply to them. These rules either complete or in some cases replace general rules for contracts found in the *Civil Code*. For example, a lease is a special type of contract, specifically named in the *Civil Code* and subject to a number of exceptional provisions (CC III, arts. 370-446). The same is true for the contract of sale (CC III, arts. 263-364), of exchange (CC III, arts. 365-369), of loan (CC III, art. 447-481), of deposit (CC III, arts. 482-525), of mandate (CC III, arts. 526-551), of guarantee (CC III, arts. 552-582), of transaction (CC III, arts. 583-597) and of pledge (CC III, arts. 598-612). In a contract of deposit, a person receives something that belongs to someone else and undertakes to look after it and to return it. Under a contract of mandate or agency, a person gives another the power to do something on his or her behalf and in his or her name. A written contract of mandate is often called a power of attorney. By a contract of guarantee, one person agrees to pay a creditor if another person defaults on a debt. A contract of transaction puts an end to litigation; it is often called an out of court settlement. A contract of pledge (or pawn)

entitles an unpaid creditor to exact payment by selling off some specified property of the debtor which has been left in the possession of the creditor as security for the debt.

### *Formation of Contracts*

Four mandatory conditions are required for a contract to be validly concluded: the consent of the contracting parties; the capacity of the latter to contract; a determinate object that is contemplated by the contract; a legal purpose (*cause*).

**Consent.** Consent is certainly the key element in the formation of contracts. Consent may take several forms. It may be written or verbal, and it may be explicit or implicit. The exchange of consent takes place in two stages. Initially, an offer to contract must be made by one of the parties. Secondly, the other party must indicate that the offer is accepted.

The offer must be complete, in that it must contain all of the elements necessary for a contract to be formed. It must be more than a simple discussion, even if this is often present at preliminary phases of the formation of contracts. An offer may be made to a specific person, or it may be made generally. An offer of employment will normally be made to a specific person, the future employee, whereas an offer of sale will normally be made to the general public, open for acceptance by whomever is willing to pay the price. An offer is considered to be valid until it has been either accepted or refused, although often a person will specify in an offer that it is only valid for a given period of time. Where an offer is made for a specific period of time, it is irrevocable. Once the specific period of time has elapsed, the offer is no longer valid. Even where no period of time is specified, an offer will be deemed to have been withdrawn tacitly once a reasonable period of time has elapsed.

The contract becomes complete when it is accepted. Acceptance of a contract may be either tacit or explicit. However, unless otherwise provided by law, the silence of an individual can never be deemed to constitute acceptance of an offer. The acceptance must also respect the offer. If the offer is accepted pursuant to certain conditions, which modify the terms of the original offer, this will not be viewed as an acceptance but rather as a form of counter-offer. With the acceptance of the offer, the contract is formed, even if there is no immediate payment. For example, a contract is formed between merchant and consumer when the latter pays with a post-dated cheque. Problems

may arise in determining the date and place of the contract, especially when the parties are not together at the time the contract is formed. For example, where an offer is made by mail, is the contract formed when the other party replies by mail or is it formed when the acceptance is received? This may have legal consequences in terms of the date of the contract (for example, where an offer is valid for a certain period of time), as well as the place where it is formed. If a contract is formed by mail, and the offer is accepted outside Rwanda, then foreign law may govern the contract. Rules that resolve these matters have not been determined in the *Civil Code*, and it is the job of Rwandan courts to establish them in light of case law and scholarly writings.

Some contracts are not negotiated between the parties, but are in a sense imposed by one upon the other. The terms are set out beforehand, usually in a published form. For example, a contract with the electricity company or the telephone company is not generally subject to negotiation, because of the power relationship between the two parties. The distinction is important, because where a contract's terms are stipulated in this manner, in case of doubt or ambiguity it will be interpreted by the courts in favor of the party that has not stipulated, according to the principle *contra proferentem* (CC III, art. 60).

Consent must be freely given, and must not be the result of error or fraud (CC III, art. 9). Many forms of error may occur at the time a contract is formed, and not all of them will invalidate a contract. In effect, civil law attempts to achieve a balance that respects the need for certainty and stability in contracts but at the same time takes account of the need for free consent. For example, where an individual agrees to a contract of loan thinking that it is in reality a gift, there is an important error likely to impeach the validity of the consent. Such a mistake forms an obstacle to the free consent necessary for the formation of a contract (*erreur obstacle*). However, where an individual buys a house only to say that he or she made a mistake, because it is not big enough for all of the purchaser's furniture, the contract's formation cannot be challenged on the grounds of error.

According to the *Code*, an error that concerns the substance of the object of the contract may give rise to a demand that the contract be annulled (CC III, art. 10(1)). Such error is sometimes called error *in substantia*, to distinguish it from *erreur obstacle*. An individual who buys an oil painting because it has been signed by a famous artist, only to learn that it is someone else who has painted the work, may

invoke error to challenge the contract. An error may also concern the identity of the other party (CC III, art. 10(2)). It can only be grounds for annulment where the identity of the other party was the principal reason for the contract, such as an employment contract (CC III, art. 10(2)). Such contracts are described as being *intuitu personae.*

In the case of *erreur obstacle*, the contract is deemed never to have existed. No consent was ever formed, and the contract is absolutely void. In the case of error as to the substance of the contract or the identity of the other party, the party whose consent is doubtful is entitled to demand that the contract be declared void (CC III, arts. 18,196).

Fraud is a maneuver employed by one party in order to deceive the other into contracting. For example, a merchant sells a painting for an elevated price claiming it is signed by a famous artist, knowing that in fact the signature is a forgery. This is nothing more or less than a lie, a fraudulent act. In order to jeopardize the consent to a contract, it must be clear that the victim would not have contracted were it not for the fraudulent act (CC III, art. 16). However, mere exaggeration as to the qualities of an object, for example by an aggressive and exuberant salesman, will not normally be considered sufficient to justify cancellation of a contract. Fraud will never be presumed, and must be proven by the party who claims to be the victim (CC III, art. 17). In some cases, the silence of one party may be considered to be fraudulent when its consequence is to camouflage an important fact which would undoubtedly have influenced the decision of the other party. The fraud must originate with one of the parties, or at least be known to one of the parties. Fraud originating with a third party that is unknown to the parties themselves does not influence the validity of the contract. Contracts formed as a result of fraud are not void, but only voidable; that is, they may be declared void at the request of the victim (CC III, arts. 18, 196).

Violence may be used to force an individual to consent to a contract. But where violence is involved, the consent is not free, and as a result there is no real consent. The *Civil Code* defines violence as an act whose nature will impress a reasonable person and instill fear that the person or his or her property is threatened with clear and present danger (CC III, art. 12). Regard is to be paid in this matter to the age, the gender and the position of the persons concerned. Violence may also be exercised against the spouse of the party, or against parents or children (CC III, art. 13). Unlike the case

of fraud, violence against a person who has contracted an obligation is a cause of nullity, even though practised by someone other than the person for whose benefit the contract was made (CC III, art. 11).

Not all violence will justify challenging the consent to a contract. For example, reverential fear of a father or mother or other ascendants, in the absence of any actual physical violence, is not grounds to annul a contract. Furthermore, the violence must have determined the outcome; were it not for the violence, the consent would not have been given. The degree of fear has a subjective component, and the courts will consider the age, gender and condition of the person who invokes it in order to determine whether the fear was really likely to have influenced the consent (CC III, art. 12(2)). A contract may not be challenged on the grounds of fear of violence if the violence has since ceased and if the victim has either explicitly or implicitly accepted the terms of the contract (CC III, art. 15).

Lesion is a term used to describe the harm suffered by a contracting party when there is gross disproportion between what the party gives and what the party is given. It bears some relationship with the notion of equity which is found in the common law. Lesion is controversial in civil law systems, with many arguing that where competent adults make agreements, these should not be tampered with simply because they appear to be unfair. Rwanda's *Civil Code* recognizes that contracts between persons of full age may be declared void in cases of lesion. According to the *Code*, in cases where a creditor who abuses the needs, weaknesses, passions or ignorance of a debtor, and who obtains advantages from a contract that manifestly exceed what is normal in the circumstances, the debtor may ask the court to reduce the obligations to what is appropriate in the circumstances (CC III, art. 131*bis*). Thus, the contract is not annuled, but rather revised by the court.

**Capacity.** The *Civil Code* is quite laconic when it comes to the capacity of parties to a contract. Article 23 states simply that any person may validly contract, unless he or she is declared incompetent. Thus, there is a legal presumption that everyone is competent to contract. For a more complete idea of this notion, it is necessary to refer to Book I of the *Civil Code*, which deals with persons and the family. The subject is discussed in this volume at pp. 105-108.

There are two forms of incapacity, incapacity to exercise rights and incapacity to enjoy rights. A person may possess rights but be unable to exercise them. Such a person has not been denied rights,

but only denied the possibility of exercising them, generally in order to protect his or her own best interests. Such incapacity applies for only a limited time period. The most common form of incapacity to exercise rights is the incapacity of minors. The age of majority in civil law is set at twenty-one years (CC I, art. 431). From that age, all acts of civil life may be accomplished by an individual. Minors, who are under the age of twenty-one, lack the incapacity to exercise their rights, subject to the exception of emancipated minors involved in business who are deemed to have the age of majority for all undertakings contracted by them in the course of their work (Decree of August 2, 1913, s. 6(1)). In all other cases, legal acts concerning the rights of minors must be carried out by their legal representatives, that is, their parents or guardians. The incapacity to exercise rights of the minor concludes definitively at the age of twenty-one. Protected adults, described in Book I of the *Civil Code* as interdicted persons, are also unable to exercise their civil rights. In fact, the law views an adult who is interdicted for mental illness as being equivalent to a minor (CC I, art. 448). Incapacity of enjoyment actually denies rights to an individual, and not simply their exercise. It consists of a categorical prohibition to possess certain rights.

Legal acts accomplished by a person who is unable to exercise rights are voidable. This principle exists in order to protect persons who are in a disadvantaged position with respect to those having full civil rights. They are not prohibited from carrying out certain acts, but are protected when these acts are abusive. Indeed, acts carried out by a minor that are not contested may in fact be confirmed and, upon the minor reaching the age of majority, they become unchallengeable. As for an individual who is unable to enjoy certain rights, acts accomplished are voidable if they concern private interests, but void if they concern general or public interests. The determination of legal capacity of foreigners is based on the laws of their own country, and not those of Rwanda (CC PT, art. 24).

**Object.** All contracts must have an object, namely a thing which a party undertakes to give or an action which a party undertakes to carry out or not to carry out (CC III, art. 25). The object of a contract may be sale, rental, exchange, etc. Simple use or simple possession of something may also be the object of a contract (CC III, art. 26). Although the object of the contract may vary considerably, the parties do not have complete freedom in its determination. Contracts or covenants are only valid to the extent that they are not inconsistent with public policy and with good morals. For example, it is forbidden

to renounce to an estate that has not yet been opened for settlement, or to stipulate with respect to such an estate, even with the agreement of the individual concerned (CC III, art. 29(2)).

An important distinction must be made here with the object not of a contract but of an obligation. The object of an obligation is the undertaking assumed by the debtor in favor of the creditor. In a bilateral or reciprocal contract, each party assumes an obligation, and thereby a different object, because each is both debtor and creditor simultaneously. The object of an obligation may be the delivery of something, the transfer of rights to real property, etc. The parties can only contract with respect to things that can actually be the object of a contract (CC III, art. 26). For example, the sale of a baby is a contract without a valid object.

The object of the obligation must exist. It need not, however, exist at the time the contract is concluded, because contracts may concern things to be created in the future (CC III, art. 29(1)). A contract must also concern something that is determinate or determinable, even if it is not individualized (CC III, art. 28(1)). For example, a contract providing for the delivery of a desk is sufficiently precise to be valid. If there is no further specification concerning the quality of the desk, the vendor respects the contract by delivering a desk of average quality. The situation is not the same if the purchaser orders a specific desk, for example, an antique which is a one-of-a-kind item. This becomes significant if the object is lost or destroyed. If the item has not been precisely identified, then the vendor bears the responsibility as long as it has not been delivered. If the item is precisely identified, the purchaser assumes responsibility, because he or she has become owner at the time the consents were exchanged, well prior to the actual delivery.

Even if an item is not clearly specified or identified, its quantity must be subject to determination (CC III, art. 28(2)). For example, it is possible to specify in a contract that the value will be that value normally accorded to such an item in public markets, because this makes it possible to determine the value.

**Purpose (*cause*).** The final condition for the existence of a contract is a valid and legal purpose (*cause*). An obligation without a purpose, or for a purpose which is false or illegal, does not produce effects (CC III, art. 30). The purpose is the reason why a party has decided to become bound by the contract. Purposes for contracts vary

enormously, depending very much on the individual. In a bilateral or reciprocal contract, the purpose is the correlative undertaking assumed by the other party. If the contract is one of sale, the purpose for one party will be the delivery of a given item, and for the other party the payment of the price that was agreed upon. In a gratuitous contract, the purpose is the intent to make a gift or donation in favor of another.

A contract is not void merely because the purpose is not expressed (CC III, art. 31). As with the object of a contract, where the purpose is prohibited by law or is contrary to good morals, it is illicit (CC III, art. 32). Although proof in this area is often difficult to establish, if a contract has an illicit purpose, it is void.

### *Extinction of Contracts*

Contracts are extinguished by payment, novation, voluntary remittal or release, compensation, confusion, loss or destruction of the thing, nullity or rescission, the operation of a resolutive condition, and limitation or prescription (CC III, art. 132).

**Payment.** Obligations are normally extinguished by their performance or execution, which the *Civil Code* calls "payment". Payment may be made by the debtor and even by a third party, providing the latter acts clearly on behalf of the debtor (CC III, art. 134), but may not be made by a third party if the creditor objects and has a legitimate interest in doing so (CC III, art. 135). It must be made to the creditor in person, or to someone authorized by the creditor to receive payment (CC III, art. 137). The creditor cannot be compelled to accept anything but that which is due, even if the value of what is being offered in payment is equivalent or even greater than that which is owed (CC III, art. 141). It is possible for a person to be subrogated in the rights of the creditor. For example, where a third party pays the debt to the creditor, the creditor may subrogate that person in his or her rights towards the debtor. This means that henceforth the debtor owes the debt to the third party, who has become subrogated (CC III, art. 148). Where a debtor who owes several different debts to the same creditor makes a payment, he or she is entitled to declare which debt is being paid (CC III, art. 151). If a creditor refuses to accept payment, for whatever reason, the debtor may pay the debt into court (CC III, art. 155). If subsequently the creditor sues the debtor, the debtor may invoke the payment into court in defense.

**Novation.** Novation occurs when an old debt is substituted by a new one, or when there is a replacement creditor or debtor (CC III, art. 163). But a debtor cannot simply designate a replacement, unless the creditor agrees (CC III, art. 167). If the creditor has discharged the debtor and accepted a replacement, the initial debtor is completely discharged, even if the replacement debtor later becomes insolvent (CC III, art. 168).

**Compensation or Set-off.** When two persons are debtors with respect to each other, their respective debts may be eliminated by compensation or set-off. The two debts are extinguished reciprocally by simple operation of the law; it is not necessary, as in some legal systems, for this to be pleaded or declared (CC III, art. 182). But for there to be compensation, the debts must be equivalent, and must be payable at the same time and place.

**Nullity.** Contracts may be void or they may be simply voidable, meaning that they may be attacked by one or another of the parties, as the case may be, but that they remain in force if they are not challenged. This distinction does not appear in the Rwandan *Civil Code* or other legislation, and has been adopted by the Rwandan courts as a result of European case law and legal scholarship. Generally, contracts are voidable in order to protect the interests of an individual, because of the vulnerability of that person caused by age or mental infirmity. Actions to declare contracts void are time-barred after ten years (CC III, art. 196). Contracts are void and not simply voidable when the public interest (*ordre public*) is concerned. Unlike contracts which are voidable, which can only be contested by certain persons, any person having an interest in the matter can take action when a contract is void. This may mean not only the contracting parties themselves but also their heirs and successors, or any other person having an interest in the contract. For example, certain solemn covenants make an exception to the rule and require that the contract be in writing. Such contracts are void.

A contract that is void is deemed never to have existed. As a result, a judgment that finds a contract void must put the parties back in the position where they were prior to the formation of the contract, to the extent possible. As for the future, when a contract is declared it liberates the parties from any obligations that result.

**Release.** Release of the debt takes place where the creditor renounces to its payment in favor of the debtor. It is in fact comparable to a donation or gift, although there is no requirement that the release

be in any special form. It is even possible for courts to presume that release has been granted tacitly. Often releases are signed at the time lawsuits are settled out of court.

**Loss or Destruction.** An obligation may be extinguished by the loss or destruction of the thing that is due. If this takes place without any fault of the debtor, then the obligation comes to an end and the debtor is liberated. However, where it is only a quantity of fungibles that is lost or destroyed, then the debtor may be required to make the payment with other items of the same kind.

**Limitation or Prescription.** Although limitation (*prescription*) is also a form of extinguishing contractual obligations, in reality it merely bars recovery of an obligation before the courts. Some claim that even where a claim is time-barred, the debtor still has a moral obligation towards the creditor. A debtor can always renounce to a limitation period, and pay the debt even though the creditor is powerless to compel this (CC III, arts. 614-615). The general rule in Rwandan law states that after thirty years, the recovery of debts is time-barred. It is also possible to acquire rights as a result of limitations, for example as a result of occupation of land where the occupant becomes the owner. In the Gisenyi and Ruhengeri regions, under the land tenure system of *ubukonde*, an occupant acquires ownership of land where it has been held for one hundred years (Edict 530/1 of May 26, 1961).

Limitation periods may be interrupted or suspended by various events. Interruption may be effected by, for example, a lawsuit, or by an admission made by the debtor (CC III, arts. 638, 640). There are a number of exceptions to the general limitation period of thirty years. In the case of acquisition of immovables, the prescription period is fifteen years (CC III, art. 648). Claims by teachers for tuition fees, by innkeepers and caterers for food and lodging they have provided, and by workers for wages, are time-barred after six months (CC III, art. 652). Claims by doctors and pharmacists for their fees, by traders for merchandise sold to consumers, and by domestics for their wages are time-barred after one year (CC III, art. 653). Arrears for child and spousal support, residential rentals, and interest on loans are time-barred after five years (CC III, art. 657).

Several special limitation periods also exist in various other laws. For example, recovery of wages is time-barred after five years (LC, s. 108). Lawsuits based on insurance contracts also have a five-year limitation period (D-L 20/75 of June 20, 1975, s. 23). Actions

based on checks must be taken within six months (Decree of December 10, 1951, s. 52).

### *Liability for Inexecution of Contracts*

Failure to respect an obligation entitles the creditor to demand forced execution, in the case of an obligation to do something or to refrain from doing something, or alternatively to demand that compensation be paid (CC III, arts. 40, 43 and 45). Forced execution is an exceptional measure, and generally the courts order compensation in the case of inexecution of a contract. Here, the rules are quite similar to those applicable in the field of civil liability. Both sets of rules require that one of the parties commit a fault, that there be prejudice or damage, and that a causal link exist between the fault and the damage.

**Fault.** Contractual liability can only exist where a valid contract has been formed. A debtor cannot be sued for failure to deliver goods if the object of the contract is prohibited by law, and as a result the contract is void. The debtor of an obligation may be ordered to pay compensation not only for complete inexecution, but also for delay in execution (CC III, art. 45). If one party provokes a breach in the contract, the other may seek compensation before the courts. A premature end to a contract amounts to inexecution.

**Damage.** Compensation which is payable is that which results from the actual loss suffered by the creditor, and the profit of which the creditor has been deprived (CC III, art. 47). Where a contract has been breached, the creditor is entitled to receive a sum equal to the amount that would have been received had the contract not been broken. But from this amount must be deducted an amount corresponding to the creditor's unfulfilled obligation, in order to avoid any unjust enrichment. Unless the contract provides that the obligation must be carried out within a given time, and the time has elapsed, compensation can only be claimed if the debtor has been formally placed in default (CC III, art. 44). If a contract requires only payment of a sum of money, late execution of the contract only entitles the creditor to claim interest, at a rate set by the court. In such cases, it is not necessary to show loss, as this is presumed from the fact that the payment is late (CC III, art. 51).

Some contracts provide for a penalty clause (CC III, arts. 124-131). In effect, an amount of compensation is already predetermined in the case of inexecution or faulty execution. If this is a case, the

courts may not order an amount that is greater or lesser (CC III, art. 50). However, a penalty clause may be modified by the judge if the principal obligation has been partially executed in order to avoid inequitable results (CC III, art. 129).

**Causal Link.** The debtor is only liable for damage that was foreseeable at the time the contract was formed (CC III, art. 48). A debtor may be exonerated where it is shown that the prejudice to the creditor is the result of some external cause (CC III, art. 45). No contractual liability arises when *force majeure* has prevented the debtor from fulfilling the obligation, or has compelled the debtor to do something he or she had undertaken not to do (CC III, art. 46).

### *Remedies for Breach of Contract*

Under civil law, specific performance is not a standard remedy, and where a contractual obligation is breached, the creditor's recourse is usually a suit in damages for a sum of money. The creditor may also have the contract rescinded, under the theory that both parties have in effect included a resolutory condition in the contract by which one party is not required to execute its obligation where the other fails to do the same, following the principle *exceptio non adimpleti contractus*. Although this is more exceptional, where the obligation is to do something, or to refrain from doing something, civil law courts may order specific performance.

## Quasi-contracts

Sometimes obligations arise as a result of the will of a single individual. They are not contracts, because there is no agreement between two persons. Civil law defines them as "quasi-contracts" (CC III, art. 247). Rwanda's *Civil Code* recognizes two forms of quasi-contract, the *negotiorum gestio* or management of another's business, and the restitution of payments not due.

### *Negotiorum gestio*

The quasi-contract of *negotiorum gestio* arises when a person voluntarily assumes the management of some activity or enterprise for another. The owner does not formally consent, and he or she may or may not be aware of the intervention. The *Code* views such activity as a form of tacit mandate or agency. The manager must intend to assist the owner, and must not simply be acting in his or her own interest. The management must be useful and opportune (CC III, art.

248). Such a quasi-contract would arise where one neighbor repairs the leaky roof of another neighbor, who is absent and cannot tend to his or her own property. The neighbor voluntarily assumes the obligation, but without the other neighbor's consent. The neighbor was not required by law or by contract to take on the responsibility, but once this has been done, he or she is bound to execute the obligation responsibly, according to the rules set out in the *Code*. Upon the conclusion of the quasi-contract, once the owner again assumes full responsibility for his or her property, the manager is entitled to be reimbursed for useful and necessary expenses (CC III, art. 251).

### *Restitution of Payments Not Due*

Where an individual receives something that is not owed, a quasi-contract arises obliging that person to return it (CC, art. 252). This will usually involve payment by mistake of a sum greater than the debt that was due, although the rules set out in the *Code* are generally applicable and go beyond payment of money. The quasi-contract does not exist if there is in fact a debt, and it has merely been paid before its term. Furthermore, the *Code* requires that the payment be made by mistake, for otherwise it could be considered a gift.

If the thing received has already been resold, then it cannot be returned to its original owner. In such cases, the price must be repaid (CC III, art. 256).

## Torts or Delictual Liability

Because Rwandan civil law is derived from the Napoleonic tradition, its law of delictual liability or tort is not fundamentally different from that applicable in other countries with the same legal system. The common law of torts is based on judicial precedent, and over the centuries a complex system of discrete torts has arisen. Civil law takes a more theoretical approach, stating broad principles and then leaving the courts to apply them. Liability (or delict) falls within the general theory of obligations, which also comprises contracts and quasi contracts. The *Civil Code* recognizes that certain obligations exist and are formed without any agreement between the parties (CC III, art. 26). Of these, the most important are found within the section concerning delicts or delictual liability. The law of delicts comprises only five provisions in the *Civil Code* (CC III, arts. 258-262). Under the general title of delictual liability, civil law makes a further distinction between delicts and quasi-delicts. For the purposes of this

introductory work, the difference between the two is of no great significance. Essentially, it lies in the degree of intention of the individual who is responsible. Intentional fault is viewed as a delict, whereas harm caused merely by lack of care or negligence is treated as a quasi-delict. Both, of course, impose an obligation to repair the harm done.

Under the civil law of liability or delict, the fault or the wrongful act creates an obligation between the victim, who is its creditor, and the perpetrator, who is its debtor. The debtor must answer for his or her acts. As a result of this liability, civil law requires the debtor to compensate for the damage that has been caused. In assessing the existence of this obligation, the courts must ensure that three essential elements are present, a wrongful act or fault, a prejudice or damage to the victim, and a causal link between the two. These general principles are stated in a single, succinct provision: "art. 28. Any act whatever of human agency which causes harm to another requires the person whose wrongful act is responsible to repair it."

### *Wrongful Act or Fault*

Fault is the violation by a person of a duty not to harm another by an act or behavior that an ordinarily diligent person placed in similar circumstances would not have committed. Breach of a duty may be easily identifiable when legislation specifically imposes an obligation to do something or to refrain from doing something. However, such legislated norms are rather rare. In their absence, it is necessary to refer to some comparative criteria. Would a careful and diligent person placed in comparable circumstances have done the same thing? If the answer is positive, the act cannot be deemed wrongful, and as a result civil liability is not incurred. Case law and scholarly writing often refer to the notion of the *bon père de famille*, now a rather antiquated and gender-biased expression that means in effect a careful and diligent person.

**Omission.** According to the *Code*, persons are responsible not only for harm caused by wrongful acts, but also that caused by negligence or carelessness (CC III, art. 259). Thus, failure to act may also incur liability. Failure to act where this is required by law is treated on the same level as the performance of a wrongful act. For example, the *Penal Code* imposes an obligation to provide assistance to a person who is in danger, where this can be done without danger to the person or to a third party. The assistance must be provided

either by a personal act or by calling for help (PC, s. 256). But although this crime may result in a prison sentence of up to five years, it also gives rise to an action in civil liability by the victim. From the standpoint of civil law, the issue is whether a careful and diligent person placed in the same circumstances would have acted or would have abstained from acting. Obviously, there is an element of subjectivity in the appreciation of this matter. For example, the conduct of a doctor arriving at the scene of an accident must be assessed differently from that of an individual without medical training. The former's behavior will be judged more rigorously, at least with respect to the degree and quality of assistance provided to the victim.

**Competence.** There are exceptions to the general principle holding individuals to a standard of behavior that a normally prudent person would undertake. The individual must be mentally competent, to a degree permitting that person to judge the nature of the act performed. A person who is not endowed with reason will not be held responsible for wrongful acts committed. For example, a very young child cannot engage his or her civil liability. He or she cannot understand the nature and the consequences of certain behavior. However, under some circumstances, persons exercising parental authority over infants and children may be held liable for the acts of the latter. Persons suffering from mental illness or disability who are unable to assess the nature of their acts are also exempt from responsibility for the harm they cause to others. The courts are charged with determining whether the individual who is accused of the wrongful act was able to assess the nature of the act at the time. The law does not set a minimum age for liability, leaving this for the judge to assess in individual cases. If all of this seems simple when a child of three years old is concerned, it is less clear in cases involving older children or the mentally ill or disabled.

### *Vicarious Liability*

In addition to liability for their own acts or omissions, individuals may also be held liable for acts or omissions of others, as well as for damage caused by things under their control (CC III, art. 260).

**Parents.** The father and, following his death, the mother, answer for damage caused by their children who reside with them (CC III, art. 260, para. 2). This liability derives from the fact that parents have a degree of control over their children, and a presumption that where their children have committed wrongful acts, ineffec-

tive supervision for which they are responsible is to blame. This vicarious liability is also important so as to make recovery of an award to compensate for damage caused more likely, given that most children have few or no assets. Otherwise, where a young person had committed a wrongful act, any remedy would be illusory.

In order to succeed in an action based on the liability of parents for damage caused by their children, the plaintiff must prove that the parental relationship exists. Furthermore, it must be established that the child is not of the age of majority (see pp. 105-106), and that the child continues to live with the parents. Parents will not be held liable for the acts of an adult child, even one who continues to live under the same roof. The fact that a child who meets these conditions has caused harm to another does not automatically engage the liability of parents. It only creates a rebuttable presumption of fault, and parents can avoid liability if they can prove that they were unable to prevent the act in question. Normally this will be done by a demonstration that parents have acted appropriately, imposing proper discipline, supervision and direction upon their children.

**Employers.** Employers are also held responsible for damage caused by their employees in the course of functions for which they are employed (CC III, art. 260, para. 3). In fact, the *Code* uses an archaic terminology, speaking of "masters" and "domestics" as well as of employers, although the distinction is insignificant, given that the relationship between master and domestic is also one of employer to employee. Liability of the employer requires proof of subordination of the employee to the employer and of harm caused in the course of the employee's functions. Furthermore, the employee's act must be wrongful.

Establishing the existence of subordination is not always an easy matter. The existence of an employment contract may assist the court in determining such a relationship, but the absence of a written contract is not on its own of any great significance. The real question is whether the employer, at the time the wrongful act was committed, had the power to give instructions to the employee concerning the execution of the latter's work. An individual who is fulfilling a mandate for another, such as a lawyer or a doctor, is not in such a relationship because there is no power of the employer to control how the work is carried out.

The wrongful act must have been caused during the exercise of the employee's functions. The employer is as a result not responsible

for acts committed by employees that have no relationship to the work, even if these take place during working hours. An employee who is not fulfilling work-related duties is no longer working for the employer, and is not subordinate to the employer's supervision. However, it is not a defense for the employer to say that the work was not being carried out in accordance with instructions, because the subordination and supervision continues to exist.

Unlike the vicarious liability of parents, which arises because they are deemed to fail in their duty to supervise children, the liability of employers is not based on any particular obligation. The liability of employers is engaged because of a wrongful act by the employee, and not because of a wrongful act by the employer. Thus, in contrast with the parent, who may defeat a claim by proving that he or she acted responsibly, the employer can only defeat a claim by demonstrating that the employee was not subject to subordination or supervision. This has as a corollary the requirement that in a suit based on vicarious liability of employers, the wrongful act or fault of the employee must be proven.

**Artisans.** Artisans answer for damage caused by their apprentices while the latter are under their supervision (CC III, art. 260, para. 4). The notion of apprenticeship is broader than that envisaged by labor law, where there is a requirement of an approved apprenticeship contract. To fall within the scope of the *Civil Code* provision, it is necessary to prove that the individual provided professional training. In distinction with a teacher, the artisan requires that his or her apprentice actually carry out work. The artisan is required to supervise the apprentice, and may rebut a presumption of fault by showing that appropriate supervision and direction was provided. Thus, the approach is similar to that of parents, except that no age limit is imposed, and different from that of employers, in that the artisan has a defense of absence of fault. The artisan's liability is only applicable to the time where actual supervision is exercised, and is thus considerably limited.

**Teachers.** Teachers may be held liable for damage caused by their students (CC III, art. 260, para. 4). As in the case of parents and artisans, the teacher may defeat a suit in liability by showing that appropriate supervision was exercised over the student. A teacher is an individual who provides instruction in the arts or the sciences. It is not necessary for the teacher to receive remuneration for this service. The students must be effectively under the supervision of the teacher, a rule that excludes those who have no real responsibility of

supervision, such as university professors. For liability to be incurred the student must have committed a wrongful act, and not simply caused damage or harm. The wrongful act must have been committed while the teacher was in charge of the student. Normally, this means the teacher is responsible during school hours.

**Animals and Things.** The owner of an animal is liable for damage caused by the animal, whether the animal is being kept or whether it has been lost or has escaped (CC III, art. 160). The user of an animal is also liable for damaged caused during the use of the animal. Thus, the person who controls the animal is deemed to be at fault. The only way to rebut this presumption is to show that the damage was in fact the result of some external cause, such as *force majeure*. It is no defense to argue that the owner or the user was not at fault. Essentially the same rules are applicable where moveables are the cause of damage (CC III, art. 260, par. 1).

**Buildings.** The owner of a building "in ruins" is responsible for damage that it causes when this is the result of poor maintenance or defects in its construction (CC III, art. 263). There is no fault requirement with respect to the owner in order to establish liability in this context. The provision only applies to buildings, and damage caused by moveable property is not covered by the provision. Although the *Code* uses the term "in ruins", it is in fact sufficient to establish relatively minor deterioration of a building. A common example is a loose brick that falls on a passer-by. The victim must establish that the cause is poor maintenance or construction defects. The owner is responsible, even if the construction or maintenance problems are not the owner's fault.

### *Damage*

Proof of a wrongful act or fault does not create an obligation to compensate in the absence of proof of damage or harm. The fundamental principle is that the victim be placed in the same situation as prior to the wrongful act, known by the Latin phrase *restitutio in integrum*. Courts will refuse to order compensation that goes beyond the actual extent of the prejudice that has been caused. Although the victim must obtain justice, he or she must not be unjustly enriched. The purpose of the law of civil liability is not to punish the perpetrator, a field that is left to criminal law. Where property has been damaged, these principles are relatively simple to apply. Where personal injury is concerned, the matter is considerably more com-

plex, because bodily harm does not lend itself to simple mathematical calculations. Even more difficult is compensation for what are known as moral damages, in distinction with physical damages. How can a price be put on sorrow, pain and suffering?

The victim cannot remain totally passive when harm is caused, and is expected to attempt to mitigate any prejudice to the extent possible. Nor can the defendant be held responsible for damage that results from aggravation, and that could have been avoided by the victim. The victim's obligation is one of means and not result. He or she must simply make a best effort to minimize the seriousness of the situation.

**Material Damage.** In order to warrant compensation, material damage must be certain. It cannot merely be speculative. However, this does not exclude prejudice in the future, to the extent that it can be readily determined. The test to be applied is whether it can be established that the prejudice will occur, and that the amount or quantum of the prejudice can be accurately assessed. Compensation will not be awarded by the courts if the victim has already been compensated, as this would amount to unjust enrichment. This does not mean that more than one person cannot be held responsible. However, the total of the amounts awarded cannot exceed the real amount of prejudice. Although normally compensation will be ordered in the form of a monetary payment, the *Code* does not exclude the possibility of compensation in kind. For example, a woodworker who has destroyed a piece of furniture that he or she was repairing may compensate the victim by providing another piece of furniture.

**Bodily Injury.** Article 258 makes no distinction between different heads of damages. In effect, they are all subject to the same principles when the time comes to determine appropriate indemnities for the victim. Bodily injury compromises the physical integrity of an individual but in this context it should not be confused with the moral damage that the individual suffers as a result of the injury. All that is considered here is the actual physical loss and the physical consequences that result from it. It may seem absurd to compensate a portion of the body with a sum of money, but it is the only choice for the victim. As a result, the courts examine the portion of the body affected in order to determine the appropriate amount of compensation. For example, amputation of a hand will dictate more compensation than amputation of a finger.

The disability caused by bodily injury may be partial or total, temporary or permanent. It will generally result in a loss of income or an increase in expenses for the victim. Thus, the victim is entitled to compensation for such damages. For example, the victim should receive an indemnity for loss of wages, as well as for medicine and health care. In order to assess the appropriate amount the judge will take into account facts such as life expectancy. The judge must be able to calculate the number of years the victim will be deprived, either partially or totally, of income. Generally speaking, the younger the victim, the higher the indemnity.

Rwandan law has provided additional guidelines in order to assist the courts in such calculations. Ministerial instruction 01/87 of September 14, 1987, on determination of indemnities for loss of income and moral damages, dictates that any award for bodily injury or death be paid in the form of a pension corresponding to the loss of income. The courts may choose also to award a lump sum, providing that it is invested in such a way as to generate an amount equal to a pension in the form of interest. The intention is to avoid situations where the disabled quickly spend damage awards. The ministerial instruction also notes that courts must consider life expectancy in calculating appropriate indemnities.

**Moral Prejudice.** Moral prejudice – pain, suffering, humiliation, loss of enjoyment, breach of privacy, etc. – lends itself less readily to such calculations. However, the principle of *restitutio in integrum* remains the same, at least in theory. Often, serious physical disability prevents a victim from functioning adequately, or from enjoying certain activities, and so it is accompanied by moral damage. Moral damage may also arise even where there is no bodily injury, such as in the case of libel and slander.

Payment of moral damage in the case of death has always been a controversial area. Civil law describes it by the Latin term *solatium doloris*. To whom is the sum to be paid? Article 258 says that any person who has suffered harm as a result of a wrongful act is entitled to compensation. But this general principle is considerably limited by Ministerial instruction 01/87 of September 14, 1987, which defines those eligible to be compensated in the case of wrongful death, as well as the amounts to which they are entitled. The surviving spouse may claim compensation varying between 100,000 and 300,000 FRW, the parents and legitimate children a sum varying between 50,000 and 100,000 FRW, and brothers, sisters and other dependents a sum varying between 50,000 FRW and 80,000 FRW.

### *Causal Link*

Besides evidence of a wrongful act and of harm or damage, the plaintiff must also show a causal link between these two elements. Following the Latin maxim *actori incumbit probatio*, which is set out in a provision of the *Civil Code*, the plaintiff always has the burden of proof (CC III, art. 197). Legal presumptions, described earlier in this section, considerably modify this general approach to evidence in civil liability. For example, where children are charged with responsibility, their parents are deemed to have been irresponsible in supervision and discipline. It is not the plaintiff who must prove this, but rather the defendant who must prove the contrary.

The defendant may attempt to demonstrate that some external event which was unforeseen and inevitable caused the damage, and that as a result of this *force majeure* he or she should no longer be held responsible. Proof that damage results from *force majeure*, that is, from events which could not have been foreseen or avoided by the defendant, will result in exoneration of any liability.

However, acts by third parties, unless these amount to *force majeure*, are insufficient defenses to suits in liability. Where acts by third parties are the sole cause of damage, the issue of causality does not arise: the defendant is quite simply the wrong person, and the plaintiff should have sued the third party. If several individuals act together, then the wrongful act is common to them. They are all liable to the victim, and the degree of liability cannot be divided amongst them. As far as the victim is concerned, there is really only one defendant, namely the group of individuals who have committed the wrongful act collectively. In such cases, they may be condemned jointly (*in solidum*), meaning that any one of the defendants may be held liable for the entire amount due to the plaintiff. If one defendant does in fact pay for all co-defendants, he or she may subsequently sue the other co-defendants in order to force them to pay their share, although by this point it is only a matter between defendants, the victim having been fully compensated.

In some cases, the victim may bear all or a portion of the responsibility. For example, an individual who decides to trespass on private property, where signs indicate the presence of a guard dog, and who is attacked by the dog, may fail in a suit for damages. He or she has accepted the risk, and is responsible for his or her own misfortune. Often, the wrongful act of a victim will result in shared

liability. This is not unlike the situation where more than one defendant has contributed to the harm done to a victim. The courts will attempt to apportion the liability, establishing a percentage of the total damage for which defendant and plaintiff are responsible.

## Property

Under customary law, ownership of land vested in the Mwami, or king, as well as in the local chief and in the head of the family. Rwandans viewed themselves as having a right to use the land, but there was no exclusive right to own it, at least in the sense it is understood in civil law. The State was divided into provinces, directed by three personalities, the administrative chief, the land chief and the pasturage chief. The land chief was responsible for collecting taxes and other duties. The pasturage chief was assigned to collect duties on pastures as well as milk for the Court.

Book II of the *Civil Code* concerns property law. Rwandan legislation is derived from provisions imposed in the Belgian Congo in 1912 and 1913, and made applicable to Rwanda in 1927. Book II has been modified on occasion since that time. It now consists of eighty-five articles or provisions. Specific pieces of legislation contained in decrees adopted prior to decolonization of Rwanda are also relevant to the field of property law, specifically those concerning land registration, surveying, registration of real rights and mortgages (hypothecs). Property rights may consist of claims (in effect, obligations, discussed earlier in this chapter) and intellectual rights (for example patents or copyright, a subject dealt with in special legislation). This section is concerned with property rights in the more narrow sense, that is, ownership and related notions concerning things, be they moveable or immovable.

### *Moveables and Immovables*

Civil law makes a basic distinction between moveable and immovable property. All property is either moveable or immovable (CC II, art. 2). Property is deemed moveable when it is not immovable, or when it is not attached or fixed to an immovable (CC II, art. 4). For example, shares in a corporation, or animals on a farm that are not used in agriculture, are moveable. But everything relating to an immovable, including a right or claim for recovery of the immovable, is considered to be immovable. This distinction takes on considerable importance when it is necessary to establish ownership of property.

Property may be immovable by nature, but moveable property may also become immovable by incorporation or by destination (CC II, art. 5). Immovables by nature are those which are normally immobile, such as the land or mines (CC II, art. 6). Immovables by incorporation have been in effect attached to immovables by nature. A building is an immovable by incorporation, attached to the land, as well as all of its accessories, such as water, gas and electricity conduits (CC II, art. 7). Immovables by destination are those which are placed in an immovable by the owner in order to facilitate use or enjoyment of the immovable, and which cannot be easily removed without damaging the immovable (CC II, art. 8).

The principal significance of the distinction between moveable and immovable property is that real rights, that is, rights that "belong" to the "thing", exist only in the case of the latter.

***Attributes of Property***

The right to property is certainly dear to the hearts of most citizens. It is enshrined in the fundamental law (Const., art. 23) as well as in the *Universal Declaration of Human Rights* (UDHR, art. 17) and the *African Charter of Human and Peoples' Rights* (ACHRPR, art. 14). Nevertheless, it is not an absolute right, and remains subject to certain limitations. Some things belong to nobody, such as the water in rivers and lakes (CC II, art. 19). Other property belongs to the State, such as the beds of rivers and lakes (CC II, art. 17). Legal rules concerning the actual ownership of land are determined in special laws, and by customary law. For example, the prefectures of Ruhengeri and Gisenyi remain subject to the customary land regime of *ubukonde* (Edict 530/1 of May 26, 1961). *Ubukonde* is a form of occupation of cleared land whereby the first occupants are entitled to certain rights.

The right to property may be defined as comprising the freedom to dispose of it either partially or totally, taking into account legal restrictions and the rights of others (CC II, art. 14). Civil law subdivides the right to property into three components, described by Latin names that betray the Roman origin of this approach: *usus, fructus* and *abusus*. *Usus* implies the right to the use of property. *Fructus* refers to the right to enjoy property and to profit from it. *Abusus* indicates the right to dispose of property.

Several people may own the same piece of property. In this case, they are described as being co-owners. If it is impossible to determine

which portions of the property they own, they are said to be in undivided co-ownership. Several heirs to one piece of land often find themselves in a state of undivided co-ownership, if the person who has bequeathed the property has not seen fit to divide it among them. Undivided co-owners cannot have charges placed on property, such as mortgages (hypothecs) without the permission of the other co-owners (CC II, art. 32). Co-owners may use the property, but must not prevent the other co-owners from using it. They are jointly responsible, in proportion to their shares, for all charges and encumbrances, and they profit in the same way from its fruits (CC II, art. 31*bis*). A wall between two individually held properties (mitoyen wall) is often jointly owned by the two neighbors. Costs and profits from the wall are borne jointly by them (CC II, art. 35/2). Nobody can be compelled to remain in a state of indivision – *in communione nemo tenetur invitus detineri*. Consequently, any of the co-owners can force the division of the property. The co-owners may agree to remain in a state of indivision for a period of up to five years (CC II, art. 33).

### *Components of the Right to Property*

Property rights are not always absolute. It is possible to provide for certain forms of property rights that fall somewhat short of full ownership, and that therefore do not give an unqualified right to *usus, fructus* and *abusus*. As a general rule, such rights may be registered, thereby protecting their beneficiaries and ensuring that if the property changes hands during the term, they remain entitled to exercise their rights.

**Usufruct.** The creditor of a right of usufruct has a temporary right to use the property and to benefit or profit from its use. However, the right of usufruct does not entitle its creditor to dispose of the property. Usufruct may exist in the case of both moveable and immovable property. It may be established in a number of ways, but is usually done so by will and testament, whereby an heir is entitled to a right of usufruct in property during his or her life. However, the property itself is bequeathed to another, who is entitled to full enjoyment of the right to property only upon the death of the creditor of the right of usufruct. Civil law also refers to rights of use and of habitation, which are in reality forms of usufruct. A right of use implies both *usus* and *fructus*, but only in the interests of the immediate family of the beneficiary. A right of habitation is a right of *usus* alone. Obviously, the creditor of a right of usufruct has no right to dispose of the property – *abusus* – as it has already been pledged to another heir.

**Emphyteusis.** Emphyteusis is the right to full use and enjoyment of property belonging to another, but on the condition to maintain the value of the property and to make payment in money or in kind to the owner (CC II, art. 63). A contract (emphyteutic lease) granting a right of emphyteusis may be made for a maximum term of ninety-nine years. Usually, such a contract obliges the creditor to construct a building, which is the property of the owner of the land and remains there at the end of the term (CC II, arts. 64, 72).

***Superficie.*** A right of *superficie* entails the possibility of using land belonging to another, including buildings, trees and other plants found thereupon (CC II, art. 76). It cannot exceed a term of fifty years (CC II, art. 77).

**Servitudes.** Servitudes are rights that are attached to immovable property. An example is a right of passage, an obligation imposed on one property (the dominant tenement) in favor of another (the servient tenement). Servitudes are quite analogous to the common law notion of easements. Rwandan law envisages the creation of servitudes, although the *Code* provides no details on this technique (CC II, art. 66).

### *Mortgages (hypothecs) and Liens*

The general rule is that all creditors are equal, and share in proportion to their claim in the assets of their common debtor (Decree of May 15, 1922, s. 1). The principal exceptions to this rule are mortgages (hypothecs) and liens, which gave creditors who benefit from them a priority over other creditors of the debtor with respect to certain designated property. Thus, if a debtor is in default, the creditor who benefits from a mortgage or a lien is likely to be paid first and possibly to the exclusion of the ordinary creditors.

**Mortgages (hypothecs).** The term "mortgage" is actually a common law expression, and has somewhat different legal consequences than its civil law equivalent, which is known as a hypothec. A hypothec constitutes a real right on immovable property that ensures execution of some other obligation, usually the obligation to pay the price of the immovable (Decree of May 15, 1922, s. 5). Hypothecs may be created either by law (Decree of May 15, 1922, ss. 8-10) or by contract (Decree of May 15, 1922, ss. 11-18). According to Rwandan law, hypothecs may only be granted on immovables as such, rights of usufruct, emphyteusis and *superficie*, mining concessions, and railway concessions. They must be registered in order to protect

the creditor of the hypothec should the owner, who is also the debtor, sell the property (Decree of May 15, 1922, s. 19, 31, 52-66). In such a case, if the debtor of the original obligation were to default, then the beneficiary of the hypothec would be entitled to have the property seized and sold in order to satisfy his or her claim.

**Liens or Privileges.** Liens or privileges are privileged claims established by law. There are five categories of privileged claim: taxes for the current and previous year; other taxes; law costs incurred in the common interest of all creditors; appropriate funeral expenses; wages and other benefits due to a worker and his or her family, including six months' arrears (to a maximum of 400,000 FRW). Debts that are secured by liens pass before ordinary unsecured debts, in the event of distribution of the moveable assets of a debtor to several different creditors. The five categories are paid in order, the first being fully satisfied before the second is paid, and so on. If two or more creditors have liens of the same rank, they are paid *pro rata*.

## Persons and Family Relations

Book I of the Rwandan *Civil Code*, entitled "Persons and Family Relations", was adopted in 1988 (Law 42/1988 of October 27, 1988). It replaced the earlier version of Book I, which was entitled "Persons". The original version of Book I was largely based on the *Civil Code* applicable in the Congo, adopted in 1895, and contained many references to customary law. Customary law remains a subsidiary or secondary source of law, and where the *Code* provisions are incomplete, the courts are entitled to fall back on customary rules and principles. In this respect, reference should be made to article 98 of the 1991 *Constitution* which states that customary law applies only to the extent that it has not been replaced and that it is not incompatible with the Constitution, with laws, regulations, public order and morality. The same principle is expressed in article 3 of the *Civil Code*, which authorizes the judge to rule pursuant to customary law, in cases where there is no applicable legislation.

Book I of the *Civil Code* is divided into two parts, the first dealing with persons, and the second dealing with the family.

## Persons

Civil law distinguishes between natural persons and fictitious or "moral" persons. Commercial companies are an example of the latter. Their rights and obligations are considered later in this chap-

ter. Although Part I of Book I of the *Civil Code* is entitled "Persons", in fact it only concerns natural persons. Three major subjects are dealt with in this Part of the *Code*, the personality as such, the identification of natural persons, and the proof of civil status.

*Personality*

A natural person is an individual to whom the law recognizes a unique legal personality, independent of that belonging to others. Legal personality is a qualification that permits determination of whether or not a natural person is subject to laws within a given legal system, namely the Rwandan legal system.

***Birth.*** A natural person is subject to law from birth until death (CC I, art. 15). However, unborn children are nevertheless entitled to some attributes of legal personality. According to the *Code*, a child that has been conceived is deemed to enjoy all of his or her civil rights, but only on the condition that he or she be born alive (CC I, art. 16(1)). Where the unborn child's interests are concerned, the child is deemed to have been born (CC I, art. 16(2)). Thus, a child may inherit property after conception but prior to birth, but only on the condition that the child is born alive. A child is deemed to have been conceived 180 to 300 days prior to birth (CC I, art. 17). This rule is applied principally in order to establish paternity, and the *Code* prohibits any evidence to challenge this presumption in paternity cases (CC I, art. 17).

***Death and Disappearance.*** A natural person's legal personality is terminated upon death. It is not always a simple matter to determine the precise moment of death. The date of death may have important legal repercussions. For example, transmission of the estate of the deceased takes place at the moment of death. The *Code* sets out a series of special rules in order to assist in establishing the moment of death where this appears uncertain.

If several persons die at approximately the same time and it is impossible to determine the order of their deaths, the *Code* declares that they are deemed to have passed away at the same time (CC I, art. 18). In cases where a person has disappeared and the body cannot be found, if the death is certain, any interested person may apply to the court for a declaratory judgment establishing the death of that person (CC I, art. 19). If several persons perish at the same time, for example in an airplane accident, the sinking of a boat or during an earthquake, such a judgment may be issued collectively (CC I, art. 20). The action is taken before the court having jurisdiction for the

place where the accident took place, except in the event of an airplane crash or sinking of a boat, in which case it is the court from where the vessel originated that should rule on the matter (CC I, art. 21). Such a judgment establishes the date of death, although it can be modified within three years of the judgment should it prove to be erroneous, unless it was impossible for the petitioner to know of the judgment, in which case the case can be heard up to six years after the original judgment declaring death (CC I, art. 22). Such judgments order the officer of civil status to issue a death certificate, or to correct it, as the case may be (CC I, art. 24). Of course, if the "deceased" was not in fact dead, and reappears subsequently, the declaratory judgment of death may be reversed upon application by the individual in question, the public prosecutor or any other person with a legitimate interest in the matter (CC I, art. 24).

***Absence.*** Where an individual disappears and it is not certain that the person has perished, civil law speaks of absence rather than of presumed death. Where a natural person disappears from his or her domicile or residence without providing any news of whereabouts, the person is considered to be absent. The person is deemed to be alive for two years following the last positive news of him or her (CC I, art. 25(1)). This presumption may be overturned by the court in cases where the probability of death can be deduced from the circumstances (CC I, art. 26). Following disappearance, any individual with a legitimate interest may apply to the court for a declaration of absence (CC I, art. 27). Where a person has been absent for one year, the court may appoint an administrator of the person's property; this will normally be one of the person's heirs or successors (CC I, art. 31). If the absence is confirmed by judicial declaration, the provisional transmission of the person's estate takes place (CC I, art. 42). The person's spouse may also request that marriage contracts be either performed or dissolved (CC I, art. 43).

After seven years have passed, the presumption that the person is alive comes to an end, and if there is no definite news to show that the person is alive, the courts may issue a declaration of death (CC I, arts. 28-29). Transmission of the estate takes place with such a declaration (CC I, art. 47). If the absent person subsequently reappears, the heirs are required to restitute the property they have received or the equivalent value (CC I, art. 48).

Judicial declaration of death permits the surviving spouse to remarry, unless the absent person reappears prior to celebration of the new marriage (CC I, art. 49). If the marriage has only been

contracted but not celebrated, the absent spouse may also attack the marriage (CC I, art. 50). However, nothing can be done if the judgment has been issued and the marriage celebrated.

*Identification of Natural Persons*

The *Code* declares that natural persons are identified by gender, ethnic origin, name, given names, residence and domicile (CC I, art. 57). Reference here to ethnic origin is highly questionable, and dates from a period in Rwanda's history of institutionalized discrimination. The *Arusha Peace Agreement* states that official documents are to make no reference to ethnic origin, and that "[d]ocuments in use or not yet used shall be replaced by those not bearing any reference to ethnic origin" (Arusha VII, art. 16). The better view would be that the reference to ethnic origin in article 57 of the *Civil Code* is now inoperative and implicitly repealed by the *Fundamental Law*. Reference to gender as a means of identification is also increasingly obsolete, as legal barriers to the equality of women give way to contemporary international norms such as those expressed in the *Convention for the Elimination of Discrimination Against Women.* But some discriminatory rules still remain in the *Code*, such as the rule holding the mother liable for damage caused by her child only if the father is dead (CC I, art. 260).

In addition to the criteria set out in article 57, nationality is an important factor in identification of natural persons. Rules governing nationality are considered in the chapter on international law (see pp. 193-195).

***Name.*** The name is without doubt the most common means of individualizing natural persons as subjects of the law. The *International Covenant on Civil and Political Rights* describes it as a fundamental right: "Every child shall be registered immediately after birth and shall have a name" (ICCPR, art. 24(2)). All individuals possess a surname and one or more given names (CC I, art. 58). Rights are exercised under these names, and persons may not use any surnames or given names in an official capacity other than those appearing on the birth certificate (CC I, art. 62). Married women retain the names given to them at birth, and may not use the surnames of their spouses in any official capacity (CC I, art. 63). The same is true of members of religious orders, who retain the names given them at birth for official purposes (CC I, art. 64). It is possible to effect a legal change of name, but only for reasons judged to be worthy and if there is no opposition to the change from interested persons (CC I, arts. 65-71).

The surname and given names are attributed to a child within fifteen days of birth (CC I, art. 59). A child may not receive the given name of his or her father or mother, nor that of any living brothers or sisters. However, the *Code* allows a child to take such names providing there is also another name so as to avoid any confusion (CC I, art. 60). For example, the child of a woman named Mary may not take that name, but may take the name Mary Jane. Also, given names may not violate principles of morality (CC I, art. 61).

The name is an element of a person's estate, and may therefore be used for commercial or mercantile purposes. However, it is not property in the traditional sense, and may not be sold or transferred. An individual may consider his or her name to be well recognized by the public, and therefore wish to do business under it. In order to protect its exclusive use, the bearer of the name may challenge another who attempts to use it where such use causes moral or material damage (CC I, art. 72(1)). Rights in the protection of a name's goodwill may be transmitted to heirs and successors. For example, a husband or wife may challenge any use being made by a third party of the deceased spouse's name, even where they do not have the same name (CC I, art. 72(2)).

***Residence.*** The residence of a person is a question of fact. It is the place where a person habitually resides (CC I, art. 73). It is possible to have more than one residence at the same time (CC I, art. 74). There is a presumption that a person resides where that person is found, subject to proof of the contrary. Legal presumptions also exist in the case of spouses, who are deemed to have the same residence. Agents in the public and private sectors, as well as religious personnel, are also deemed to reside in the place where they exercise their functions (CC I, art. 76). Because residence is a question of fact, it is possible to stipulate in a contract or other legal document that a given place shall constitute the residence, for the purposes of that instrument or transaction (CC I, art. 77).

***Domicile.*** Unlike residence, determination of domicile is a question of law. A person's domicile is the place where he or she has his or her principal establishment. It is only possible to have one domicile (CC I, art. 79). Domicile is established by intention, although in some cases the law intervenes to establish domicile for certain categories of persons. Married women are deemed to have the same domicile as their husbands, unless the court authorizes otherwise (CC I, art. 83). Unemancipated minors have the same domicile as the bearers of parental authority (CC I, art. 84). Interdicted persons have

the same domicile as their tutors (CC I, art. 85). Proof of domicile is made with reference to the population register, or to the identity card (CC I, art. 78). If domicile is unknown, it is presumed to be in the building owned by the person where that person intends to retire and pass his or her old age, failing which it is presumed to be the person's residence, and as a last resort, the place where the person is found (CC I, art. 81).

*Proof of Civil Status*

Proof of civil status of persons is made by official documents, known as certificates of civil status (CC I, art. 86). An officer of civil status is responsible for drafting and conserving such certificates. Normally, this role is performed by the burgomaster, who keeps the archives in the communal office (CC I, art. 116). Ambassadors and consuls who are on mission abroad may also act as officers of civil status (CC I, art. 87). Officers of civil status must avoid conflicts of interest, and are not allowed to draft certificates that concern their spouses, ascendants, descendants, siblings and in-laws (CC I, art. 88). The officer of civil status who does not respect these rules may be liable for civil damages, and also subject to prosecution (CC I, arts. 91, 152). Provisions of the *Penal Code* also apply to those who prepare false documents or who commit forgery (PC, ss. 202-208).

The officer of civil status is also empowered to celebrate marriages (CC I, art. 89). The officer is thus responsible for ensuring that they satisfy the conditions set down in the law. Registers of civil status are furnished at no charge, and may be consulted by any interested person (CC I, art. 98). The officer is also required to deliver, to any person who makes a request and on the condition that the required fee is paid, a certified copy of a certificate (CC I, art. 106).

Six different types of certificate of civil status exist according to the *Civil Code*: birth, death, marriage, recognition of paternity, adoption and varia. Births must be declared within fifteen days (CC I, art. 117), either at the place of birth or at the residence or domicile of the parents. Birth certificates contain the year, month, date and place of birth, surname, given names and gender of the child, as well as the identity of the parents and of the person who has prepared the medical certificate (CC I, art. 118). Although the *Code* also requires the ethnic origin of the child and the parents, this requirement is now overridden by the *Fundamental Law* (Arusha VII, art. 16). Death certificates must be issued within fifteen days of death at the place

of death (CC I, art. 127), and contain the date and place of death, as well as the identities of the deceased, his or her spouse and parents, and the person issuing the medical certificate (CC I, art. 128). The marriage certificate is issued at the place where the marriage is celebrated, and in addition to the identities of the spouses (including their nationalities) and their parents it must also include the consent or authorization required in the case of a minor, the identity of any former spouse where applicable, and various declarations concerning marriage contracts and *inkwano* (CC I, art. 137).

Where there is no birth certificate, it is possible for an individual to apply for an act of notoriety (CC I, art. 138). Such a certificate may be required in the case of those born prior to independence, in 1962, as certificates were not issued at that time. It is also possible, where a certificate does not exist, to apply to the court for a judgment of civil status (CC I, art. 147). Where there are errors in a certificate, these may be corrected by judgment of the court (CC I, art. 144). An interested person may also challenge the accuracy of a certificate by means of proceedings in improbation (CCCP, arts. 118-136).

Due to their official nature and so that they may not be challenged easily, certificates are issued in the presence of two witnesses (CC I, art. 105). Information that appears in a certificate is deemed to be truthful, and no further proof is required when a declaration is made. The officer reads the contents of the certificate to the parties and to the witnesses. All present must sign the certificate in authentication (CC I, arts. 105, 114).

*Capacity of Natural Persons and Parental Authority*

Generally speaking, all persons are deemed to have full legal capacity, until the law declares otherwise. The age of majority is set at twenty-one years. From that point on, individuals are deemed to have full civil capacity (CC I, art. 431). Note, however, that criminal liability may be incurred from the age of fourteen (PC, s. 77). The law prohibits two categories of persons from performing certain civil acts, namely minors aged less than twenty-one (CC I, art. 360) and persons of full age who have been interdicted.

***Minors.*** Minors are prohibited from exercising their civil rights, subject to certain exceptions. This incapacity is only temporary, and ceases when the minor reaches the age of majority. Until that point, the minor remains subject to the authority of his or her father and

mother (CC I, art. 344), to whom honor and respect are owed (CC I, art. 343). The term parental authority refers to the fact that parents exercise a degree of control over the assets of their children. Authority is exercised jointly by father and mother. However, in the event of disagreement, the will of the father prevails (CC I, art. 345). Nevertheless, the mother may apply to the court and seek a judicial determination. In cases where paternity has not been established, parental authority is exercised by the adult who has custody of the minor (CC I, art. 346).

***Parental Authority.*** Parental authority has three elements: custody, administration of property and enjoyment (CC I, art. 349). Custody requires that parents maintain and educate their child (CC I, art. 35). The *Fundamental Law* affirms that parents have the right and the duty to raise their children (Const., art. 24). Note also that the *International Covenant on Civil and Political Rights* declares that every child has "the right to such measures of protection as are required by his status as a minor, on the part of his family" (ICCPR, art. 24(2)). Parents are entitled to correct their children, although the extent to which they may use force is determined by criminal law (CC I, art. 347). If a child's education is delegated to another person, then so is the right of correction. The minor child may not leave the family residence without the permission of one of the parents (CC I, art. 348). If a child's behavior makes it impossible to remain in the family residence, the child may be interned in a center for rehabilitation for a period varying from one to twelve months (CC I, art. 351).

As long as they remain married, the father or, in his absence, the mother, administers the property of the minor child and represents the child in all acts of civil life (CC I, art. 352). Nevertheless, the law limits their powers when it comes to sale or transfer of assets or other acts concerning real property, such as hypothecation. Such acts can only be conducted with leave of the court (CC I, art. 352), failing which they are void. These powers of administration exist pursuant to law, and come to an end if the child is placed under tutorship, or is emancipated, or when the child reaches the age of majority (CC I, art. 354).

Parents are also entitled to the fruits of a child's property (CC I, art. 355). However, this right does not cover property that the child has obtained by his or her own labor (CC I, art. 358). A divorced parent who does not have custody of the child is not entitled to the fruits of the child's property (CC I, art. 357). Parents who abuse their author-

ity, or who are guilty of ill-treatment of their child or for other serious reasons, may be deprived of parental authority by judgment of the court (CC I, art. 359). Deprival of parental authority may be either temporary or permanent, at the discretion of the court.

***Emancipation.*** An emancipated minor is deemed to have full legal capacity, as if he or she were an adult (CC I, art. 430). A minor may be emancipated in two ways. First, the minor is emancipated automatically by marriage (CC I, art. 426). A minor who has reached the age of eighteen may be emancipated by the father or, in his absence, by the mother, who makes a simple declaration before the officer of civil status (CC I, art. 427). A tutorship council may also emancipate a minor if both parents are absent (CC I, art. 428). The emancipated minor may engage in commercial or mercantile activities, and is deemed an adult for such purposes (Decree of August 2, 1913, s. 6).

***Tutorship.*** Tutorship may be established in order to protect the person or the property of a minor, in the absence of a person entitled to exercise parental authority, whether because of the death of the parents or because of a judgment depriving them of parental authority (CC I, art. 361). A tutor or guardian may be designed by the will and testament of the last surviving parent (CC I, art. 362). Failing such designation, the court will appoint the tutor and open the tutorship (CC I, art. 366). Nobody can be forced to accept a tutorship (CC I, art. 412). However, many categories of individuals are not entitled to serve as tutors: members of a family council, minors, interdicted persons, persons engaged in litigation with the minor, persons subject to civil degradation, those deprived of parental authority, and persons guilty of notorious misconduct (CC I, arts. 416-417). The tutor has custody of the minor, and is charged with ensuring the minor's education and maintenance (CC I, art. 365). The tutor also is the legal representative of the minor, and represents the latter in all civil transactions as well as administering the minor's property (CC I, art. 367). However, certain acts such as hypothecation of real property are forbidden to the tutor, who must obtain the permission of the tutorship council (CC I, art. 389).

Most of the important decisions concerning tutorship require the permission of the tutorship council. Transactions made without such authorization are void. The council is composed of the president of the Court of First Instance or his or her delegate, and six relatives, divided equally along maternal and paternal lines (CC I, art. 368).

Brothers and sisters of full age may also participate (CC I, art. 369). The council only sits as required, but participation is mandatory and any member who fails to attend is subject to a fine (CC I, arts. 374-375). There is a quorum of two-thirds of the members, and decisions are taken by majority vote (CC I, arts. 377-378).

The substitute tutor has a role of supervision and control of the tutor's administration. Appropriate verifications must be made once per year (CC I, art. 397). Because of his or her role, the substitute tutor cannot be related to the minor (CC I, art. 393). Where it is impossible to designate a substitute tutor, the court may assign this role to the State (CC I, arts. 401-402). In such cases, there is no tutorship council (CC I, art. 403).

Tutorship ends by emancipation, death, return of an absent parent, adoption, recognition of the child by a parent or the child's reaching the age of majority (CC I, art. 407).

***Interdiction.*** Interdicted persons are individuals of full age who, for various reasons, are not fully able to perform civil acts. This group includes persons suffering from mental illness, mental disability and prodigality. Such persons are interdicted for their own protection from others who might take advantage of their vulnerability. A person who suffers from mental illness or disability may be interdicted, even though such a person has lucid intervals (CC I, art. 432). An application is made to the court which must take the opinion of a family council into account, as well as the views of the adult concerned (CC I, arts. 435, 437, 439). The applicant cannot participate in the family council (CC I, art. 438). The interdicted person then has the legal capacity of an unemancipated minor, and a tutor and substitute tutor are appointed (CC I, art. 445). In the case of a married person, the spouse is automatically designated tutor (CC I, art. 446). Legal transactions performed by the interdicted person prior to interdiction may be attacked if the cause of interdiction was already notorious at the time of the transaction (CC I, art. 443). Interdiction comes to an end when the causes which justified it no longer exist (CC I, art. 451).

The *Civil Code* provides a somewhat less draconian possibility for vulnerable persons who are not in such an extreme situation. They are forbidden to perform certain legal acts, such as litigation, sale of property, hypothecation, etc., without the assistance of an advisor (CC I, art. 452). The advisor is appointed in the same way as a tutor.

### *Family Law*

The field of family law addresses the legal relationships that exist among members of one or several families, between spouses and fiancés, between parents and children, and so on. Several institutions exist in this context, specifically marriage and the circumstances of its dissolution (divorce and separation), parentage and legitimation. The existence of the family is enshrined in human rights law. The *International Covenant on Civil and Political Rights* recognizes the family as "the natural and fundamental group unit of society" (ICCPR, art. 23(1)). The *African Charter of Human and Peoples' Rights* describes the family as "the natural unit and basis of society" (ACHPR, art. 18(1)). The *African Charter* adds that the family "is the custodian of morals and traditional values recognized by the community" (ACHPR, art. 18(2)). Rwanda's *Fundamental Law*, inspired by these international norms, declares: "The family, which is the natural basis of Rwandan society, is protected by the State" (Const., art. 24).

#### *Marriage*

Civil marriage is the voluntary union of a woman and a man in accordance with rules established by law. The right to marry is recognized by numerous international instruments, notably article 16 of the *Universal Declaration of Human Rights* (see also *International Covenant on Civil and Political Rights*, art. 23(2)). Marriage is celebrated publicly by the officer of civil status (CC I, art. 170). Unless an exception is granted by the Minister of Justice and with the agreement of those exercising parental authority, only persons aged twenty-one years or more may contract marriage (CC I, art. 171). Prior to adoption of Book I of the *Code*, the law allowed men of eighteen and women of sixteen to marry without authorization from the parents or the authorities. Marriage is prohibited by law in the case of ascendants and descendants, and to the seventh degree in the collateral line, as well as with in-laws and adopted children (CC I, arts. 172-174, 153-158). A woman must wait three hundred days after dissolution of marriage before remarrying, although this period may be shortened if she has given birth or is pregnant (CC I, art. 176).

Although in the first half of the century polygamy was allowed in Rwanda, it is now forbidden by the *Fundamental Law*, which states that monogamous marriage alone is recognized (Const., art. 25; also CC I, art. 169). As a result, nobody may contract marriage until a previous marriage has been annulled or dissolved (CC I, art. 175).

Polygamous marriage is punishable by three months to three years' imprisonment and a fine of 1,000 to 20,000 FRW (PC, s. 357).

***Promise of Marriage.*** The effects of marriage extend beyond the relationship of the spouses themselves, and touch their families. Promise of marriage is the best example of this. Promise of marriage or betrothal (*fiançailles*) constitutes an agreement between two families to the effect that marriage will take place, and involves a commitment by both families to assist and sponsor the union of the future consorts (CC I, art. 159). The initiative in this respect is taken by the family of the groom. Nothing binds the families, of course, unless the future consorts themselves have indicated their agreement (CC I, arts. 161, 164). Although betrothal is not a formal legal contract, civil law recognizes the existence of an action in damages against the party who breaches the promise (CC I, arts. 160, 166). Except for payment of the *inkwano*, celebration of the betrothal takes place according to the local custom of the families, to the extent that it is not contrary to the law, to public order and morality (Ministerial order 098/05 of March 25, 1992).

*Inkwano* is paid at the time of betrothal. It is a sum of money or property that is given to the bride's family as a sign of the alliance between the two families. In Rwanda, the maximum amount of the inkwano is fixed by law at 15,000 FRW (Ministerial order 096/05 of March 25, 1992). The validity of the marriage does not depend, however, on payment of the *inkwano* (CC I, art. 168). Sometimes, the bride's family replies to the *inkwano* with a gift to the groom's family, known as the *indongoranyo*.

***Celebration of Marriage.*** Prior to celebration of marriage, the officer of civil status publishes the banns. These announce the date of the impending marriage, the surnames and given names, professions, domiciles and residences of the betrothed, as well as relevant information about their parents if one or both are not of full age (CC I, art. 177). Marriage may not be celebrated until twenty days after the publication of the banns (CC I, art. 178). After publication, the future spouses have four months in which to celebrate marriage, failing which there must be a new publication of banns (CC I, art. 179). The date of the marriage itself is set by agreement between the future consorts. The officer of civil status must also be in possession of certain fundamental documents: birth certificates of the future consorts, a declaration that they have never married or, in the alternative, evidence of divorce or of death of the former spouse, and finally, in the case of minors, proof that authorization has been

granted for the marriage (CC I, art. 180). If the officer refuses to celebrate marriage for whatever reason, the spouses may challenge this decision in court (CC I, arts. 181, 183).

Any interested person, including the Public Prosecutor, may oppose celebration of the marriage (CC I, art. 190). However, where the opposition is judged to be unfounded, the court may condemn the applicant to pay damages for having delayed celebration of the marriage (CC I, art. 194). The opposition must be supported by reasons, and must be made verbally or in writing, at the latest at the moment when the marriage is being celebrated (CC I, art. 191). Opposition suspends the marriage until the irregularity is corrected or until the court orders otherwise (CC I, art. 192). For example, an opposition based on the young age of one of the future consorts becomes inoperative once that person has reached full age.

At the time of celebration of marriage, the spouses, accompanied by a representative of each family and two adult witnesses, appear before the officer of civil status who reads the documents that have been presented and informs them as to their respective rights and obligations. Each spouse must also declare that he or she wishes to take the other in marriage (CC I, art. 184). The marriage certificate is then signed by the participants. The officer gives the spouses a marriage book which confirms the contents of the certificate (CC I, arts. 185-189).

***Rights and Duties of the Spouses.*** The spouses are required by law to assume the maintenance and education of their children, and one or other of the spouses can even go to court to enforce this obligation (CC I, art. 197). The obligation exists between the spouses, and towards both sets of parents as well as children by marriage (CC I, art. 200). The law creates a hierarchy: spouses, children, parents, ascendants, parents in law and children in law (CC I, art. 202). The duty of support involves provision of necessities of life or their equivalent in money to a member of the family who is in need (CC I, arts. 198-199). The court that orders payment of support must take into account the needs of the applicant and the resources of the respondent (CC I, art. 204). Support may be charged to the estate of an individual, and creditors of support are entitled to sue even after the death of the person who owes support (CC I, art. 204).

Although Book I of the *Civil Code*, adopted in 1988, substantially improved the legal position of women in Rwandan law, the *Code* still states that it is the husband who is the head of the family (CC I,

art. 206). But this does not mean that the woman is in a situation of complete dependence. For example, parental authority is exercised by both parents (CC I, art. 346). Marriage does not change the civil capacity of the spouses (CC I, art. 212). If one of the spouses is no longer able to exercise his or her rights, due to incapacity or absence, the other takes on the sole exercise of the rights recognized to the couple (CC I, art. 208). The spouses owe each other duties of faithfulness, help, assistance; they must cohabit and they must contribute to the expenses of the family (CC I, arts. 209-211). Adultery is not only forbidden by the *Civil Code*, it also constitutes an infraction punishable by up to one year of imprisonment, in the case of the woman, and six months, in the case of the man (PC, ss. 353-355). Failure to provide help and assistance is also punishable under Rwandan criminal law (PC, s. 380). If one of the spouses fails to respect these obligations, the other may apply to the court for provisional measures (PC, ss. 216-219).

***Nullity of Marriage.*** Marriage in violation of the rules set out by law may be challenged. Civil law recognizes both relative nullities (voidable) and absolute nullities (void). Absolute nullities deal with issues of public order and morality, such as the prohibition of polygamy, the requirement that the spouses be of opposite sexes, the various prohibited degrees, the age of the spouses and the requirement that banns be published. Absolute nullity may be alleged not only by one of the spouses, but also by the public authorities or by any interested person (CC I, art. 222). Exceptionally, marriage where the parties are under age may be confirmed if they have reached full age, or if the wife is pregnant (CC I, art. 223). Where consent to marriage has been obtained by error or violence, its existence is only subject to relative nullity (CC I, art. 22). Error refers to the essential qualities of the individual and might apply, for example, where one of the spouses had a serious criminal record unknown to the other. However, error about the profession or the assets of one of the spouses will not normally be acceptable grounds to annul a marriage. Where the spouses have lived together for six months since discovery of the error, they are deemed to have renounced any claim to invoke it (CC I, art. 221).

*Dissolution of Marriage and Judicial Separation*

Marriage may be dissolved by death of one of the spouses or by divorce (CC I, art. 236). Judicial separation does not bring an end to the marriage itself, but has important effects on the respective rights and obligations of the spouses.

***Divorce.*** Divorce is a decision by the court to dissolve the marriage for grounds set out in the law. The *Fundamental Law* recognizes divorce, stating that its conditions and forms are defined by law (Const., art. 25). Either spouse may apply for divorce based on conviction of an offense involving serious dishonor, adultery, mental and physical cruelty, abandonment for more than twelve months and separation for at least three years (CC I, arts. 209, 237). The action is heard by the Tribunal of First Instance where the spouses had their last common residence, or where the defendant is domiciled (CC I, art. 238). Unlike applications to annul, where interested parties may apply, only the spouses may apply for divorce (CC I, art. 240). The Public Prosecutor may be heard in all divorce applications. Before applying for divorce, the parties are required to meet with a view to reconciliation. The purpose is to ensure that continued life together is impossible. The meeting is presided by a judge, who makes observations and attempts to reconcile the parties (CC I, art. 243). If the meeting is unsuccessful, the judge authorizes the case to proceed.

Uncontested divorce is allowed under Rwandan law, but only for couples who have been married for more than five years (CC I, art. 258). They must apply together for the divorce, indicating that life together has become intolerable, and must renew this declaration three times over the ten months that follow filing of the application (CC I, art. 265). If there is reconciliation, the action comes to an end. This involves appreciation of various facts that indicate a desire of the spouses to resume life together (CC I, art. 256). If new grounds for divorce arise subsequent to reconciliation, the applicant may file new pleadings and may renew the former grounds.

In order to protect the interests of the parties and of their children while the case is proceeding, the judge may impose a variety of provisional measures (CC I, art. 248). These may include provisional custody of the children to one of the parties or to someone else, and authorization to leave the common domicile and to remove personal effects (CC I, art. 250). Such orders are executory notwithstanding appeal, but may be revised by the court where there is a change in circumstances (CC I, art. 254).

The judgment of divorce brings an end to the marriage (CC I, art. 247). The parties are then free to remarry, and the wife is not required to wait 300 days (CC I, arts. 176, 278). However, remarriage is not allowed with an accomplice who has committed adultery (CC I, art. 279). Rwandan law seeks to protect the innocent party in a divorce, as well as to punish the guilty one. The guilty party loses all

benefits that the other party had intended, such as gifts in a marriage contract (CC I, art. 280). However, the innocent party continues to benefit from such gifts, even if they are not yet due (CC I, art. 281). Support may be ordered to be paid from the assets of the guilty party (CC I, art. 282). Custody of the children is ordered taking into account their best interest (CC I, art. 283). Both parents remain responsible for supporting the children, however (CC I, art. 284).

***Judicial Separation.*** Judicial separation does not dissolve the bonds of marriage, but it does bring to an end the duty of cohabitation and results in the separation of the property of the parties (CC I, art. 289). However, the spouses still remain bound by their duties of support, of assistance and of fidelity (CC I, art. 289). Separation may be granted for cause or by mutual consent (CC I, art. 288). The application is similar to proceedings in divorce (CC I, art. 287). When three years have elapsed following the separation, the spouses may apply to the court to convert this to a judgment of divorce (CC I, arts. 290-291). As in the case of divorce, where separation is granted for cause, the guilty party loses many benefits of the marriage provided for in the marriage contract or in subsequent undertakings (CC I, arts. 280, 292).

*Parenthood*

Rwandan law distinguishes three forms of parenthood: legitimacy, natural parenthood and adoption.

***Legitimacy.*** The legitimate child is conceived during marriage. The law presumes that the husband is the father if the child is born within 180 days prior to the beginning of the marriage and 300 days after its dissolution (CC I, art. 296). The husband may disavow the child with proof that it was impossible for him to have fathered the child, for example because he had had no contact with the mother during the relevant period (CC I, arts. 297-306). Normally, proof of paternity is made by the birth certificate. Where there is no birth certificate, legitimate parenthood may be proven by uninterrupted possession of status, that is, an adequate combination of facts indicating the relationship of filiation, such as the name given to the child, the treatment of the child by the father, and the recognition of the child by the family and society as a whole (CC I, arts. 307-309).

***Natural Parenthood.*** Natural or illegitimate children are born to parents who are not married. They become legitimate by the subsequent marriage of their parents if the latter recognize them or if the court so decides (CC I, art. 318). Once they have been legiti-

mized, they enjoy the same rights and obligations as children born of marriage (CC I, art. 323). If the parents do not marry, paternity may be recognized either voluntarily or by judgment. Recognition of a natural child by solemn declaration only binds the person who makes such a declaration. Thus, the consent of the other parent is required in order to establish the paternity definitively (CC I, art. 325). Children who have been recognized have the same rights and obligations with respect to their parents as do legitimate children (CC I, art. 326).

***Adoption.*** Adoption must be based on valid grounds and must present advantages for the person who is adopted, who need not necessarily be a child (CC I, art. 332). Generally, adoption may be requested by any person aged thirty-five years or more, or thirty years in the case of spouses who have been married for at least five years. Unless the person to be adopted is also the child of one of the spouses, there must be an age difference of at least fifteen years between adopting parents and adopted child. If the adopting parent is married, the consent of the other spouse is required (CC I, art. 333). If the parents of the child being adopted are still alive, they must give their consent (CC I, art. 335). Even after adoption, the adopted child retains his or her surnames and given names, as well as links with the natural family and rights and obligations towards them (CC I, arts. 336-337). However, the adopting parent or parents become holders of parental authority. With respect to the adopting parents, adopted children have the same rights and obligations as the natural children of the parents, except with respect to succession (CC I, art. 339).

## Successions and Estates

There is little written law in Rwanda on the subject of successions, and as a result custom is applicable pursuant to article 3 of the *Civil Code* (CC PT, art. 3). Under Rwandan customary law, inheritance devolved to the male children; if there were none, then the estate returned to the father or even the grandfather of the deceased, according to the principle that property belongs to he that gave it. Daughters were excluded from inheritance. There are no longer any such discriminatory rules in Rwandan law. Custom is only applicable to the extent that it is not inconsistent with the *Fundamental Law*. For this reason, judges are now adapting customary principles by eliminating, for example, the inferior status that was traditionally ascribed to women in this area.

Under customary law, a person's estate or succession (*succession*) is opened not only at the moment of death, as in European legal

systems, but also in the case of prolonged absence, in cases where a family council has decided to exlude a member of the family and to deny him or her any rights within the family, and where exile has been ordered by political authorities. In Rwandan families, where an individual has been absent for a lengthy period or has been ordered into exile, mourning takes place as if the individual had actually passed away.

Because the person's estate does not disappear at the time of death, it is important to provide rules for the administration and eventual transfer of property of the deceased, known in civil law as the *de cujus*. Intestate succession occurs where the deceased has left no will and testament, and it is the law itself that provides the rules for administration and transfer of the estate. Testamentary succession occurs where the deceased has expressed his or her final wishes in the form of a will or testament. The deceased may bequeath all property, both moveable and immovable, and may even bequeath a right in real property, such as a right of usufruct or of habitation. Often, the *de cujus* will provide that the family residence devolves to the children, but that the surviving spouse continues to benefit from a right of usufruct or habitation throughout his or her life.

Some property, of ceremonial or religious significance such as the spear or the chair, is not included in the estate because it is deemed to disappear with the *de cujus*.

### *Legal or Intestate Succession*

Where the deceased has left no will, or in cases where a will is found to be invalid, the estate of the *de cujus* is distributed following rules of legal or intestate succession. The succession is opened at the moment of death, although the proceedings do not begin until considerably later. If the deceased has left instructions concerning last rites, it is for the family to see that these are respected as closely as possible. Where no instructions have been left, the family, and more particularly the surviving spouse, have the responsibility for the funeral arrangements and the choice of place of burial.

Classification of those entitled to inherit is determined by order and by degree. Both blood relationship and marriage are relevant to this determination. There are three orders: the first comprises descendants, the second comprises privileged ascendants and collateral relatives, the third is made up of ordinary ascendants and the fourth of ordinary collateral relations. Privileged ascendants are parents of

the deceased; privileged collateral relatives are the brothers and sisters of the deceased. The children of the *de cujus* are the first who are called to inherit. If there are none, or if they decline the succession, then the estate passes to the second order, and so on.

Within each order, the heirs are classified according to the degree of relationship that they have with the deceased. Degree determines the order of priority. The heirs belonging to the closest degree pass ahead of those belonging to subsequent degrees. For example, grandparents pass before great-grandparents. These rules are subject to application of principles of representation, which may modify the order of those entitled to inherit. Representation has the effect of putting representatives, who are the descendants of an heir who has predeceased the *de cujus*, in the place of that heir. In other words, if a son has died before his father, the grandchildren are represented and may divide their father's share in the estate among themselves.

The surviving spouse has no formal place in this scheme, but this does not mean that the spouse does not benefit from the estate. The right of the surviving spouse to inherit is the continuation of the duty of assistance owed by consorts to each other. Even after death, it is presumed that the deceased intends for the surviving spouse to benefit from his or her estate. Thus, the surviving spouse and the other heirs share equally in the estate. However, where the marriage has been dissolved or annulled, the former consort cannot benefit from the succession.

A person who has been found guilty of an attempt on the life of the deceased is deemed to be unworthy, as is the person who has had reprehensible behavior towards the deceased or one whose parental authority has been deprived. Legal heirs are not obliged to accept the succession, because this may involve not only property but also onerous obligations. Eligible heirs who accept the estate share in it in equal portions. If the *de cujus* dies intestate and has no spouse or heir, the estate devolves to the State.

### *Testamentary Succession*

Where the *de cujus* seeks to set aside the legal rules, it is necessary to specify this in a last will and testament. In principle, the *de cujus* is entitled to total freedom in this respect, subject to rules of public order and morality. Most wills in Rwanda are made verbally, in public in the presence of witnesses and the heirs. The will is

deemed to be authentic if it is made before a notary. Where a will is made in the handwriting of the deceased but with no other formality, it is called a holograph will. A will whose form has been simplified, considering all circumstances, is called a privileged will. A notarial or authentic will is less likely to be contested than a will in another form. What is important, of course, is not so much the respect of formalities as the assurance that the will genuinely represents the wishes of the *de cujus*. The will may be revoked and changed as long as the *de cujus* has not passed away.

The *de cujus* has total freedom to dispose of his or her property, except in the case of a flagrant injustice, when the family council may modify the last will. Under customary law, the male heirs are normally the recipients of the property of the *de cujus*, although some property may be bequeathed to daughters. The *de cujus* may also exclude male children from the succession in cases of indignity or misbehavior. A person may choose to bequeath his or her entire estate to one person, or to divide it among several heirs. A universal heir receives the entire estate. The testator (that is, the person who makes the testament) may choose to bequeath all of the legacy to one person, or on the contrary divide it among several persons. The person to whom property is bequeathed is called the legatee. A legatee by general title receives an aliquot part of the property of the testator, for example one-half or one-third, or the whole of the testator's moveable or immovable property, or the whole of the private property excluded from the matrimonial community, or an aliquot part of such whole. The legatee by particular title receives some determined item of property, such as a house, or a vehicle.

The person responsible for administering the property is called the testamentary executor. The testamentary executor is often identified in the testament, and may be one of the heirs, although frequently a legal professional, such as a notary, will be designated. The executor prepares an inventory of the testator's property, and a list of the heirs. Eventually, it falls to the executor to see that the property is distributed and that the estate is liquidated.

## Commercial Law

Many civil law States have adopted specific commercial law codes defining the rules applicable to business. However, Rwandan commercial law is confined to some specialized legislation, most of it imposed by Belgium early in the century and now badly out of step with contemporary business practices. Of course, the *Civil Code* also

remains generally applicable to commercial transactions. The *Code* itself contains some special rules relating to merchants and traders, notably in the area of evidence. Thus, books of account of merchants make proof against the merchant, but cannot be used against non-merchants (CC III, arts. 211-212). Proof of commercial undertakings or contracts may be made by verbal testimony, no matter what the amount (CC III, art. 217; Decree of August 2, 1913, s. 9).

### *Checks and Bills of Exchange*

Checks drawn on a bank are in fact a form of bill of exchange. Bills of exchange may, of course, be made payable by individuals. They represent, in reality, a contract by which the individual who draws the bill of exchange commits a third party to pay a sum of money to the bearer of the bill of exchange. It is a type of contract envisaged by the general theory of obligations as a contract of *porte-fort*. The term bill of exchange is also used to describe a promissory note, a document in which the drawer agrees to pay the bearer a sum of money on demand or at a certain date. Paper money is a form of promissory note by which the State or the central bank undertakes to make payment upon demand. The great interest of bills of exchange is that they may be negotiated, that is, passed from one bearer to another. Because of the widespread use of bills of exchange, special legislation is necessary to complete the very general principles found in the *Civil Code*.

Rwanda has two distinct pieces of legislation in this area, the first, introduced in 1934 and subsequently amended, dealing with bills of exchange (Decree of July 28, 1934) and the second dealing specifically with checks (Decree of December 10, 1951). They cover such matters as drawing of cheques and bills of exchange, endorsement, acceptance, payment and the consequences of dishonor.

### *Bankruptcy and Insolvency*

In order to encourage commercial activity and trade, the law allows a trader or merchant who is experiencing financial hardship to declare bankruptcy (Decree of July 27, 1934). The declaration of bankruptcy results in administration of the bankrupt's assets by the court. When the assets have been liquidated, the bankrupt may apply to the court for rehabilitation and thereby renew commercial activity. Special rules apply for the distribution of the assets of the bankrupt to the various creditors.

A trader or merchant may avoid bankruptcy by making a proposition to his or her creditors (Decree of December 12, 1925). The proposition is supervised by the court. To the extent it is accepted, it shelters the assets of the insolvent trader or merchant from legal process, thereby facilitating a recovery of the faltering business.

### *Commercial Credit*

A variety of mechanisms exist in Rwandan law in order to secure credit for traders or merchants. A trader or merchant may pledge the assets used in the normal course of business. This is an exception to the general rule in civil law which does not traditionally allow for chattel mortages or similar rights in moveable property. Such assets include the equipment, furniture, tools, lease, signs and even goodwill. However, they may not include more than 50% of merchandise held in inventory (Decree of January 12, 1920, s. 2). A commercial pledge must be in writing, either in the form of a written contract signed by the parties (Decree of January 12, 1920, s. 3) or a notarial deed (Decree of November 17, 1953, s. 2). It is also possible to pledge the accounts receivable of a business. In order to protect such pledges, the law makes it a criminal offense to negotiate payments once the accounts receivable have been pledged, subject to between one month and two years' imprisonment (Decree of January 12, 1920, s. 24). It is also possible to pledge merchandise using warrants (Decree of March 20, 1923).

### *Companies*

The only commercial legislation now in force in Rwanda that has been thoroughly modernized is its law concerning commercial companies, adopted in 1988 (Law 06/1988 of February 12, 1988). Commercial companies have a distinct legal personality. Their powers vary depending on the type of company and the terms of their statute or letters patent, which must be published in the *Official Gazette*. Rwandan law recognizes various types of commercial companies, that can be described in general terms as either partnerships or limited liability corporations. In a partnership, the judicial personality of the partners themselves survives in a partnership. Creditors of the company may attempt to satisfy their debts against all of the property of the partners. In a corporation, the individual participants are shareholders whose other property is beyond the reach of creditors. The corporation clearly provides more protection for the trader.

However, for this reason suppliers and financiers may be unwilling to extend credit to the corporation, given its limited assets.

**Partnerships.** A partnership is an association of two or more individuals who intend to do business together. However, although the individuals operate collectively under the name of the partnership, they remain individually liable for the debts of the partnership. All of their property, and not just the property of the partnership as such, remains accessible to their creditors in the event that the partnership defaults on its obligations. Nevertheless, creditors of the partnership must first sue the partnership itself, and attempt to satisfy their debts out of the assets of the partnership, before turning on its individual partners.

Aside from general partnerships (*société en nom collectif*), Rwandan law also recognizes the commercial partnership (*société en commandite*), which has two categories of partner. The first category of partner is essentially comparable to that of the general partner. The second category is nothing more than an investor who does not participate actively in the affairs of the partnership. He or she is not liable for the debts of the partnership beyond the amount of the investment, and thus the property of this second category of partner remains sheltered from the creditors of the commercial partnership.

**Limited Liability Corporations.** Rwandan law recognizes two forms of corporation, the limited liability corporation (*société à responsabilité limitée – SARL*) and the public corporation (*Société anonyme – SA*). Essentially similar in structure and operation, they differ in terms of the powers that the law will allow them. A limited liability company cannot engage in banking, insurance and finance. It requires a minimum initial share capital of only 5,000 FRW. A limited liability company can have no more than fifty shareholders, and its shares do not trade publicly. The public corporation requires a minimum initial share capital of 1,000,000 FRW, and has no legal limitations on the type of business in which it may engage, on the number of shareholders and on public trading of its shares.

### *Accounting*

All commercial operations in Rwanda are bound by law to keep regular books of account. The standardization of accounting procedures is required by virtue of Decree-Law 19/78 of August 14, 1978, the details of which have been completed by ministerial order.

## Evidence and Procedure

Rwanda's judicial system is described generally at pp. 22-25. Civil and commercial litigation takes place before either the Canton Courts or the Courts of First Instance. The Canton Courts have jurisdiction, no matter what the amount in dispute, where litigation takes place between individuals and where the matter involves application of customary law. Otherwise, cases are heard by the Courts of First Instance, with an appeal *de plano* (of right) before the Court of Appeal (Law of August 24, 1962).

### *Civil Procedure*

Rwanda has a *Code of Civil and Commercial Procedure*, adopted by Law of July 15, 1964, which sets out the rules applicable for litigation of this type (CCCP). Claims may be made either in writing or verbally before the Court. The defendant must then be summoned to appear in court to answer the claim. Service of the claim is made by bailiff or by the clerk of the Court. The *Code* provides for a number of preliminary procedures, including preparation of expert opinions, rogatory commissions and conservatory or interim measures.

The defendant may file a cross-demand in answer to the claim, and may also raise various preliminary exceptions pleading, for example, that the Court is without jurisdiction to hear the case. The defendant may also implead a third party whose presence may be necessary in order to resolve the dispute.

Three judges make up the panel of the trial court. Detailed rules for the hearing are set out in the *Code*. The judgment of first instance may be contested on appeal or, if the defendant is condemned by default, by opposition.

Judgments may be executed by seizure, of which various modes are set out in the *Code*.

Where the civil claim overlaps with a criminal charge, the civil plaintiff may choose to intervene in the criminal case as a civil party. It is even possible for a civil plaintiff to initiate criminal charges. The judgment of the criminal court settles the factual issues, and establishes not only guilt from a criminal standpoint but also civil liability.

### *Evidence*

The customary law of evidence in Rwanda valued testimonial evidence, and according to tradition this was decreed by King Ruganzu I Bwimba early in the fourteenth century. Testimony was made on sworn oath in the name of the mwami or king (*indahiro*). Proof could also be made by admission (*ukwiyemerera*) or by presumption (*ibimenyetso bicukuwe*). For example, according to custom, the fact that a man had made gifts to an unwed mother was deemed to be proof of paternity. More brutal methods of proof, analogous to those practised in Europe in the middle ages, were also accepted before traditional courts. For example, in the case of theft or poisoning, the accused would be ordered to put his or her arm into boiling water. If there were no signs of injury, innocence was proven (*gushora amazi ashyushye*). Sometimes, the accused would be forced to drink poison. If he or she survived, this was considered to be proof of innocence (*gushora rwizilinga*). By another technique, the victim would assemble his or her friends and relatives and would confront the accused, also supported by friends and relatives. The magistrate would set a fire and put an iron in it. A substance would be poured on the iron to prevent it from turning red. If, despite the liquid, the iron reddened, then the accused would be deemed innocent.

Rules of evidence now applicable in civil and commercial litigation are found in Book III of the *Civil Code*. Many provisions of the *Code* set out principles that are recognized in virtually all legal systems, such as the requirement that the plaintiff have the burden of proof (CC III, art. 197; CCCP, art. 23). Under civil law, the burden of proof is one of the balance of probabilities. The plaintiff must show that on the totality of the evidence, his or her claims are more likely than the pretensions of the defendant. This burden of proof is not as demanding as that which lies on the prosecution in criminal matters, whre guilt must be proven beyond a reasonable doubt (*intime conviction*).

Rwandan law recognizes five types of evidence: written proof, verbal testimony, presumptions, admission by the defendant, and oaths. The *Civil Code* distinguishes between written documents whose authenticity has been validated by a public officer, such as a notary, and ordinary written documents (CC III, arts. 199-216). The latter are easier to attack in court. Verbal testimony is only admitted under certain circumstances; it is prohibited when sums of money greater than 2,000 FRW are contested (CC III, art. 217). Nevertheless, there are a number of exceptions to this general principle, such

as the case of commercial traders and merchants, and where there is some written evidence to support the claim even if it is insufficient on its own to make full proof (CC III, art. 223). Presumptions are in effect a form of circumstantial evidence, permitting the court to conclude as to the existence of a fact upon proof of another, related fact (CC III, art. 225).

## Private International Law

Special rules concerning private international law are covered in the Preliminary Title of the *Civil Code*. Rwandan law declares that laws concerning civil status apply to Rwandans, even where they live abroad (CC PT, art. 10). Recognizing a form of reciprocity, it also states that foreigners residing in Rwanda are governed by the laws concerning civil status applicable in their own countries (CC PT, art. 11). Laws, judgments and contracts of foreign countries are without effect in Rwanda, if they are contrary to public order or policy (CC PT, art. 8). Property is governed by the law of the place where it is situated (CC PT, art. 12). Legal requirements of form of a final will and testament made by a foreigner in Rwanda are governed by the law of the place where it is made. However, the substance and effects of such a last will and testament are governed by the law of the foreigner's country (CC, art. 13). A foreigner is, however, free to opt for application of Rwandan law in a last will and testament, although this intention must of course be clearly apparent (CC PT, art. 13).

**Further reading.** In the English language, a very good introduction to civil law is provided in F.H. LAWSON, A.E. ANTON, L. NEVILLE BROWN, *Amos and Walton's Introduction to French Law*, 3rd ed., Oxford: Clarendon Press, 1969. In French, see: Jean-Baptiste SEYANGA, «Le régime successoral dans la République rwandaise», (1972) 26 *Rev. Jur. Pol. Ind. Coop.* 775; André SEBATWARÉ, «L'évolution du droit foncier coutumier au Rwanda», (1970) 24 *Rev. Jur. Pol. Ind. Coop.* 1181.

# Chapter 4
# Labor and Social Law

The employment contract is a fundamental component of civil law, and most of its elements in the Rwandan *Civil Code* can be traced back to the time of the Romans. But much of labor and social law is a relatively recent creation, developed in the late nineteenth century and the early twentieth century in order to temper the worst abuses of industrialization. International obligations created by human rights treaties, particularly the *International Covenant on Economic, Social and Cultural Rights* and the many specialized conventions of the International Labor Organization, set minimum standards in this field.

Social law refers to a range of measures enacted by legislation aimed at protecting workers and other vulnerable sectors of the population from dislocations caused by unemployment, illness, injury and old age. Social rights are set out in the *Universal Declaration of Human Rights*, and include the right to social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood due to circumstances beyond the individual's control (UDHR, art. 25(1)). The implementation of economic and social rights requires resources, and it is therefore recognized that their effective implementation will depend on a society's level of economic development, and can only be achieved progressively (ICESCR, art. 2(1)).

Rwandan law has undergone significant reforms in the area of labor law, which had not been revised significantly since 1967, aside from occasional ministerial orders. This revision has made Rwandan law more relevant to the contemporary social reality of the country. The comments in this chapter deal principally with the draft labor code (DLC) which, as these words were written, had still not been adopted. The 1967 *Labor Code* remains in force until the new legislation is enacted.

Constitutional and international law establish some fundamental principles applicable to labor and employment law of which the most basic is the prohibition of slavery and forced labor (Const., arts. 12, 17; UDHR, art. 4; ICCPR, art. 8; ACHPR, art. 5(2)). Rwanda is also a party to the *Slavery Convention (1926)*, by virtue of its ratification by Belgium in 1927. One of the first international treaties ratified by Rwanda, upon independence, was *International Labor Organization Convention (No. 105) concerning the abolition of forced labor*. The draft labor code contains a provision affirming this principle, something that was absent from the previous version, adopted in 1967 (DLC, art. 4). Exceptions to the rule are allowed in the case of civic obligations or community work. The *African Charter of Human and Peoples' Rights* requires every individual "to serve his national community by placing his physical and intellectual abilities at its service" (ACHPR, art. 29(2). Furthermore, every individual is required "to work to the best of his abilities and competence" (ACHPR, art. 29(6)).

The *International Covenant on Economic Social and Cultural Rights* (detailing general provisions set out in the *Universal Declaration of Human Rights*) affirms the right to the enjoyment of just and favorable conditions of work. Specifically, this must include fair wages and equal remuneration for work of equal value, without distinction of any kind. Women are to be guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. Workers must receive a decent living for themselves and their families. The *Covenant* also guarantees safe and healthy working conditions, equal opportunity for everyone to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

## Employment Law

When a worker is engaged on an individual basis, without the involvement of a trade union or a collective agreement, the applicable rules are termed employment law. Where employees have been organized into a bargaining unit or trade union, the applicable rules fall under the heading of labor law.

### *The Employment Contract*

Section 27 of the draft labor code describes an employment contract as follows:

> An employment contract is formed by the mutual consent of worker and employer, the former agreeing to provide his or her professional activity in the service and under the authority of the employer, the latter undertaking in exchange to pay to the worker the remuneration agreed upon.

Such a definition identifies the parties to the contract, as well as its essential elements. Furthermore, it targets the general obligations assumed by the parties as a result of their undertakings.

An employment contract is by nature bilateral or reciprocal (CC III, art. 2). There are two parties to the contract, each required to respect certain obligations, some of which are peremptory as a result of the law, others the result of the contract itself and the will of the parties. The parties to such a contract are the worker and the employer. The worker, or employee, is an individual who agrees to provide his or her professional activity to the employer, who may be either an individual or a public or private corporation (DLC, s. 2(1). The worker must be a physical person, a feature permitting distinctions with professional contracts for services, where the supplier may be either an individual or a commercial company. Of course, the company that itself supplies services to another company will itself be an employer, with employees subject to either employment law or, if they are organized in a bargaining unit, labor law.

Workers are protected against discrimination, and the law prohibits any distinction or exclusion based on sex, religion, race or similar grounds, and affecting the employee's equality of opportunity (DLC, s. 36; see also: Const., art. 16; Arusha III, art. 3). For example, a foreigner residing in Rwanda who satisfies the general legal conditions is considered to be a worker within the meaning of the labor code. Moreover, any employment contract that is to be carried out within Rwanda is subject to the code, irrespective of the place where the contract was actually made. The law makes similar provision in the case of contracts which are to be executed partially outside Rwanda, once the contract has been executed within Rwanda for a period of three months (DLC, s. 29).

Not all employees are subject to the labor code. However, there is a presumption that the labor code applies, failing a contrary provision in legislation. Probably the best example of such an exception is employees in the public sector, who are excluded from the labor code. Also, individuals who are hired on a contractual basis by the public administration are also excluded (DLC, s. 2(1)). Because there is no attempt at harmonizing the applicable laws, conflicts may well arise with such legislation as the *Public Service Employment Act*. Such special legislation is often quite summary, and frequently many fundamental points are not addressed. It might well be helpful, in the future, to make explicit reference to the labor code in such cases, where special legislation is silent on a particular subject, so as not to leave employees who are excluded from the code in a form of legal limbo. Presumably, as a question of interpretation, provisions of the labor code will be applicable to employment contracts even where there is special legislation, to the extent that questions considered by the code are not addressed in the special legislation.

The draft labor code includes agricultural workers within the definition of workers (DLC, s. 2(2)). This is a very significant modification from the previous legislation, which expressly excluded agricultural workers from its scope. Rwanda has in the past been criticized by expert bodies of the International Labor Organization for this very major exception to the ambit of its labor legislation. However, the new labor code is not intended to protect all workers within the agricultural sector. Industrial or commercial work that is related to agriculture is not covered. In addition, work within the family and for its benefit, carried out by spouses, parents and children, including adopted children, is also excluded from the prescriptions of the draft labor code (LC, s. 2(3)).

The term "employer" applies to any individual or corporation, whether public or private, that employs workers, even if this is on an irregular basis. There is no quantitative criterion or required period of time in the definition. An employer may thus employ only one worker in order to carry out a task over a very short period of time, perhaps only a day or two. The law still applies.

There are three material elements of the employment contract: it must consist of professional activity, for remuneration, and be under the direction of the employer. In order to respect the definition set out in section 27 of the draft labor code, some form of professional activity or service must be provided to the employer. However, the nature of this activity, both quantitatively and qualitatively, is not

considered in establishing the existence of the contract and the application of the code. The activity may be either manual or mental, and for any length of time. It may be regular, continuous or occasional, part-time or full-time. In exchange for the worker's professional activity, the employer must provide some remuneration. Work for which no remuneration is intended will not be covered by the labor code. Remuneration consists of anything that is provided to the employee in exchange for his or her labor. It may take a variety of forms – money, allowance, indemnity, payment for time off – subject to certain peremptory conditions which will be examined in detail later. The final element in the employment contract is that work must be provided subject to the direction of the employer. Such a condition has the effect of excluding self-employed professionals and other individuals, who are subject in their dealings to ordinary rules of contract law. The employer, or the employer's representatives, must be in a position to establish the form of activity that is to be provided by the worker. It includes direction of the work (that is, establishing when and how it will be provided); authority (the power to impose orders); and supervision (the power to control and verify the work as it is being carried out). Only when these three elements are present does the employer-employee relationship exist and, consequently, the employment contract.

*Creation of the Employment Contract*

Failing an express provision to the contrary, Rwandan law imposes no particular formalities as to the form that contracts take, be they employment contracts or those in some other field. The employment contract may take the form that the parties choose, unless it provides for a length exceeding three months or requires the worker to move to a location away from his or her ordinary residence (DLC, s. 30). They must, of course, represent the free will of the parties (DLC, ss. 27 and 28). A contract formed following fraudulent maneuvers by one or the other parties is voidable because of the absence of a free and informed consent.

The draft labor code prohibits any distinction, exclusion or preference based on race, color, sex, political opinion, religion, and national or social origin which has for effect to breach the right to equality of opportunity in employment (DLC, art. 36). As a result, an employment contract based on discriminatory considerations will not be enforced by the courts, even if the worker has freely accepted its conditions.

An individual may effect an employment contract from the age of eighteen years, contrary to the general rule in the *Civil Code* which sets the age of free consent at twenty-one (CC III, art. 431). Otherwise, the consent of the person holding parental authority is required for there to be a valid contract (DLC, art. 35). Of course, minors remain protected by the labor code. Failing a provision to the contrary, they benefit from the same protection and are bound by the same obligations as workers aged eighteen and over. Special rules relating to minors in the work force are considered elsewhere in this chapter.

Workers may be hired on probation, so that the employer may determine the abilities of the worker and so that the worker may assess the working conditions offered by the employer (DLC, s. 38). Such a contract must be written, failing which it is voidable by one or the other party (DLC, s. 38(1)). By definition, probationary employment must be for a limited period which may not exceed the time necessary to assess the abilities of the worker. Under no condition, may it exceed six months (DLC, s. 39(1)). If the parties continue to respect their mutual obligations after the probationary period, the contract is transformed into a regular employment contract with no fixed term, deemed to have begun at the beginning of the probationary period (DLC, s. 39(3)).

*Obligations of the Employer*

The employer must provide the worker with a work environment suitable for the adequate execution of the contract. The requirement that the employer provide suitable conditions of work implies that the worker be required to perform tasks that correspond to his or her qualifications. The employer cannot impose upon an employee a task for which he or she is not qualified. The employer must ensure that the worker is physically capable of carrying out the task, and this requires the employer to provide the necessary premises, tools and equipment. Where equipment is lost or damaged, the employer cannot make deductions from the worker's wages as a form of repayment (DLC, s. 142). The employer must ensure the health and safety of the employee, and take appropriate measures in order to protect his or her physical integrity. Finally, the employer must remit the appropriate remuneration for the work performed. Although in theory it may take a variety of forms, normally remuneration will be paid as salary at regular intervals.

*Obligations of the Worker*

The worker must personally carry out the task that was agreed upon. If the employee assigns the work to someone else, then we are no longer in the presence of an employment contract, because the employer is no longer directing the work. The work must be carried out as directed by the employer. Care and diligence must characterize the activity of the employee, who must act as a normally diligent person would do under the circumstances. The employee must also show loyalty to the employer. The draft labor code requires the employee to furnish all of his or her professional activity to the employer (DLC, s. 37), but this does not prohibit the employee from undertaking other remunerated activities for another employer while not in service for the first employer. However, where the employee works for a second employer, the work must not harm the services or interests of the first employer.

The worker's obligations do not finish with the end of the employment contract. Restrictive covenants are often included in employment contracts. Their purpose is to protect employers from former employees acting in bad faith who, at the end of their employment contract, assist the employer's competitor using knowledge obtained from the employer. Such covenants or clauses are troublesome, because they prevent the operation of a free labor market, and may encourage unemployment. They are only valid if the end of the employment contract is brought about by the worker, or if the worker has been dismissed for gross negligence. Any prohibition in such clauses must refer to specific activities that are competitive with those of the employer, it must have a time limit not to exceed twelve months, and geographically it may not extend beyond five kilometers of the place of work.

The worker is also held to certain obligations of confidentiality both during and after the contract finishes. Confidential information obtained from the employer may not be used for purposes other than those required by execution of the work. Privileged information is of course covered by this rule, as well as trade secrets. As in the case of restrictive covenants, this obligation of confidentiality may be of varying length, depending on the circumstances. It must be reasonable, in that it must protect the employer but at the same time enable the employee to continue to work. If a restrictive covenant is unreasonable, the courts may strike it down.

*Conclusion of the Employment Contract*

The term of the contract may or may not be fixed (DLC, s. 31(1)). The importance of this distinction takes on its significance at the end of the contract. Fixed terms are allowed by law, but under no circumstances may they exceed two years (DLC, s. 32(1)). Any employment contract whose term is set at a period longer than two years is automatically reduced to two years (DLC, s. 32(2)). If, after the agreed term is concluded, the parties continue to meet their respective obligations, then the contract is tacitly transformed into one with no fixed term. The parties to an employment contract whose term is fixed may also agree to renew it. However, the labor code declares that any employment contract of a fixed term that is renewed three times is automatically transformed into a contract with no fixed term (DLC, s. 32(3)). An employment contract with a fixed term may come to an end prior to the term if the contract is void (because, for example, it is discriminatory), where the employee dies, in cases of *force majeure*, or by mutual agreement. Where the employer ends the contract prior to the term for no valid reason, the worker is entitled to be paid the full amount of remuneration for the entire term of the contract. Where the worker ends the contract for no valid reason, the employer may sue for damages. In such cases, a new employer who is responsible for the worker's resignation may be held jointly responsible to pay the indemnity. The new employer is liable where the employee has been lured away, or where the new employer knew that the worker was bound by a valid contract to another employer, or where the new employer learned of the problem and continued to employ the worker.

The fact that an employment contract has no fixed term does not mean that it can never come to an end. It will conclude when one or the other parties no longer chooses to continue the relationship. However, the parties may not abruptly end an employment contract with no fixed term. There is a presumption that an employment contract with no fixed term should continue more or less indefinitely. Where one or the other party seeks to terminate the contract, sufficient notice must be given to the other, the length of which will depend on the duration of employment and the profession or trade of the worker (DLC, s. 50). The length of this notice period is normally set by ministerial order, although nothing prevents a contract from providing otherwise. The purpose is to give both parties time to adjust their affairs; in the case of the worker, to find alternative employment, and in the case of the employer, to find a substitute for the employee who has resigned. Where the notice period is not respected, the party at fault is required to pay to the other an amount that

corresponds to the wages and other benefits payable to the worker during the notice period (DLC, s. 55(1)). In effect, this enables an employer to dismiss an employee immediately, subject to payment of a sum representing severance pay. This may be a preferable alternative for the employer to keeping a disgruntled employee until the notice period has expired.

During the notice period, the parties are held to the obligations in the employment contract (DLC, s. 53(1)). However, because the purpose of the notice period is to permit the parties to find alternatives, the law entitles the worker to take time off during this period in order to seek other employment. The worker may take one day off per week during the notice period for this purpose. The employer must be informed the day prior to any such absence. The worker may take the time either one day at a time, or hour by hour (DLC, s. 53(2)). If the worker succeeds in finding new employment, he or she may quit immediately without being required to compensate the employer, on the condition that the worker is in good faith and informs the employer of this development at the earliest possible moment (DLC, s. 54).

In cases where an employer concludes the employment contract of several employees at the same time, generally for economic grounds such as a slowdown in orders, the employer must take into account the seniority of employees. Those with the least seniority must be dismissed first, in favor of those who have longer service with the employer. In calculating seniority, in addition to the years and months of actual service, the employer is required by law to add one year for each of the worker's dependent children (DLC, s. 61(2)).

Where the employer dismisses the worker for good and sufficient cause, there is no requirement of a notice period and no compensation is required. In order to protect the worker from abusive dismissals, the employer has the onus of proving that dismissal is based on legitimate grounds (DLC, s. 49). Where the employer fails to prove legitimate grounds, the worker is entitled to compensation for the dismissal. The draft labor code declares that dismissal is not based on legitimate grounds where it is inspired by the worker's political opinion, his or her trade union activity or membership in a union, the fact that a complaint was filed against the employer, or where it is the result of discrimination based on race, color, sex, handicap, pregnancy, religion or marital status. This is not an "open" enumeration, in that it does not include grounds that are analogous to those enumerated. For example, age is not among the prohibited grounds.

Where a worker is dismissed because of age or some other unenumerated factor, the tribunal may still conclude that the grounds were not legitimate, but there is no legal presumption that dismissal on such grounds is illegitimate.

### *Severance Allowance*

In cases where *force majeure* results in the end of the employment contract, besides payment of an amount corresponding to the remuneration for the notice period, the worker is entitled to additional compensation. A worker with a minimum of one year of continuous service has a right to 20% of his or her average monthly earnings over the previous year for each of the past five years, 25% of the average for each year between five and ten years' service, and 30% of the average for each year exceeding ten years' service (DLC, s. 61(1)). These indemnities are not payable where the worker is responsible for the event leading to the end of the employment contract, such as in cases where the worker is responsible for a fire that has destroyed the employer's business.

A worker with more than ten years' service is also entitled to an equivalent indemnity in cases of resignation (DLC, s. 61(2)). Similarly, an indemnity calculated in the same manner is payable where an employee with more than ten years' service retires in order to benefit from a retirement pension.

### *Working Conditions*

Despite an international context of deregulation, imposed by the International Monetary Fund and the World Bank, Rwanda has decided to provide a number of additional rights to workers that did not appear in earlier labor legislation. Previously, the labor code set the normal working week at forty-five hours (LC, s. 155). The new draft code lowers this to forty hours, no matter what the age or gender of the worker, or the type of work being performed (DLC, s. 151(1)). This is consistent with an amendment to the former code adopted in 1996 (Law 5/96 of May 29, 1996). Any work in excess of forty hours is treated as overtime, and is subject to additional remuneration as specified in ministerial orders (DLC, s. 151(1)).

Special rules concerning the length of the working week apply in certain circumstances, for example in the case of women and

children, and for night work. Night work is defined as taking place between 7:00 PM and 5:00 AM (DLC, s. 154). Night work is forbidden to employees aged less than eighteen (DLC, s. 155(1)). However, there is an exception in the case of family-run non-industrial work where only parents and their children are involved. In such cases, children may be employed provided the work is not harmful to them and on the condition that they have twelve hours' rest between shifts. According to the draft code, night work conditions for women are set by ministerial order (DLC, s. 156). Under no condition may women, and more particularly pregnant women, be required to perform work that exceeds their abilities or in conditions that may be harmful to their health or situation (DLC, s. 162). Work that is forbidden to women is defined by ministerial order.

Pregnant women are entitled to special measures prior to and following birth, in keeping with Rwanda's international obligations. The *International Covenant on Economic, Social and Cultural Rights* requires that special protection be accorded to mothers during a reasonable period before and after childbirth, and that working mothers should be accorded paid leave or leave with adequate social security (ICESCR, art. 10(2)). Under the draft labor code, women are entitled to maternity leave of twelve months, including a minimum of six weeks following birth, which may be extended by an additional six weeks in cases of illness (DLC, s. 164). A woman may not be dismissed while she is on maternity leave. During this period, she is entitled to two-thirds of her regular wages for twelve weeks (DLC, s. 165(4)). The additional six weeks that is allowed in case of illness would appear to be unremunerated. Upon returning to work, a new mother is entitled to two rest periods of one-half hour per working day for a period of fifteen months, in order to permit her to nurse the baby (DLC, s. 165(1)). Notwithstanding the ordinary rules applicable to breach of the employment contract, a new mother who decides to resign during the fifteen-month period is not required to give notice nor to pay compensation to the employer (DLC, s. 165(2)).

Workers are entitled to a minimum weekly rest period of twenty-four hours, which is normally observed on Sunday (DLC, s. 167). However, exceptions are allowed providing the worker is compensated with an equivalent rest period. The employer is required to post in the workplace the days and hours of weekly rest periods. Where these differ for particular workers, this must also be specified (DLC, s. 168). In addition to statutory holidays established by presidential order, and for which the worker receives full wages, all workers are also entitled to an annual vacation equal to one and one-half days per

month for each month of continuous service (DLC, s. 169(1) and 175)). The amount payable is based on the average remuneration including benefits paid to the worker over the relevant period (DLC, s. 174). Any incomplete days of vacation leave are rounded-off to a full day (DLC, s. 169(1)). Thus, where a worker has nine months' service, the formula results in a vacation period of thirteen and one-half days, which is automatically rounded off to fourteen days. For every three years of service with the same employer, the worker has a right to an additional paid vacation day per year (DLC, s. 169(2)). Workers aged less than eighteen years are entitled to two days' paid vacation for every month of continuous service (DLC, s. 169(2)).

Despite the foregoing, a worker without one year of continuous service is not entitled to paid vacation leave (DLC, s. 170(1)). Thus, the worker in the previous example who is entitled to fourteen days' paid leave for nine months' service may not take them until he or she has worked an additional three months. If the contract is breached prior to the one-year period, the worker is entitled to be paid an amount corresponding to the number of days of vacation pay that are due (DLC, s. 170(2)). These provisions are peremptory, and it is forbidden for employer and employee to set them aside by private arrangement (DLC, s. 170(3)). Nor is it possible to split the vacation period, except for any period exceeding two weeks (DLC, s. 171). The worker must take two weeks of vacation within one year of eligibility for it, and any additional period to which the worker is entitled must be taken within eighteen months (DLC, s. 173(2)).

Workers who are required to work away from their homes are entitled to housing for themselves and their families, paid for by the employer. The worker cannot be required by the employer to reimburse such costs (DLC, s. 115). Similarly, where a worker is required to travel away from his or her normal workplace, the employer must assume the expenses, which are set by ministerial order (DLC, s. 117).

The operation of company stores or "economats" is specifically contemplated by the labor code (DLC, s. 146). In order to operate a company store for the sale of goods and services to employees, the employer must make a written declaration to the labor inspector. Before the store may open, the inspector must verify that workers are not required to purchase goods at the company store, that credit is not provided, that prices are posted and that alcoholic beverages are not sold (DLC, s. 147).

### *Remuneration*

Notwithstanding any contrary agreement, salary must be paid in legal tender (DLC, s. 123). Subject to cases of *force majeure*, earnings must be paid in person to the worker at the workplace, and may not be paid in a store or place of recreation, unless this is in fact the workplace (DLC, ss. 125-126). A written record of earnings must be provided to the worker at regular intervals, corresponding to the pay period (DLC, s. 128). The employer is required to keep receipts proving that wages have been paid, failing which he or she is deemed not to have paid them (DLC, ss. 131-132). The employer must pay wages no later than seven days following the pay period.

According to the *International Covenant on Economic, Social and Cultural Rights*, "fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work" (ICESCR, art. 7(a)(i); ACHPR, art. 15). The draft labor code recognizes the rights of workers to equal remuneration, irrespective of origin, gender, age or status (DLC, s. 114). Section 36 of the draft code, which forbids any discrimination concerning employment contracts which impinges upon equality of opportunity, reinforces this principle.

The minimum wage is set by ministerial order, and may not be set aside by agreement between employer and worker (DLC, s. 118(1)). For workers engaged in piece-work, the law requires that earnings be established so that they permit a minimum wage for a worker of average ability comparable to what is paid to a worker remunerated on an hourly basis (DLC, s. 119). As in the case of leave periods, rules concerning remuneration must be posted by the employer at the workplace (DLC, s. 120).

Employers may not impose fines of any kind on workers as a disciplinary measure. The only disciplinary measures available to the employer are suspension or dismissal. Suspension may not exceed eight days, and must be ordered in writing with sufficient details so that the worker knows the reasons for the sanction (DLC, s. 122).

In order to protect salaries in situations where businesses experience financial difficulties, the law provides that they must be paid before any amounts due to suppliers (DLC, s. 133). In case of bankruptcy or winding-up by the court, workers have a lien for wages

that may be set up against all other creditors, even the Rwandan government (DLC, ss. 134-135). Besides wages due, any other amounts owed to the worker, such as unpaid vacation leave or an amount in lieu of notice of dismissal, is also protected by this provision (DLC, s. 136). The general rule by which civil debts are time barred after thirty years (CC III, art. 647) does not apply to remuneration, and claims for unpaid wages and benefits are time barred after five years from the date that they are due (DLC, s. 139).

### *Child Labor and Apprenticeship*

As a party to the *Convention on the Rights of the Child*, Rwanda recognizes "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (CRC, art. 32(1); also, ACRWC, art. 15). Its obligations include providing for a minimum age for admission to employment, regulating hours and conditions of employment, and setting appropriate sanctions to enforce these norms.

According to the draft labor code, nobody under the age of fourteen may be employed under any circumstances, even as an apprentice, subject to the possibility of a derogation authorized by the Minister of Labor (DLC, s. 160). Such derogation may be allowed for children between twelve and fourteen years of age, if they are assigned only to light work, and if the work is not likely to prejudice their health or schooling. It should be noted that Rwanda is also bound by *International Labor Organization Convention No. 138 concerning the minimum age for employment*, which allows similar derogations, but only where children are aged thirteen years or more. Presumably, the Minister will not authorize any derogations below this age, as this would violate Rwanda's international obligations.

By contract of apprenticeship, an employer hires a young worker (apprentice) in order that the latter may learn a trade (DLC, s. 63). A number of special rules apply in order to distinguish the relationship between apprentice and master from that of worker and employer under an ordinary employment contract. Unlike the employment contract, an apprenticeship contract must be written, failing which it may be declared void upon application to the court (DLC, s.. 64). In order to be valid, it must also bear the seal of the Labor Department. Because the apprentice is defined as a young

worker, rules applicable to persons of the age of majority are excluded. However, the employer may not hire an apprentice who is under the school leaving age (DLC, s. 67).

In cases where an apprentice is required to live with the employer, because of the distance between home and workplace, the law requires proof of the employer's good character. An apprentice may not live with an employer who has already been sentenced to a minimum of three years' imprisonment (DLC, s. 73). Nor may girl apprentices live with a male employer who lives alone and where there is no adult female in the household (DLC, s. 72). If the employer divorces, or his wife dies or leaves the household, a girl apprentice is entitled to break the contract.

In order to train apprentices, the employer must be adequately trained (DLC, s. 74(1)). The employer must ensure that the apprentice is employed for activities related to his or her own profession (DLC, s. 74(2)). The employer is responsible not only for teaching the trade to the apprentice, but for training and instruction in a more general sense (DLC, ss. 76-77). In exchange, the apprentice must assist the employer to the best of his or her ability, and must show obedience and respect to the employer (DLC, s. 78). The apprentice is entitled to be paid half the minimum wage for the first year of the apprenticeship, and the minimum wage for the rest of the apprenticeship period (DLC, s. 79).

## Labor Law

Workers organized in trade unions negotiate their contract collectively. Although the general rules for employment contracts are also applicable to workers organized in unions, special norms also apply. The field is termed labor law, in distinction with employment law (see above). For all intents and purposes, Rwanda has only one trade union structure, known as the Trade Union Confederation of Rwandan Workers or CESTRAR (Centrale syndicale des travailleurs rwandais). This is without doubt due to the fact that until recently, it was the only organization authorized by the government to represent workers in their dealings with employers. The draft labor code removes obstacles to the creation of other union organizations, and this is likely to increase the role that collective agreements will play in governing the relationship between workers and employers in the Rwandan labor force.

### *Unions and Professional Organizations*

The draft labor code distinguishes between two types of organizaations involved in collective bargaining, those of workers (unions) and those of employers (professional organizations). The purpose of the former is the defense of rights of workers, while the purpose of the latter is to maximize the income and profits of employers. In reality, the legislation gives priority to workers' associations. Here, unless the context suggests otherwise, our attention is focused on trade unions or workers' associations.

The draft code states that professional organizations and unions are associations whose sole purpose is the study and defense of economic and social interests of workers or employers. In fact, the draft labor code uses the word "exclusively" (DLC, s. 5), although this rather narrow formulation would appear to contradict other provisions of the legislation where trade union freedoms – something suggesting the right to intervene socially on a wide range of issues – are expressed.

Unions are independent organizations, with a distinct legal identity and rights independent of those of their members (DLC, s. 13(1). They are sheltered from intervention by the State, and cannot be dissolved by administrative order (DLC, s. 12). They are entitled to formulate their own internal rules and regulations, elect their own representatives, and generally operate in the way that they see fit (DLC, s. 7(1)). These rules and regulations, as well as any changes to them, and the names of those who direct the organization, are communicated to the Minister of Labor (DLC, s. 7(2)). Union officials must have the full exercise of their civil rights, they must be of Rwandan nationality, and must have their domicile or permanent residence in Rwanda. Foreign workers may however be elected to union office if they have been resident within Rwanda for at least five years and do not make up more than one-third of the union leadership (DLC, s. 8).

In addition to the prohibition of gender-based discrimination set out in the draft code (DLC, s. 36), the legislation declares explicitly that married women may belong to unions (DLC, s. 9). The provision comes from the 1967 *Code*, and is really quite anachronistic, given the recognition of freedom of association without discrimination by international treaties which Rwanda has ratified (ICCPR, arts. 2 and 21; CEDAW, art. 7(c)). Because adolescents are allowed to work, above a certain age, their right to organize in order to defend their

interests is also recognized (DLC, s. 10). An early draft of the code had made the exercise of rights by workers who had not reached the age of majority subject to parental authority, but such a rule was subsequently abandoned; it would have been contrary to article 15 of the *Convention on the Rights of the Child.*

Unions may devote a portion of their resources to the creation of housing or other premises for their members, they may create credit unions and pension funds which are immune from judicial seizure, they may subsidize cooperatives, etc. (DLC, ss. 14-15). They are also empowered to provide or to rent materials necessary for the exercise of a profession, subject to a condition that this not be an indirect method of providing benefits to workers, something which is prohibited by the draft code (DLC, s. 15(5)).

Unions are organizations that represent workers in their dealings with the employer. They are allowed to affiliate with other unions and create federations as well as create or participate in international organizations of workers or employers (DLC, s. 17). The CESTRAR is a member of an international labor body, the International Confederation of Free Trade Unions. Such larger bodies have the same rights and obligations as unions (DLC, s. 18).

### *Protection of Trade Union Freedoms*

Freedom of association is protected by the 1991 *Constitution*, although the provision adds "under conditions set by law" (Const., art. 19). Prior authorization is not to be required for exercise of this right. Trade union activity is also protected by the Constitution, as is the right to strike, subject to limitations imposed by law (Const., arts. 31, 32). The *Protocol on the Rule of Law of the Arusha Peace Agreement* also recognizes freedom of association as a fundamental right (Arusha III, art. 6). It is a well recognized principle that freedom of association also means the right not to belong to an organization, something that is also expressed in the *Fundamental Law*, which states that members of associations may withdraw from them, despite any contrary provision (Const., art. 31; also UDHR, art. 20(2)).

Several international treaties to which Rwanda is a party also ensure the protection of trade union freedoms, notably *I.L.O. Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize* and *I.L.O. Convention (No. 98) concerning the Application of the Principles of the Right to Organize and to Bargain*

*Collectively*, both of which were ratified by Rwanda in 1988. The *Universal Declaration of Human Rights* recognizes freedom of association and peaceful assembly (UDHR, art. 20(1); also ICCPR, art. 22(1)). The *International Covenant on Economic, Social and Cultural Rights* declares:

**Article 8**

The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

A worker has the right to join the union of his or her choice (DLC, s. 6(2)). Employers may not treat their employees differently, depending upon whether or not they are members of a union. Specifically, union membership may not be allowed to influence hiring, distribution of work, training, promotion, remuneration, benefits, discipline and dismissal (DLC, s. 6(3)). Employers may not pressure their employees in order to influence their choice of a union (DLC, s. 6(5)). In order to discourage docile unions that are in fact dominated by employers, the draft code prohibits employers not only from hindering union organizations but also from helping them. Employers may not deduct union dues from wages without prior authorization by the worker (DLC, s. 6(4)). If the employer makes such deductions without authorization, the employee's right to recover the amount is ensured by the draft code (DLC, s. 6(6)).

### *Union Activity*

The elected union executive represents its members in dealings with the employer (DLC, s. 20). Members of the union executive are specifically charged with informing the employer of demands made by the union membership, conduct of collective bargaining and presentation of grievances (DLC, ss. 21, 26, 223). The draft code declares executive members are entitled to sufficient release time for the exercise of these responsibilities (DLC, s. 22). They are also entitled to annual leave for training and education, whose duration is determined by the collective agreement or the minister. A list of the members of the union executive must be provided to the employer and to the labor inspector (DLC, s. 25), and posted at the workplace.

In firms having more than twenty employees, the employer must provide the union with appropriate premises for a monthly meeting of its members, not to be held during working hours (DLC, s. 24). Unions are entitled to bulletin boards at the workplace where they may post notices, after giving a copy to the employer (DLC, s. 23). Unions are also authorized to distribute, at the entrance and exit of the workplace, literature whose purpose is the promotion of the economic and social interests of workers.

### *Collective Agreements*

A collective agreement is a written agreement concerning working conditions concluded between an employer or a group of employers and one or more unions. The draft code recognizes the possibility

that collective agreements be negotiated by elected representatives of workers, even where there is no union or professional organization (DLC, s. 88). A collective agreement must be in written form, in one of the three official languages of Rwanda (DLC, s. 92(1)). Only authorized representatives of the union, or individuals elected by two-thirds of the workers in a firm, may negotiate a collective agreement (DLC, s. 90(1)). But once a text has been negotiated, it must also be ratified by a meeting of the union membership. Unions or employers who are not party to a collective agreement may subsequently accept its terms, following procedures set out in the collective agreement itself (DLC, s. 91(2)).

Because it is a collective employment contract, the agreement binds not only those who have signed it, but also the members of the organizations that have not signed it (DLC, s. 93). Individual members may not make separate agreements with the employer that derogate from the collective agreement (DLC, s. 89(3)). The only exception to this rule would be a case where an employment contract existing prior to the collective agreement had established working conditions that are more favorable. The content of the collective agreement may vary considerably, depending on the requirements of workers and employers. Generally, it will set out rules concerning working conditions and the rights and obligations of the parties. Specifically, the draft code states that it may provide for working conditions that are more favorable than those set out in national legislation (DLC, s. 89(2)). However, it may not derogate from public policy legislation (DLC, s. 89(2)). The collective agreement itself determines its scope of operation and its term. Nevertheless, the term of a collective agreement may not exceed five years (DLC, s. 91). A collective agreement must provide for its renewal, setting out notice periods and other details of interest as the term comes to an end. A common feature in collective agreements would normally be a provision for settlement of disputes by arbitration, with a view to avoiding recourse to ordinary courts.

The Minister of Labor is empowered to extend the application of a collective agreement so that it applies to all workers and employers in a given sector or industry (DLC, s. 94(1)). However, such a collective agreement must already cover a representative number of workers and employers. It must also ensure the protection of trade union freedoms, establish wages and vacation periods, authorize the election of union representatives, enshrine the principle of equal work for equal value, and provide for its revision (DLC, s. 95). It may also contain provisions dealing with subjects such as hiring and arbitra-

tion, although this is not mandatory. Where a collective agreement imposed by decree in this manner, firms that are covered may not, even by agreement, provide for less favorable conditions.

The employer is bound to ensure that all workers are informed of the contents of the collective agreement (DLC, s. 102). Unions are authorized to take legal action in order to enforce the rights created on behalf of their members by the collective agreement (DLC, s. 101). However, individual members may also intervene personally in such litigation.

### *Regulations*

In addition to a collective agreement, where one is in force, the parties are also required to follow the regulations established for the firm. The two instruments complement each other. The regulations differ from the collective agreement in that the former is confined to rules concerning technical organization of the workplace, discipline, health and safety and circumstances of payment of wages (DLC, s. 105). Regulations are only required where firms employ at least twenty workers. In the case of agricultural enterprises, this number is increased to thirty (DLC, s. 103). Where a firm has several different operations, distinct regulations may be established for each operation (DLC, s. 104).

The employer may not impose the regulations unilaterally, but must consult with representatives of the employees in their preparation (DLC, s. 105). Once adopted, the regulations are forwarded to the labor inspector, who indicates the changes that are required in order to bring them into harmony with the relevant legislation and the collective agreement (DLC, s. 106). The regulations come into force twenty days after they have been accepted by the labor inspector. They must be transmitted to the workers' representatives and posted at the workplace and where hiring takes place (DLC, ss. 107-108).

### *Dispute Settlement*

Where there is a collective agreement, disputes about its application may well affect more than one employee in his or her dealings with the employer. However, disputes may also involve two unions who contest, for example, their right to represent the workers in an establishment. The law provides for a procedure of mandatory mediation in order to encourage the parties to settle such matters without going to court (DLC, s. 264). All disputes are initially submit-

ted to the labor inspector. Within forty-eight hours of receipt of notice of a dispute, the inspector convokes the parties. If the matter is satisfactorily resolved as a result of the inspector's intervention, the parties sign minutes of agreement which become binding upon being filed with the clerk of the court. Where conciliation does not succeed, minutes are prepared that set out the points of disagreement, and are submitted to the arbitration panel by the Minister of Labor (DLC, s. 265).

The members of the arbitration council are designated by the Minister from among members of the National Sub-Commission for the Private Sector or other personalities known for their expertise in the field. The council has broad powers of investigation into the economic and social situation of the parties. Costs of the arbitration are borne by the State (DLC, s. 266). The council must issue its sentence within fifteen days, transmitting it to the Minister who must notify the parties. Within four days of being informed of the council's decision, the parties may inform the Minister that they wish to challenge it (DLC, s. 267).

If the sentence of the council is not challenged, it must be filed with the Labor Court and binds the parties. If the Labor Court has yet to be established, it would seem appropriate to file the sentence with the ordinary courts of first instance. However, where the sentence is contested, or if the Minister has not submitted the dispute to the arbitration council, the parties may exercise the means of pressure available to them, that is, strike or lock-out, providing that they have given the other party four days' notice of any stoppage of work (DLC, s. 268).

A strike is a work stoppage whose purpose is to support demands which the employer refuses to meet. The right to strike is recognized in the *Fundamental Law* (Const., art. 32), which states that "the right to strike is exercised within the limits of the law, and may not jeopardize freedom to work." The right to strike is also recognized by the *International Covenant on Economic, Social and Cultural Rights*, and, according to the case law of the Freedom of Association Committee, by *I.L.O. Convention No. 87*. A lockout is the total or partial shutdown of industrial activity, imposed by the employer where workers are already on strike or where a strike is feared.

If the parties resort to such means of pressure prior to exhaustion of the mandatory conciliation procedure, the strike or lockout is considered to be illegal. An illegal strike by workers may result in

dismissal, non-payment of wages, compensation to the employer for material that has been deliberately damaged and even penal sanctions against the union organization (DLC, s. 270(a)). An employer who resorts to a lockout prematurely may be required to pay wages for the shutdown period, and may also lose the right to bid on public contracts (DLC, s. 270(b)).

Some services are deemed essential to society, and the right of workers in certain industries may therefore be limited. Restrictions on the right to strike of members of the armed forces and the police are recognized by international instruments, but other exceptions have been recognized to exist in the case law of the Freedom of Association Committee of the International Labor Organization. The Minister establishes such limits, after consultation with the National Subcommission for the Private Sector (DLC, s. 271).

## Administration

There are a multitude of bodies in Rwanda with responsibility for the administration, control and supervision of employment. Some of them exercise properly judicial functions, whereas others may only make recommendations.

### *Labor Administration*

The Labor Administration is the organ responsible for setting national policy concerning working conditions, protection of workers and social security. The Labor Administration is charged with preparing draft legislation, ensuring application of legislation dealing with working conditions, providing technical assistance to labor and management, coordination of other bodies involved in labor law, etc. (DLC, s. 200).

The Labor Administration is composed of two bodies, the General Labor Office and the Labor Inspectors. The functions of the General Labor Office are principally political; it prepares draft legislation and compiles information for the government (DLC, s. 201). The Labor Inspectors determine whether the law has been violated. Where they identify an infraction, they draft a report which constitutes *prima facie* evidence of such a violation until proof to the contrary (DLC, s. 205(1)). The Inspectors may directly address the courts, and specifically the Labor Court. But the law also allows them to give warnings and make recommendations with a view to solving

the problem before litigation begins (DLC, s. 205(2). Labor Inspectors have the right to enter the workplace in order to carry out their responsibilities of enforcement. The Inspector must inform the employer of his or her presence (DLC, s. 209), but may enter without warning at any time of the day or night (DLC, s. 209). The inspector may carry out investigations, question the parties, compel the production of documents, require that notices be posted, take samples, etc. Where this is technically complex, the inspector may be accompanied by experts and technicians (DLC, s. 208).

The Labor Inspectors are public servants sworn by oath and bound by rules of confidentiality, given their broad powers of investigation and search (DLC, ss. 202-203). They must be neutral and impartial, and may not have any material interest, either direct or indirect, in establishments subject to their supervision (DLC, s. 204).

The Minister may also appoint medical inspectors who are responsible for supervising the employers' obligations concerning health and safety (DLC, s. 212). Medical inspectors may provide information to the Labor Inspector, and are empowered to draft reports that establish breaches of health and safety standards.

### *Labor Court*

One of the most important innovations in the draft labor code is the creation of the Labor Court. Under the former *Code*, where the Labor Inspector failed in its efforts to resolve disputes, contentious matters could only be submitted to the ordinary courts. The Labor Court is created by order of the Labor and Justice Ministers, who must also define the seats of the different jurisdictions and their territorial competence (DLC, ss. 234-236). Despite the considerable advantages of creating a specialized jurisdiction for labor matters, the draft labor code envisages the possibility that the Labor Court's creation be delayed. In such circumstances, the ordinary courts will continue to be the appropriate forum for settlement of legal disputes.

The Labor Court adjudicates disputes related to an employment contract or an apprenticeship contract which arise between employer and worker or between master and apprentice, or even between workers themselves (DLC, ss. 233, 242). It is also competent in matters concerning collective agreements that are either accepted by the parties or decreed by the Minister, as well as in litigation concerning social security. The Court cannot act until other means of settle-

ment or conciliation before the Labor Inspector and the Arbitration Council have been exhausted. The Court is a tribunal based on parity, meaning that employers and workers are equally represented among its members. Each bench is made up of a magistrate and two assessors, one each from management and labor. The assessors are designed from lists prepared by management and labor, and hold office for a period of two years, which may be renewed (DLC, ss. 237-238).

Normally, the Labor Court having jurisdiction will be the one covering the territory where the workplace is located. In the case of work accidents, it is the Court with jurisdiction where the accident took place (DLC, s. 246). The parties may be represented by attorney or by the professional organization to which they belong (DLC, s. 248).

*Nemo judex in sua causa.* Following this Latin maxim which means that nobody may be judge in his own case, certain rules exist to ensure that members of the Court are independent, neutral and impartial. They or their spouses may not have a personal interest in the litigation, and may not be related or bound by bonds of friendship to one of the parties. Nor can they have been previously involved in the case, for example as counsel or as an expert.

### *Consultative Bodies*

Three consultative bodies are established by law, the National Subcommission for the Private Sector, the National Parity Commission for Collective Agreements and Wages, and the National Commission for Health and Safety in the Workplace. All three are parity bodies, made up of equal numbers of labor and management representatives, and each is chaired by the Minister of Labor.

The National Subcommission for the Private Sector is a consultative body charged with making recommendations concerning manpower training or any other matter relating to labor or manpower (DLC, s. 213). The National Parity Commission for Collective Agreements and Wages provides opinions concerning the conclusion, the extension and the application of collective agreements (DLC, s. 216). It may also make recommendations to labor and management organizations concerning the content of collective agreements and wage fixing. The National Commission for Health and Safety in the Workplace is composed of technicians and specialists and may, on accession, require the assistance of experts on specific matters (DLC, s. 219). It may provide opinions on relevant legislation, make proposals

aimed at protecting workers, and recommend that certain techniques or machinery be considered as being potentially dangerous (DLC, s. 218).

### *Shop Stewards*

The shop steward is the intermediary between employer and workers, elected by the latter for a renewable term of one year. He or she ensures that legislation, the collective agreement and the regulations are respected by management. The steward presents individual or collective claims concerning working conditions and other matters (DLC, s. 224(1)). A worker who wishes to submit a grievance must contact the steward, who must present the complaint to the employer. The worker retains the right to make such claims individually (DLC, s. 224(2)). The steward is also responsible for bringing matters to the attention of the Labor Inspector. The steward may also make recommendations to management dealing with dismissals that have been planned or on any other matter likely to improve the organization of work and the productivity of the employer. After consultation with the National Subcommission for the Private Sector, the Minister sets rules concerning the appointment of stewards, the number of stewards per employer, the amount of paid release time to which shop stewards are entitled in order to carry out their functions, and any other relevant matters.

Because of the crucial role played by the steward, he or she benefits from special protections aimed at preventing an employer from dismissing someone deemed to be too effective or devoted. Any dismissal of a steward must first be proposed to the Labor Inspector, who has fifteen days in which to pronounce on the matter (DLC, s. 223). This rule applies during the steward's mandate, and for six months after its completion. Where the steward is charged with gross negligence, the dismissal may be provisional, pending a final decision by the Labor Inspector.

## Occupational Health and Safety

Protection of health and safety in the workplace is one of the most fundamental aspects of labor and social law. The draft labor code contains a special section dealing with health and safety. The employer is bound by law to guarantee that the workplace is in a constant state of cleanliness, in order to ensure that it does not endanger the health and safety of the workers. The employer is also required to provide training in health and safety, and must post signs to ensure

that requirements are respected. Protective equipment must not only be provided, the employer must also see that it is used appropriately. If the employer intends to use production techniques or methods that are likely to provoke illness, he or she must make a prior declaration to this effect to the Labor Inspector and to the Rwandan Social Fund (Caisse sociale du Rwanda).

Workers are required to respect rules concerning health and safety that are set out in the employer's regulations. They are bound to use protective equipment that is provided for them. Some forms of work are inherently dangerous, such as the production of toxic chemicals or explosives. In such cases, the Labor Minister may impose special measures, by ministerial order, after consultation with the National Commission for Occupational Health and Safety (DLC, s. 181).

In industries employing more than forty workers, a health and safety committee must be established. Within forty-eight hours of an accident occurring or the detection of a work-related disease, the employer must make a declaration to the Labor Inspector and to the Rwandan Social Fund (DLC, s. 186). The worker has two years from the date of the accident or discovery of the disease in which to make a declaration.

### *Work-Related Accidents and Diseases*

A work-related accident is defined by the Decree-Law on Organization of Social Security of August 22, 1974 as an accident occurring to a worker as a result of or during work, even if it is his or her own fault. By definition, an accident presupposes a sudden event. Unlike a work-related disease, the time of the occurrence of an accident must be precisely defined. However, this must not be confused with the harm caused, which may only become apparent later. In order to meet the definition, the accident must have occasioned harm or prejudice to the worker. A serious incident that does not cause any harm to the worker is not an accident. Nor should an accident be confused with the discovery of some pre-existing condition, which has only become apparent during work but which is not caused by it.

A work-related accident must take place during working hours, that is, as work is being performed. However, the law provides that an accident that occurs during meal times or breaks is deemed to be a work-related accident. The same principle applies during work-related travel whose expense is borne by the employer. Essentially, the

test is whether or not the worker was under the supervision or authority of the employer at the time of the accident. Furthermore, the accident must result from the work itself, that is, it must be a consequence of performance of the work and not something else that is unrelated to the job.

A work-related illness or disease is any invalidity caused by the work. Unlike accidents, illnesses generally take a considerable amount of time to develop and become apparent. A work-related illness must be identified on a list which is published by the Minister of Social Security.

### *Labor Inspectors*

The Labor Inspector plays a central role in the administration of labor and social legislation. Among his or her many functions, the Labor Inspector is the first official involved in enforcement of health and safety standards. When circumstances require prompt and immediate intervention in the workplace, the law gives the Labor Inspector the power to order that some or all activities at a given workplace cease immediately (DLC, s. 183). The inspector may require that the employer correct the situation within a given period of time, and insist that all work be suspended until such measures have been effected. The Inspector's decision is binding, and until the corrective measures are in place, it can only be suspended by ministerial order. In circumstances that are not as serious, the Inspector may order that measures be taken within a reasonable time, and that the work be permitted to continue (DLC, ss. 184-185). Decisions of the Labor Inspector can be contested before the National Commission for Occupational Health and Safety, which must rule within one month on the Inspector's order.

### *Rehabilitation of Injured Workers*

The duties of the employer of an injured worker continue, even after a declaration has been made. Besides preventive measures that are provided by law, the employer must also endeavor to reintegrate the worker who is capable of returning to work although not able to perform all of the duties that he or she once assumed. The employer is obliged to find appropriate work in such circumstances. If this is impossible, because the employer does not have any such suitable work, the eventual dismissal of the employee must be submitted to the Labor Inspector, who makes the final determination.

### *Employment of the Disabled*

Legislative measures exist that are aimed at providing the physically disabled with equal employment opportunities. Pursuant to the draft labor code, a protected person is one whose opportunities to obtain and retain employment are diminished because of disability. The medical commission determines whether an individual is disabled, and the appropriateness of measures aimed at integrating the person in the workplace (DLC, s. 193). It should be noted that these rules apply only to the physically disabled, and not to the mentally disabled. They are applicable to industrial and commercial establishments, the professions, agriculture, the public administration, etc. (DLC, s. 195). Persons covered by the law are entitled to training either in special institutions or at the workplace, and may receive remuneration or some other allowance provided for by the Minister (DLC, ss. 197-198). Following training, the placement service attempts to obtain employment that corresponds to the physical capabilities of the disabled worker.

## Social Security

Article 22 of the *Universal Declaration of Human Rights* states: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Rwanda has a plan of social security that provides for payment of indemnities in the case of work-related illness or accident, old age, disability or death (D-L of August 22, 1974, s. 1). Rwandan law does not provide for unemployment insurance.

### *Eligibility*

Three categories of persons are subject to Rwanda's social security legislation. First, the plan covers workers subject to the *Labor Code*, without any distinction based on the nature of employment (public or private), or such prohibited factors as race, gender or fortune. Until recently, agricultural workers were excluded from the system, but this situation should be changed with the adoption of the draft labor code (DLC, art. 2). Second, the plan covers workers employed by the State. Third, the plan covers students in professional

or vocational schools, interns and apprentices, even if they receive no remuneration. Where a worker is no longer part of the plan, for example because of lay-off or dismissal, within six months he or she may ask to remain within the system as a voluntary participant.

In order to be covered, workers must be registered as part of the plan. Registration is the responsibility of the employer (PO 671/06 of December 21, 1987). The worker receives an insurance book in which all relevant information is to be noted, including periods of employment.

### *Employment Hazards*

We have already reviewed the issue of worker's compensation for accident and work-related illness. Four types of benefit are paid to workers under such circumstances: 1) medical care, even where the worker has not missed time from work; 2) monetary compensation for temporary disability; 3) a pension or allowance in the case of permanent disability, be it total or partial; 4) survivor benefits and an allowance for funeral expenses, where there is loss of life (D-L of August 22, 1974, s. 21). Medical benefits cover medical and surgical assistance, examinations, X-rays and laboratory tests, medication, hospital care including food, and prosthetics or other equipment. Workers suffering from temporary disability receive a daily allowance while they are disabled which is equal to 75% of their daily average income. It is paid according to the same frequency as the regular wages (D-L of August 22, 1974, ss. 23-24). Workers suffering from permanent disability are entitled to a pension equal to 85% of their average monthly income, where the disability is total. Eligibility for a total disability pension is determined taking into account the nature of the infirmity, the general condition of the victim, the age of the victim, the physical and mental abilities of the victim and his or her professional qualifications (D-L of August 22, 1974, s. 25). Where partial permanent disability is greater than 15%, a pension is also payable, taking into account the degree of disability. Where it is less, the worker is paid a lump sum indemnity. In the case of death, the survivors are entitled to an allowance for funeral expenses equal to 100 times the minimum wage set by law. Survivors benefits cannot exceed the amount the worker would have received in the case of permanent disability. The widow receives 30% of the pension, although this comes to an end with remarriage; orphaned children receive 15% to 25% of the pension; and ascendant dependents receive 10% of the pension (D-L of August 22, 1974, s. 28).

### *Pensions*

Three types of pension are provided by law. They provide benefits in the case of old age, disability and death. A registered participant in the plan who reaches the age of fifty-five is entitled to an old age pension. To be eligible, a person must have participated in the plan for at least twenty years, have paid into the plan for sixty months over the previous ten years, and have ceased all gainful employment (D-L of August 22, 1974, s. 30). A worker who has not reached fifty-five may obtain a pension if a medical certificate attests to the fact that his or her physical or mental abilities have suffered as a result of work and that the worker is no longer able to pursue gainful employment. The certificate must also indicate that this is not due to work-related accident or illness, as these are covered by another aspect of the plan (MO 589/09 of December 30, 1975). The amount of the pension is normally 30% of recent average earnings, subject to increases where the worker has contributed for more than 180 months. In any case, the law entitles a worker to a pension equal to 50% of the minimum wage for a normal working week. A participant in the plan who is disabled as a result of accident or illness unrelated to work that makes him or her unable to earn more than one-third of the average income of another worker in the same circumstances is entitled to disability benefits. To be eligible, the worker must have participated in the plan for at least five years as well as for six months of the previous year, and must be under fifty-five years of age. The amounts are calculated in the same manner as the old age pension. Survivor benefits are payable to heirs and dependents of a beneficiary of an old age or disability pension, or an individual who would otherwise be eligible for such a pension, having 180 months of insurable coverage. The surviving spouse is entitled to 50% of the amount of the pension orphaned children are entitled to 25 to 40%; if the deceased had no spouse or children, ascendants are entitled to 25% of the pension.

### *Financing*

The Social Fund (*Caisse sociale*) is responsible for collecting payments into the plan and for paying benefits. It is a public institution with its own legal personality, overseen by a board of directors but supervised on a daily basis by a director appointed by the President of the Republic (D-L of August 22, 1974, s. 4-6). The assets of the Fund are made up of assessments imposed upon employers and workers, of penalties for late payment, of investment income, of gifts and other bequests, and of such other resources as are determined by

law (D-L of August 22, 1974, s. 10). Assessments are calculated so as to cover disbursements, administrative costs and the creation and maintenance of a reserve (D-L of August 22, 1974, s. 13). The employer is responsible by law for paying the entire assessment, although a portion, in some cases, is deducted from the worker's wages. They must be paid in the month following the quarter for which they are payable, with a penalty being charged for late payment. The Fund has a lien on the assets of the employer in order to ensure payment of its assessments. The Fund may invest its resources in various bonds or immovable property, and may make loans to public institutions (PO of March 1, 1977).

## Education

The purpose of education is to contribute to the development of the intellectual and physical abilities of students, and of their moral values. Parents are entitled to choose the school which best suits the needs and aspirations of their children. Rwandan law recognizes both public and private schooling. The *National Education Act* of 1966, amended in 1975, organizes public education and, at the same time, establishes rules applicable to private schooling. The State is charged with directing the public school system, whereas it only supervises private schools (NEA, ss. 1, 5, 17, 18, 22). There are five levels of school administration: the Minister of Education; the General Education Council; national representatives of subsidized free education; official inspectors; diocesan visitors (NEA, ss. 7-25; PO 185/03). Rwanda is divided into school districts, corresponding to prefectoral boundaries. These are in turn subdivided into various sectors (NEA, s. 14; MO 05/01/244).

There are four levels of public education: primary education; junior secondary schooling; upper secondary schooling; higher education and university (NEA, s. 41). Primary schooling is mandatory from the age of seven (NEA, ss. 4, 44; PO 185/03 of April 28, 1967). The *Fundamental Law* states that primary education is free, and this includes books and other necessary materials (Const., art. 27; NEA, ss. 4, 37; Presidential order 185/03). Nevertheless, pupils are required to pay a fee of 100 FRW (PO 1300/85 of December 17, 1974). For secondary education, tuition amounting to as much as 10% to 15% of the income of the parents may be required. Scholarships may be offered, either by the State or from private sources (PO 80/03 of October 14, 1966). To the extent possible, separate schools are organized for each gender (PO 175/03, s. 95).

### *Primary Education*

Primary schooling consists of six years of instruction. Primary schooling is divided into two cycles, the first of four years, for pupils aged seven to eleven, and the second of two years, for pupils aged twelve and thirteen. Complementary classes for agriculture and handicrafts may be organized for pupils who do not follow ordinary courses (NEA, s. 68). Classes are given in Kinyarwanda, although the Minister may authorize use of another language (NEA, s. 69). Compulsory subjects are Kinyarwanda, civics, arithmetic, geography, history, art, health, music, physical education, industrial arts, French, and religion or ethics. Religious instruction plays an important part in primary education. However, the State protects the personal convictions of each pupil and his or her parents, by ensuring training in ethics for those who so desire (NEA, ss. 5, 7). Presumably, English will join French as a language that is taught at the primary level.

The weekly schedule comprises thirty-two hours (PO 185/03, s. 55). Pupils may not be absent from school without permission, and may be expelled if they are absent more than twenty times. Absence is authorized on such grounds as illness of the pupil or a parent, death of a close relative, and bad weather (PO 185/03, ss. 83-85). The schoolmaster is entitled to impose sanctions in proportion to the seriousness of disciplinary problems, although the schoolmaster is not permitted to insult the pupil or submit him or her to ill treatment (PO 175/03, ss. 89-91). Sanctions include reprimands, bad marks, isolation, detention, additional chores and expulsion, which must follow an administrative inquiry.

### *Secondary Education*

Secondary schooling completes a child's education, and prepares the pupil for working life or for higher education (NEA, s. 75). There are two streams, one in technical and professional fields, the other for modern humanities. The first phase, which lasts three years, has a common course load for both streams. This comprises religious or ethical instruction, mathematics, art, natural sciences, history, geography, civics, industrial arts, physical education and economics. For the modern humanities stream, the second phase also lasts three years. For students in the technical or professional stream, the length of the second phase is set by the State (NEA, ss. 76-77; PO 175/03, ss. 116-119). Secondary teaching is in one of the official languages,

Kinyarwanda, French or English, and teaching of all of them is mandatory at the secondary level in any case (NEA, s. 80).

### *Higher Education*

University education is subject to special legislation. The Rwandan National University is based in Butare, and is composed of several faculties, schools or institutes, including faculties of law and medicine. The President of the Republic is the honorary president of the University. Its administration is directed by the Minister in charge, the Rector, the Vice-rectors, the Secretary-general, the Administrator-treasurer, the deans and associate deans of the faculties, the directors of schools and institutes, and the faculty secretaries (D-L 36/76, ss. 16-31). Internally, the University is governed by the University Council, the Academic Council, and the Councils of the faculties, schools, institutes and centers (D-L 36/76, s. 5).

**Further reading.** Louis-Marie MUGENZI, «La protection du travailleur contre les accidents du travail en droit social rwandais», (1989) 43 *Revue juridique et politique* 568.

# Chapter 5
# Civil Liberties and Fundamental Rights

The protection of civil liberties and fundamental rights has become one of the paramount purposes of contemporary legal systems. Generally, the norms are incorporated within the fundamental law of a country, and are inspired by international instruments such as the *Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights.* Indeed, international legal norms protecting human rights are also an essential part of the system of protection.

## Origin of Human Rights

Human rights have existed and been invoked since antiquity, as students of religion, history and philosophy have observed. Without any doubt, many fundamental human rights comprised part of the customary law applicable within Rwanda long before colonization. Yet the legal norms that now form the anchor of the *Fundamental Law* of Rwanda as well as its international models such as the *Universal Declaration of Human Rights*, are direct tributaries of the English common law. The *Magna Carta* of 1215 established the rule of law and the principle that even the sovereign was subject to the laws of the land. Its spirit pervaded subsequent developments, including the *Habeas Corpus Act*, which entitled any person to contest the legality of detention before a court of law, and the *English Bill of Rights* of 1689, which established other significant principles such as the prohibition of cruel and unusual punishments. The American revolutionaries of the eighteenth century were shocked at the double standard, by which English colonialists could affirm fundamental principles and then derogate from them. They corrected the anomaly by taking the fundamental rights of the English common law and

putting them in the *Constitution*, beyond the reach of fickle legislators. Thomas Jefferson, who had played so central a role in the drafting of the American *Bill of Rights*, was the first United States Ambassador to Paris. Arriving at the height of the French Revolution, he assisted his friend Lafayette in drafting an initial version of the French *Declaration of Rights of Man and Citizen*, whose provisions were clearly inspired by sources familiar to Jefferson, the English common law and the American constitutional documents. These eighteenth century revolutionary instruments – the American *Bill of Rights* and the French *Declaration of Rights of Man and Citizen* – provided models for many States throughout the nineteenth and twentieth centuries. After the Second World War, they would provide similar inspiration to the drafters of international human rights instruments, including the *Universal Declaration of Human Rights*.

To the extent that fundamental rights and freedoms enjoyed at least formal recognition in the constitutional instruments of Europe and other developed countries, as a general rule these were not extended to the colonies of the latter. At any rate, they were confined to civil and political rights, and these were denied virtually by definition to the subject colonies. Furthermore, the initial enumerations of human rights found in European constitutions had little to say on the subject of economic and social rights that were so fundamental to developing countries. The Belgian Colonial *Charter*, adopted for the Congo in 1908 and extended to the Ruanda-Urundi mandate in 1924, declared that the inhabitants of Belgian colonies were entitled to certain rights protected by the Belgian *Constitution*, including a number of procedural guarantees applicable to those charged with criminal offences. These included the right to *habeas corpus*, the inviolability of private property, freedom of opinion and religion, the right to protection of privacy of correspondence, and the right of petition. Freedom of the press was not enshrined, however, and freedom of assembly and association were not even mentioned. In fact, the Belgian regime was characterized by quite atrocious and brutal violations of human rights. These have been well-documented elsewhere, and is not the purpose of this introductory volume to review in any detail Rwanda's colonial history.

The trusteeship system, by which the United Nations replaced the League of Nations mandate scheme in 1946, proclaimed as one of its basic objectives "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion..." Nevertheless, it was only with decolonization that human rights and freedoms were formally entrenched in Rwan-

dan law. In effect, the 1962 *Constitution* contains a detailed enumeration of human rights and freedoms. These comprise civil, political, economic, social and cultural rights. The enumeration is based on well-known models of the time, particularly the *Universal Declaration of Human Rights*, but has its original aspects. It is clear that the authors of the 1962 *Constitution*'s human rights provisions sought to tailor it to the reality of an underdeveloped country, emerging from the yoke of colonialism. The 1962 *Constitution* made explicit reference to the *Universal Declaration of Human Rights*, whose provisions are incorporated therein.

The two subsequent *Constitution*s, that of 1978 and that of 1991, contain similar although not at all identical enumerations of human rights. From the standpoint of content, they are essentially comparable, and do not truly reflect the significant evolution in human rights norms that has taken place, on an international level, since the end of the Second World War.

### *International Law*

In reality, Rwanda is governed by two distinct but complementary systems of human rights law, one international, the other domestic. In some cases, the international instruments are directly incorporated into Rwandan law. This is the case of the *Universal Declaration of Human Rights*, to which explicit reference is made in the *Fundamental Law* (Arusha VII, art. 17). In others, the international instruments have been ratified by Rwanda and are thus applicable in its internal law, although there is no enabling legislation. This is the case, for example, of the *Convention for the Prevention and Punishment of the Crime of Genocide*. Customary legal norms are also a source of human rights obligations, and they are undoubtedly applicable to Rwanda.

**Customary Human Rights Norms.** Customary law is one of the principal sources of international human rights law. The International Court of Justice has stated that common article 3 to the *Geneva Conventions*, which prohibits murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, humiliating and degrading treatment and ensures due process, expresses norms of customary international law. It has also declared that freedom from slavery and racial discrimination "have entered into the body of general international law". Recently, the Human Rights Committee, created under the *International Covenant on Civil and Political*

*Rights*, proposed a list of customary international human rights norms: the prohibition of slavery, of torture and cruel, inhuman or degrading treatment or punishment, the right to life, protection against arbitrary arrest and detention, freedom of thought, conscience and religion, the presumption of innocence, the right to a fair trial, prohibition of execution of pregnant women or children, prohibition of advocacy of national, racial or religious hatred, the right of persons of marriageable age to marry, the right of minorities to enjoy their own culture, profess their own religion or use their own language. Customary norms are applicable and may be invoked before the domestic courts of Rwanda, whether or not there is any implementing legislation. Because they have been codified in written instruments that are also applicable, such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *African Charter of Human and Peoples' Rights*, the question of the status of customary norms within domestic law is not often likely to arise in practice.

***Universal Declaration of Human Rights.*** The *Universal Declaration of Human Rights* was adopted by the General Assembly of the United Nations on December 10, 1948. Some founders of the United Nations had hoped to include a declaration of human rights within the *United Nations Charter*, adopted at San Francisco in June, 1945. However, concerns from certain quarters about the sanctity of state sovereignty incited the *Charter*'s drafters to proceed more cautiously, and while the *Charter* affirmed that the protection of human rights was one of the purposes of the new international organization, the actual task of defining and declaring human rights was left to the Commission on Human Rights. The Commission undertook to draft two distinct instruments, one of them a declaration of human rights that would operate as a non-binding statement of goals, and the other a binding treaty open to member States that chose to take their human rights commitments a step further and actually ratify such an instrument.

The *Declaration* proved to be somewhat easier to finalize, but so as to avoid any ambiguity as to whether or not it created binding international norms subject to immediate implementation, its preamble affirmed that it was a "common standard of achievement". The *Declaration* was consequently drafted in a large and general fashion, leaving much room for evolving conceptions of human rights. The *Declaration* remains very much a touchstone of human rights, and its relevance has been reaffirmed regularly, including in such instru-

ments as the *African Charter of Human and Peoples' Rights* (preamble), the *Helsinki Final Act* of the Organization for Security and Cooperation in Europe (OSCE), and the *Declaration and Plan of Action* of the Vienna Conference on Human Rights, of June 1993.

From the standpoint of binding, "black letter" legal norms, the *Universal Declaration of Human Rights* is not a treaty or convention, but only a resolution of the United National General Assembly. Interestingly, despite the fact that the *Declaration* was not intended to state binding norms, some States, including Rwanda, have incorporated the provisions of the *Declaration* within their constitutions. Thus, in Rwanda the *Universal Declaration* is applicable because it is referred to in domestic legislation. The *Universal Declaration* was mentioned in the preamble of the 1978 *Constitution*, and again in the preamble of the 1991 *Constitution*. Moreover, the *Arusha Peace Agreement* declares that "[w]ith regard to public freedoms and fundamental rights, the principles enshrined in the *Universal Declaration of Human Rights* of December 10, 1948 shall take precedence over corresponding principles enshrined in the *Constitution* of the Republic of Rwanda [of June 10, 1991], especially when the latter are contrary to the former," giving it direct application within Rwandan law (Arusha VII, art. 17). There are other references to the *Declaration* in the *Arusha Peace Agreement*. The *Protocol on the Rule of Law* refers to the *Declaration*, noting that national unity is based on the rights set out in the Declaration (Arusha III, art. 1). The *Protocol* also states that the fundamental principles of democracy include those set out in the *Universal Declaration of Human Rights* (Arusha III, art. 6).

The direct application of the *Universal Declaration of Human Rights* in Rwanda's *Fundamental Law* was recognized by the Constitutional Court in its judgment 009 of July 26, 1995. Although it would be gratifying to conclude that article 17 of the *Arusha Peace Agreement* (Arusha VII) affirms the primacy of the *Declaration* over Rwandan law in general, this is not in fact what is literally stated in the text. In a narrow interpretation, only provisions of the 1991 *Constitution* are subject to the primacy of the Declaration because there must be "corresponding" provisions for article 17 to apply. Thus, it is far from obvious that where the 1991 *Constitution* is silent, for example on the subject of the right to social security, the right must be recognized because it appears in the *Universal Declaration*. Nor, under a literal and restrictive reading of article 17, does the *Universal Declaration* take precedence over provisions of the *Fundamental Law*

other than the 1991 *Constitution*, such as the *Arusha Peace Agreement*. Consequently, the affirmation that the *Universal Declaration* has been incorporated into Rwandan law and takes precedence over incompatible provisions should be treated with caution.

***African Charter of Human and Peoples' Rights.*** The *African Charter on Human and Peoples' Rights* was adopted on June 27, 1981 by the Organization of African Unity, and came into force on October 21, 1986. It has been ratified by more than fifty African States, including Rwanda, which signed the treaty on November 11, 1981, and ratified it by legislation (Law 10/1983 of May 17, 1983). The *African Charter* consists of an enumeration of fundamental norms, as well as provisions setting out the organization and powers of the African Commission of Human and Peoples' Rights. In its interpretation of the *Charter*, the Commission is to draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the *Charter of the United Nations*, the *Charter of the Organization of African Unity*, the *Universal Declaration of Human Rights*, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights, as well as from the provisions of various instruments adopted within the specialized agencies of the United Nations such as UNESCO, the World Health Organization and the International Labor Organization.

The *African Charter* establishes a regional human rights system, whose creation was inspired by similar systems in operation in Europe and the Americas. As the most recent of the three, it is in many ways the most original and innovative. While repeating the basic norms found in other international human rights instruments, such as the *Universal Declaration of Human Rights*, the *Charter* also develops what are sometimes called "third generation" rights of solidarity. It states, for example, that all peoples shall have right to existence and to the unquestionable and inalienable right to self-determination. The *Charter* also states that all peoples shall freely dispose of their wealth and natural resources, and that in case of spoliation the dispossessed people shall have the right to the lawful recovery of their property as well as to an adequate compensation. The *Charter* attacks "all forms of foreign economic exploitation particularly that practised by international monopolies", insists upon the right of all peoples to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind, and proclaims a right

to national and international peace and security. The *Charter* is the only major international human rights instrument to proclaim the right of peoples "to a general satisfactory environment favourable to their development".

The African Commission on Human and Peoples' Rights is composed of eleven experts, elected by the States parties to the *Charter*. Meeting twice yearly throughout the continent, the Commission examines periodic reports on compliance with the *Charter* prepared by States parties as well as individual petitions alleging violations of the *Charter*. Individual petitions may be filed by anyone claiming a breach of the *Charter*, and it is therefore possible for individuals to charge that Rwanda has breached their rights as ensured by the *Charter*. Several such petitions have been filed against Rwanda in recent years, although the Commission has not publicized the results of its deliberations. Until the mid-1990s, the Commission examined individual petitions in the strictest confidence and, unlike the petition mechanisms in other human rights systems, spared the respondent States from the international embarrassment that was the principal sanction consequent upon violation. Now the Commission decides to render public at least some of its conclusions that result from individual petitions. Under the European and American regional systems, once individual petitions have been examined by the Commission, they may be referred to a court of human rights. The African human rights system makes no provision for such a Court, although an amending protocol to the *Charter* that would create an African Court of Human Rights is currently under consideration.

As an international treaty ratified by Rwanda, the *African Charter of Human and Peoples' Rights* is directly incorporated into Rwandan law, and takes precedence in the event of conflict with domestic legal rules. There are three references to the *African Charter* in Rwanda's *Fundamental Law*, signalling the importance attached to this instrument. The preamble to the 1991 *Constitution* makes references to "the protection of the human person and the promotion of respect for fundamental freedoms, in accordance with... the *African Charter of Human and Peoples' Rights*". The *Protocol on the Rule of Law* also refers to the *African Charter*, noting that national unity is based on the rights set out in the *African Charter* (Arusha II, art. 1). The *Protocol* states that the fundamental principles of democracy include those set out in the *African Charter* (Arusha II, art. 6).

**International Covenants on Human Rights.** The *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* were ratified by Rwanda on Feburary 12, 1975 (Decree-Law 8/75 of February 12, 1975). Consequently, like the *African Charter* they form part of the law of the land. The two *Covenants* were prepared and adopted by the United Nations General Assembly in order to provide formal recognition by treaty of the principles set out in the *Universal Declaration of Human Rights*. In fact, some of the rights in the *Declaration* have been omitted from the *Covenants* (such as the right to property), while others have been set out in considerably more detail (such as the right to life). Indeed, interpreters of the *Universal Declaration* often find the *Covenants* to be of particular assistance because they flesh out the rather prolix statements of the *Declaration*. In its judgment 009 of July 26, 1995, the Rwandan Constitutional Court referred to the *International Covenant on Civil and Political Rights* in this manner. Examining the rights of individuals who are detained or imprisoned, the Court used the more detailed provisions of article 9 of the *International Covenant on Civil and Political Rights* to complete the laconic text of article 10 of the *Universal Declaration of Human Rights*.

The *Covenants* also provide for specific means of implementation. The *International Covenant on Civil and Political Rights* creates the Human Rights Committee, an expert body consisting of eighteen members charged with examining periodic reports of States parties, and with adjudicating inter-state and individual petitions. Rwanda has not made the necessary supplementary declarations so as to attribute jurisdiction to the Committee in the case of individual or inter-state petitions. Rwanda is, however, required to submit periodic reports on its compliance with the Covenant, and has, to date, submitted three reports. The *International Covenant on Economic, Social and Cultural Rights* also requires States parties to submit periodic reports. These are examined by the Committee on Economic, Social and Cultural Rights.

A protocol to the *International Covenant on Civil and Political Rights* requires States to abolish the death penalty. Rwanda has not ratified this *Protocol*, although it has undertaken to do so in the *Arusha Peace Agreement* (Arusha VII, art. 12). Because of this commitment, Rwanda should respect the provisions of the *Protocol* on abolition of the death penalty until it deposits its formal instruments of ratification.

**Other Human Rights Treaties.** Rwanda is also a party to several other human rights treaties: *International Convention for the Elimination of All Forms of Racial Discrimination* (accession by D-L 8/75 of February 12, 1975); *International Convention for the Prevention and Punishment of the Crime of Apartheid* (ratification by PO 430/16 of November 10, 1980); *Convention on the Elimination of All Forms of Discrimination Against Women* (ratified by PO 431/16 of November 10, 1980); *Convention on the Rights of the Child* (ratified by PO 773/16 of September 19, 1990); *Convention and Protocol on the Status of Refugees* (ratified by D-L 29/79 of October 22, 1979, and confirmed by Law 01/82 of January 26, 1982); *Convention Governing the Specific Aspects of Refugee Problems in Africa* (ratified by D-L 30/79 of October 22, 1979, confirmed by Law 01/82 of January 26, 1982). Once again, these treaties are binding upon Rwanda internationally and are also deemed to be part of the law of the land. Nevertheless, even when treaties are ratified and applicable in internal law, they may require domestic legislation in order to facilitate their execution. This is the case with the *Genocide Convention*, which defines the crime of genocide and requires States to provide for its prosecution and punishment in their domestic criminal legislation. Rwanda ratified the *Genocide Convention* in 1975, but did not adopt any legislation to make the provisions of the treaty executory, a fact which is noted in the preamble to the Organic Law of August 30, 1996. Indeed, for this reason Rwanda's National Assembly felt compelled to provide for prosecution of crimes already set out in the *Penal Code* despite the fact that they also constituted the crime of genocide, as defined in the *Convention*.

Several important international human rights treaties have not yet been ratified by Rwanda, despite an undertaking in the *Arusha Peace Agreement* (Arusha VII, art. 12). Among the more important are: *Optional Protocol to the International Covenant on Civil and Political Rights* (allowing for individual petitions to the Human Rights Committee); *Second Optional Protocol to the International Covenant on Civil and Political Rights* (abolishing the death penalty); *African Charter on the Rights and Welfare of the Child*; *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.*

Aside from its general obligation to respect the rights enshrined in the human rights treaties that it has ratified, Rwanda is also bound to submit periodic reports to several committees created by the treaties. In addition to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, referred to above,

these include the Committee for the Elimination of Racial Discrimination, the Committee for the Elimination of Discrimination Against Women and the Committee on the Rights of the Child. The periodic reports are presented to the Committees in public sessions by government representatives, and then discussed by members of the committees, who are internationally recognized experts in human rights. These reports, and the comments and conclusions of the committees, constitute important sources of human rights law applicable to Rwanda.

During the presentation of Rwanda's most recent report to the Committee for the Elimination of Discrimination Against Women, in January, 1996, the Committee praised Rwanda's commitment to the advancement of women, even during the difficult period of the post-genocide situation. The Committee identified as major factors and difficulties in implementing the Convention: the weak State machinery to effectively maintain the peace process; the difficult process of national reconciliation; the breakdown of public infrastructure and private support systems; the large number of Rwandan refugees and internally displaced persons; the great number of militias and some civilians who are still armed; and the shattered economy and extreme poverty. The Committee drew particular attention to problems in prosecuting genocide offenders, including the need for equal representation of women and men on the International Criminal Tribunal for Rwanda, the need for a witness protection unit in the war crimes prosecutor's office to protect those who testify about rape, sexual violence and other crimes, and the importance in training the monitoring unit of the Human Rights Field Operation in Rwanda about sexual assault, rape, and systematic rape.

**Humanitarian Law Treaties.** International humanitarian law is the law of armed conflict. As well as establishing a large number of detailed rules governing the behavior of belligerents and their soldiers, it also provides for the protection of the human rights of victims of armed conflict, including civilians. Recently, the scope of international humanitarian law in the course of internal armed conflicts, such as the war in Rwanda from 1990 to 1994, has been enlarged considerably, although it remains less developed than the law applicable to international armed conflicts. Much of international humanitarian law is composed of customary legal rules, which have been codified in the four *Geneva Conventions of 1949* and their two *Additional Protocols* of 1977, all of which have been ratified by Rwanda, as well as certain specialized instruments dealing with prohibited weapons, protection of cultural property, and similar is-

sues. The application of humanitarian law to Rwanda, particularly during the genocide of 1994, was the legal basis for the creation, by the United Nations Security Council, of the International Criminal Tribunal for Rwanda. International humanitarian law is discussed in more detail in the chapter on international law.

### *Domestic Law*

A series of provisions in the 1962 *Constitution* set out basic human rights, and was completed with a very direct reference to the *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly in 1948. The 1978 *Constitution* contained a similar, if somewhat different enumeration of human rights, but did not directly incorporate the *Universal Declaration*. The human rights provisions of the 1991 *Constitution* were broadly similar to those of the 1978 *Constitution*. A provision in the *Arusha Peace Agreement* directly incorporated the *Universal Declaration of Human Rights* in Rwandan law, noting that the principles set out in the *Universal Declaration of Human Rights* take precedence over the corresponding principles in the *Constitution* to the extent of incompatibility between the two instruments (Arusha VII, art. 17). Moreover, international human rights treaties which have been ratified by Rwanda are directly applicable in the internal legal system. These include the *International Covenants on Human Rights,* the *African Charter of Human and Peoples' Rights*, the *Convention on the Rights of the Child*, the *Convention for the Prevention and Punishment of the Crime of Genocide*, and several of the International Labor Organization conventions.

The provisions in the 1991 *Constitution* (Const., arts. 12-33) are inspired by the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *African Charter on Human and Peoples' Rights*. They respect the principle of indivisibility of human rights, in that they comprise civil, political, economic, social and cultural rights, without distinction.

Besides its significance in domestic law, ratification of international human rights treaties means that Rwanda is responsible with respect to its treaty partners for the respect and maintenance of human rights within its borders. Of course, many States have subscribed to such obligations while at the same time rebuffing criticism of their human rights records in the name of state sovereignty. Rwanda has gone a step further, in that its fundamental law recog-

nizes that the international community is entitled to express its concern in cases where human rights are violated in Rwanda (Arusha III, at. 14).

The *Protocol on the Rule of Law between the Government of the Republic of Rwanda and the Rwandan Patriotic Front*, of August 18, 1992 (Arusha III) notes that the rule of law means that nobody, including the authorities, is above the law, and that the law respects the fundamental rights of all citizens. The *Protocol* states that the rule of law is the best guarantee of national unity, and of the respect of fundamental rights and freedoms. The promotion and respect of the rights and freedoms of the individual is one of the principles contained in the Code of Ethics binding political forces that participate in the transitional institutions (Arusha IV, art. 80(5); also Arusha II, art. V(1)).

## Norms

There are many ways in which to classify or subdivide human rights. Historically, they were divided by the two *International Covenants* into civil and political rights and economic, social and cultural rights. Such a distinction was a product of cold war politics, and has since been rejected as running contrary to the principle of indivisibility. The *Covenants* suggest as a basis for such a distinction the argument that civil and political rights are essentially negative in nature, requiring the State to abstain from violations, and it is often said that for this reason they may be applied even by the poorest States. In contrast, economic and social rights require the State to take positive action, and they can therefore only be implemented as a function of economic development and progress. But on closer analysis, these distinctions are not easy to apply. For example, some fundamental norms, such as the right to life, have important economic and social components, despite the fact that they are usually classified as being civil and political. The right to a minimum of food and medical care is part of the right to life, even if these rights are generally classified as being economic and social. As for the right to a fair trial, it too is classified as being civil and political, despite the fact that many of the accoutrements of justice bear a direct relation to the level of wealth in a society.

For the purposes of this introduction to Rwandan human rights law, six categories have been identified: the right to security of the person; legal rights; fundamental freedoms; equality rights; economic, social and cultural rights; democratic rights.

### *Security of the Person*

The *Universal Declaration of Human Rights* proclaims that "Everyone has the right to life, liberty and security of person" (UDHR, art. 3). Other provisions complete the recognition of these rights, by prohibiting torture and treatment or punishment that is cruel, inhuman and degrading (UDHR, art. 5), banning slavery and servitude (UDHR, art. 4) and protecting individuals from arbitrary arrest, detention or exile (UDHR, art. 9). The *International Covenant on Civil and Political Rights* echoes these provisions with texts that are considerably more detailed, and that enumerate a series of exceptions (ICCPR, arts. 6-10). The *African Charter of Human and Peoples' Rights* contains corresponding provisions (ACHPR, arts. 4-6). The 1991 *Constitution* only partially reflects these international obligations of Rwanda. Article 12 of the 1991 *Constitution* declares that "[t]he human person is sacred", article 17 prohibits slavery and article 29 prohibits forced labor. Article 13 states that no person may be subject to security measures except as provided by law, and for reasons of public order or State security. However, there is no explicit protection of the right to life, or prohibition of torture or cruel treatments. The international texts apply directly in domestic law, and furthermore they provide content and context to the summary declaration in article 12.

**Right to life.** The right to life prohibits summary or arbitrary executions by the State. In some States, where capital punishment has been abolished, it may be argued that the right to life also prohibits the death penalty. Article 3 of the *Universal Declaration of Human Rights* is silent on the subject. At the time the *Declaration* was drafted, in 1948, it was agreed that the death penalty should not be explicitly authorized by the declaration because human rights were developing in favor of its evolution. But a formal proposal to prohibit the death penalty was also rejected, because it was felt this was too advanced for the times. The *International Covenant on Civil and Political Rights* tolerates the death penalty, but limits its application to the most serious crimes, forbids execution of children and pregnant women, and requires the most stringent procedural safeguards on its use. The *Second Optional Protocol to the Covenant*, adopted in 1989 and in force since 1991, abolishes the death penalty, but it has not yet been ratified by Rwanda. In a 1995 judgment, a majority of the South African Constitutional Court concluded that the death penalty as set out in that country's *Penal Code* was contrary to the right to life, protected by the post-apartheid *Constitution*.

The right to life also requires the State to protect the life of its citizens. It must take appropriate measures to ensure that life is safeguarded, not only from the State itself but by non-State actors such as groups of vigilantes or private militias. State authorities, such as police and military, must not use life-threatening force in subduing demonstrations, riots, or prison escapes unless this is absolutely required.

International law has yet to take a firm position on whether abortion and euthanasia constitute acceptable exceptions to the right to life. As a general rule, these issues have been left intentionally vague in the drafting of texts so as to respect the diversity of practice in various States. In recent years, the right to life has been given a broader interpretation that takes into account economic and social rights. Thus, the right to life, which is classified as a civil right in the *International Covenant on Civil and Political Rights*, is now deemed to ensure the right to a minimum standard of life, that includes food, housing and medical care, as well as a healthy environment.

**Torture and Cruel Treatment.** The prohibition of torture and cruel treatment, although not set out explicitly in the 1991 *Constitution*, constitutes one of the core principles of modern human rights. It is subject to no suspension or derogation, even in times of great crisis. The international prohibition of torture implies, for States, the duty to criminalize torture, to prosecute those responsible for it, to cooperate in extradition of those suspected of torture, to indemnify victims of torture, and to declare evidence obtained under torture to be inadmissible in judicial proceedings. Cruel, inhuman and degrading treatment or punishment is generally viewed as a lesser although equally reprehensible form of torture. Difficult issues arise because it may call into question forms of treatment or punishment expressly authorized by domestic law. In the judgment referred to above, the South African Constitutional Court unanimously held the death penalty to constitute cruel, inhuman and degrading punishment, although a judgment of the Tanzanian Court of Appeal also issued in 1995 took a different view of the matter. In a 1993 judgment, the Supreme Court of Zimbabwe adopted the position that prolonged detention while awaiting execution was also a form of cruel treatment. Some constitutional courts have concluded that life imprisonment, without possibility of parole, is a form of cruel punishment. In a 1978 judgment, the European Court of Human Rights ruled that certain forms of corporal punishment inflicted on juveniles were also contrary to this norm.

**Arbitrary Detention.** International norms, and specifically article 9 of the *International Covenant on Civil and Political Rights*, prohibit arbitrary arrest or detention, and state that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. A person who is arrested is entitled to be informed, at the time of arrest, of the reasons for his arrest and of any charges against him. He must be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable time or to release. As a general rule, persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Essentially, these rights are provided for in Rwandan domestic law, and specifically by the *Code of Criminal Procedure*. There are a number of quite demanding international standards dealing with prison conditions, such as the *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the Economic and Social Council in 1955, which are difficult to reconcile with many prison conditions within Rwanda.

Problems relating to the norm prohibiting arbitrary detention have arisen in relation to genocide suspects, of whom tens of thousands were arrested in 1994 and subsequently. They have been detained, usually without formal accusations being presented and without prompt appearance before a court, in violation of international norms as well as of the Rwandan *Code of Criminal Procedure*. In 1995, the Transitional National Assembly adopted a law amending the *Code of Criminal Procedure* in order to suspend rules relating to preventive detention and provisional release of persons suspected of committing genocide, crimes against humanity and war crimes. Referring to art. 12(4) of the *Constitution* of 1991, as well as the *Universal Declaration of Human Rights* (art. 11(1)) and the *African Charter of Human and Peoples' Rights* (art. 7(b)), the Constitutional Court ruled the law to be a violation of the presumption of innocence (Judgment 009 of July 26, 1995). The right to challenge illegal detention before a court (*habeas corpus*) is not formally recognized in the *Fundamental Law*. However, the *Universal Declaration of Human Rights* protects the right to an effective remedy (UDHR, art. 8). The Constitutional Court, in its July 26, 1995 judgment, also held that the draft amendment to the *Code of Criminal Procedure* was unconstitutional because it deprived detained suspects of a remedy.

In response to the Constitutional Court's judgment, an amendment to the *Constitution* was adopted on January 18, 1996 authorizing the law to derogate from article 12(2) of the *Constitution* in cases of exceptional danger threatening the existence of the nation (Const. Am. I, art. 6). The words are borrowed from article 4(1) of the *International Covenant on Civil and Political Rights*, which authorizes derogation or suspension of certain rights enshrined in that instrument, including those of article 9. It should be noted, however, that article 4(1) of the *Covenant* does not authorize any derogation from article 15, prohibiting retroactive crimes and punishments. Any interpretation by the courts of the 1996 amendment must respect the *Covenant*, and as a result the scope of the amendment must be confined to issues concerning arbitrary detention, whose derogation is allowed.

Subsequent to the 1996 Amendment, new legislation was enacted in September, 1996, suspending the provisions of the *Code of Criminal Procedure*, and authorizing detention of genocide suspects despite the irregularity of their files (Law 9/96 of September 8, 1996). It makes specific reference, in its preamble, to article 4 of the *International Covenant on Civil and Political Rights*. The law provides, for example, that an arrest record for a suspect must have been prepared no later than the end of 1997, which means that an individual may have been detained for more than three years without ever having a proper arrest record. The legislation also suspends the right to appeal decisions concerning pre-trial detention, although this does not explicitly offend any international norms. Article 8 of the 1996 Law says that it is effective as of April 6, 1994, although in reality its effects are not retroactive, as their principal purpose is to legalize detention and thereby insulate it from court challenges in the future. International tribunals have refused to set a firm rule establishing fixed periods beyond which pre-trial detention is unacceptable, and have preferred to treat it on a case by case basis. In one judgment, the European Court of Human Rights ruled that pre-trial detention exceeding four years did not infringe the arbitrary detention provisions of the *European Convention of Human Rights*.

### *Legal Rights*

Procedural safeguards and the right to access to courts are central to the modern law of human rights. Pursuant to the *Universal Declaration of Human Rights*, "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal,

in the determination of his rights and obligations and of any criminal charge against him" (UDHR, art. 10). Such a right, as the text states clearly, applies to civil proceedings as well as to criminal proceedings. In the later case, further safeguards are set out. An individual accused of a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (UDHR, art. 11(1)). Retroactive crimes are forbidden, and penalties for such crimes may not be increased subsequent to commission of the infraction (UDHR, art. 11(2).

The *International Covenant on Civil and Political Rights* provides substantial details as to the scope of these rights as well as to permissible limitations, especially to the principle that trials shall be public (ICCPR, art. 14(1)). In the case of criminal trials, the accused is entitled: to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge; to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing; to be tried without undue delay; to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment in any such case if he or she does not have sufficient means to pay for it; to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her; to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court; and not to be compelled to testify against himself or herself or to confess guilt (ICCPR, art. 14(3)). Furthermore, there is a right to appeal (ICCPR, art. 14(5)), to compensation for miscarriages of justice (ICCPR, art. 14(6)), and to protection against double jeopardy (ICCPR, art. 14(7)). If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby (ICCPR, art. 15(1)). The same principles are set out, in somewhat more summary form, in the *African Charter* (ACHPR, art. 8). Although the fair trial provisions of the *International Covenant on Civil and Political Rights* are subject to suspension or derogation in emergency situations, according to the case law of the Human Rights Committee, they brook no such exception in cases where the death penalty is at issue.

The 1991 *Constitution* contains very few of these procedural and substantive rules relating to legal rights. It affirms the presumption of innocence (Const., art. 12(4)), prohibits retroactive crimes and punishments (Const., art. 12(2-3)), and states that there is an absolute right to be defended, at all stages of proceedings (Const., art. 14(3); also OL 8/95, s. 26). Reasons must be given for all judgments, which must be delivered publicly (Const., art. 94). All trials are public, and hearings may be held *in camera* only when publicity would be dangerous for public order or morality (Const., art. 93). The Constitutional Amendment of January 18, 1996 allows an exception to the rule against retroactivity, stating that acts or omissions are punishable provided they were considered criminal according to general principles of law recognized by the international community. Such an exception is perfectly compatible with international norms, from which the new provision is borrowed. There is often much confusion about the principle of non-retroactivity. In effect, it prohibits retroactive crimes and punishments, but it does not forbid retroactive legislation generally. The Preliminary Title of Rwanda's Civil Code specifically contemplates the possibility of retroactive legislation, where the intention of a retroactive effect is expressly stated by the legislator, although it creates a presumption that legislation has only a prospective effect (CC PT, art. 3).

Despite the fact that many of the specific rights found in article 14 of the *International Covenant on Civil and Political Rights* are not set out in the *Fundamental Law*, they are generally protected by provisions of the *Penal Code* and the *Code of Criminal Procedure*. However, the underdeveloped state of the Rwandan defence bar makes it difficult to ensure the right of an accused "to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he does not have sufficient means to pay for it", as required by the *Covenant*. A provision of the Organic Law dealing with genocide prosecutions, promulgated in September, 1996, is in contradiction with this provision when it denies the right to state-funded counsel.

The international guarantee of an independent and impartial tribunal is reflected in a number of provisions, including frequent mention in the *Arusha Peace Agreement* of the importance of the rule of law and of the impartiality of the judiciary. Various specific provisions of Rwandan law insure the independence of judges (OL 8/95, s. 25). However, recently enacted provisions providing for renewable judicial appointments to the Court Martial of twelve months seem unlikely to ensure impartiality. In practice, it is difficult to apply

provisions concerning judicial independence and impartiality where a judicial system is in turmoil as a result of civil disturbances.

### *Fundamental Freedoms*

The *Universal Declaration of Human Rights* protects the fundamental freedoms of religion or belief, expression, association and peaceful assembly (UDHR, arts. 18-10). It also protects the right to privacy (UDHR, art. 12), freedom of movement (UDHR, art. 13), asylum (UDHR, art. 14), nationality (UDHR, art. 15), to marriage and family (UDHR, art. 16) and to own property (UDHR, art. 17). Similar formulations appear in the *International Covenant on Civil and Political Rights* and the *African Charter*, with minor differences. The *Covenant* also provides detailed clauses setting out the scope of permissible limitations to some of the fundamental freedoms, generally specifying that they must be provided for by law and must be necessary in a free and democratic society. For example, the *Covenant* allows for restrictions on freedom of expression in the interest of respect of the rights or reputations of others, the protection of national security, public order, public health or morals (ICCPR, art. 19(3)). In addition, the *Covenant* requires that propaganda for war, as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, be prohibited by law (ICCPR, art. 10).

Comparable provisions can be found at various places in the *Fundamental Law* of Rwanda. Freedom of religion, including public celebration of religion, is protected by the *Constitution*, except in the case of criminal offences committed during the practice of religion (Const., art. 18). Non-confessionalism is one of the principles set out in the Code of Ethics binding political forces that participate in the transitional institutions (Arusha IV, art. 80(5)). Freedom of expression is not explicitly protected by the 1991 *Constitution*, although this is corrected in the *Arusha Peace Agreement*. The *Protocol on the Rule of Law* refers specifically to freedom of expression as a fundamental democratic principle (Arusha III, art. 16). Indeed, it is inconceivable that the detailed provisions concerning the rule of law, free and fair elections, democratic governance, and freedom of association and assembly, be exercised without the protection of freedom of expression. Abstention from all incitement to violence in writing, verbal message or by other means is one of the principles contained in the Code of Ethics binding political forces that participate in the transitional institutions (Arusha IV, art. 80(3)). Academic freedom is also protected by the *Fundamental Law* (Const., art. 26).

Freedom of association is protected by the 1991 *Constitution*, although the provision adds "under conditions set by law" (Const., art. 19). Prior authorization is not to be required for exercise of this right. Trade union activity is also protected by the *Constitution*, as is the right to strike, subject to limitations imposed by law (Const., arts. 31, 32). Freedom of peaceful assembly, without arms, is protected by the *Fundamental Law*, under limits set by the law. Prior authorization can be required by law, but only in the case of public meetings, and for reasons of security, peace and hygiene (Const., art. 20).

All citizens are free to move throughout the territory of Rwanda, to leave it and to return. Exercise of this right can only be limited by law based on public order or State security (Const., art. 21). Certain limitations on freedom of movement within the country are set out in the *Penal Code* (PC, ss. 54-58, 128). Rwandan citizens are entitled to enter the country without any formality. In cases of expulsion or other restriction on mobility, a foreigner has a remedy before the President of the Republic (Law of 15/10/63, s. 19). Rwandan citizens may not be extradited under any circumstances (PC, s. 16). The right to asylum is recognized, but only under circumstances provided for by law (Const., art. 15). Extradition is only authorized under conditions provided for by law (Const., art. 15).

Several provisions concerning refugees are contained in the *Arusha Peace Agreement*, which states that unity of the Rwandan people can only be achieved with a definitive solution of the refugee problem. The *Agreement* declares that the return of refugees to their country is an inalienable right and constitutes an element of peace, unity and national reconciliation (Arusha III, art. 4). The Government is to repatriate and reintegrate all Rwandan refugees who desire to return to the country (Arusha V, art. 23). Opposition to the free exercise of this right by refugees is forbidden (Arusha III, art. 4). The right of Rwandan refugees to return to their country is an inalienable right, and constitutes an element of peace, unity and national reconciliation (Arusha V, art. 1). Refugees who return may settle in a place of their choice within the country, on the condition that they do not violate the rights of others (Arusha V, art. 2).

The right to privacy is protected by the 1991 *Constitution*, in a provision that echoes the international models (Const., art. 22). This includes protection of correspondence, mail, telephone and telegraph and similar means of communication. The right can only be limited by law. Also, the home is protected against intrusion, which must be authorized by law. Examples of such authorization can be found in

the *Code of Criminal Procedure*, which authorizes searches of homes, but only under rigorously controlled conditions (CCP, ss. 32, 33). Restrictions on the right to choose one's home are found in criminal law (PC, ss. 54-58) and in certain measures concerning married women and minors. Protection against disturbance in the enjoyment of this right is also protected by civil law (CC II, art. 35/3). Limitations on the protection of correspondence are found in prison regulations and customs laws (PC, ss. 214-216).

The right to own property is declared by the *Constitution* to be inviolable (Const., art. 23; also CC II, art. 9). It may only be limited in cases of public utility, where established by law, and provided that fair compensation is provided prior to any expropriation. Affirming that the right to property is inalienable, the *Arusha Peace Agreement* declares that refugees have the right to retake possession of the property upon their return (Arusha V, art. 4). It adds, however, that in order to promote social harmony and national reconciliation, those who have been absent for more than ten years are urged not to reclaim their property, but instead to accept compensation from the government (Arusha V, art. 4). Refugees whose property has been taken over by the State are entitled to fair compensation (Arusha V, art. 4). Expropriation for public utility is provided for by D-L 21/79 of July 23, 1979.

### *Equality Rights*

The *Charter of the United Nations* affirms that one of the principal purposes of the Organization is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." The principle of non-discrimination has been stated by the International Court of Justice as well as by the Human Rights Committee to constitute a rule of customary law. The *Universal Declaration of Human Rights* expands the enumeration of categories, stating that the rights and freedoms set forth in the *Declaration* must be ensured to everyone, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, art. 2). A similar provision appears in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* (ICCPR, art. 2(2); ICESCR, art. 2(2)). The *African Charter of Human and Peoples' Rights* also contains such a provision, adding "ethnic group" to the categories, and substituting "fortune" for "property" (ACHPR, art. 2). The *International Covenant on Civil and Political*

*Rights* takes equality rights one step further, in that it also prohibits discrimination generally, and not only with respect to rights that are protected by the *Covenant* itself. Discrimination is prohibited when it is based on "any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (ICCPR, art. 26). Use of the term "such as" enables courts and other bodies that interpret the Covenant to add non-enumerated categories of discrimination, for example sexual orientation.

The Rwandan *Constitution* states that all citizens are equal before the law, without discrimination based on any ground such as race, color, origin, ethnic origin, clan, sex, opinion, religion or social position" (Const., art. 16). The *Protocol on the Rule of Law* of August 18, 1992 returns to the theme of equality and non-discrimination as fundamental components of the rule of law. It states that national unity must be the basis of equality of all citizens before the law, and of equality of opportunity in all fields, including the economy (Arusha III, art. 1). It declares that national unity implies the need to fight all obstacles to national unity, including ethnicism, regionalism, integrism and intolerance, which replace the national interest with ethnic, regional, religious or personal interests (Arusha III, art. 2). National unity implies the rejection of all forms of exclusion and all forms of discrimination, particularly those based on ethnicity, region, gender and religion. It implies equality of all citizens and the same chances of access to political and economic life and other things that the State must ensure (Arusha III, art. 3). The *Protocol on the Rule of Law* also affirms that the fundamental principles of democracy include equality before the law (Arusha III, art. 6).

Specific measures are provided for in the *Fundamental Law* in order to combat discrimination. Mention of ethnic origin in official documents, which contributed for so many years to racial hatred in Rwanda, is now prohibited by the *Fundamental Law* (Arusha IV, art. 16). The Broad-Based Transitional Government is mandated with removing such references in any existing documents. In the Code of Ethics binding political forces that participate in the transitional institutions, an undertaking is made to fight any political ideology and any act whose purpose is to promote discrimination based on ethnicity, regionalism, gender and religion (Arusha IV, art. 80(5)).

The Government is specifically entrusted with the mission of establishing effective mechanisms to combat all forms of discrimination and exclusion (Arusha IV, art. 23). The Government is also charged with creating a system of recruitment for public service and

for admission to educational institutions that is based on fair competition and that provides equal opportunity to all citizens (Arusha IV, art. 23).

As in all other legal systems, despite recognition of the fundamental norm of equality and non-discrimination, there are many provisions of Rwandan law that are incompatible with these principles. Presumably, they will be changed over time as legislators revise the country's statutes in order to reflect them.

The Legal and Constitutional Commission, created by the *Arusha Peace Agreement*, is charged with examining legislative changes that are required, particularly the provisions dealing with the Rule of Law (Arusha III). The fundamental law also provides for the creation of a National Commission of Human Rights (Arusha II, art. 15), whose mandate is to examine alleged violations of human rights committed within the territory of Rwanda, and particularly those for which the State may be responsible. The Commission may act before the courts in the case of violations, and is also charged with dissemination, promotion and training of the population in human rights.

### *Economic, Social and Cultural Rights*

Economic, social and cultural rights were included in the *Universal Declaration of Human Rights*. The Vienna Conference on Human Rights, in June, 1993, confirmed that they are an indivisible part of international human rights. The *Universal Declaration of Human Rights* recognizes the following economic and social rights: the right to social security (UDHR, art. 22); the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, and to equal, just and favorable remuneration (UDHR, art. 23); the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (UDHR, art. 24); the right to a standard of living, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond the control of the individual (UDHR, art. 25); the right to education, elementary education being both free and compulsory (UDHR, art. 26). Essentially, the same rights appear, but in a considerably more detailed formulation, in the *International Cove-*

*nant on Economic, Social and Cultural Rights*. This *Covenant* can be distinguished from the *International Covenant on Civil and Political Rights* in that it does not require immediate implementation of the rights it enshrines. Rather, a State party "undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" in the instrument (ICESCR, art. 2(1)). This highlights one of the difficulties of implementation of economic and social rights. They do not lend themselves as easily to litigation, because they require intervention and, generally, investment by the State, something courts find themselves poorly placed to order. For this reason, economic and social rights are often viewed as "program rights".

The *African Charter of Human and Peoples' Rights* contains a rather more meagre list of economic and social rights. It recognizes the following: the right to work under equitable and satisfactory conditions, including equal pay for equal work (ACHPR, art. 15); the right to health and medical attention (ACHPR, art. 16); the right to education (ACHPR, art. 16).

Cultural rights are also recognized by the *Universal Declaration*, which states that "[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits" (UDHR, art. 27). The *International Covenant on Economic, Social and Cultural Rights* reaffirms this right (ICESCR, art. 15). Furthermore, the *International Covenant on Civil and Political Rights* recognizes the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their own culture (ICCPR, art. 27). The African *Charter* also asserts the right of the individual to take part in the cultural life of his or her community.

Some of these fundamental economic and social rights are enshrined in the 1991 *Constitution*. The right to work, to freely choose employment, and to fair and satisfactory working conditions are enshrined in the 1991 *Constitution* (Const., art. 30). The right to free primary education is also protected by the *Constitution* (Const., art. 27), subject to the rights and duties of parents (Const., art. 24). Primary education is mandatory (Const., art. 27). At the time of ratification of the *International Covenant on Economic, Social and Cultural Rights*, Rwanda made a reservation, declaring that on the

subject of education, it would be bound only by the provisions of its *Constitution*. However, Rwanda has since declared its intention to withdraw all reservations to human rights treaties and, in legislation adopted in early 1995, actually declared that all reservations formulated by the Republic of Rwanda had been lifted (D-L 014/01 of February 15, 1995, s. 1). However, it does not appear that Rwanda has yet deposited a declaration to this effect with the United Nations Secretariat.

### *Political Rights*

The *Universal Declaration of Human Rights* states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people is to be the basis of the authority of government, and is to be expressed in periodic and genuine elections. Elections are to be held by universal and equal suffrage, and by either secret vote or equivalent free voting procedures (UDHR, art. 21). The *International Covenant on Civil and Political Rights* contains a comparable provision (ICCPR, art. 25). The *African Charter* does not speak of elections, but states that "[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law" (ACHPR, art. 13(1)).

Although the right to free and fair elections was not stated explicitly in the 1991 *Constitution*, in a text corresponding to those of the international models, several provisions dealt implicitly with it. The *Constitution* states that all Rwandan citizens of the age of majority and who are not in an excluded group are entitled to vote (Const., art. 9). Suffrage is declared to be universal, equal and secret, and may be either direct or indirect (Const., art. 8). Political parties are also protected by the *Constitution* (Const., art. 7). They may organize themselves and act without interference, provided they respect democratic principles and do not threaten the republican form of government, the country's territorial integrity and State security (Const., art. 7). Explicit recognition of the principle of free and fair elections was added during the *Arusha Peace Agreement*. The *Fundamental Law* of Rwanda now affirms that "government is based on the consent of the people expressed in periodic, free, transparent and fair elections" (Arusha III, art. 6). Democracy is to be based on multipartyism, and social and economic pluralism (Arusha III, art. 6). This requires the implementation of effective mechanisms of supervision,

including international observers. Elections must also involve explanation of civil rights and duties; this, too, is an inalienable right of the citizen and constitutes a means of avoiding all forms of political manipulation (Arusha III, art. 11).

Members of the armed forces are entitled to vote, but cannot participate in local elections or run for office (Arusha V, art. 1(B)(7), (8)). Convicted criminals subject to civil degradation are prohibited from voting and are ineligible for election (PC, art. 66(2)).

**Further reading.** A number of general introductions to human rights law have been published, of which the following are particularly recommended: Henry J. STEINER, Philip ALSTON, *International Human Rights in Context*, Oxford: Clarendon Press, 1996; Philip ALSTON, *The United Nations and Human Rights: A Critical Appraisal*, Oxford: Clarendon Press, 1992; Thomas BUERGENTHAL, *International Human Rights in a Nutshell*, 2nd ed., St. Paul, Minnessota: West Publishing, 1995. To our knowledge, there are no published academic studies dealing specifically with human rights law within Rwanda. Readers are advised to consult the periodic reports presented by Rwanda to the different treaty bodies.

# Chapter 6
# International Law

Public international law has, at least historically, been viewed as the system of legal norms governing relations between sovereign states. It is often traced to the early seventeenth century, and the writings of Hugo Grotius, as well as the Treaties of Westphalia of 1648 which enshrined the system of sovereign nation states. In the twentieth century, this somewhat narrow view has been enlarged so that the field also governs relations between individuals and the State, particularly in the field of human rights. Jurists also refer to "private international law", a system of legal rules that resolves conflicts between competing legal systems. For example where a marriage takes place in one State and a divorce in another, private international law determines which national legal system applies to the division of the marital property. Rwandan law declares that laws concerning civil status apply to Rwandans, even where they live abroad (CC PT, art. 10). Private international law is addressed elsewhere in this book (see p. 124).

International law is a European creation, and only gradually was its scope expanded to treat States in the Americas, Asia and Africa as being full participants. In the Americas, this was associated with independence from the European colonial regime. In parts of Asia, States began to be recognized as subjects of international law only in the nineteenth century. And it was not until the end of the First World War, and the *Covenant of the League of Nations*, that international law was deemed to apply throughout the world to all States, without discrimination. But even then, and despite the fact that the right of nations to self-determination was one of the war aims enunciated in President Woodrow Wilson's Fourteen Points, former colonies of Germany were not decolonized but rather assigned to the victorious European powers under the Mandate System. Only with

full decolonization were all Member States of the United Nations recognized as equals, although even within the United Nations there is a formal inequality in the fact that one of its principal organs, the Security Council, is essentially controlled by the five permanent members.

International law prevails over domestic law in relations between States. In other words, where a State is bound by an international legal obligation, it may not invoke its domestic law in order to avoid this obligation with respect to another State. But the situation is not necessarily the same in the case of an individual who invokes international law before domestic courts. Rwanda is known as a "monist" States, meaning that international law is applicable directly within the domestic legal system. As a result, customary legal obligations are part of the law of the land, and take precedence over domestic law in the case of conflicts. The same is true of international treaties, although these must be published in the *Official Gazette* before they are accorded force in domestic law. Some States, known as "dualist", separate international and domestic law, and require that international treaties be implemented by specific legislation for them to have domestic effect.

Because Rwanda achieved sovereignty only relatively recently, many international legal rights and obligations were in a sense inherited from Belgium pursuant to rules of State succession. Thus, the boundaries established prior to decolonization were unaffected by independence. Extradition treaties contracted by Belgium have also been considered to stay in force according to principles of State succession. But for most international obligations, Rwanda was not bound to the Belgian treaties, although in the case of multilateral treaties it was entitled to declare that it intended to continue being governed by them. In the years following decolonization, Rwanda issued a number of such declarations, providing for its succession to obligations contracted on its behalf by Belgium in such areas as dangerous drugs, highway traffic, humanitarian law and labor standards.

According to the *Fundamental Law*, the President of the Republic represents Rwanda in its foreign relations (Arusha IV, art. 6(c)). The President appoints and accredits ambassadors and other envoys, after their designation by the Cabinet, and receives the credentials of foreign diplomats.

## Sources of Public International Law

The classic formulation of the sources of international law is article 38 of the *Statute of the International Court of Justice*. It sets out the three principal sources:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations.

There is no hierarchy, and all three sources are in theory equal, although the third, general principles of law, has in practice been relatively less significant. Nor is the list exhaustive. For example, a source of international law that is of growing importance is decisions of the United Nations Security Council, adopted pursuant to article 25 of the *Charter of the United Nations* and binding upon all Member States. The Statute of the International Criminal Tribunal for Rwanda is a decision of the Security Council, and is binding on all states. Unilateral acts, such as a declaration of support for legal principles comprised in a resolution of the General Assembly, may also create legal rights and obligations. The *Statute of the International Court of Justice* indicates that legal scholarship and judicial decisions are "subsidiary means for the determination of rules of law".

### *International Conventions*

The term "International Conventions" refers to what are more commonly known as treaties and, somewhat less frequently, as covenants, agreements, protocols, charters, acts, statutes and declarations. The terminology is of little or no importance. What is being described is an agreement concluded between States in written form and governed by international law. A treaty or convention must be made by subjects of international law (that is, by sovereign states or international organizations), its purpose must be the creation of binding obligations, and the agreement must be subject to international law. Treaties exist covering a wide range of international law issues, including: pacific settlement of international disputes; privileges and immunities; diplomatic and consular relations; human

rights; refugees and stateless persons; narcotic drugs; the slave trade; obscene publications; health; international trade and development; transport and communications; navigation; education and culture; the status of women; freedom of information; family law; the law of the sea; outer space; telecommunications; disarmament; environment; taxation. A large number of treaties are really nothing more than contracts between States creating rights and obligations on international law issues.

Treaties may be either bilateral, meaning that they bind only two States, or multilateral, in which case they may be ratified by three or more States. Some treaties, such as the *Geneva Conventions of August 12, 1949* dealing with the protection of non-combattants during armed conflict and the *Convention on the Rights of the Child*, have been ratified by virtually every State in the world. Some multilateral treaties are limited to regions, examples being the *Charter of the Organization of African Unity* and the *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Treaties may be drafted and executed between States and international organizations; an example is the host state agreement between Rwanda and the United Nations concerning the presence of the UNAMIR forces, executed in November, 1993.

Bilateral treaties are generally the result of private negotiations between States. Sometimes they are based on model conventions prepared by international organizations, which leave it to the individual States to tailor the models to their own specific needs and circumstances. Such model conventions have been prepared in the field of extradition and international judicial cooperation. Multilateral treaties are drafted at international conferences or by United Nations organs such as the General Assembly. The adoption of the text does not give the treaty binding force. Even those States that have approved of the text at the time of its adoption must still commit themselves formally by a process of ratification, acceptance, approval or accession. Treaties are registered with the United Nations, a requirement imposed by the *United Nations Charter*. In the interpretation of treaties, courts will often refer to the drafting history of the treaty (for example, records of debates in the United Nations General Assembly), or the subsequent practice of the States parties, in order to determine the intent of the drafters, in much the same way as domestic courts interpret a contract between two individuals. The most important rules governing the conclusion of treaties, ratification, coming into force, reservation, interpretation and denunciation

are contained in the *Vienna Convention on the Law of Treaties*, to which Rwanda acceded on January 3, 1980 (PO 473/16 of October 9, 1979).

Unless the treaty declares otherwise, States are generally free to ratify it with reservations to one or several of its provisions. Reservations are tolerated by the international community to the extent that they are not contrary to the object and purpose of the treaty. Reservations that do not meet this standard may be subject to objections by other States parties, and may even be challenged by international organs that are charged with implementation of the treaty, such as the Human Rights Committee (implementation of the *International Covenant on Civil and Political Rights*). When Rwanda ratified the *Convention on the Prevention and Punishment of the Crime of Genocide*, in 1975, it formulated a reservation to article IX, which grants jurisdiction to the International Court of Justice for the adjudication of disputes arising from the *Convention*. Rwanda later undertook, in the Arusha Peace Agreement, to withdraw its reservations to international human rights treaties (Arusha VII, art. 15), and in 1996 it adopted legislation authorizing this (D-L 014/01 of February 15, 1995).

Treaties are ratified by the President of the Republic of Rwanda, following decision by the Cabinet. The Government is charged with negotiating and concluding international treaties (Arusha IV, art. 16(2). However, treaties that involve modifications of Rwanda's borders or that affect its sovereignty, treaties involving international association with other States, and treaties with budgetary implications, are only executory after they have been approved by legislation (Arusha IV, art. 11(6)). The merger of Rwanda with one or more democratic States must be approved by referendum. (Arusha IV, art. 11(6).

### *Customary International Law*

Customary law binds States in the same way as convention law or treaties. Like treaty law, it is essentially based on their consent, but with the distinction that proof of such consent does not rely on the existence of a written instrument, but rather on two factors, one objective and the other subjective. In order to establish the existence of a customary international law norm, there must be evidence of state practice and a constant and uniform usage, accepted as law by the state itself as *opinio juris*. The great difficulty with invoking

customary norms is proving their existence. Often, the search for customary norms leads almost inexorably back to written instruments. Many non-binding or "soft-law" declarations adopted by international bodies such as the United Nations General Assembly, the International Law Commission and the Commission on Human Rights are viewed as written codifications of customary law. An example would be the *Universal Declaration of Human Rights*, a resolution of the United Nations General Assembly that has even been incorporated in Rwanda's *Fundamental Law*, despite the fact that its authors never intended for it to affirm binding legal norms (Arusha VII, art. 17).

The International Court of Justice has held that common article 3 to the *Geneva Conventions*, which prohibits murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, humiliating and degrading treatment and ensures due process, expresses norms of customary international law. It has also declared that freedom from slavery and racial discrimination "have entered into the body of general international law". The Court has also recognized the existence of customary rules concerning fishing rights and maritime borders. A customary rule may be only regional in nature.

Customary international law is directly incorporated into the legal systems of many states, including Rwanda. By its very nature, customary international law is not subject to ratification. As stated in article 38 of the *Statute of the International Court of Justice*, this requires proof of "general practice accepted as law". Thus, courts will look for evidence of two distinct elements, the objective behavior of a State *vis-à-vis* other States (state practice), and its subjective conception of whether or not it considers itself to be bound by the customary norms (*opinio juris*). This may include such things as the way it votes on resolutions in international bodies, and official statements that its representatives make. Where a State is concerned about being bound by a customary norm it is important for it to manifest its objections visibly.

### *General Principles of Law Recognized by Civilized Nations*

General principles of law recognized by civilized nations are listed in the *Statute of the International Court of Justice* as one of the three principal sources of rules of international law, although in practice they have taken a back seat to customary and conventional norms. Examples of such general principles would be the rule of *res judicata*, the doctrine of estoppel and the obligation to make repara-

tion for breach of an engagement. The obligation to act in accordance with good faith, particularly in the execution of obligations that have been undertaken, is another general principle. In the *Statutes* of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda, the judges are authorized to accord pardon or commutation based on the "interests of justice and the general principles of law". Because, by definition, such rules are derived from domestic law, most if not all of them are already recognized by Rwandan courts.

**Territory**

Respect for the sovereign territory of States is a cardinal principle of international law. Traditionally, States could act as they pleased within their own territory, subject to duties not to harm other States, for example by cross-border pollution. More recently, human rights and humanitarian law have imposed limits on what States may do within their own territory to their own populations. By territory, international law considers not only the land territory of States, but also adjacent waters and airspace. A great deal of international litigation has been devoted to establishing the land and maritime borders of States. Territory which does not belong to an independent State may be either common to humanity (*res communis*), such as the high seas or outer space, or unclaimed (*res nullius*). The only unclaimed territory now left on Earth is certain portions of Antarctica.

Rwanda's current borders were determined prior to decolonization. In application of the legal principle *uti possedetis juris*, borders established at the time of decolonization, even if they do not correspond to ethnic or even pre-colonial divisions, are to be respected and may not be changed without the consent of all concerned parties. The principle is not without controversy, as it may run counter to the right of peoples to self-determination and is often criticized for imposing borders that were determined by colonialists at European conferences. Much of the ethnic conflict in Africa is blamed for this situation. However, the Organization of African Unity, in its *Cairo Declaration* of July 21, 1964, recognized the application of the rule *uti possedetis juris* within Africa. The principle was affirmed by the International Court of Justice in 1986 when it determined the border between Burkina Faso and Mali.

Rwanda is bounded by Congo, Uganda, Tanzania and Burundi. The western border, with Congo, was agreed to by Belgium and Germany in the *Brussels Convention* of August 11, 1910. A map annexed to the *Convention* established the boundary line within Lake

Kivu, and specified that the islands of Iwinza, Nayamaronga, Kwidjwi and Kitanga were to form part of the territory of Rwanda. Shortly after the First World War, Belgium ceded a strip of territory along Rwanda's western border to the United Kingdom for the right of way of the Cape to Cairo railroad. The League of Nations intervened because this went beyond the scope of Belgium's mandate, and the territory was returned to Rwanda. The northern border, with Uganda, was determined by an arrangement between Germany and the United Kingdom at Berlin, on July 1, 1890. Subsequently, a treaty between Germany and Britain concerning the border between German East Africa and Uganda was finalized on May 14, 1910.

The Western and Southern borders involved the post-World War I division of German East Africa. The border with Tanzania was set by the Ochs-Milner Agreement of May 30, 1919, between the United Kingdom and Belgium, and was approved by the Council of the League of Nations on July 20, 1922. Subsequently, a protocol signed at Kigoma concerning the border of East African territories under Belgian and British mandate was reached on August 5, 1924. The border was modified by a treaty, signed at London on November 22, 1934. No international treaty governs the southern border with Burundi. The boundary was established by Belgium itself, pursuant to Ordinance 21/258 of August 14, 1949, on the territorial organization of the territory of Ruanda-Urundi. This was modified by Ordinance no. 21/58 of January 31, 1958.

International rivers and lakes are those situated on the territory of more than one State. Lake Kivu, on the western border of Rwanda, is divided by an international border running to the east of Ijwi Island and to the west of Iwawa Island. The portion of the lake inside Rwanda's border is thus part of its national territory. Since the Congress of Vienna of 1815, the principle that international lakes are open to navigation not only by the border States but also to others has been recognized. The principle has been reaffirmed more recently in judgments of the Permanent International Court of Justice.

Rivers flowing out of Rwanda are international waterways and are subject to certain rules concerning their use. These norms are not found in treaties, but rather are customary rules, whose expression can be identified in "soft law" documents. In this case, the fundamental principle applicable is stated in the *Helsinki Rules on the Uses of the Waters of International Rivers* of 1966: "Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the water of an international drainage basin".

More recent efforts at the codification of customary rules have been made by the International Law Commission of the United Nations, which has reaffirmed the principle of equitable and reasonable use, include an obligation to participate in the use, development and protection of international watercourses. The International Law Commission's Draft Articles state that watercourse States "shall utilize an international watercourse in such a way as not to cause appreciable harm to other watercourse States".

Airspace above the land territory belongs to a State, as part of its sovereign territory. The *Chicago Convention on International Civil Aviation* of 1944 declares that no scheduled international air service may be operated over or into the territory of a State without its authorization. However, non-scheduled aircraft may overfly States without requiring prior permission, although the State over which they are flying may require that they land, and may prohibit them from flying over certain regions. Although the *Chicago Convention* does not prohibit use of force against air trespassers, the near-unanimous reaction of the international community to the downing of Korean Airline Flight 007 in 1983 suggests that this is a principle that must be respected. Indeed, an amendment to the *Chicago Convention* was adopted following the destruction of the Korean plane in order to eliminate any ambiguity in the law on this point.

## Nationality

Nationality law establishes the relationship between an individual and one or several States. The acquisition and loss of nationality is a matter of domestic law, subject to certain treaties governing the case of stateless persons. International law intervenes when States assert claims against other States based on the rights of their own nationals. States may also, under certain circumstances, be held responsible for the acts of their nationals. Nationality is also relevant when criminal law jurisdiction is being established, and may be invoked to oppose extradition from those States, such as Rwanda, that refuse to extradite their own nationals. International human rights law recognizes certain rights with respect to nationality. All citizens have the right and the opportunity to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service (ICCPR, art. 25).

International law recognizes three forms of acquisition of nationality. Nationality may be acquired by virtue of birth within a State's territory (*jus soli*) or by virtue of birth to parents who are already

nationals of that State (*jus sanguinis*). States may also grant nationality by naturalization or impose it in the case of marriage. Rwandan legislation recognizes all of these forms of acquisition of Rwandan nationality (or citizenship), subject to specific conditions. Rwandan citizenship is determined by the *Code of Rwandan Nationality*, adopted September 28, 1963 and subsequently amended. However, no right to nationality is protected by the *Fundamental Law*. It states simply that Rwandan nationality and the conditions of naturalization are defined by law (Const., art. 5).

Because of the multiplicity of legal rules, it is possible for an individual to have more than one nationality and many States permit their citizens to take on the citizenship or to retain the citizenship of other countries. However, Rwanda does not allow dual nationality (CRN, s. 19).

Recognition of Rwandan nationality to individuals by virtue of birth within Rwanda is quite limited. A newborn child found in Rwanda whose parents are unknown is given Rwandan citizenship (CC, art. 5). This is in keeping with international human rights obligations, which affirm that children have the right to acquire a nationality (ICCPR, art. 24(c); CRC, art. 7(1)). Most Rwandans have obtained nationality not by their birth within Rwanda but rather by application of the principle of *jus sanguinis*. Where the father of a child is of Rwandan nationality, the *Code of Rwandan Nationality* confers Rwandan citizenship automatically (CRN, s. 3). Where the father is not Rwandan but where the mother possesses Rwandan nationality, the child acquires Rwandan nationality if the father is unknown (CRN, s. 4). Where the father is known, the child of a Rwandan mother may opt for Rwandan nationality, providing he or she has lived in Rwanda for the previous three years. The choice must be made between the eighteenth and twenty-first birthday (CRN, s. 8). Because these rules discriminate between children depending on whether or not the father is Rwandan, irrespective of the fact that the mother is Rwandan, they conflict with international human rights norms (CEDAW, art. 9(2) and could well be vulnerable to attack as running contrary to Rwanda's *Fundamental Law*.

Special rules concern acquisition or loss of Rwandan nationality as a result of marriage, and affect women only. Rwandan law provides for automatic acquisition of nationality by marriage, in the case of a non-Rwandan woman who marries a Rwandan. She acquires Rwandan citizenship by right at the date of the marriage, subject to the possibility of the Government contesting this within a one-year pe-

riod. Acquisition of Rwandan citizenship may be denied in cases where the woman is entitled to conserve her original citizenship at the time of marriage (CRN, art. 7). A Rwandan woman who marries a non-Rwandan only loses her Rwandan citizenship if she makes a declaration to this effect prior to marriage, and if she can obtain the citizenship of her husband (CRN, art. 20). These rules also violate international obligations assumed by Rwanda concerning discrimination against women (CEDAW, art. 9(1)) and are of doubtful legality in the light of the non-discrimination provisions of the *Fundamental Law*.

It is possible to obtain Rwandan citizenship by naturalization, upon proof of residence in Rwandan for ten years, or five years if the applicant has rendered exceptional services to the country (CRN, art. 13).

Citizenship is lost if an individual voluntarily obtains citizenship of another country (CRN, art. 19). A Rwandan citizen may be stripped of nationality for acts that are harmful to Rwanda, for obtaining Rwandan nationality by fraud, and in the case of conviction for treason within Rwanda or conviction for any serious offence, whether committed in Rwanda or abroad (CRN, art. 21).

**Jurisdiction**

International law usually employs the term "jurisdiction" to describe the legal power of States to exercise authority through legislation, executive action or the courts. It is quite common for States to possess the jurisdiction to make legal rules, but to lack the jurisdiction to enforce them. Following the principle of sovereign equality, States may not exercise jurisdiction in such a way as to interfere with the rights of others.

Issues of jurisdiction arise in areas of civil and criminal law. In the field of civil or private law, there are few restrictions on the rights of States to attempt to exercise jurisdiction. The fundamental requirement is that they maintain a satisfactory system of civil adjudication, and that they respect the rules of private international law. These requirements are met by the *Civil Code*, the *Code of Civil Procedure* and various special laws and orders.

In criminal law, the matter is considerably more complex, because States consider that they and they alone may prosecute crimes committed within their territory, subject to certain exceptions. They

may also establish forms of personal jurisdiction, authorizing prosecution of offenders who possess their nationality, or where the victim possesses their nationality. Finally, in the case of international crimes such as piracy, apartheid, torture, war crimes and crimes against humanity, they may assume universal jurisdiction, authorizing prosecutions even in the absence of any territorial or personal link with the infraction. Rwanda exercises criminal law jurisdiction on both a territorial and personal basis. The specific rules governing criminal law jurisdiction are discussed in detail in the chapter on criminal law (see pp. 49-51).

As an expression of their sovereign equality, recognized States are immune from the jurisdiction of the courts of other States. As a result, not only States themselves but also their representatives, notably diplomats, cannot be sued in foreign courts. In the case of diplomats and consular officials, special rules have been set out in the *Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.* These provide for full immunity of foreign diplomats from criminal prosecution and a relative immunity in the case of civil matters, as well as ancillary matters such as protection of the embassy premises and the diplomatic bag. Consuls benefit from a lesser protection than full-fledged diplomats. Immunity does not eliminate remedies, but simply means that these must proceed before the courts of the State concerned. Specific treaties have also been developed that provide for some immunities, particularly with respect to international organizations such as the United Nations. In its host state agreement with the United Nations concerning the presence of the UNAMIR, Rwanda granted immunity to members of the peacekeeping forces. The agreement also specified that any civil claims directed against members of the blue helmets were to be adjudicated by an arbitration commission, to be set up by Rwanda and the United Nations. Rwanda has ratified other treaties concerning immunities of personnel belonging to the Organization of African Unity, the Great Lakes Economic Community and the Central African States Economic Community.

## Inter-state Relations

### *Peaceful Settlement of Disputes*

States are bound, under the *United Nations Charter*, to settle their disputes by peaceful means. Negotiation will usually be the first method employed. In situations where there are ongoing and persist-

ent difficulties requiring negotiations, States often institutionalize the negotiation process with the creation of a mixed commission. When negotiation fails, they may have recourse to a third party which may intervene through good offices (really, a form of quiet diplomacy), mediation, inquiry and conciliation. Sometimes, these procedures are provided for in treaties.

When what are essentially diplomatic means of settlement are unsuccessful, States often turn to arbitration. Arbitration takes place where States agree to submit a matter in dispute to an international tribunal, often composed of arbitrators named by each of the parties, and a third arbitrator agreed upon by the parties or chosen by the first two members of the tribunal. The arbitration tribunal is really a form of private court.

### *Recognition*

By recognition, States manifest their intention to consider another State to be a member of the international community. Sometimes, this extends to recognition of specific governments, notably when there are changes of regime in period of political turmoil or revolution. But such a practice is falling into disuse. Recognition is of capital importance when a new State is created, by secession, as in the case of the former Yugoslavia and during the breakup of the Soviet Union. During those developments, European States declared that they would only recognize new states that respected the *United Nations Charter*, that guaranteed the rights of ethnic minorities, and that respected the inviolability of borders.

### *State Responsibility*

States may be held responsible at international law for breaches of treaties, and for injuries to another State, its diplomatic representatives, and even aliens within its territory. The fact that acts committed by the State are legal under domestic law does not relieve the State of its obligations under international law. Under general principles of law, the State must make reparation for such injury. A State is not ordinarily responsible for acts of an individual not under its authority, or of an insurrectional movement established within its territory. However, where an insurrectional movement subsequently becomes the new government, it may be held liable for illegal acts. Customary rules concerning state responsibility have been codified in a draft treaty prepared by the International Law Commission.

The *Charter of Economic Rights and Duties of States*, adopted in 1974 by the United Nations General Assembly, authorizes States to regulate foreign investment and to nationalize or expropriate foreign property, subject to providing appropriate compensation.

## International Organizations

International organizations have been created by sovereign States in order to fulfill goals that they hold in common. In the mid-1800s the first modern international organizations were created to deal with telecommunications (International Telecommunications Union) and mail (Universal Postal Union). International organizations now exist dealing with such matters as international peacekeeping, human rights, labor relations, food production and distribution, education, science and culture, health, economic development, trade, finance, civil aviation, meteorology, maritime commerce, intellectual property and nuclear energy. International organizations are distinguished from non-governmental organizations (NGOs), which are privately organized and generally operate independently of States. A distinct legal personality is recognized to international organizations, although their powers are normally quite closely limited by the States that comprise them. The principal international organizations in which Rwanda participates are the United Nations and the Organization of African Unity. Rwanda's history was of course significantly influenced by another international organization, the League of Nations, which was created in 1919 and disappeared with the creation of the United Nations, in 1945.

### *United Nations*

Rwanda was admitted as a member of the United Nations immediately following its independence, on September 18, 1962. On the same date, Rwanda acceded to the *Charter of the United Nations*. The United Nations is the paramount international organization, created in the aftermath of the Second World War to replace the ailing League of Nations. The principles of the United Nations are set out in article 1 of the *Charter*:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the

principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Members of the United Nations undertake to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. Moreover, they agree to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.

The principal organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the Secretariat, and the International Court of Justice.

**General Assembly.** The General Assembly holds annual meetings that last several months, beginning in September of each year. The Assembly sets the budget and the assessments of Member States. The Assembly also adopts a large number of resolutions that provide policy and programmatic guidelines for the organization and its Member States. Although these are not legally binding, they may often contain what are called "non-binding norms" which the State is morally bound to respect. Every Member State of the United Nations is represented in the General Assembly and has an equal vote, although most matters in the Assembly are resolved by consensus.

**Security Council.** The Security Council is composed of fifteen members, of whom five (United States, United Kingdom, France,

Russian Federation, China) sit permanently and have a veto on all resolutions and decisions. The other ten members are elected to two-year terms by the General Assembly. The Security Council's responsibility is limited to "maintenance of international peace and security" although in recent years it has given this expression a very broad scope, for example by intervening in order to protect the human rights of minorities, or in establishing international criminal courts to prosecute human rights violations within internal conflicts, such as the Rwandan genocide of 1994. The Council's decisions are legally binding, and the Council may impose measures such as trade embargos against delinquents. Orders by a subsidiary body, such as the International Criminal Tribunal for Rwanda, are also binding and the Council is empowered to take action where these are not respected.

**Economic and Social Council.** The Economic and Social Council (ECOSOC) is subordinate to the General Assembly, and is responsible, as its name implies, for economic and social questions. It is assisted by a number of commissions that report to it, including the Commission on Human Rights and the Commission on Crime Prevention and Control.

**Trusteeship Council.** The Trusteeship Council was assigned responsibility for territories that had previously been under League of Nations mandates, including Ruanda-Urundi. Its role diminished dramatically with decolonization, and since the independence of New Guinea in 1976 it has been essentially inactive.

**Secretariat.** The Secretariat is headed by the Secretary-General, who is the chief administrative officer of the organization. The Secretary-General is elected to a five-year term by the General Assembly, but upon the recommendation of the Security Council which therefore has a *de facto* veto on his or her appointment. The High Commissioner for Human Rights, a position that was created in 1994 as a consequence of the Vienna Conference on Human Rights, is subordinate to the Secretary-General.

**International Court of Justice.** The International Court of Justice is the principal judicial organ of the organization. The term "World Court" designates the International Court of Justice, created in 1945, as well as its predecessor, the Permanent International Court of Justice, created in 1919. The Court is composed of fifteen judges, elected by the General Assembly and the Security Council,

and who are representative of the different regions and legal systems of the world. As one of the six principal organs of the United Nations, the International Court of Justice may issue advisory opinions at the request of other United Nations bodies, such as the General Assembly, the Security Council and the World Health Organization. In July, 1996, the Court issued an advisory opinion declaring the use and the threat of use of nuclear weapons to be contrary to international law, except in certain extreme circumstances. The Court is also competent to adjudicate disputes between Member States, providing that they have accepted the competence of the Court. States do this on a case by case basis or, if they prefer, by a declaration under the optional clause of the *Statute* of the Court in which they accept the jurisdiction of the Court for a period of time or on an unlimited basis, or for certain subject matters. Rwanda has not made such a declaration, and may only litigate matters before the Court with its express consent. Certain treaties also specify a role for the Court in dispute settlement. This is the case with the *Convention for the Prevention and Punishment of the Crime of Genocide*, but Rwanda has made a reservation to the provision in question.

For many years the Court was relatively inactive. Its credibility, particularly in the developing countries, had been harmed by a judgment issued during the 1960s on the future of Namibia. But since the 1980s, its prestige has grown considerably, and the Court now has a full docket. In recent years it has adjudicated border disputes between several African states, including Burkina Faso, Mali, Libya, Chad, Cameroon and Nigeria. A pending case between Yugoslavia and Bosnia concerns application of the *Convention on Genocide*, and should develop the law on that subject considerably.

Rwanda is also a member of specialized organizations within the United Nations system, specifically UNESCO, the World Health Organization and the International Labor Organization.

### *Organization of African Unity*

The Organization of African Unity was created in May, 1963, with the adoption of the *Charter of the Organization of African Unity*. Rwanda became a party to the *Charter* and a member of the Organization on January 17, 1964. The OAU comprises all States on the continent, as well as Madagascar and other islands such as Cape Verde, Mauritius and Seychelles. It has its headquarters in Addis Ababa, Ethiopia. The purposes of the OAU are declared to be the

promotion of unity and solidarity of African States, the coordination and intensification of their cooperation, the defense of their sovereignty, territorial integrity and independence, the eradication of colonialism and the promotion of international cooperation. The *Charter* makes express reference to the *Charter of the United Nations* and the *Universal Declaration of Human Rights*. In fact, many provisions of the OAU *Charter* echo those of the United Nations.

The principal organs of the OAU are the Assembly of Heads of State and Government, the Council of Ministers, the General Secretariat and the Commission of Mediation, Conciliation and Arbitration. The Assembly meets at least once a year for an ordinary session and may meet in extraordinary system upon request. All Member States have an equal vote, and resolutions must be adopted by a two-thirds majority of the Members (and not just of those present). The Council of Ministers is made up of foreign ministers or others who are delegated by their States. It meets at least twice a year in ordinary session. The Council is responsible to the Assembly. The General Secretariat is responsible for the administration and ongoing operations of the OAU. The Secretary-General is elected for a ten-year term, but may not be re-elected or succeeded by an individual of the same nationality. The activities of the Commission of Mediation, Conciliation and Arbitration are governed by a distinct charter.

The OAU also has a number of specialized commissions, dealing with economic and social questions, education and culture, health, defense and science. The African Commission on Human and People's Rights, created by the *African Charter of Human and Peoples' Rights*, is responsible for human rights issues within the African continent.

### *Organisation Commune Africaine et Malgache*

The Organization Commune Africaine et Malgache (OCAM) was set up in February, 1965 as a body of African francophone States. The first president described OCAM as "an African grouping which has the aim, within the framework of the OAU, of reinforcing cooperation and solidarity among the African States and Madagascar in order to accelerate their development in the political, economic, social, technical and cultural spheres." Although Rwanda was not a founding member, it was admitted later in 1965. The OCAM has three principal organs, the Conference of Heads of State, the Council of Ministers, and the Administrative Secretary-General.

### *Francophonie*

Rwanda is a member of the Francophonie, an international organization with its headquarters in Paris that comprises States where the French language is used. The Francophonie traces its origins to a series of international francophone cultural, academic and political organizations created during the 1950s and 1960s, and was inspired by important French-speaking personalities in Africa such as Léopold Sédar Senghor of Senegal, Hamani Diori of Niger and Habib Bourguiba of Tunisia.

In the mid-1980s, the Francophonie began organizing bi-annual Summits of Heads of State and Governments, which were subsequently held in Quebec City (1987), Dakar (1989), Paris (1991), Mauritius (1993) and Cotonou (1995). The Summits address the major political and economic issues of the day, and adopt programs of cooperation to be carried out in the coming two-year period. The Francophone Ministerial Conference is made up of foreign ministers of participating States and Governments, and ensures follow-up of the Summit decisions. The Conference directs the work of the Agence de Coopération Culturelle et Technique (ACCT), which was formed in 1970, and which is the principal intergovernmental body within the Francophonie. The ACCT is particularly active in areas of education, technical cooperation, economic development, and legal assistance. Rwanda has been a party to the *ACCT Convention* since 1974.

The Permanent Council of the Francophonie is a political organ charged with executing Summit decisions and coordinating institutional activities. It is made up of fifteen Member States or governments, designated at each summit. The Council meets at least four times a year. Two Permanent Ministerial Conferences are held, one for education, the other for youth and sports. The International Parliamentary Assembly groups representatives from forty-five States, and is a consultative body. Specialized bodies within the Francophonie concern university teaching and research (Association des universités partiellement ou entièrement de langue française or AUPELF, Université des réseaux d'expression française or UREF, and Senghor University). The Francophonie also operates an international French-language television network (TV5).

## Finance, Trade and Commerce

The increasing globalization of the economy has resulted in the creation of a sophisticated body of law dealing with international

finance, trade and commerce, as well as specialized international organizations. The United Nations has established the United Nations Commission on International Trade Law with the aim of promoting coherence within international trade. The *United Nations Convention on Contracts for the International Sale of Goods* was adopted in 1980, but has been ratified principally by developed countries. The *General Agreement on Tariffs and Trade* was set up following the Second World War with a view to eliminating obstacles to free trade, and to providing for settlement of trade disputes between States. The system it created has now been institutionalized with the establishment of the World Trade Organization (WTO). In the field of international finance, the International Monetary Fund and the International Bank for Reconstruction and Development (World Bank) are the main bodies.

### *Bretton Woods Institutions*

The International Monetary Fund and the World Bank are known as the Bretton Woods institutions, after the town in the United States where they were created in 1944. Both bodies now have their headquarters in Washington, and operate in very close harmony and along similar lines. Rwanda has been a member of both bodies since 1964. The International Monetary Fund is ruled by a board of governors with one representative from each member State. However, as each member State has a number of votes equivalent to its subscription, the wealthy States have effective control over the Fund. The World Bank is empowered to loan money to member nations.

### *Lomé Convention*

The Lomé Convention was adopted in 1976, and binds approximately eighty-five States, members of the European Union and developing countries in Africa, the Pacific and the Caribbean, including Rwanda. Its purpose is to promote trade, aid and cooperation, essentially to the former colonies of Belgium, France, the United Kingdom and the Netherlands. It has been revised four times. Rwanda is a party to the latest version, the Fourth Lomé Convention, since 1991.

### *Economic Community of the Great Lakes Countries*

The members of the Economic Community of the Great Lakes Countries (CEPGL) are Rwanda, Burundi and Congo. The organization was established in 1976, at Gisenyi, in order to promote security,

commercial exchanges and circulation of goods, as well as cooperation in economic, commercial, scientific, cultural, political, military, financial and technical matters. The Community has four principal organs, the Conference of Heads of State, the Council of Ministers and State Commissioners, the Permanent Executive Secretary and the Arbitration Commission. The Arbitration Commission is made up of four judges, and has jurisdiction to settle disputes that arise in the execution of the *Convention of the Economic Community of the Great Lakes Countries*. The Permanent Secretariat of the Community is in Gisenyi.

In 1990, the members of the Economic Community of the Great Lakes Countries created a preferential tariff. The purpose of this initiative is to create a free trade zone within the Community. Other treaties adopted within the CEPGL deal with protection of plants and animals, research on tropical diseases, and corporations. The CEPGL has also created the Development Bank of the Great Lakes Countries (BDEGL), located in Bujumbura, Burundi, an energy center, also located in Bujumbura, and the Institute of Agronomic and Zootechnical Research, with headquarters at Gitega, Burundi.

### *Other Bodies and Agreements*

Rwanda is a member of several other international bodies whose purpose is elimination of tariff barriers and trade liberalization. Rwanda is a member of the Central African States Economic Community since 1984, and the African Economic Community since 1993. Rwanda is eligible for membership in the Common Market for Eastern and Southern Africa (COMESA) and the Eastern and Southern African Preferential Trade Area. It is also a member of the Organization for the Management and Development of the Kagera River Basin (with Burundi, Tanzania and Uganda) and the African Development Bank.

## International Criminal Law

The globalization of crime and of criminal organizations has resulted in a rapid and recent expansion of the field known as international criminal law. International criminal law can be divided into two main sub-heads, international cooperation and international prosecution. When States attempt to prosecute offenders, they are often confronted with problems relating to arrest, transfer and investigation because of suspects, witnesses and material evidence found in other countries. As a result, they require international cooperation

in order to carry out prosecution effectively. There have also been relatively isolated efforts at the creation of international tribunals, authorized to prosecute for serious crimes affecting the world community as a whole.

### *International Cooperation*

International cooperation in criminal law aims at facilitating the arrest of suspects and their transfer to the prosecuting State (extradition), and international judicial assistance in the conduct of investigations within other States. States normally make such arrangements by treaty, providing for reciprocal obligations, although they are always free to make *ad hoc* arrangements. Adjustments to domestic law may also be required in certain cases in order to effect such international obligations.

**Extradition.** Extradition is the transfer of a suspect from one State (extraditing State) to another (receiving State) so that the suspect may stand trial for an offense committed within the jurisdiction of the receiving State. Although a customary legal obligation may exist requiring States to extradite for crimes against humanity and war crimes, if they refuse to prosecute offenders before their own courts, as a general rule obligations to extradite are set out in either bilateral or multilateral treaties.

Because extradition treaties applicable prior to independence normally continue in force, unless a contrary intention is expressed by one of the parties to the treaty. Belgian extradition treaties applicable to Rwanda in 1962, when the mandate ended and when Rwanda achieved independence, are still valid. Such pre-independence treaties apply between Rwanda and Bolivia, Bulgaria, Chile, Colombia, Costa Rica, Cuba, Denmark, Equator, Finland, Greece, Guatemala, Honduras, Italy, Nicaragua, Netherlands, El Salvador, Switzerland and the United Kingdom. They may also apply to states for which one of these states was responsible for foreign relations, such as India and Pakistan (in the case of the United Kingdom).

Since independence Rwanda has executed extradition treaties with neighboring States. Rwanda executed an extradition treaty with Tanzania on January 25, 1965. A treaty reached on June 21, 1975 provides for extradition between Burundi, Congo and Rwanda. Rwanda has also made bilateral treaties with Uganda (February 6, 1988) and Kenya (May 28, 1990).

Some multilateral treaties also provide for extradition. The *Convention for the Prevention and Punishment of the Crime of Genocide*, adopted in 1948 and ratified by Rwanda in 1975, requires States parties "to grant extradition in accordance with their laws and treaties in force". Whether this requires States to provide extradition of a genocide suspect in the absence of a distinct extradition treaty has never been determined by international or domestic courts. In a 1978 report prepared for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, special rapporteur Nicodeme Ruhashyankiko, a Rwandan, urged that this principle be recognized in cases of genocide. The more recent *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* is more explicit, stating that in the absence of extradition treaties, the *Convention* itself shall be deemed an extradition treaty.

Like many States, Rwandan law does not allow extradition in the absence of an international agreement in force between the two states (PC, s. 15). The 1991 *Constitution* specifies that extradition is only allowed in cases provided by law (Const., art. 15; also PC, arts. 15-16). The legal basis for extradition in Rwanda is a Belgian order of 1886 that was made applicable to Rwanda when Belgium assumed the League of Nations mandate.

Extradition is an act of sovereign authority. Only the State itself can demand or authorize extradition from or to another State. Extradition begins with a request made through diplomatic channels. The application must be supported by the warrant of arrest as well as a detailed description of the offense itself, in order to ensure that there is sufficient evidence to sustain the prosecution. Nevertheless, the extraditing State does not rule on the guilt of the suspect, who remains subject to the presumption of innocence until tried before the courts of the receiving State. It is not sufficient to identify the infraction, and the crime itself must be described in detail. Extradition will normally only be allowed where the offense meets the dual criminality rule, that is, it must constitute a crime in both jurisdictions (PC, art. 15(2)). Not every criminal offense is subject to extradition, and treaties generally set out the infractions for which extradition is authorized. Under the rule of specialty, extradition is granted only for the offenses set out in the application. A receiving State may not prosecute the suspect for any other crime committed prior to extradition.

Because extradition is also subject to laws in force within various States, measures often exist allowing individual suspects to challenge the sufficiency of an extradition application before extradition is granted by the State. In the case of Rwanda, the extradition request must be examined by the Court of Appeal of the district where the individual resides, in order to verify the sufficiency of the application and to allow the suspect to invoke any defenses that may be available. The ultimate decision to extradite belongs to the Minister of Justice.

The *Penal Code* prohibits extradition of Rwandan nationals (PC, s. 16). This exception is usually recognized in extradition treaties. Because this issue must be assessed at the time of the offense, an alien who has acquired Rwandan nationality by naturalization subsequent to the infraction would still be subject to extradition. These rules do not ensure impunity for Rwandans who have committed crimes abroad, because they may be judged for offenses committed outside Rwanda pursuant to Rwanda's *Penal Code* (PC, ss. 9-10).

Another exception, also included in treaties, is for political offenses (PC, s. 15(2)), although defining what constitutes a political offense has not always been an easy matter, particularly because political activities often involve breaches of ordinary crimes. Rwanda's extradition treaties with Tanzania, Burundi and Congo prohibit extradition for political offenses. The international conventions prohibiting genocide, apartheid and torture specify that these crimes are not to be considered political offenses for the purposes of extradition. Inspired by model conventions prepared by international bodies such as the United Nations, many States have now incorporated provisions in their extradition treaties aimed at protecting human rights. Such provisions entitle States to refuse extradition, even where a treaty exists, if there is a threat of human rights violation in the receiving State. For example, Rwanda's extradition treaty with Uganda prohibits extradition where the offense is subject to the death penalty in the receiving State but not in the extraditing State. Many other extradition treaties enable States to refuse extradition if the death penalty will be imposed, although this is not a requirement and the State may waive such a rule

**International judicial assistance.** A variety of techniques exist in international law to facilitate criminal investigations and prosecutions. Because of the globalization of crime, it is often necessary to seize evidence and examine witnesses in another country. Generally, States prefer to provide for this by agreements estab-

lishing reciprocal obligations and providing for a number of relevant details of such activities, including the payment of costs. In recent years, a network of interlocking international treaties has been developed in this field, known as international judicial assistance. In fact, although the focus is criminal investigation, these international norms often extend to civil litigation as well.

Rwanda has treaties with Uganda, Burundi, Congo and Kenya with respect to international judicial assistance. The treaty with Congo and Burundi, of June 21, 1975, has been completed with a *Protocol* dealing with international judicial assistance. In each of the three States, an office is created in order to ensure the application of the *Convention*. Regular meetings are arranged between the authorities of the three States, as well as an ongoing exchange of criminal records and other information and statistics.

Rwanda is also a party to multilateral treaties aimed at controlling drug traffic.

***International Prosecutions***

The possibility of prosecuting individuals within one jurisdiction for crimes committed elsewhere having no territorial or personal jurisdictional link with the State where the trial is to take place has already been discussed. This is what is known as universal jurisdiction and, although it is of theoretical importance as a form of international justice, in practice it has had little practical impact. A classic and very rare example of such universal jurisdiction is the Eichmann trial in Israel, in 1961. Somewhat more promising, from the standpoint of international justice, is the establishment of criminal tribunals on an international level.

Provisions in the *Versailles Treaty* at the close of the First World War envisaged an international war crimes tribunal, although one was never actually established. The first great experiment with such international criminal courts was the Nuremberg tribunal, created by the victorious allied powers in 1945. It judged several of the leading Nazi war criminals in a single trial that resulted in several convictions and a few acquittals. The Nuremberg tribunal inspired a similar venture in the Far East, as well as several major trials of European war criminals including Nazi doctors, jurists and industrialists. The *Convention for the Prevention and Punishment of the Crime of Genocide*, adopted in 1948, contemplated the creation of a permanent international criminal court, and although the idea continued to be

discussed within the United Nations for several years, it was eventually shelved. The Cold War context had much to do with the lack of enthusiasm for such a permanent court, and it was only in 1989 that the idea was really revived. As work on the permanent court proceeded, the war in Yugoslavia provided the impetus to set up an *ad hoc* international criminal court. This was done by decision of the Security Council, in May 1993. A year later, following the genocide in Rwanda, the new government of the Republic of Rwanda called upon the Security Council to set up a similar international criminal tribunal to deal with genocide, war crimes and crimes against humanity in Rwanda. The Tribunal was created in November, 1994, also by decision of the Security Council. The Security Council resolution of November, 1994 contains the *Statute* of the Tribunal, setting out the basic structure of the tribunal, its subject matter, territorial and temporal jurisdiction, and a number of other essential rules dealing with prosecution, rights of the defense and sentencing. Meanwhile, ongoing work on the proposed international criminal court is currently expected to conclude in 1998 with the negotiation of a treaty that will require ratification by States for them to fall within its jurisdiction.

The *ad hoc* international tribunal for Rwanda is competent to try certain specified crimes committed in the territory of Rwanda or committed in neighboring States by Rwandan citizens between January 1, 1994 and December 31, 1994. The crimes over which the tribunal has jurisdiction are genocide (as defined in the *Convention on the Prevention and Punishment of the Crime of Genocide*), crimes against humanity (consisting of a number of very serious crimes against the person or against property committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds), and serious violations of the laws of war applicable to internal armed conflicts.

The Tribunal is competent to judge individuals who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of one or more of these crimes, even if he or she held an official position at the time. Moreover, the fact that such a crime was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. Nor is superior orders a defense to such accusations, although it may be relevant as a mitigating factor in sentencing.

There are eleven judges of the Tribunal, elected by the General Assembly of the United Nations. Six of them are assigned to trials, and sit in benches of three judges, except for relatively minor procedural questions where a single judge is entitled to make an order. Five judges make up the Appeal Chamber. They are the same five who form the Appeal Chamber for the International Criminal Tribunal for the Former Yugoslavia. Unifying the appeal chambers ensures that the principles of law developed by the two international *ad hoc* tribunals remain consistent and coherent. The judges are empowered to adopt rules of procedure and evidence in order to guide their work. These *Rules of Procedure and Evidence*, adopted by the International Criminal Tribunal for Rwanda in July, 1995 and modified on various occasions since then, make up, together with the *Statute* of the Tribunal, its principal sources of written law.

An independent prosecutor's office is responsible for laying charges and presenting the case against the accused. The first prosecutor was Richard Goldstone, a member of the South African Constitutional Court with a distinguished human rights record. He was succeeded, in October, 1996, by Louise Arbour, a member of the Ontario Court of Appeal, in Canada. Although the procedure followed by the Tribunal borrows from major legal systems, it is essentially based on the adversarial system of the common law. Thus, the judges remain unaware of the evidence against the accused until this is presented in court, during an adversarial debate, according to various principles for the admission of evidence, some of which are already contemplated by the Statute of the Tribunal and by its rules of procedure, and others which are in the course of being developed by the judges themselves. Nevertheless, because many judges of the Tribunal are drawn from legal regimes other than the adversarial system of the common law, some of the procedural approaches in force reflect their differing backgrounds.

The jurisdiction of the International Criminal Tribunal for Rwanda overlaps with that of the courts of Rwanda. The *Statute* of the Tribunal declares that it shall have primacy over the national courts of all States. At any stage of proceedings, the International Tribunal may formally request the national courts to defer to its competence. However, once an accused has been convicted by the national courts of Rwanda, the rule against double jeopardy prevents the International Tribunal from retrying the individual, unless it can be shown that the national court proceedings were not impartial or independent, or were designed to shield the accused from international criminal responsibility, or that the case was not diligently

prosecuted. The Statute also prohibits prosecution before national courts for the same crimes where someone has already been tried by the International Tribunal. As a Security Council decision, the *Statute* is binding in international law and thus supersedes Rwandan law in the event of any conflict.

A variety of mechanisms are available to the tribunal to facilitate investigation, as well as arrest and transfer of suspects. For example, under the *Rules of Procedure and Evidence*, the Tribunal may ask States to seize evidence, question witnesses and arrest suspects, with a view to their transfer to the Tribunal's seat, which has been established in Arusha, Tanzania. States are expected to enact national legislation in order to facilitate cooperation with the Tribunal, where this is required. Where they fail to provide cooperation, the Tribunal may submit the matter to the Security Council for further action.

The *Statute* of the tribunal avoids using the word "extradition", speaking instead of "transfer". This terminology is intended to avoid difficulties with national legal systems which prohibit extradition of nationals. Rwandan law prohibits extradition of citizens (PC, s. 16). Many other States have similar prohibitions. This rule of national law would be subordinate to an international obligation, for example, if the International Criminal Tribunal for Rwanda were to request transfer of a Rwandan national to stand trial in Arusha. The conflict with the *Penal Code* would be resolved in favor of the international rule.

The Tribunal is empowered to impose sentence of imprisonment. This has been interpreted by the judges to go as far as life imprisonment. The Security Council excluded the death penalty because of developments in international human rights law, which views the death penalty as a violation of the right to life and the prohibition of cruel, inhuman and degrading punishment. According to the *Statute*, the Tribunal is also supposed to take into account the general pattern for sentencing of similar offences by the domestic courts of Rwanda. The application of this rule is problematic, because prior to the genocide of 1994 Rwanda's courts were characterized by impunity for hate crimes and as a result there is little reliable and authoritative case law on which to determine such a pattern. Sentences are to be served in national prisons, following agreements between the Tribunal and States which agree to provide this service to the international community.

## International Humanitarian Law

International humanitarian law is a body of law developed beginning in the mid-nineteenth century in order to eliminate the most brutal excesses of international conflicts. The earliest norms of the system were concerned with prohibiting weapons, such as dum-dum bullets, that cause superfluous and unnecessary suffering, and with protecting medical personnel wearing a recognized emblem such as the red cross or the red crescent. In the twentieth century, international humanitarian law became more concerned with civilian victims of international armed conflict. Its focus in recent years has shifted to internal armed conflict, an area where States are much more reluctant to admit a role for the international community.

The core of the legal system of international humanitarian law is the four *Geneva Conventions*, adopted in 1949. These texts, comprising hundreds of specific provisions, set out rules protecting four categories of victims of international armed conflict: wounded soldiers on land (Convention I), wounded sailors (Convention II), prisoners of war (Convention III) and civilians (Convention IV). Prior to decolonization, Belgium had ratified the *Conventions* and declared them applicable to Ruanda-Urundi. Upon independence, Rwanda produced a declaration of succession in which it recognized the continued application of the four *Geneva Conventions*. In 1977, two *Additional Protocols* were adopted that modernize the *Geneva Conventions,* taking into account particularly the special problems posed by national liberation struggles, guerrilla wars and internal armed conflicts. Rwanda is also a party to the two *Additional Protocols*. There are a number of other international treaties in the field of international humanitarian law, concerning prohibited weapons such as gas and land mines and the protection of cultural property during war. Rwanda is a party to the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* of 1925, pursuant to Belgium's ratification of the instrument in 1928. Although several other humanitarian law instruments have not yet been ratified by Rwanda, they are in large part recognized as comprising customary international law. Thus, the rules are applicable to Rwanda in any case.

It would be impossible in these pages to review all of the principles of international humanitarian law, particularly those applicable to internal armed conflict which are of special relevance to Rwanda, given its recent history. The fundamental principle is estab-

lished in "common article 3", so called because it consists of an identical provision in all four of the *Geneva Conventions*. Common article 3 applies to persons who take no active part in hostilities. They include not only civilians, but also wounded or disarmed combatants. Such persons are protected by a number of basic norms, which closely resemble the core provisions of international human rights treaties, including a general requirement of humane treatment without discrimination based on race or other criteria, the prohibition of cruel or degrading treatment, and the right to a fair trial. However, no special protection is offered to prisoners in such conflicts, who are not therefore entitled to any particular prisoner of war status and are treated as ordinary criminals.

## International Human Rights Law

One of the most important developments in international law in the second half of the twentieth century is the creation of what is known as international human rights law. International law had previously been concerned almost exclusively with the reciprocal rights and obligations of sovereign states. How individuals were treated by their own States was of, at best, marginal interest. The First World War brought with it attempts to introduce a new perspective whereby States were also responsible, as a question of international law, for the treatment of individuals within their own borders. Part I of the *Treaty of Versailles* incorporated the *Covenant of the League of Nations*, which guaranteed freedom of conscience and religion in League mandate countries, including Ruanda-Urundi, and more generally ensured that "fair and humane conditions of labor" and the rights of indigenous populations would be defended by League members. American President Woodrow Wilson had apparently wished to go even further in the international protection of human rights and freedoms with the *Treaty of Versailles*, but backed off gingerly when the Japanese delegates to the Peace Conference insisted upon guarantees against racial discrimination. Treaties adopted after the war concerning Eastern Europe also provided for protection of minority rights, freedom of religion, equality before the law, and the prohibition of anti-Semitism. After the First World War, ongoing attention to the rights of labor was provided by the establishment of the International Labor Organization, an arm of the League of Nations, created by Part XIII of the *Treaty of Versailles*. The International Labor Organization was responsible for scores of conventions dealing with the rights of labor and working conditions.

It was only with the Second World War that the bases of our contemporary system of international human rights law were created. During the conflict, President Franklin D. Roosevelt proclaimed that the post-war system would be built upon "four freedoms", freedom of expression, freedom of belief, freedom from want and freedom from fear. The *United Nations Charter*, adopted in June, 1945 at San Francisco, placed unprecedented emphasis on human rights although it stopped short of including an enumeration of those rights that were to be protected. Three years later, the United Nations General Assembly adopted the *Universal Declaration on Human Rights*, a document which forms the centerpiece of what is known as the International Bill of Rights. The International Bill of Rights is in fact not one document but several. Besides the *Universal Declaration*, it includes four treaties, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and two optional protocols to the first of the covenants, one creating an individual petition mechanism and the other abolishing the death penalty. The *Universal Declaration* and the two *Covenants* are directly applicable within Rwandan law, and their application is discussed in greater detail in the chapter on human rights law.

Within the United Nations, the principal political body involved in human rights is the Commission on Human Rights. Made up of fifty-three member states elected by the Economic and Social Council, the Commission meets every year in March and April in Geneva. It may also meet in special sessions on an exceptional basis. Only the second such session ever held took place in May, 1994, to deal with the genocide in Rwanda. In its early years, the Commission's work focused on the drafting of international instruments such as the *Universal Declaration on Human Rights* and the *Covenants*. Only gradually was a more active role for the Commission in examining human rights abuses within Members States accepted, as the view that the protection of human rights was no longer part of the reserved domain sheltered from the view of the international community by principles of national sovereignty. The Commission examines a wide range of human rights issues, including torture, minority rights, indigenous peoples and impunity, and human rights situations in specific countries. One of its principal tools is the creation of special rapporteurs, who are international experts assigned by the Commission to examine thematic human rights issues or country situations and to report on a regular basis. The special session on Rwanda in May, 1994 led to the designation of René Degni-Segui as special rapporteur for Rwanda. Professor Degni-Segui's mandate came to an

end in 1997, and was not renewed. The Commission on Human Rights decided to establish a "special representative" whose mandate is "to make recommendations on how to improve the human rights situation in Rwanda, to facilitate the creation and effective functioning of an independent national human rights commission in Rwanda, and further to make recommendations on situations in which technical assistance to the Government of Rwanda in the field of human rights may be appropriate."

The other organs of the United Nations that are deeply involved in human rights are the General Assembly and a Sub-Commission of the Commission on Human Rights. All States are represented in the General Assembly, and have an equal vote. The Sub-Commission is composed of expert members who do not formally represent member States. A Rwandan expert who served on the Sub-Commission in the 1970s, Nicodeme Ruhashyankiko, authored an important report on the subject of genocide. Neither the General Assembly, the Commission nor the Sub-Commission is empowered to actually make international human rights law, in the sense that it is charged with the creation of legally binding norms. At best, the resolutions of such bodies make up what is sometimes called "soft law" or "non-binding norms". Over time, however, when such resolutions are widely accepted they may come to be recognized as statements of customary international law in the field of human rights.

The United Nations organ with the power to make binding legal rules is the Security Council. Its mandate is restricted by the *Charter* to questions of international peace and security, and it is only in the 1990s that it has began to extend the scope of its activities to the protection of human rights within sovereign states. Its first intervention was in 1991, when it authorized other Member States to take action within Iraq in order to protect that country's Kurdish minority. Later, it also approved interventions within the former Yugoslavia, Somalia and Haiti. In Rwanda, the Security Council initially refused to intervene to prevent genocide in Rwanda. After more than two months of hesitation, it finally authorized foreign powers to create the so-called "Zone Turquoise" in south-western Rwanda. Since 1994, the Security Council has adopted a number of resolutions concerning the protection of human rights in Rwanda, of which the most important is probably its decision to create the International Criminal Tribunal for Rwanda (see above).

The United Nations also has several specialized bodies concerned with human rights, of which the most important are UNESCO

and the International Labor Organization. Rwanda is a member of UNESCO, but it has not ratified the UNESCO conventions, which deal mainly with racial discrimination in fields of education and culture. Rwanda joined the International Labor Organization on September 18, 1962, and immediately ratified several of its conventions, including: *Convention (No. 4) concerning the employment of women during the night* (actually, a declaration of succession), *Convention (No. 11) concerning the rights of association and combination of agricultural workers, Convention (No. 12) concerning workmen's compensation in agriculture, Convention (No. 14) concerning the application of the weekly rest in industrial undertakings, Convention (No. 17) concerning workmen's compensation for accidents, Convention (No. 18) concerning workmen's compensation for occupational diseases, Convention (No. 26) concerning the creation of minimum wage-fixing machinery, Convention (No. 42) concerning workmen's compensation for occupational diseases, Convention (No. 50) concerning the regulation of certain special systems of recruiting workers, Convention (No. 62) concerning safety provisions in the building industry, Convention (No. 64) concerning the regulation of written contracts of employment of indigenous workers, Convention (No. 89) concerning night work of women employed in industry, Convention (No. 94) concerning labor clauses in public contracts and Convention (No. 105) concerning the abolition of forced labor.*

International human rights law has also developed on a regional basis. There are three developed regional systems for the protection of human rights, in Europe, the Americas and Africa. The European system was the earliest, with the Council of Europe, created in 1949, establishing a large number of international treaties, including the *European Convention on Human Rights*. The *European Convention* is implemented by the European Commission on Human Rights and the European Court of Human Rights. The case law of these bodies is recognized as authoritative by national and international courts well beyond the borders of Europe. A similar structure to that of the Council of Europe exists for the Americas under the umbrella of the Organization of American States. Africa was the third region to set up a human rights system. The *African Charter on Human and Peoples' Rights* was adopted in 1981 and came into force in 1986. It requires States to submit periodic reports on their compliance with the *Charter*, and allows individuals and member states to submit petitions alleging violations of the *Charter*. The African human rights system does not yet have a court, although the matter is now under study. Rwanda is a party to the *African Charter*, and participates in the system, and is required to submit periodic reports to the African

Commission on Human and Peoples' Rights. The *African Charter* forms part of Rwandan law, and its role within the national legal system is discussed in detail in the chapter on human rights law.

**Further reading.** A number of general introductions to international law have been published, of which the following are particularly recommended: Malcolm SHAW, *International Law*, Cambridge: Cambridge University Press, 1991; Ian BROWNLIE, *Principles of Public International Law*, Oxford: Clarendon Press, 1990. To our knowledge, there are no published studies dealing with Rwanda and international law. On the Rwandan boundaries, see: Ian BROWNLIE, *African Boundaries, a Legal and Diplomatic Encyclopedia*, London: C. Hurst & Co., 1979, at pp. 674-681. On the International Criminal Tribunal for Rwanda, see: Payam AKVAHAN, "The International Criminal Tribunal for Rwanda: The Politics and Pragmatism of Punishment," (1996) 90 *American Journal of International Law* 501; Melissa GORDON, "Justice on Trial: The Efficacy of the International Tribunal for Rwanda," (1995) 1 *International Law Students' Association of International and Comparative Law* 21; Robert KUSHEN and Kenneth J. HARRIS, "Surrender of Fugitives by the United States to the War Crimes Tribunals for Yugoslavia and Rwanda," (1996) 90 *American Journal of International Law* 510; Roy S. LEE, "The Rwanda Tribunal," (1996) 9 *Leiden Journal of International Law* 37; Theodor MERON, "International Criminalization of Internal Atrocities," (1995) 89 *American Journal of International Law* 554; Mariann MEIER WANG, "The International Tribunal for Rwanda: opportunities for clarification, opportunities for impact," (1995) 27 *Columbia Human Rights Law Review* 177; Mark R. Von STERNBERG, "A Comparison of the Yugoslavian and Rwandan War Crimes Tribunals: Universal Jurisdiction and the 'Elementary Dictates of Humanity,'" (1996) 22 *Brooklyn Journal of International Law* 111. On international organizations see: T.O. ELIAS, *Africa and the Development of International Law*, Dordrecht: Martinus Nijhoff, 1989. On extradition to and from Rwanda, see: Alphonse NKUBITO, Apollinaire NSENGIYUMVA, "De l'extradition: Principes de la coopération interétatique au Rwanda," (1983) 37 *Revue juridique et politique* 244. On nationality, see: André SEBATWARÉ, "La nationalité rwandaise," (1971) 25 *Revue juridique et politique* 1547.

# Glossary of Rwandan Legal Expressions

| English | French | Kinyarwanda |
|---|---|---|
| abortion | avortement | gukuramo inda |
| administrative law | droit administratif | agenga ubutegetsi bwite bwa leta |
| admission | aveu | kwemera k'umuburanyi |
| adultery | adultère | ubusambanyi |
| amnesty | amnistie | imbabazi zitanzwe n'itegeko |
| appeal | appel | ubujurire |
| appeal in cassation | pourvoi en cassation | gusuba iseswa ry'urubanza |
| armed robbery | vol à main armée | ubujura bukoreshejwe intwaro |
| arrest warrant | mandat d'arrêt | urwandiko rufata uregwa by'ageteganyo |
| arson | incendie | itwika |
| article | article | ingingo |
| Assistant judge | Magistrat auxiliaire | abaca manza b'abafasha |
| association | association | ishyirahamwe |
| Attorney general | procureur général | prokireli jenerali |
| bailiff | huissier | intumwa z'inkiko |
| bankruptcy | banqueroute | igihombo gitewe n'umucuruzi ubwe |
| Cabinet | Conseil des ministres | inama y'abaminisitiri |
| Canton Court | Tribunal de Canton | Inkiko za kanto |
| case law | jurisprudence | ibyemezo byagashwe kenshi n'inkiko mu manza |
| civil law | droit civil | mboneza-mubano |
| civil party | partie civile | kuregera indishyi |
| civil procedure | droit judiciaire privé | y'imiburanishirize y'imanza z'amahugu |
| clerk | greffier | grefiye |

| English | French | Kinyarwanda |
|---|---|---|
| co-ownership | copropriété | gutunga ibintu abantu babifatanyije |
| commercial law | droit commercial | y'ubucuruzi |
| conduct | conduite | imyifatire |
| constitutional law | droit constitutionnel | itegeko-nshinga |
| contract | contrat | amasezerano |
| court | tribunal | urukiko |
| Court of Appeal | Cour d'appel | Inkiko z'ubujulire |
| Court of Cassation | Cour de cassation | Urukiko rusesa imanza |
| Court of First Instance | Cour de première instance | Inkiko za mbere z'iremezo |
| Court of State Security | Cour de surêté de l'état | Urukiko ruburanisha abahungabanya leta |
| criminal law | droit pénal | ahana |
| criminal procedure | droit de la procédure pénale | ashinga ikurikirana ry'ibyaha |
| custom | coutume | umuco |
| death penalty | peine de mort | igihano cyo kwicwa |
| decree | décret | iteka |
| decree-law | décret-loi | itegeko-teka |
| discontinuance | désistement de l'instance | kureka ikirego |
| divorce | divorce | gutana |
| domicile | domicile | aho umuntuatuye n'aho aba |
| dowry | dot | inkwano |
| duress | contrainte | ibifungo |
| equity | équité | ubwitonzi |
| error | erreur | kwibeshya |
| evidence | preuve | ikimenyetso |
| exchange | échange | amasezerano y'ubugurane |
| expropriation | expropriation | kwimurwa |
| extortion | extortion | ubwambuzi |
| extradition | extradition | kurekurira ikindi gihugu umunyacyaha |
| family | famille | umuryango |
| family law | droit de la famille | y'umuryango |
| fine | amende | ihazabu |
| foundation | fondation | ikigo |
| fraud | dol | kubeshya, gushuka, igishuko |

| English | French | Kinyarwanda |
|---|---|---|
| fundamental law | droit fondamental | itegeko-shingiro |
| gift | donation | impano |
| hearing | enquête | ipereereza |
| human presumptions | présomptions humaines | no gusesengura |
| immoveables | biens immobiliers | ibintu bitimukanwa |
| imprisonment | emprisonnement | igihano cy'igifungo |
| indecency | attentat à la pudeur | ibyaha by'itera-soni |
| individual inmate file | fiche de détention | impapuro zo gufunga |
| inheritance | succession | izungura |
| inmate register | registre d'écrou | igitabo cy'abafunzwe |
| insanity | démence | ibasazi |
| international law | droit international | mpuza-mahanga |
| judgment (final) | arrêt | imanza |
| judgment | jugement | icibwa ry'urubanza |
| judicial authority | autorité judiciaire | ubucamanza |
| Judicial Police Officer | Officier de police judiciaire | Abaganza-cyaha |
| jurisdiction | juridiction | urukiko |
| justice | justice | ubutabera |
| labor law | droit du travail | y'imirimo |
| law | droit | amategeko |
| law (Statute) | loi | itegeko |
| lease | bail | kwatisha isambu |
| legal advisor | conseil judiciaire | umufasha w'udashoboye gucunga ibye |
| legal presumptions | présomptions légales | n'amategeko |
| lien | servitude | bukomoka |
| life imprisonment | emprisonnement à perpétuité | igfungo cya burundu |
| literal evidence | preuve littérale | cyanditse |
| magistrate | magistrat | umucamaza |
| majority | majorité | ubukure |
| marriage | mariage | ishyingirwa |
| Military Court | Cour militaire | Urukiko rw'ubujulire rwa gisilikare |
| Military Penal Code | Code pénal militaire | igitabo cy'amategeko ahana ya gisirikare |
| Military prosecutor | auditorat militaire | parike za gisi rikare |
| Minister of Justice | Ministre de la justice | Minisitiri w'ubutabera |

| English | French | Kinyarwanda |
|---|---|---|
| minor | mineur | umwana muto utaramenya ubwenge |
| moveables | biens mobiliers | ibintu byimukanwa |
| National Assembly | Assemblée nationale | ishinga amategeko |
| national law | droit national | y'igihugu |
| nationality | nationalité | ubwenegihugu |
| norm | norme | itegeko |
| oath | serment | indahiro |
| occupation | occupation | ubukonde |
| Official Gazette | Journal officiel | Igazeti ya Leta |
| order | arrêté | iteka |
| ordinary law | loi ordinaire | itegeko lisanzwe |
| ordonnance | ordonnance | iteka |
| organic law | loi organique | itegeko ngenga |
| pardon | grâce | imbabazi zitangwa na Perezida wa Repubulika |
| parole | libération conditionnelle | ifungura ry'ageteganyo |
| penitentiary | établissement pénitentiaire | gereza |
| pillage | pillage | isahura |
| preamble | preambule | irangashingiro |
| President | Président | Perezida wa Republika |
| presumptions | présomptions | ibimenyetso bicukuwe |
| preventive detention | détention préventive | gufungura mbere y'urubanza |
| Prime Minister | Premier ministre | Minisitiri w'intebe |
| prisoner | prisonnier | abafunzwe |
| private international law | droit international privé | amategeko mpuzamahanga rusange |
| private law | droit privé | rusange |
| professional judge | Magistrat de carrière | abaca manza b'umwuga |
| prostitution | prostitution | ubumaraya |
| provisional release | mise en liberté provisoire | gufungura by'agateganyo |
| public domain | domaine public | ubutaka bwa leta bugenewe ibikorwa rusange |
| public international law | droit international public | amategeko mpuzamahanga ahuriweho n'ibihugu |
| public law | droit public | y'ubutegetsi bwa leta |
| public policy | ordre public | indemya-gihugu |
| Public Prosecutor | Ministère Public | ubushinja-cyaha |

| English | French | Kinyarwanda |
|---|---|---|
| Public Prosecutor's Office | parquet | parke |
| rape | viol | ubusambanyi ku gahato |
| record | procès-verbal | nyandiko-mvugo |
| recourse | recours | ubujurire |
| recusation | récusation | kuba mu rubanza |
| registry | greffe | ibiro by'inkiko |
| rehabilitation | réhabilitation | ihanagura-busembwa |
| res judicata | chose jugée | urubanza rwamaze gucibwa |
| residence | résidence | aho umuntuatuye n'aho aba |
| sale | vente | amasezerano y'ubugure |
| section | article | ingingo |
| security | sécurité | umutekano |
| security (safety) | sûreté | ubugwwate |
| seizure | saisie | gufatira ibintu |
| seizure of property | saisie des biens | ifatira ry'ibintu |
| self defense | legitime défense | kwitabara |
| servitude | servitude | bukomoka |
| social law | droit social | y'ubwitegenyirize (abakozi) |
| solemnities | solennités | imihango |
| State Council | Conseil d'état | urikiko rw'inama ya leta |
| stay | sursis | isubika-gihano |
| Superior Judicial Council | Conseil supérieure de la magistrature | imama nkuru y'ubucamanza |
| tax law | droit fiscal | y'imisoro |
| testimony | témoignage | guhamya; kuba umugabo mu rubanza |
| theft | vol | ubujura |
| transaction | transaction | ubwumvikane |
| tribunal | tribunal | urukiko |
| use and habitation | usage et habitation | gutizwa isambu n'inzu gusa |
| usufruct | usufruit | bukoresha umutungo wimukanwa n'umutungo utimukanwa |
| Vice-president | vice-président | visi-perezida |
| violence | violence | iterabwoba |
| War Council | Conseil de guerre | Inkiko za gisilikare |
| warrant | mandat | inzandiko zitumira ababuranyi |
| will | volonté | ubushaka (watekereje bihagije) |

# Courts

## COURTS OF FIRST INSTANCE

| Court | Communes subject to its jurisdiction |
|---|---|
| Kigali | Nyarugenge, Kicukiro and Kacyiru of the Prefecture of Kigali Town; Butamwa, Kanombe, Rubungo, Bicumbi, Gikoro, Gikomero, Rutongo, Mugambazi, Mbogo and Syorongi of the Prefecture of Kigali |
| Rushashi | Musasa, Rushashi, Tare |
| Nyamata | Ngenda, Gashora, Kanzenze |
| Gitarama | Runda, Nyamabuye, Taba, Buringa, Musambira, Migina, Mikingi, Mushubati, Kigoma, Tambwe, Ntongwe, Masango, Murama, Nyakabanda, Nyabikenke, Rutobwe, Kayenzi |
| Butare | Ngoma, Huye, Shyanda, Rushashya, Mugusa, Maraba, Mbazi, Nyakizu, Runyinya, Kigembe, Gishamvu, Muyaga, Mibayi, Muganza, Ndora, Myaruhengeri, Ntyazo, Nyabisindu, Tusatira, Muyira |
| Gikongoro | Nyamagabe, Mudasomwa, Rukondo, Kinyamakara, Rwamiko, Kivu, Nshili, Musange, Muko, Karambo, Musebeya |
| Cyangugu | Kamembe, Cyimbogo, Gishoma, Gafunzo, Gisuma, Bugarama, Karengera, Nyakabuye, Kagano, Gatare, Kirambo |
| Kibuye | Mabanza, Rutsiro, Gitesi, Mwendo, Bwakira, Kibumu, Rwamatamu, Gishyita, Gisovu |



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| | |
|---|---|
| Gisenyi | Rubavu, Rwerere, Nyamyumba, Kanama, Kayove, Kutura, Gaseke, Giciye, Karago, Ramba, Mibirira, Satinsyi |
| Ruhengeri | Kigombe, Mukingo, Nkuli, Nyakinama, Kidaho, Ruhondo, Nkumba, Kinigi, Nyamutera, Nudusu, Gatonde, Nyamugali, Cyeru, Butaro, Cyabingo, Nyarutovu |
| Byumba | Kibali, Cyunmba, Mukarange, Kinyami, Giti, Rutare, Kiyombe, Kivuye, Buyoga, Tumba, Cyungo, Mubumba, Ngarama, Gituza, Muhura, Murambi, Bwisige |
| Kibungo | Birenga, Mugesera, Sake, Kigarama, Kabarondo, Mukazi, Rutonde, Kayonza, Rukara, Rusumo, Rukira |

# Constitutional Instruments

# Fundamental Law of the Republic of Rwanda*

## Preamble

The Transitional National Assembly, meeting at its sitting of May 5, 1995;

Faithful to the principles that constitute the framework of the Arusha Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, signed on August 4, 1993 at Arusha, in the United Republic of Tanzania, namely:

a. The institution of the Rule of Law;

b. The formation of a National Army open to all Rwandans and devoted to the interests of the people as a whole;

c. The institution of power sharing within the context of a Broad-Based Transitional Government;

Considering that since the signing of the Peace Agreement, the regime of the late President Juvenal Habyarimana had multiplied the obstacles to the implementation of the Agreement, while at the same time accelerating preparation of genocide and massacres, thereby eliminating the usefulness of any efforts to settle the crisis by negotiation;

Paying homage to the memory of the victims of genocide and of the massacres perpetrated by that regime, and deciding to work so that such a regime and the divisions which it served may never again appear in Rwanda or elsewhere;

* This English language version of the Fundamental Law is based on translations by the authors of those texts for which no official English version exists. The official English versions of the Arusha Peace Agreement are reproduced, subject to correction of minor errors of spelling, punctuation and translation, although this has been kept to a minimum.



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Rejoicing at the victory of the Rwandese people over fascism and sectarian ideology, which is contrary to principles of democracy and freedom;

Grateful for the peace which has been won after indescribable suffering inflicted upon the Rwandese people by the bloody power, now vanquished;

Resolved to complete the task of liberation of the Rwandese people which was begun by the Rwandese Patriotic Forces, in particular by applying principles of national reconciliation, of tolerance and solidarity, and in pursuing the arduous task of rebuilding the country, of socio-economic development and of promotion of democratic culture;

Recognizing the need for representation of the National Army (AN) within the Transitional National Assembly;

Adopts the present Fundamental Law, which will govern the transitional period for the Republic of Rwanda:

Article 1

The Fundamental Law of the Republic of Rwanda consists indissolubly of the Constitution of June 10, 1991, the Arusha Peace Accord, the RPF Declaration of July 17, 1994 concerning the Establishment of Institutions, the Protocol of Agreement between the Political Forces RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR on the Establishment of National Institutions, signed November 24, 1994.

Article 2

In case of conflict between the provisions of the Peace Agreement and those of the RPF Declaration of July 17, 1994 concerning the establishment of institutions, the latter shall prevail. Similarly, in case of conflict between the RPF Declaration of July 17, 1994 concerning the Establishment of Institutions and those of the Protocol of Agreement between the Political Forces RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR on the Establishment of National Institutions, signed November 24, 1994, the latter shall prevail.

Article 3

The present Fundamental Law shall enter into force as of July 17, 1994.

Kigali, May 26, 1995

# Constitution of the Republic of Rwanda of June 10, 1991

The National Development Council, meeting in Constituent Assembly on May 30, 1991;

Confident in Almighty God;

Considering the liberation of the Rwandese people accomplished by the social revolution of 1959 and eager to defend the republican form of government resulting from the popular will of January 28, 1961 and confirmed by referendum on September 25, 1961;

Deciding to safeguard national independence, achieved on July 1, 1962 as well as the accomplishments of the moral revolution of July 5, 1973;

Faithful to democratic principles and eager to ensure protection of the human person and to promote respect for fundamental freedoms, in accordance with the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights;

Desiring to adapt the constitutional principles established on November 24, 1962 and December 20, 1978 to national realities, and to safeguard the Nation with a view to reinforcing democracy;

Convinced that it is essential to realize effectively national unity, peace, social justice and respect for the human person based on liberty, equality and fraternity of all members of the Rwandese community;

Deciding to guarantee to present and future generations the benefits of liberty, prosperity and fulfillment of every individual;

Deciding to pursue efforts for construction and prosperity of the country;

Resolved to contribute to maintenance of peaceful coexistence among nations, to the reinforcement of cooperation between peoples and to the edification of African unity;

Reviewing the Constitution of December 20, 1978, in accordance with article 91;

Establishes and adopts the present Constitution for the Republic of Rwanda.

**First Title. The Republic**

**1.** Rwanda is a democratic, social and sovereign Republic whose name shall be: "The Republic of Rwanda."

Its principle is: "Government of the people, by the people, for the people."

**2.** The monarchy is abolished and may not be restored.

**3.** The national flag consists of red, yellow and green, with the red band nearest the staff and the yellow band showing a black letter "R" in the center.

The motto of the Republic is "Liberty, Cooperation, Progress."

The seal of the Republic consists of ideograms of the dove and olive branch, the hoe and sickle, and the bow and arrow, symbolizing peace, labor and defense of democratic rights respectively; it also contains the inscription of the name and motto of the Republic upon two national flags placed opposite each other.

The national anthem shall be determined by law.

**4.** The national language is Kinyarwanda. The official languages are Kinyarwanda, French and English. (Const. Am. I, art. 7).

**5.** Rwandese nationality and conditions of naturalization shall be determined by law.

**6.** All power emanates from the Nation.

National sovereignty belongs to the Rwandese people who exercise it through representatives or by referendum.

**7.** Political parties that meet legal requirements participate in the expression of suffrage. They may be created and freely exercise their activities on the condition that they respect democratic principles and do not harm the republic form of government, the integrity of the national territory and State security.

**8.** Suffrage is always universal, equal and secret; it may be direct or indirect.

**9.** All Rwandan citizens of the age of majority who are not excluded by law may vote, under conditions determined by law.

**10.** The conditions and terms of popular consultation are set by law.

**11.** The Republic is divided into prefectures with legal personality. Prefectures may be sub-divided into sub-prefectures.

Each prefecture is divided into communes with legal personality.

The number, limits, organization and operation of prefectures, sub-prefectures and communes are set by law.

The capital of the Republic shall be determined by law.

## Title II. Civil Liberties

**12.** The human person is sacred.

The liberty of the human person is guaranteed; nobody may be accused, arrested, detained or convicted except under conditions established by law in force prior to the commission of the act and in the forms set by it.

No offense may be subject to punishment that was not set by law prior to its commission. Nevertheless, the law may derogate from this provision in cases where an exceptional public danger threatens the existence of the nation.

Everyone is presumed innocent of offenses charged until definitive conviction.

Acts or admissions which were not punishable at the time they were committed, may be charged and judged if they were considered criminal according to general principles of law recognized by the community of nations. (Const. Am. I, art. 6).

**13.** Nobody may be subject to security measures except as provided by law for reasons of public order or State security.

**14.** Criminal liability is personal.

Civil liability shall be defined by law.

Defense is an absolute right at all states and degrees of legal proceedings.

**15.** The right to asylum is recognized under conditions determined by law.

Extradition is only authorized under limits set by law.

**16.** All citizens are equal before the law, without distinction based on race, color, origin, ethnic origin, clan, gender, opinion, religion, social position or other reasons.

**17.** All forms of slavery and bondage are prohibited.

**18.** Freedom of worship and of public celebration of religion, freedom of conscience as well as the right to manifest one's opinions on any subject are guaranteed, subject to prosecution of crimes committed during their exercise.

**19.** Freedom of association is guaranteed under conditions set by law; prior authorization may not be prescribed.

**20.** Freedom of peaceful assembly without arms is guaranteed under terms set by law.

Prior authorization must be prescribed by law, and solely for open-air meetings, on public roads or places, and as required by reasons of security, peace and cleanliness.

**21.** All citizens have the right to circulate freely and to settle within the national territory as well as to leave and to return; the exercise of this right may only be limited by the law for reasons of public order and State security.

**22.** Interference with privacy is prohibited.

Confidentiality of correspondence and postal, telegraphic, telephone or other communication is guaranteed; it may only be restricted by law.

The home is inviolable. Entry into the home may only take place in cases provided by law and under the forms that it prescribes.

**23.** Private property, individual or collective, is inviolable. It may only be interfered with for reasons of public utility, in cases and in the manner established by law, and subject to just and prior compensation.

**24.** The family, which is the natural basis of Rwandan society, is protected by the State.

Parents have the right and the duty to raise their children.

**25.** Only monogamous marriage is recognized, under conditions and forms set by law.

Conditions and forms of divorce are determined by law.

**26.** Freedom of education is guaranteed, subject to punishment of offenses committed during its exercise. Organization of official and subsidized free education as well as the recognition of diplomas and certificates issued by private education are determined by law.

**27.** Subject to article 24(2), primary schooling is mandatory and free, according to terms established by law.

**28.** National service, either civil or military, is organized by law.

**29.** Non-penal forced labor is prohibited.

**30.** Everyone has the right to work, to free choice of employment and to just and favorable conditions of work.

**31.** Every worker may defend his or her rights through trade union action, subject to punishment of offenses committed during exercise of this right.

**32.** The right to strike is exercised in accordance with the laws that regulate it; it cannot hinder exercise of the right to work.

**33.** The judiciary is the guardian of civil liberties and rights, and ensures their respect under conditions set by law.

## Title III. Powers

**34.** Repealed (Arusha I, art. 3(1)).

### *First Chapter. Executive Power*

**35.** Repealed (Arusha I, art. 3(1)).

**36.** The law shall establish compensation, pensions, and other material benefits pertaining to the presidential and ministerial duties.

**37.** The President of the Republic, the Prime Minister, Ministers, and Secretaries of State may not take advantage of their offices in order to acquire or dispose of any State property, nor exchange their personal property for State property.

Their duties shall be incompatible with the exercise of any other remunerated professional activity.

**38.** Repealed (Arusha I, art. 3(1)).

*First section. President of the Republic*

**39-49.** Repealed (Arusha I, art. 3(1)).

*Section 2. Government*

**50-52.** Repealed (Arusha I, art. 3(1)).

**53.** Ministers and Secretaries of State shall execute laws and regulations for which they are responsible by means of orders.

**54-56.** Repealed (Arusha I, art. 3(1)).

### *Chapter II. Legislative Power*

**57.** Repealed (Arusha I, art. 3(1)).

*First Section. National Assembly*

**58-60.** Repealed (Arusha I, art. 3(1)).

**61.** The National Assembly shall be directed by its Speaker and, in case of the latter's incapacity, by one of the Deputy Speakers.

**62.** The National Assembly shall establish its own regulations for the organization and method of exercise of its attributions.

**63.** Repealed (Arusha I, art. 3(1)).

**64.** The National Assembly shall sit in the Capital except in cases of *force majeure.*

Any deliberation, whatever its subject, that is held without convocation or agenda, or held outside the regular sittings or the premises noted on the notice of convocation is invalid.

**65-68.** Repealed (Arusha I, art. 3(1)).

*Section 2. Legislation*

**69.** Legislative power shall be exercised by means of laws.

The law is sovereign in all matters and in no case shall regulations contravene the provisions of laws.

**70-71.** Repealed (Arusha I, art. 3(1)).

**72.** Bills and amendments proposed by Deputies of the National Assembly, the adoption of which may bring about either a decrease in public resources or the creation or increase of public expenses, must be accompanied by a bill to increase revenue or savings of equal value.

**73-74.** Repealed (Arusha I, art. 3(1)).

**75.** Before promulgation, laws and statutory orders must be sent to the Constitutional Court which shall rule on their constitutionality within eight days or, in case of emergency, within four days. (The second paragraph of this provision was repealed by Arusha I, art. 3(1)).

**76.** The National Assembly shall vote upon laws concerning finances which establish the resources and expenses of the State under conditions prescribed by an organic law.

Any budgetary transfer must be authorized by law.

**77.** Each year, the National Assembly shall rule on the financial accounts and pass a balanced budget, a bill for which shall be filed before the opening of the first ordinary session.

If it has not been passed within forty days from the opening of the first ordinary session, or if it has not been passed as balanced, the budget bill shall be adopted by means of a statutory order on January 31 of the year of its execution at the latest. (The third and fourth paragraphs of this provision were repealed by Arusha I, art. 3(1)).

**78.** No taxation may be established, modified, or abolished except by law; no exemption or reduction may be granted except in the cases prescribed by law.

No monopoly may be granted except by law and for a specific duration.

**79.** Authentic interpretation of laws shall be the prerogative of the legislative power.

### *Chapter III. Relations between the National Assembly and the Government*

**80.** The President of the Republic and the Prime Minister must be informed of the agenda for the meetings of the National Assembly and its committees.

The Prime Minister, Ministers, and Secretaries of State may, if they so desire, attend the National Assembly meetings; they shall speak whenever they wish; if need be, they may be accompanied by technical advisors of their choice.

**81-85.** Repealed (Arusha I, art. 3(1)).

### *Chapter IV. Judiciary*

**86-87.** Repealed (Arusha I, art. 3(1)).

**88.** Except when prescribed by law, the Court of Cassation shall not consider the merits of cases. (The first paragraph of this provision was repealed by Arusha I, art. 3(1)).

**89.** When consulted, the Council of State shall provide a reasoned opinion about the text of any draft law or bill, or any amendment to a draft law or bill, any draft decree-law, as well as any draft order. It may propose drafting modifications as judged necessary.

The Council of State shall hear applications to quash regulations, orders and administrative decisions; it also supervises public consultations.

The Council of State shall be organized by an organic law.

Subordinate administrative jurisdictions shall be created and organized by an organic law.

**90.** Repealed (Arusha I, art. 3(1)).

**91.** No jurisdiction may be established except by an organic law.

The organization and competence of any jurisdiction shall be defined by an organic law.

**92.** No one may be deprived without consent of the judge assigned by law.

**93.** Court hearings shall be public. Courts may rule that they shall sit *in camera* when publicity may endanger public order or morals.

**94.** Reasons must be given for all judgments and must be pronounced in public hearing.

**95.** Courts shall only apply orders and other regulations that are consistent with the Constitution and with laws.

## Title IV. Amendment of the Constitution

**96.** Repealed (Arusha I, art. 3(1)).

## Title V. General and Transitional Provisions

**97.** Laws and regulations may not take effect unless they have previously been published under the conditions established by law.

Ignorance of laws that have been regularly published is no excuse.

**98.** As of the date of promulgation of this Constitution, any legislation not incompatible with it shall remain in force to the extent it is not amended, repealed or replaced by new laws or regulations.

Custom shall remain applicable inasmuch as it has not been replaced by laws or is not contrary to the Constitution, laws, regulations, public order or morals.

**99.** Repealed (Arusha I, art. 3(1)).

**100.** Foreigners shall enjoy the protection granted to persons and property, as well as the civil rights recognized by this Constitution, except in cases prescribed by law.

**101.** Repealed (Arusha I, art. 3(1)).

**102.** This Constitution revises and replaces the Constitution of December 20, 1978.

It will enter into force on the date of its promulgation by the President of the Republic.

# Peace Agreement Between the Government of the Republic of Rwanda and The Rwandese Patriotic Front

The Government of the Republic of Rwanda on the one hand, and the Rwandese Patriotic Front on the other;

Firmly resolved to find a political negotiated solution to the war situation confronting the Rwandese people since 1st October, 1990;

Considering and appreciating the efforts deployed by the countries of the Sub-region with a view to helping the Rwandese people to recover peace;

Referring to the numerous high-level meetings held respectively at Mwanza, United Republic of Tanzania, on 17th October, 1990, in Gbadolite, Republic of Zaire, on 26th October, 1990, in Goma, Republic of Zaire, on 20th November, 1990, in Zanzibar, United Republic of Tanzania, on 17th February, 1991, in Dar-es-Salaam, United Republic of Tanzania, on 19th February, 1991 and from 5th to 7th March, 1993;

Considering that all these meetings aimed first and foremost at establishing a cease-fire so as to enable the two parties to look for a solution to the war through direct negotiations;

Noting the N'sele Cease-fire Agreement, of 19th March, 1991 as amended in Gbadolite on 16th September, 1991 and at Arusha on 12th July, 1992;

Reaffirming their unwavering determination to respect principles underlying the Rule of Law which include democracy, national unity, pluralism, the respect of fundamental freedoms and rights of the individual;

Considering that these principles constitute the basis and consistency of a lasting peace awaited by the Rwandese people for the benefit of the present and future generations;

Noting the Protocol of Agreement on the Rule of Law signed at Arusha on 18th August, 1992;

Considering that the two parties accepted the principle of power-sharing within the framework of a Broad-Based Transitional Government;

Noting the Protocols of Agreement on Power-Sharing signed at Arusha respectively on 30th October, 1992, and on 9th January, 1993;

Considering that the conflictual situation between the two parties can only be brought to an end through the formation of one and single National Army and a new National Gendarmerie from forces of the two warring parties;

Noting of the Protocol of Agreement on the integration of Armed Forces of both parties, signed at Arusha on 3rd August, 1993;

Recognizing that the unity of the Rwandese people cannot be achieved until a definitive solution to the problem of Rwandese refugees is found and that the return of Rwandese refugees to their country is an inalienable right and constitutes a factor for peace and national unity and reconciliation;

Noting the Protocol of Agreement on the repatriation of Rwandese refugees and the Resettlement of Displaced Persons, signed at Arusha on 9th June, 1993;

Resolved to eradicate and put a definite end to all the root causes which gave rise to the war;

Have, at the conclusion of the Peace Talks held in Arusha, United Republic of Tanzania, between 10th July, 1992 and 24th June, 1993, as well as Kinihira, Republic of Rwanda from 19th to 25th July, 1993, under the aegis of the Facilitator, His Excellency Ali Hassan Mwinyi, President of the United Republic of Tanzania, in the presence of the Representative of the Mediator, His Excellency, Mobutu Sese Seko, President of the Republic of Zaire as well as Representatives of the Current Chairmen of the OAU, His Excellency Abdou Diouf, President of the Republic of Senegal, and Hosni Mubarak, President of the Arab Republic of Egypt, the Secretary General of the OAU, Dr. Salim Ahmed Salim, the Secretary General of the United Nations, Dr. Boutros Boutros Ghali and Observers representing the Federal Republic of Germany, Belgium, Burundi, the United States of America, France, Nigeria, Uganda and Zimbabwe;

Calling the International Community to witness;

Hereby agree on the following provisions.

Article 1

The war between the Government of the Republic of Rwanda and the Rwandese Patriotic Front is hereby brought to an end.

Article 2

The following documents are an integral part of the present Peace Agreement concluded between the Government of the Republic of Rwanda and the Rwandese Patriotic Front:

I. The N'sele Cease-fire Agreement of 29th March, 1991 between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, as amended in Gbadolite on 16th September, 1991 and at Arusha on 12th July, 1992;

II. The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law, signed at Arusha on 18th September, 1992;

III. The Protocols of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government, signed at Arusha respectively on 30th October, 1992 and on 9th January, 1993;

IV. The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Repatriation of Refugees and the Resettlement of Displaced Persons, signed at Arusha on 9th July, 1993;

V. The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the integration of Armed Forces of the two parties, signed at Arusha on 3rd August, 1993;

VI. The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions signed at Arusha on 3rd August, 1993;

These entire documents are attached as Annex.

Article 3

The two parties also agree that the Constitution of 10th June, 1991 and the Arusha Peace Agreement shall constitute indissolubly the Fundamental Law that shall govern the Country during the Transition period, taking into account the following provisions:

1. The following articles of the Constitution shall be replaced by the provisions of the Peace Agreement relating to the same matters. The Articles in question are: 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 57, 58, 59, 60, 63, 65, 66, 67, 68, 70, 71, 73, 74, 75 paragraph 2, 77 paragraphs 3 and 4, 81, 82, 83, 84, 85, 86, 87, 88 paragraph 1, 90, 96, 99, 101.

2. In case of conflict between the other provisions of the Constitution and those of the Peace Agreement, the provisions of the Peace Agreement shall prevail.

3. The Constitutional Court shall verify the conformity of Laws and Orders in Council with the Fundamental Law thus defined. Pending the enactment of the law on the Supreme Court, the existing Constitutional Court shall remain composed of both the Court of Cassation and the State Council. The Presiding Judge of the Constitutional Court shall assume the presidency.

Article 4

In case of conflict between the provisions of the Fundamental Law and those of other Laws and Regulations, the provisions of the Fundamental Law shall prevail.

Article 5

The Government of the Republic of Rwanda and the Rwandese Patriotic Front undertake to make every possible effort to ensure that the present Peace Agreement is respected and implemented.

They further undertake to spare no effort to promote National Unity and Reconciliation.

Article 6

The two parties agree on the appointment of Mr. Twagiramungu Faustin as Prime Minister of the Broad-Based Transitional Government, in accordance with Articles 6 and 51 of the Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the framework of a Broad-Based Transitional Government.

Article 7

The Transitional Institutions shall be set up within thirty-seven days following the signing of the Peace Agreement.

Article 8

The current Government shall remain in Office until the Broad-Based Transitional Government is established. The maintenance of that Government does not mean that it can encroach on the mandate of the Broad-Based Transitional Government being established.

The current Government shall, in no case, take decisions which may be detrimental to the implementation of the Broad-Based Transitional program.

Article 9

The "Conseil National de Développement" (CND) shall remain in Office until the Transitional National Assembly is established. However, as from the date of signing the Peace Agreement, it shall not enact laws.

Article 10

The present Peace Agreement is signed by the President of the Republic of Rwanda and the Chairman of the Rwandese Patriotic Front, in the presence of:

- The Facilitator, His Excellency, Ali Hassan Mwinyi, President of the United Republic of Tanzania;
- His Excellency, Yoweri Kaguta Museveni, President of the Republic of Uganda, observer country;

- His Excellency Melchior Ndadaye, President of the Republic of Burundi, observer country;
- The Representative of the Mediator, His Excellency Faustin Birindwa, Prime Minister of Zaire;
- Dr. Salim Ahmed Salim, Secretary General of the OAU;
- The Representative of the Secretary General of the United Nations;
- The Representative of the Current Chairman of the OAU;
- The Representatives of other Observer countries: Germany, Belgium, United States of America, France, Nigeria and Zimbabwe;
- The delegations of the two parties.

Article 11

The present Peace Agreement shall come into force upon its signing by the parties.

Done at Arusha, on the 4th day of the month of August, 1993 both in French and English languages, the original text being in French.

# The N'sele Cease-fire Agreement between the Government of the Rwandese Republic and the Rwandese Patriotic Front, as amended at Gbadolite, 16 September, 1991, and at Arusha, 12 July 1992

We, the representatives of the Government of the Rwandese Republic and of the Rwandese Patriotic Front;

Mindful of the unfortunate incidents that have occurred between the Rwandese and have affected peace and public order in the country;

Referring to the Communiqués issues by the Heads of State of the Region, meeting in Mwanza (Tanzania) on 17 October 1990, in Gbadolite (Zaire) on 26 October 1990 and in Goma (Zaire) on 20 November 1990; considering that all these Summit meetings specifically emphasized the prior need for a cease-fire;

Considering the acceptance of the cease-fire in principle by President Juvenal Habyarimana in Zanzibar on 17 February 1991 following his meeting with Presidents Yoweri Museveni of Uganda and Ali Hassan Mwinyi of Tanzania;

Mindful of the fact that Presidents Pierre Buyoya of Burundi, Juvenal Habyarimana of Rwanda, Ali Hassan Mwinyi of Tanzania, Yoweri Museveni of Uganda and Prime Minister Lunda Bululu of Zaire, assisted by the Secretary-General of the OAU and a delegate of the UN High Commission for Refugees adopted the Dar-Es-Salaam Declaration of 19 February mandating President Mobutu Sese Seko of Zaire to take urgent and immediate steps to usher in dialogue which should culminate in a formal cease-fire agreement between the Government of Rwanda and the Rwandese Patriotic Front;

Mindful of the fact that the cease-fire should facilitate the establishment of negotiations between the Rwandese Government and the Rwandese Patriotic Front aimed at national reconciliation and restoration of lasting peace;

Considering that the two Parties reaffirmed their political will during their meeting in Paris from 6th to 8th June 1992 to find through negotiations a solution to the current conflict as well as related problems;

Considering that both parties are committed to conduct direct negotiations;

Mindful of the fact that both parties reaffirmed the validity of the cease-fire agreement signed at N'sele on 29th March 1991 and as amended on 16th September 1991 in Gbadolite subject to up-dating the agreement by making necessary amendments;

Have on this 12th day of July 1992, agreed on and accepted the following provisions with respect to the cease-fire;

**Article I**

1. A cease-fire is hereby established throughout the territory of the Republic of Rwanda, between the Government Forces and those of the Rwandese Patriotic Front. The cease-fire shall enter into force at midnight (Rwanda time) on 31st July 1992 at the same time as the deployment of the Neutral Military Observer group.

2. The entry into force of the cease-fire shall be preceded by a truce, that is, the cessation of fighting, which shall enter into force at midnight (Rwanda time) on 19th July 1992.

3. The present Cease-fire Agreement is the first stage of a peace process which shall culminate in a Peace Agreement to be signed at the conclusion of the political negotiations.

**Article II**

The Cease-fire shall imply:

1. The cessation of all hostilities for the purpose of dialogue and serious negotiations between the two parties under the auspices of the Mediator or a Facilitator;

2. The suspension of supplies of ammunition and weaponry to the field;

3. The supply of non-lethal logistical needs to the military forces in the field;

4. The release of all prisoners-of-war; the effective release of all persons arrested because and as a result of this war within five days following the entry into force of the Cease-fire Agreement;

5. The possibility of recovering the remains of the dead;

6. The withdrawal of all foreign troops after the effective deployment of the Neutral Military Observer Group (NMOG) except for Military Officers serving in Rwanda under bilateral Cooperation Agreements;

7. A ban on infiltration of troops and on the conveyance of troops and war material to the area occupied by each party;

8. A ban on any mine-laying operations or the hindering of operations to remove the mines;

9. The establishment of the Neutral Corridor separating the areas occupied by the two respective forces. This corridor meant to facilitate the monitoring of the cease-fire by NMOG shall be determined in consideration of the front lines of both armies. The demarcation on the field shall be established by the representatives of the two armies in the presence of NMOG.

**Article III**

1. The verification and control of the cease-fire shall be conducted by the neutral military observer group under the supervision of the Secretary General of the OAU;

2. The Neutral Military Observer Group shall be comprised of:

- 10 officers from Nigeria;
- 10 officers from Senegal;
- 10 officers from Zimbabwe;
- 10 officers from an African country to be chosen by the current Chairman of the OAU in collaboration with the President of the United Republic of Tanzania;

- 5 officers from the Government of Rwanda;
- 5 officers from the Rwandese Patriotic Front;

3. The Neutral Military Observer Group shall report any violation of the cease-fire to the Secretary General of the OAU and a joint political military commission;

4. The Neutral Military Observer Group shall set up the organs and machinery required for the control and verification of the cease-fire. It shall draft its own rules of procedure. It shall enjoy a status that would enable it to perform its mission as provided in the cease-fire agreement; including privileges and immunities enjoyed by the OAU personnel as enshrined in the general agreement;

5. The Neutral Military Observer Group shall have full communication and other equipment it deems necessary to perform its mission. The NMOG officers may have specific uniforms with insignia for easy identification, and light weapons for self-defense.

**Article IV**

1. A Joint Political Military Commission composed of five representatives of the Rwandese Government and five of the Rwandese Patriotic Front is established;

2. The OAU and the following countries are invited to participate, as observers, in the Joint Commission: Burundi, Tanzania, Uganda, Zaire, Belgium, France and the United States of America;

3. The Joint Commission shall have the following mandate:

- To ensure the follow-up of the implementation of the cease-fire agreement;
- To ensure the follow-up of the implementation of the peace agreement to be signed at the conclusion of the political negotiations;

4. The Joint Commission shall be based at the OAU Headquarters in Addis Ababa, Ethiopia. The Commission's Headquarters may be moved upon agreement by both parties;

5. The Joint Commission shall hold its inaugural meeting not later than 26th July 1992.

**Article V**

The signatories of the present agreement accept the following principles whose modalities of implementation shall be specified during the political negotiations:

1. Establishment of the rule of law, that is, based namely on national unity, democracy, pluralism, and respect for human rights;

2. Formation of a national army consisting of Government forces and those of the Rwandese Patriotic Front;

3. Establishment of power-sharing within the framework of a broad-based transitional government.

**Article VI**

The political negotiations culminating in the peace agreement shall proceed pursuant to the following calendar:

1. Commencement of the political negotiations: 10 August 1992;

2. Completion of the political negotiations and signing of the peace agreement: not later than 10 October 1992;

3. Completion of the implementation of the mechanisms and conclusions agreed upon pursuant to the peace agreement: not later than 10 January 1993.

**Article VII**

In the present agreement:

1. "Cease-fire" shall mean the cessation of all hostilities between the forces of the Government of the Rwandese Republic and those of the Rwandese Patriotic Front (RPF) throughout the national territory of Rwanda;

2. "Cessation of hostilities" shall mean the end of all military operations, all harmful civil operations and denigrating and unfounded propaganda through the mass media;

3. "Violation of the Cease-fire" shall mean the non-observance of one of the points mentioned in article II;

4. "Violation of the Cease-fire Agreement" shall mean the non-observance of any provision of the Agreement.

Done in Arusha on 12th July 1992.

# Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law

## Preamble

The Government of the Republic of Rwanda and the Rwandese Patriotic Front,

Reaffirming that the Rule of Law, the principle of the establishment of which was agreed upon by the signatories of the present Protocol of Agreement in accordance with Article V of the N'sele Agreement, as amended in Gbadolite, on the 16th of September, 1991 and in Arusha on the 12th of July, 1992, shall characterize the political life in our country;

Considering that the Rule of Law implies that nobody, including the authorities, is above the law and that the laws must respect the fundamental rights of the citizens;

Reaffirming that the Rule of Law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, and which is first and foremost and fundamentally characterized by justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression;

Convinced that the Rule of Law

- is the best guarantee of national unity, the respect of the fundamental freedoms and rights of the individual;
- is a concrete manifestation of democracy;
- hinges on National Unity, Democracy, Pluralism and Respect for Human Rights;

Have agreed as follows:

## Chapter I. National Unity

Article 1

National unity must be based on equality of all citizens before the law, equal opportunities in all fields including the economic field and respect for fundamental rights as stipulated, notably, in the Universal Declaration of Human Rights and in the African Charter on Human and Peoples' Rights.

Article 2

National unity implies that the Rwandese people, as constituent elements of the Rwandese nation, are one and indivisible. It also implies the necessity to fight all obstacles to national unity, notably, ethnicism, regionalism, integrism and intolerance which subordinate the national interest to ethnic, regional, religious and personal interest.

Article 3

National unity entails the rejection of all exclusions and any form of discrimination based notably, on ethnicity, region, sex and religion. It also entails that all citizens have equal opportunity of access to all the political, economic and other advantages, which access must be guaranteed by the State.

Article 4

The two parties acknowledge that the national unity of the people of Rwanda cannot be achieved without a definitive solution to the problem of Rwandese refugees. They recognize that the return of the Rwandese refugees to their country is an inalienable right and represents a factor of peace, unity and national reconciliation. They undertake not to hinder the free exercise of this right by the refugees.

## Chapter II. Democracy

Article 5

Democracy is founded on the idea that sovereignty belongs to the people. It is expressed, notably, through regular, free, transparent and fair elections. Popular representation must be the authentic expression of the will of citizens.

Article 6

The two parties accept the universality as well as the implications of the following fundamental principles of democracy:

- sovereignty of the people;
- government based on the consent of the people expressed through regular, free, transparent and fair elections;
- separation of the legislative, the executive and the judiciary powers;
- independence of the Judiciary;
- guarantee for the fundamental rights of the individual as provided for in the Universal Declaration of Human Rights as well as in the African Charter on Human and Peoples' Rights, among others, freedom of speech, enterprise and of political, social and economic association;
- laws and regulations based on the respect of fundamental human rights;
- equality before the law;
- respect of laws and regulations by all;
- Constitution which respects the principles enunciated above, organizes the State powers and defines the powers and limitations of the institutions of the Republic;
- multipartism, social and economic pluralism.

Article 7

The two parties recognize that multipartism entails the legitimate existence of a democratic opposition and consider, as legitimate, the aspiration of any Rwandese citizen to accede to power through democratic process.

Article 8

The two parties resolutely reject and undertake to fight:

- political ideologies based on ethnicity, region, religion and intolerance which subordinate national interest to the ethnic, regional, religious or personal interest;

- any form of coup d'état as being contrary to the democratic system as described above.

Article 9

In order to promote and consolidate the democratic system as described above, the two parties undertake to work for social, economic and cultural development of the country and to fight hunger, ignorance, poverty and disease.

Article 10

Elections shall be organized in such a way that transparency is guaranteed and fraud eliminated through the establishment of efficient supervision mechanisms including, if the need arises, enlisting the assistance of International Observers.

The prior and full explanation of the citizens' rights and civic duties including the issues at stake in the elections is their inalienable right as a way of avoiding any form of political manipulation.

Article 11

The two parties accept to promote, in national political life, a democratic culture based on the principles enunciated above.

Article 12

The broad-based transitional government provided for in Article V of the N'sele Agreement, as amended in Gbadolite, on 16th September, 1991 and in Arusha on 12th July, 1992, shall lead the country to a democratic system as defined above.

To this end, the two parties note that a political process has been initiated by the Rwandese people to ensure the progress of democracy and reaffirm the need to build together a society founded on the Rule of Law as stipulated in the present Protocol.

## Chapter III. Pluralism

Article 13

The two parties recognize that a democratic society is also founded on pluralism which is the expression of individual freedoms and must respect national unity and the fundamental rights of the citizen.

## Chapter IV. Human Rights

Article 14

The two parties recognize the universal nature of human rights and should express concern when these rights are violated anywhere and by anybody.

They also recognize that the International Community would be justified in expressing concern in the event that these rights are violated by anybody on Rwandese territory. These rights should be guaranteed by the Constitution and the laws of the Republic of Rwanda.

Article 15

The two parties agree that a National Commission on Human Rights shall be established. This institution shall be independent and shall investigate human rights violations committed by anybody on Rwandese territory, in particular, by organs of the State and individuals in their capacity as agents of the State or of various organizations.

The investigation work of the Commission shall not be limited in time.

The Commission shall be provided with the necessary means, especially legal means, to efficiently accomplish its mission. It shall utilize its findings to:

a) sensitize and educate the population about human rights;

b) institute legal proceedings, where necessary.

Article 16

The two parties also agree to establish an International Commission of Enquiry to investigate human rights violations committed during the war.

## Conclusion

Article 17

The two parties concur that national unity, democracy and peace and invaluable and solemnly undertake to do everything possible so as to preserve these values in the interest of the present and future Rwandese generations.

Done at Arusha, the 18th day of August, 1992 in French and English, the French version being the original.

# Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the Rwandese Patriotic Front

The Government of the Republic of Rwanda and the Rwandese Patriotic Front:

Agree on the following provisions which are an integral part of the Protocol of Agreement on Power-sharing:

## Chapter I. General Principles

Article 1

The two parties reaffirm the acceptance of the principle of power-sharing within the framework of a Broad-Based Transitional Government in conformity with Article V.3 of the N'sele Cease-fire Agreement, as amended at Gbadolite on 16th September, 1991 and at Arusha on 12th July, 1992. The modalities of implementation of this principle are the object of the present Protocol of Agreement on Power-Sharing.

Article 2

The two parties agree that those modalities shall consist of:

(a) the maintenance of the current structure of the Coalition Government with appropriate adjustments to be mutually agreed upon in this Protocol, with a view to making room for the participation of the RPF and other political forces in the country;

(b) appropriate adjustments to be mutually agreed upon in this Protocol, to be made at the level of the State powers with a view to enabling the RPF and other political forces in the country to participate in and make for the efficient management of the transition, in compliance with the principle of separation of powers.

## Chapter II. Transitional Institutions

Article 3

During the Transitional Period, the State institutions shall be:

(i) The Presidency of the Republic;

(ii) The Broad-Based Transitional Government;

(iii) The Transitional National Assembly;

(iv) The Institutions of the Judiciary.

## Chapter III. The Executive Power

Article 4

The Executive power shall be exercised collectively through decisions taken in Cabinet meetings, by the President of the Republic and by the Government.

### *Section 1. The President of the Republic and Head of State*

Article 5

Upon signing of the Peace Agreement, the incumbent President of the Republic and Head of State shall remain in office until the outcome of elections to be held at the end of the Transitional Period.

Article 6

As Head of State, the President of the Republic shall have the following prerogatives:

(a) He shall nominate the Prime Minister and other members of the Cabinet within three days following their appointment by the relevant bodies. After this period, the Prime Minister shall assume office and appoint other Members of the Cabinet.

Modalities for the appointment of the Prime Minister and other Members of the Cabinet shall be provided for in this Peace Agreement;

(b) He shall nominate and accredit Ambassadors, Plenipotentiaries and Extraordinary Envoys abroad, after their appointment by the Cabinet. He shall receive credentials of Ambassadors and Extraordinary Envoys from abroad, after their approval by the Cabinet;

(c) He shall represent the Rwandese State in its relations with other States;

(d) He shall sanction and promulgate, without any right of veto, bills passed by the National Assembly and Orders in Council adopted in the Cabinet meetings within ten days following the date of receipt of the ruling on their constitutionality. After this period, Orders in Council shall be sanctioned and promulgated by the Prime Minister, and the bills shall be sanctioned and promulgated by the Speaker of the Transitional National Assembly;

(e) He shall declare war and sign armistice upon the decision of the Cabinet and after authorization by the National Assembly. To this end, he shall bear the title of Commander-in-Chief of the Armed Forces. The Army and other security forces shall be accountable to the Cabinet, in accordance with the modalities specified in the Peace Agreement.

Article 7

The President of the Republic shall have the right to include any issue of national interest on the agenda of Cabinet meetings.

Article 8

The President of the Republic may, if he so wishes, attend meetings of the Cabinet. In this case, he shall chair the Cabinet meetings.

Article 9

Executive Orders by the President of the Republic shall be discussed and adopted by the Cabinet. Since the President of the Republic shall have the right to be involved in decision-making in the Cabinet, he shall have no right of veto on decisions regularly taken by the Cabinet, in particular, draft Presidential Orders when these are submitted to him by the Prime Minister for signature. This

signature officializing the Presidential Orders adopted in the Cabinet shall be effected within ten days following the day of receipt of the said Orders at the Presidency of the Republic. After this period, the decision shall come into force by way of a Prime Ministerial Order.

Article 10

Legal Acts by the President of the Republic shall be countersigned by the Prime Minister and by relevant Ministers and Secretaries of State.

Article 11

In pursuance of the decisions of the Cabinet and in conformity with the procedure defined under Article 9 of the present Protocol, the President of the Republic shall sign Presidential Orders with regard to the following:

1. the prerogative of mercy;
2. the minting of currency;
3. Award of the National Orders;
4. the implementation of laws, when he is so required;
5. the appointment and termination of services of the following senior civil servants:
   - the Principal Private Secretary to the President of the Republic;
   - the Chancellor for National Orders;
   - the Governor of the National Bank of Rwanda;
   - the Rector of the National University of Rwanda;
   - Ambassadors;
   - the Secretary to the Cabinet;
   - the Personal Secretary to the President of the Republic;
   - Advisors in the Presidency of the Republic;
   - Principal Private Secretaries in Ministries;
   - Advisors in Ministries;

- Head of the Prosecution Department at the Supreme Court;

6. Ratification of International Treaties, Conventions and Agreements. However, Peace Treaties, Treaties of Alliance, Treaties which may entail altering national borders or affect the rights of sovereignty, Treaties on the association of the Republic with one or several other States, as well as Treaties, Conventions and Agreements with financial implications not catered for in the budget, shall be implemented only after their approval by way of a law. The federation of the Republic of Rwanda with one or several other democratic States must be approved through a Referendum.

Article 12

The President of the Republic shall address messages to the Nation, the content of which shall be decided upon by the Cabinet.

***Section 2. The Broad-Based Transitional Government***

Article 13

The current structure of the Government, namely, the number and appellation of Ministries, shall remain unchanged. However, a Secretariat of State in the Prime Minister's Office in charge of Social Rehabilitation and Integration shall be established.

It shall be responsible for:

1. Repatriation and social and economic integration of the Rwandese refugees who may wish to go back home;

2. A Post-War Rehabilitation Program as defined under item 23.D of the present Protocol.

Article 14

The political parties participating in the Coalition Government established on 16th April, 1992 as well as the Rwandese Patriotic Front shall have the responsibility to set up the Broad-based Transitional Government. They shall decide, by consensus, on the other political formations which may participate in that Government.

Article 15

The Government shall be composed of the Prime Minister, the Deputy Prime Minister, Ministers and Secretaries of State.

*Sub-Section 1. The Powers of the Government*

Article 16

The Government shall be responsible for the management of the country. It shall determine and implement national policy. In so doing, the Government shall:

1. Be responsible for the implementation of laws and regulations;

2. Negotiate and conclude International Treaties, Conventions and Agreements;

3. Discuss and adopt draft bills and present them to the National Assembly;

4. Discuss and adopt Orders in Council, in situations of emergency or when the National Assembly is unable to sit, and transmit them to the President of the Republic for promulgation;

5. Appoint and dismiss civil servants;

6. Discuss and adopt Presidential, Prime Ministerial and Ministerial Statutory Orders on the implementation of laws.

Article 17

The Government shall be the guarantor of national sovereignty and national unity.

*Sub-section 2. The Prime Minister*

Article 18

The Prime Minister shall:

1. In accordance with the Peace Agreement and in consultation with the political forces, prepare the Government program;

2. In accordance with the modalities provided for in the Peace Agreement, select the other members of the Cabinet;

3. Present the Government program and the Ministerial team responsible for its implementation to the National Assembly;

4. Lead Government business, convene and chair Cabinet Meetings. He shall prepare the agenda for cabinet meetings, in consultation with the other members of the Government. The Prime Minister shall communicate the agenda to the President of the Republic and to the other members of the Government, at least two days before the date of the meeting.

5. Determine the functions of the Ministers and Secretaries of State as well as the nature and extent of powers of the services under them.

   The Ministers and Secretaries of State shall be delegated powers by the Prime Minister for the management of the duties of their departments. The Prime Minister shall determine the extent of this delegation of power.

6. In pursuance of the decisions of the Cabinet, sign Prime Ministerial Orders for the appointment and termination of services of the following senior civil servants:

   - the Principal Private Secretary to the Prime Minister;
   - Deputy Governors of the National Bank of Rwanda;
   - Vice-Rectors of the National University of Rwanda;
   - Advisers and "Chefs de Service" in the Prime Minister's Office;
   - the "Préfets de Préfecture" [District Commissioners];
   - Directors in Public Enterprises;
   - Directors General in the Ministries;
   - Planning and Coordination Officers in Public Enterprises;
   - Directors in Public Enterprises and Representatives of the Government in Parastatals;

- Directors and Heads of Division in the Ministries;
- "Sous-Préfets" [Assistant District Commissioners];
- Bourgmestres [County Administrators];
- Deputy Directors of Public Prosecution at the Supreme Court;
- Head of the Prosecution Department of the Courts of Appeal;
- Deputy Directors of the Courts of Appeal;
- Head of the Prosecution Department at the Courts of First Instance;
- Assistant State Attorneys.

Upon delegation of power by the Cabinet,

(a) the Minister responsible for the Civil Service shall sign Ministerial Orders with regard to appointments and termination of services of Civil Servants from the rank of Chief Clerk or equivalent and lower-level posts.

(b) The Minister of Justice shall sign Ministerial Orders for the appointment and termination of services of judicial staff other than magistrates.

(c) In Public Enterprises, senior staff shall be appointed by the Board of Directors and the rest of the staff by the relevant Director.

7. Countersign, after their promulgation by the President of the Republic, bills passed by the National Assembly as well as Statutory Orders in Council adopted by the Cabinet.

8. By way of Orders decided upon during cabinet meetings, implement laws and regulations when he is required to do so.

9. Address messages to the Nation, whose content shall be decided upon by the Cabinet.

10. May, under exceptional circumstances, after a decision taken by the Cabinet and on consultation with the Bureau of the National Assembly and the Supreme Court, declare a State of Siege or a State of Emergency.

Article 19

Legal acts by the Prime Minister shall be countersigned by the relevant Ministers and Secretaries of State.

*Sub-Section 3. Functions of the Deputy Prime Minister*

Article 20

The Deputy Prime Minister shall:

1. Upon formal delegation of power, replace the Prime Minister in the event of his absence or hindrance.

2. Act as Prime Minister when the post falls vacant, until a new Prime Minister is appointed, following modalities provided for in the Peace Agreement.

3. In addition, hold a ministerial portfolio.

*Sub-Section 4. Mode of Decision-making within the Government*

Article 21

Prior to the deliberations, the Cabinet meeting shall adopt its agenda.

Cabinet decisions shall be taken by consensus. Where consensus is not reached, the issue at hand shall be returned to the relevant Minister for further study.

Consensus on the issue shall once again be required [pursuant to] subsequent discussions, and if no consensus is reached, a decision shall be taken on the basis of a partial consensus of [...] two-thirds of the members of the Government present.

For the following issues, however, consensus shall be mandatory:

- amendment to the Peace Agreement;
- declaration of war;
- exercise of the prerogative of mercy and mitigation of sentence;
- defense and security matters.

Article 22

For each Cabinet Meeting, minutes and a summary of decisions shall be written. The summary shall be approved and signed by members who attended the said meeting.

*Sub-Section 5. Outline of the Broad-Based Transitional Government Program*

Article 23

The Broad-Based Transitional Government shall implement the program comprising the following:

A. Democracy

1. Consolidate the democratic process by establishing the necessary mechanisms for the implementation of the provisions of the Protocol on the Rule of Law.

2. Prepare and organize general elections to be held at the end of the Transition Period.

B. Defense and Security

1. Consolidate peace by taking the necessary measures for the eradication of the causes of war, especially those stemming from the non-respect of National Unity, Human Rights and Democracy.

2. Ensure internal and external security.

3. Take the necessary measures for guaranteeing the security of all the people and their property.

4. Organize defense and security institutions.

C. National Unity and National Reconciliation

1. Restore national unity, in particular and as a matter of urgency by:

a) Setting up efficient mechanisms aimed at elimination of all types of discrimination and exclusion;

b) Working out appropriate legislation in this regard;

c) Establishing a recruitment system for senior government posts, and for admission to schools, based on fair competition giving equal opportunity to all citizens.

2. Organize a national debate on National Unity and National Reconciliation.

D. Post-war Rehabilitation Program

1. Provide humanitarian assistance, especially through the supply of foodstuffs, seeds and some building materials in a bid to contribute in the resettlement of those displaced as a result of the war and social strife encountered since the outbreak of the war, in their original property.

2. Rehabilitate and rebuild the areas devastated by war and social strife encountered since the outbreak of war, especially through mine-clearance and rebuilding of socio-educational and administrative facilities.

3. Set up a program of assistance to the victims of war (both civilian and military) and of social strife encountered since the outbreak of the war, to the physically handicapped, orphans, widows and widowers.

4. Set up appropriate programs for the economic and social integration of the demobilized military personnel.

E. Repatriation and Reintegration of Refugees

Repatriate and reintegrate all Rwandese refugees who may wish to go back home following the modalities specified in the Peace Agreement.

F. The Economy

1. Stimulate the economy by, as a priority, orienting economic programs towards the disadvantaged regions and social strata.

2. Review the country's priorities with the aim of promoting food security (application of selected seeds and fertilizers, storage, etc.)

3. Diversify export products.

4. Encourage small and medium scale industries.

5. Draw up and apply strategies for better utilization of the country's resources (natural and human).

G. National Ethics

1. Establish a mechanism for guaranteeing a professional code of ethics, integrity and patriotism.

2. Establish a system for the eradication of all forms of corruption.

3. Evaluate and clean up all the State administrative institutions.

**Chapter IV. Specialized Commissions**

Article 24

In addition to the Commissions already agreed upon in the previous Agreements, the following broad-based specialized Commissions shall be established, whose composition and modalities of functioning shall be determined by the Broad-based Transitional Government.

A. Commission for National Unity and National Reconciliation

This commission, which reports to the Government, shall be responsible for:

1. Preparing a national debate on national unity and national reconciliation.

2. Prepare and distribute information aimed at educating the population and achieving national unity and national reconciliation.

B. Legal and Constitutional Commission

This Commission shall be responsible for:

1. Drafting up a list of adaptations of national legislation to the provisions of the Peace Agreement, in particular those provisions relating to the Rule of Law.

2. Prepare a preliminary draft of the Constitution which shall govern the country after the Transitional Period.

C. Electoral Commission

This Commission shall be responsible for the preparation and organization of local, legislative and presidential elections.

## Chapter V. The Judiciary

### *Section 1. General Principles*

Article 25

1. The powers of the Judiciary shall be exercised by Courts, Tribunals and other Jurisdictions. The Judiciary is independent of the Legislature and the Executive.

Justice shall be rendered on the territory of the Republic in the name of the people.

### *Section 2. Jurisdictions*

Article 26

The following ordinary jurisdictions shall be recognized:

Canton Courts, Courts of First Instance, Courts of Appeal and the Supreme Court.

The following military jurisdictions shall also be recognized:

Courts Martial and the Military Court.

The law may establish any other specialized Courts. However, no special Courts may be established.

***Section 3. The Supreme Court***

Article 27

The Supreme Court shall [in] particular exercise the following functions:

a) direct and coordinate the activities of the Courts and Tribunals of the Republic. It shall be the guarantor of the independence of the Judiciary. To this effect, it shall be responsible for the professional code of ethics;

b) ensure the constitutionality of laws and orders in council. In so doing, it shall ensure their constitutionality before promulgation;

c) give a ruling on the petition for annulment of regulations, orders and decisions issued by administrative authorities;

d) ensure the regularity of popular consultations;

e) provide, upon request, legal opinions on the regularity of draft Presidential, Prime Ministerial and Ministerial orders as well as on other draft public administration regulations;

f) give the authentic interpretation on customary practice in case written law is silent thereon;

g) give a ruling on appeals to the Court of Cassation to have a new trial ordered and on transfer of causes from one Court to another;

h) arbitrate on institutional conflicts between various State organs;

i) judge the accounts of all Public Institutions;

j) have criminal jurisdiction over the president of the Republic, the Speaker of the National Assembly, the Presiding Judge of the Supreme Court, the Prime Minister, the Deputy Prime Minister, Ministers, Secretaries of State, the Deputy-Presiding Judges of the Supreme Court, Deputies in the National Assembly, the Presiding Judges of the Courts of Appeal, the Public Prosecutors and Deputy Directors of the Supreme Court and of the Courts of Appeal.

On first trial, the above-listed official shall be tried by the Court of Cassation. On appeal, they shall be judged by the Supreme Court, in the presence of all the jurisdictional sections, with at least eleven Judges without including the Judges of the Bench of the Court of Cassation who gave a ruling on the case on the first trial.

Article 28

The Supreme Court shall comprise the following five sections:

a) The Department of Courts and Tribunals;

b) The Court of Cassation;

c) The Constitutional Court;

d) The Council of State;

e) The Public Accounts Court.

Article 29

The Supreme Court shall be chaired by a Presiding Judge assisted by five Deputy Presiding Judges. The Presiding Judge and the Deputy Presiding Judges shall be selected by the National Assembly from a list presented by the Government based on two candidates for each post. Each Deputy Presiding Judge shall also be Head of one of the sections of the Supreme Court.

The services of the Presiding Judge and Deputy Presiding Judges of the Supreme Court shall be terminated by the National Assembly voting by a two-thirds majority, either upon its initiative or upon the proposal of the Government. The instruments of appointment and termination of the services of the Presiding Judge and Deputy Presiding Judges shall be signed by the President of the Republic.

Article 30

Candidates for the post of Presiding Judge and Deputy Presiding Judges of the Supreme Court must meet the following requirements:

1. Hold at least a university degree in law.

2. Give proof of at least five years' practical experience in the field of law.

Article 31

Judges of the Supreme Court, of the Court of Appeal as well as the Presiding Judges of the Courts of first instance must hold at least a degree in law or equivalent. However, during a transitional period exceptions to this rule may be made in the case of magistrates of the Court of Appeal other than the Presiding Judge. The length of the transitional period shall be determined by law. (Const. Am. I, art. 1).

Article 32

Upon the decision of the Supreme Council of the Magistrates, the Presiding Judge of the Supreme Court shall sign the Instruments of appointment and termination of services of Judges of the Bench.

Article 33

An organic law shall determine the powers, the organization and the rules of procedure of the Supreme Court. Pending the adoption of the said law, the legislation in force relating to the powers, organization and the rules of procedure of these Courts shall remain in force.

### *Section 5. Relationship between the Supreme Court and the Government*

Article 34

The Government shall delegate one or several Commissioners to one or all sections of the Supreme Court to represent it and to avail any required information.

The Government Commissioners shall participate in discussions on matters for which they have been designated but as non-voting members.

Article 35

The implementation of the decisions by the Supreme Court, as well as the financial management of, and other administrative measures concerning the supreme court shall be vested in the Government. However, the law organizing [...] the Supreme Court shall define the administrative measures coming under its jurisdiction.

Article 36

In matters relating to the organization of the Judiciary, the Supreme Court may submit to the Government any reform proposals which, in its opinion are [...] of general interest.

### *Section 6. The Supreme Council of Magistrates*

Article 37

The Supreme [...] Council of the Magistrates shall comprise:

- the Presiding Judge of the Supreme Court as chairman;
- the Deputy-Presiding Judges of the Supreme Court;
- two Judges of the Bench of the Supreme Court;
- a Judge of the Bench from each Court of Appeal;
- a Judge of the Bench from Courts of First Instance under the Jurisdiction of each Court of Appeal;
- a Magistrate of Canton Court under the Jurisdiction of each Court of Appeal.

The Government Commissioners to the Department of Courts and Tribunals shall attend meetings of the Supreme Council of Magistrates as non-voting members.

The Council shall elect from its members a Vice-Chairman and a Rapporteur.

Article 38

With the exception of the Presiding Judge and the Deputy-Presiding Judges of the Supreme Court, members of the Supreme Council of Magistrates shall be elected by their peers of the same level of Jurisdiction.

Applications shall be submitted to the Supreme Court at least one month before the date of elections. Each candidate shall give proof of at least five years' practical experience in the field of law.

Elections shall be organized by the Supreme Court.

The President of the Supreme Court shall appoint fourteen other members of the first Supreme Council of Magistrates, determined by consensus of the Presiding Judge and the Deputy-Presiding Judges of the Supreme Court.

If required, the Presiding Judge of the Supreme Court shall appoint as magistrates the persons who are to compose the first Supreme Council of Magistrates after their determination by consensus of the Presiding Judge and the Deputy-Presiding Judges of the Supreme Court. (Const. Am. I, art. 2).

Article 39

The Supreme Council of the Magistrates shall have the following powers:

a) Decide on the appointment and termination of services and, in general, the administration of the career of Judges of the Bench other than the Presiding Judge and Deputy-Presiding Judges of the Supreme Court.

b) Give advisory opinion upon its own initiative or upon request, on any proposal relating to the judicial staff regulations within its jurisdictions.

c) Give an advisory opinion, upon its own initiative or upon request, on any matter concerning the administration of Justice.

## Chapter VI. Other Areas of Agreement

Article 40

The initiative of laws shall be vested in the Cabinet and the National Assembly.

Article 41

The Constitution which shall govern the country after the Transition Period shall be prepared by the Legal and Constitutional Commission comprising national experts referred to under Article 24.B of this Protocol. This Commission, which shall be under the National Assembly, shall prepare, after an extensive consultation with all the strata of the population, a preliminary draft Constitution which shall be submitted to the Government for advice, before submitting it to the National Assembly which shall finalize the draft Constitution, to be submitted to a Referendum for adoption.

Article 42

The National Assembly shall exercise control over the Government's activities, in line with the mechanisms provided for by the law.

Article 43

The National Budget shall be prepared by the Government and voted by the National Assembly. Where the budget is not voted in time, the Prime Minster shall, upon the decision of the Government, pass a decree authorizing the disbursement of monthly provisional expenditure.

Article 44

The "Office Rwandais d'Information" (ORINFOR) shall fall under the Ministry responsible for Information and the "Office du Tourisme et des Parcs Nationaux" (PRTPN) under the Ministry responsible for Tourism.

Article 45

In criminal matters the responsibility of the President of the Republic, the Speaker of the National Assembly, the Presiding Judge of the Supreme Court, the Prime Minister, the Deputy Prime Minister, Ministers, Secretaries of State, the Assistant Presiding Judges of the Supreme Court and Deputies, shall be individual.

However, they shall not be subjected to custody. They may appear before justice through their proxies. They shall be judged by the Supreme Court.

Deputies shall not be prosecuted or sued as a result of opinions expressed or votes cast in the exercise of their duties.

Article 46

As a matter of urgency and priority, the Broad-based Transitional Government shall rid the administrative apparatus of all incompetent elements as well as authorities who were involved in the social strife or whose activities are an obstacle to the democratic process and to national reconciliation.

In any case, all local authorities (Bourgmestres [County Administrators], Sous-Préfets [Assistant District Commissioners], Préfets de Préfecture [District Commissioners]) shall have been either replaced or confirmed within three months after the establishment of the Broad-Based Transitional Government.

Done at Arusha, on this 30th day of October, 1992 in French and English, the French text being the original.

# Protocol of Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-based Transitional Government

**(Continuation of the Protocol of Agreement signed on 30th October, 1992)**

The Government of the Republic of Rwanda on the one hand, and the Rwandese Patriotic Front on the other;

Agree on the following provisions which are an integral part of the Protocol of Agreement on Power-Sharing:

## Chapter VII. New Areas of Agreement

### *Section 1. Provisions Relating to the Executive Power*

#### *Sub-Section 1. Replacement of the President of the Republic during the Transitional Period*

Article 47

In the event of a temporary impediment or incapacity of the President of the Republic to carry out his duties, the Speaker of the Transitional National Assembly shall assume the interim until the incumbent President resumes office.

Article 48

In the event of resignation or death, permanent impediment or incapacitation of the President of the Republic:

1. The office shall be declared vacant by the Supreme Court upon request by the Broad-based Transitional Government.

2. The interim Presidency shall be assumed by the Speaker of the Transitional National Assembly.

3. The replacement of the President of the Republic shall be conducted in the following manner:

   a) The party of the former President of the Republic shall present two candidates to the Bureau of the Transitional National Assembly within three weeks of the declaration of the vacancy.

   b) Within the fourth week, the election of the President of the Republic shall be conducted in a joint session of the Broad-Based Transitional Government and the Transitional National Assembly. The respective members of the two institutions shall elect the President of the Republic by secret ballot and by an absolute majority. The election shall be supervised by the Speaker of the Transitional National Assembly.

   c) If the Party of the former President of the Republic, for one reason or another, is not willing to present a candidate or cannot present any candidate, or if the President of the Republic has resigned from his party in the meantime, each political force represented in the Transitional National Assembly may submit one candidate within six weeks after the declaration of the vacancy. The election shall be conducted during the seventh week, at the latest, following the modalities provided for in point (b) above.

   d) If the vacancy is declared three months or less before the expiry of the transitional period, the Speaker of the Transitional National Assembly shall assume the interim Presidency of the Republic until the end of the Transition.

Article 49

The candidate to the Presidency of the Republic should be at least thirty-five years of age. Once elected, the President cannot perform any military or other remunerative activity.

Article 50

The new President of the Republic shall be sworn in within eight days after his election, by the Presiding Judge of the Supreme Court, before the National Transitional Assembly.

*Sub-Section 2. Appointment of the Prime Minister, Ministers and Secretaries of State*

Article 51

The candidate for the post of Prime Minister shall be presented by the political formation designated to that effect. He shall be presented to the two parties to the negotiations for approval. He should be known before the signing of the Peace Agreement.

Article 52

The Prime Minister shall, in consultation with each political force called upon to participate in the Government, select candidates for the portfolios distributed among the various political forces. He shall present them to the President of the Republic for appointment as well as to the Transitional National Assembly, in accordance with Article 18, paragraph 3 of the Protocol of Agreement signed on 30th October, 1992.

*Sub-Section 3. Replacement of the Prime Minister, Ministers and Secretaries of State*

Article 53

The vacancy of the post of Prime Minister shall be declared by the Supreme Court upon request by the Broad-Based Transitional Government. The political force of the former Prime Minister shall submit a candidate within fifteen days of the declaration of the vacancy. Political formations participating in the Broad-Based Transitional Government shall, under the coordination of the Deputy Prime Minister, hold consultations for the approval of the candidate. Once a consensus is reached, the Deputy Prime Minister shall present the candidate to the President of the Republic for appointment within three days.

Article 54

The Prime Minister, in consultation with the political force of the Minister or Secretary of State to be replaced, shall present a candidate to the President of the Republic for appointment.

*Sub-Section 4. Distribution of Ministerial Portfolios within the Broad-based Transitional Government*

Article 55

In accordance with the provisions of Article 14 of the Protocol of Agreement signed on 30th October, 1992, the numerical distribution of the portfolios among political forces called upon to participate in the Broad-Based Transitional Government shall be as follows;

- MRND: five portfolios
- RPF: five portfolios
- MDR: four portfolios (including the post of Prime Minister)
- PSD: three portfolios
- PL: three portfolios
- PDC: one portfolio

Article 56

The nominative distribution of portfolios shall be as follows:

MRND

1. Ministry of Defense;

2. Ministry of Higher Education, Scientific Research and Culture;

3. Ministry of Public Service;

4. Ministry of Planning

5. Ministry of Family Affairs and Promotion of the Status of Women.

RPF

1. Ministry of Interior and Communal Development;

2. Ministry of Transport and Communications;

3. Ministry of Health;

4. Ministry of Youth and Associative Movement;

5. Secretariat of State for Rehabilitation and Social Integration.

MDR

1. Prime Minister;

2. Ministry of Foreign Affairs and Cooperation;

3. Ministry of Primary and Secondary Education;

4. Ministry of Information.

PSD

1. Ministry of Finance;

2. Ministry of Public Works and Energy;

3. Ministry of Agriculture and Livestock Development.

PL

1. Ministry of Justice;

2. Ministry of Commerce, Industry and Cottage Industry;

3. Ministry of Labor and Social Affairs.

PDC

Ministry of Environment and Tourism.

Article 57

The two parties further agree that;

- with reference to Article 5 of the Protocol of Agreement signed on 30th October, 1992, the Presidency of the Republic shall go to the MRND party;
- one of the holders of the five ministries allocated to the RPF shall bear the title of Deputy Prime Minister, in accordance with Article 20, paragraph 3 of the Protocol of Agreement signed on 30th October, 1992.

Article 58

In case one of the political forces called upon to participate in the Broad-Based Transitional Government as provided for under Article 14 of the Protocol of Agreement signed on 30th October, 1992, defaults, the portfolios which had been allocated to that force shall be distributed among the remaining political forces. The possibility of opening to political forces other than those mentioned under Article 55 and 56 above shall be agreed upon by consensus in accordance with Article 14 cited above.

Article 59

Permanent impediment rendering the President of the Republic, Ministers and Secretaries of State incapable of carrying out their duties shall be declared by the Supreme Court following their resignation, death or physical incapacitation certified by a medical commission established by the Government for that purpose, and also following dismissal as a result of final sentencing for criminal offenses.

### *Section 2. Transitional National Assembly*

Article 60

The Transitional National Assembly shall, except in the case provided for in Article 63 of this Protocol of Agreement, be normally composed of seventy members called Deputies to the Transitional National Assembly. The Deputies shall be appointed by their own political forces and their mandate shall cover the whole Transitional Period. The Transitional National Assembly shall make its own rules of procedure.

Article 61

All the political parties registered in Rwanda at the signing of this Protocol as well as the RPF shall be represented in the Transitional National Assembly, on condition that they adhere to and abide by the provisions of the Peace Agreement. To that effect, all these parties and the RPF should, prior to the establishment of the Broad-Based Transitional National Assembly and the Broad-Based Transitional Government, sign a Political Code of Ethics whose principles are spelled out in Article 80 of this Protocol.

Since the RPF and the political parties participating in the current Coalition Government are automatically, directly or indirectly bound, as a result of the Protocol of Agreement on the Rule of Law signed by the two parties to the negotiations, the political parties which do not participate in the said Government should, from the time of the signing of the Protocol of Agreement on Power-Sharing, demonstrate their commitment to abide by the principles governing the Protocol of Agreement on the Rule of Law, to support the peace process and to avoid engaging in sectarian practices and in any form of violence. Such commitment shall constitute a prerequisite for their participation in the Transitional National Assembly and it is incumbent upon the two parties to the negotiations to see to it that such commitment is met.

Article 62

The numerical distribution of seats in the Transitional National Assembly among the political forces, subject to the implementation of the previous article, shall be as follows:

MRND: eleven seats

RPF: eleven seats

MDR: eleven seats

PSD: eleven seats

PL: eleven seats

PDC: four seats

The other registered parties shall have one seat each.

Article 63

a) The maximum number of members of the Transitional National Assembly shall become the total number of seats of the remaining political forces if, for one reason or another, one or several political forces do not participate in the forming of the Transitional National Assembly, or withdraw from that assembly, provided that the total number is not reduced to less than two-thirds of the number stipulated under Article 60 of this Protocol of Agreement.

b) If one or several political forces do not participate, or cease to participate in the Transitional National Assembly, and the number of Deputies falls below that stipulated in the above paragraph, the remaining political forces participating in the Transitional National Assembly shall consult and agree on the modalities for the composition of the new National Assembly.

Article 64

A Deputy may resign. In this case, his political party shall replace him in consultation with the Bureau of the Transitional National Assembly.

Article 65

All compulsory mandates shall be null and void. The right of the Deputies to vote shall be individual.

Article 66

The first session of the Transitional National Assembly shall be devoted to administering the oath of the Deputies and to electing the Bureau of the Transitional National Assembly.

Article 67

The Bureau of the Transitional National Assembly shall be composed of the Speaker, the Deputy Speaker and a Secretary.

Article 68

The PSD and PL political parties shall each present one candidate for the post of Speaker of the Transitional National Assembly. The political party that will not have taken the post of Speaker shall present two candidates for the post of Deputy Speaker of the Transitional National Assembly.

The PDC and other political parties which do not hold any ministerial portfolio in the current Coalition Government shall each present one candidate for the post of Secretary.

Voting for the above-mentioned posts shall be by secret ballot and on the basis of an absolute majority of the Deputies present.

Article 69

The Transitional National Assembly shall automatically hold, each year, three ordinary sessions of three months each, followed each time by a one month parliamentary leave. When circumstances may so require, the Transitional National Assembly shall hold extraordinary sessions.

The first ordinary session shall begin fifteen days after the Deputies to the Transitional National Assembly have taken oath of office.

The Transitional National Assembly shall be convened by the Speaker. It may be convened in extraordinary session upon the initiative of the President of the Republic, the Speaker, the Prime Minister or following the decision taken by its members on the basis of an absolute majority. When it is convened in extraordinary session, the Transitional National Assembly shall deal with only those issues that motivated its convening.

Whenever an ordinary or extraordinary session of the Assembly is convened, the agenda and venue shall be indicated. Before any proceedings, the Transitional National Assembly shall adopt its agenda and decide on the urgency of the matters to be discussed. A Deputy or the Prime Minister may request the urgent consideration of an item. When the request is made by the latter, the matter in question shall automatically be considered as urgent.

Article 70

The status of a Deputy shall be incompatible with the holding of a Ministerial portfolio and the exercise of any other remunerative activities.

Article 71

Members of the Transitional National Assembly who may be finally sentenced by Courts of criminal offenses shall automatically lose their seats. In this case, they shall be replaced in accordance with the provisions of Article 62 of this Protocol.

Article 72

The legislative power shall be exercised by way of laws passed by Deputies in the Transitional National Assembly as well as by Orders in Council passed by the Broad-Based Transitional Government in cases of emergency or when the Transitional National Assembly is unable to convene.

Article 73

Ordinary laws shall be passed on the basis of an absolute majority of the Deputies present. Organic laws shall be passed on the basis of a three-fifths majority.

Article 74

For any lawful sitting to be held, a quorum of two-thirds of the members of the Transitional National Assembly shall be required.

Article 75

Sessions of the Transitional National Assembly shall be public; the minutes of the debates shall be published. However, upon request of the Speaker, of the Prime Minister or of one-third of its members, the Assembly may, by an absolute majority, decide to sit *in camera*.

### *Section 3. Relationship between the Transitional National Assembly and the Broad-Based Transitional Government*

Article 76

The Prime Minister, upon a decision of the Cabinet and after consultations with the Bureau of the Transitional National Assembly, may request the President of the Republic to dissolve the Transitional National Assembly. The dissolution cannot take place within the last three months of the Transition.

Article 77

Replacement of the members of the Transitional National Assembly shall be done as per the numerical distribution of seats referred to under Article 62 above.

The replacement of each of the members of the Bureau of the Transitional National Assembly shall be made by election in accordance with Article 68 of this Protocol of Agreement.

Article 78

The Transitional National Assembly shall be endowed with the following means of information and control over government activities:

- oral questioning
- written questioning
- committee hearing
- commission of inquiry
- interpellation
- motion of censure.

An organic law shall determine the conditions and procedure for this control. (Const. Am. II, art. 1).

Article 79

The Transitional National Assembly may question the conduct of the Broad-Based Transitional Government as well as that of a Minister or Secretary of State, by voting on a motion of censure against the Prime Minister or any other member of the Government.

Such a motion is not admissible until after questioning and unless it is presented by at least one-fifth of the members of the Transitional National Assembly in the case of a Minister or a Secretary of State, and by one-third of the members in the case of the Government.

The motion of censure shall be adopted by secret ballot and by a two-thirds majority of the Deputies present.

The vote of a motion of censure against the Prime Minister shall entail his resignation and that of the Government. In this case, the replacement of the Prime Minister shall be made in accordance with

Article 53 of the Protocol of Agreement. The outgoing Government shall dispose of the day-to-day matters until a new Government is formed.

### *Section 4. Political Code of Ethics Binding the Political Forces Called upon to Participate in the Transitional Institutions*

#### *Sub-Section 1. Fundamental Principles*

Article 80

In a declaration signed by their authorized representatives, the political forces called upon to participate in the Transitional Institutions shall undertake to:

1. Support the Peace Agreement and work towards its successful implementation;

2. Promote national unity and national reconciliation of the Rwandese people;

3. Abstain from all sorts of violence and inciting violence, by written or verbal communication, or by any other means;

4. Reject and undertake to fight any political ideology or any act aimed at fostering discrimination based mainly on ethnic, regional, sexual or religious differences;

5. Promote and respect the rights and freedoms of the human person;

6. Promote political education among their members, in accordance with the fundamental principles of the Rule of Law;

7. Work towards a system whereby the political power serves the interests of all the Rwandese people without any discrimination;

8. Respect the secularism of the Rwandese State;

9. Respect national sovereignty and the territorial integrity of the country.

Article 81

The Commission on National Unity and National Reconciliation shall ensure that each political force respects the principles spelled out under Article 80 above.

Article 82

Any political force violating the provisions of Article 80 shall be liable to a sanction of exclusion from the Transitional Institutions, without prejudice to other legal or statutory provisions on the matter.

This measure shall be taken by the Supreme Court upon request of the Government, acting on the Commission's report.

The request to the Supreme Court shall be preceded by a warning by the Government to the political party concerned [which] has not been heeded.

*Sub-Section 2. Additional Duties of the Commission for National Unity and National Reconciliation*

Article 83

The two parties agree that the Commission on National Unity and National Reconciliation, in addition to the duties specified under Article 24.A of the Protocol of Agreement signed on 30th October, 1992, shall see to it that each political force respects the principles spelled out in the Political Code of Ethics binding the political forces to participate in the Transitional Institutions.

***Section 5. Miscellaneous Provisions***

*Sub-Section 1. Modalities of Appointment within the Judiciary*

Article 84

In order to maintain the independence of the Judiciary, posts in the Judiciary shall not be subjected to sharing among political forces. Therefore, applications for the posts of Presiding Judge and Deputy Presiding Judge of the Supreme Court, referred to under Article 30 of the Protocol of Agreement signed on 30th October, 1992 shall be considered without any reference to political parties, in order to better ensure the neutrality of magistrates.

Article 85

The Supreme Council of Magistrates shall, in conjunction with the Broad-Based Transitional Government, take all necessary and adequate measures to facilitate the integration of competent, experienced or qualified Rwandese nationals who have not worked or evolved in the current legal system of Rwanda.

*Sub-Section 2. Re-deployment of the Deputies to the CND*

Article 86

The Broad-Based Transitional Government shall take the necessary steps to find, to the extent possible, a new placement for the Deputies to the CND in their former sectors of activity. In so doing, the Broad-Based Transitional Government shall take into account the qualifications and experience of each Deputy.

*Sub-section 3. Local Elections as a Solution to Social Tensions*

Article 87

Local elections shall normally be held within six months before the expiry of the transition. In the meantime, the replacement of local authorities shall be made through nomination. However, the Broad-Based Transitional Government shall decide on the opportune moment for organizing [...] local [by-]elections if adequate security conditions allow for the holding of such elections and if it has the legal instruments to organize them.

*Sub-Section 4. National Conference*

Article 88

The National Conference shall consist of a general discussion to focus solely on national unity and national reconciliation, as provided for in Article 23.C.2 of the Protocol of Agreement signed on 30th October, 1992.

This discussion shall be prepared by the Commission on National Unity and National Reconciliation provided for under Article 24 of the Protocol of 30th October, 1992. The Commission shall report to the Broad-Based Transitional Government.

Done at Arusha, this 9th day of the month of January, 1993, in the French and English languages, the French text being the original.

# Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons (June 9, 1993)

Omitted.

# Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front on the Integration of the Armed Forces of the Two Parties (August 3, 1993)

Omitted.

# Protocol of Agreement Between the Government of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions

The Government of the Republic of Rwanda on the one hand, and the Rwandese Patriotic Front on the other;

Agree on the following provisions:

## Chapter I. State Security Services

### *Section 1. Communal Police, Prisons Services and the Public Prosecution Department*

### Article 1

Within the framework of implementing the Government's Program outlined in Article 23 of the Protocol of Agreement of 30th October, 1992, the Broad-Based Transitional Government shall undertake the following activities with regard to the Security Services:

*Communal Police*

1. Ensure that policemen are recruited on the basis of the security needs of the Commune, and that an optimal ratio is established between the strength of the police force and the size of the population in the Commune, in accordance with standard criteria applicable throughout the country.

2. Improve and enhance the level of training of the Communal Police Force and adapt it to suit its specific tasks.

3. Provide assistance to the Communes in matters of security, especially by improving the service conditions of the Communal Police.

4. Define the modalities of collaboration between the Communal Police Force and other Security Organs.

5. Evaluate and improve on the performance of the Communal Police Force.

*Prisons Services*

1. Update the legal provisions and regulations governing prison warders and guards.

2. Improve and enhance the level of training of prison warders and guards, by providing them with training best suited to prisons services.

3. Evaluate and improve on prison services, in conformity with Article 23.G.3 of the Protocol of Agreement of 30th October, 1992, and taking into consideration the principles underlying the Rule of Law.

*Public Prosecution Department*

1. Undertake an extensive reform of the Public Prosecution Department and open it to all the Rwandese Nationals.

2. Make a distinction between the Jurisdiction of the Public Prosecution Department and of other services charged with criminal investigations.

3. Seek technical cooperation for the Public Prosecution Department.

### *Section 2. State Security Services*

**Article 2.** *Structure*

The current structure of the State Security Services shall be maintained. They shall consist of the following:

- External Security under the Ministry of Defense;
- Internal Intelligence Service under the Prime Minister's Office;
- Immigration and Emigration Service under the Ministry of Interior and Communal Development.

**Article 3.** *Principles*

The State Security Services shall be guided by the following principles:

1. They shall serve the Government and shall be subjected to its authority.

2. They must confine their activities to the gathering of intelligence relevant to the missions entrusted to them. They shall have no power of arrest, such power shall be vested in the relevant authorities (Public Prosecution Department, the National Gendarmerie and the Communal Police).

3. They must abide by the law and must conform to the letter and spirit of the International Conventions to which the Republic of Rwanda is a party.

4. They must respect the civic rights of citizens as well as fundamental freedoms.

5. In exercising their duties, they shall be guided by the supreme interest of the State and the public good. They shall perform their duties in a non-partisan spirit and must act with absolute impartiality and neutrality vis-à-vis political parties.

**Article 4.** *Coordination of Intelligence Services*

An Organ responsible for the coordination of all intelligence gathered by various State Intelligence Services shall be established within the Prime Minister's Office.

The Chart indicating the coordination of all these Services is attached to the Protocol as an Annex [omitted].

The Broad-Based Transitional Government shall set up a Commission to carry out a comprehensive study of the problems pertaining to State Security and propose the best way of organizing the Intelligence Services in the country.

**Article 5.** *Participation of the Rwandese Patriotic Front in the State Security Services*

The Broad-Based Transitional Government shall create new posts in the State Security Services within three months after the setting up of the Broad-Based Transitional Government. The RPF shall be effectively represented at all levels of the departments (External Security, Internal Security Services, Immigration and Emigration), particularly at the level of Director and Deputy Director of the Departments and within the organ responsible for the coordination of State Security Services.

## Chapter II. Miscellaneous Provisions

**Article 6.** *Oath of Office by the President of the Republic*

Without prejudice to Article 3, 5 and 6 of the Protocol of Agreement of 30th October, 1992, the President of the Republic, before taking Office, shall take oath before the Constitutional Court, in the following words:

> "I, ....., in the Name of the Almighty God, do hereby solemnly swear to the Nation to discharge faithfully the duties entrusted to me, remain loyal to the Republic of Rwanda, respect the State Institutions and promote the interests of the Rwandese people, in accordance with the Fundamental Law and other Laws."

**Article 7.** *Oath of Office of the Prime Minister, Ministers, Secretaries of State and Deputies of the Transitional National Assembly*

Before taking up Office, the Prime Minister, Ministers, Secretaries of State and Deputies of the Transitional National Assembly, shall take oath in the following words:

> "I, ....., in the Name of the Almighty God, do hereby solemnly swear to the Nation to discharge faithfully the duties entrusted to me, to remain loyal to the Republic of Rwanda, respect the Head of State, the State Institutions and promote the interests of the Rwandese people, in accordance with the Fundamental Law and other Laws."

The Prime Minister, Ministers, and Secretaries of State shall take oath before the President of the Republic, and the Transitional Assembly.

Deputies of the Transitional National Assembly shall take oath before the President of the Republic of Rwanda, in the presence of the Presiding Judge of the Constitutional Court.

In the event of the inability of the President of the Republic of Rwanda to perform this function, the personalities listed above shall take oath before the Presiding Judge of the Constitutional Court.

**Article 8.** *Oath of Office of the Presiding Judge and Deputy Presiding Judges of the Supreme Court*

Before taking Office, the Presiding Judge and Deputy Presiding Judges of the Supreme Court shall take oath in the following words:

> "I, ....., in the Name of the Almighty God, do hereby solemnly swear to the Nation to discharge faithfully the duties entrusted to me, to remain loyal to the Republic of Rwanda, to respect the Head of State as well as the State Institutions and promote the interests of the Rwandese people, in accordance with the Fundamental Law and other Laws."

The Presiding Judge and Deputy Presiding Judges of the Supreme Court shall take oath before the President of the Republic, and the Transitional Assembly. In the event of inability of the President of the Republic to perform this function, the above personalities shall take oath before the Speaker of the Transitional National Assembly.

**Article 9.** *Chairmanship of the first Session of the Transitional National Assembly*

The first Session of the Transitional National Assembly shall be chaired by the President of the Republic. In the event of the latter's inability to perform the function, it shall be chaired by the Presiding Judge of the Constitutional Court.

**Article 10.** *Removal of Deputies of the Transitional National Assembly*

A Deputy of the Transitional National Assembly shall be removed by the Supreme Court which shall, in turn, inform the Transitional National Assembly and the Broad-Based Transitional Government.

**Article 11.** *Violation of the Fundamental Law by the President of the Republic*

In the event of violation of the Fundamental Law by the President of the Republic, his indictment shall be decided by the Transitional National Assembly on the basis of a two-thirds majority vote of the members present and by secret ballot.

However, prior to voting on the indictment, the Transitional National Assembly shall consult the Joint Political Military Commission (JPMC) referred to in Article IV of the Cease-fire Agreement as amended at Gbadolite 16th September, 1991 and at Arusha on the 12th July, 1992. It may also consult the Facilitator. In case the indictment is confirmed to be appropriate, the President is answerable to the Constitutional Court which alone is competent to decide on his immediate resignation.

**Article 12.** *Violation of the Fundamental Law by the Prime Minister, Ministers and Secretaries of State*

In the event of violation of the Fundamental Law as outlined in the Peace Agreement, by the Prime Minister, a Minister or a Secretary of State, the procedure provided for in Article 78 and 79 of the Protocol of Agreement on Power-Sharing signed on 9th January, 1993 shall apply.

**Article 13.** *Voluntary Resignation of the President of the Republic*

The President of the Republic may, for personal reasons, resign from office; his resignation shall be accepted by the Transitional National Assembly. In this case, his replacement shall be effected, in accordance with Article 47 to 50 of the Protocol of Agreement on Power-Sharing agreed on 9th January, 1993.

**Article 14.** *Resignation of the Prime Minister, Ministers and Secretaries of State*

The Prime Minster, a Minister or Secretary of State may for personal reasons, tender his/her resignation. That resignation shall become definitive if not withdrawn within eight days.

The Prime Minister shall tender his/her resignation to the President of the Republic. In this case, Article 53 of the Protocol of Agreement on Power-Sharing, signed on 9th January, 1993 shall apply.

The Minister or Secretary of State shall tender his/her resignation to the President of the Republic and shall inform the Prime Minister accordingly. In this case, Article 54 of the Protocol of Agreement on Power-Sharing signed on 9th January, 1993 shall apply.

In either situation, Orders of resignation shall be signed by the President of the Republic, in accordance with the modalities provided for in Article 9 of the Protocol of 30th October, 1992.

**Article 15.** *Ratification of International Instruments on Human Rights*

The Broad-Based Transitional Government shall ratify all International Conventions, Agreements and Treaties on Human Rights, which Rwanda has not yet ratified. It shall waive all reservations entered by Rwanda when it adhered to some of those international instruments.

**Article 16.** *Deletion of reference to Ethnic Group in Official Documents*

The Broad-Based Transitional Government shall, from the date of its assumption of office, delete from all official documents to be issued any reference to ethnic origin. Documents in use or not yet used shall be replaced by those not bearing any reference to ethnic origin.

**Article 17.** *Public Freedoms and Fundamental Rights*

With regard to public freedoms and fundamental rights, the principles enshrined in the Universal Declaration of Human Rights of 10th December, 1948 shall take precedence over corresponding principles enshrined in the Constitution of the Republic of Rwanda [of June 10, 1991], especially when the latter are contrary to the former.

**Article 18.** *Authentic Interpretation of the Peace Agreement*

It shall be the duty of the Transitional National Assembly to make an authentic interpretation of the Peace Agreement.

The Transitional National Assembly shall consult the Joint Political-Military Commission referred to in Article IV of the N'sele Cease-fire Agreement as amended at Gbadolite 16th September, 1991 and at Arusha 12th July, 1992.

It may consult the Facilitator or any [other] persons it deems competent.

In this regard, the Transitional National Assembly shall take a decision on the basis of a three-fifths majority vote of its [...] members.

**Article 19.** *Amendment of the Peace Agreement*

Proposals for the amendment of the Peace Agreement may be made by the Broad-Based Transitional Government and the Transitional National Assembly.

Where the proposal emanates from the Government, it must be adopted by the Transitional National Assembly on the basis of a three-fifths majority vote of its members.

Where the proposal emanates from the Deputies, it must be adopted by the Transitional National Assembly on the basis of consensus.

**Article 20.** *Confirmation of Orders in Council by the Transitional National Assembly*

Orders in Council by the Cabinet must be adopted by the Transitional National Assembly during its forthcoming session, otherwise they shall lose their binding force.

**Article 21.** *Jurisdiction, Organization and Functioning of the Supreme Council of Magistrates*

An organic law shall determine the jurisdiction, organization and functioning of the Supreme Council of Magistrates.

**Article 22.** *Duration of the Transition Period*

The duration of the Transition Period shall be twenty-two months, effective from the date of establishment of the Broad-Based Transitional Government, with the possibility of one extension if

warranted by exceptional circumstances impeding the normal implementation of the program of the Broad-Based Transitional Government.

The length of the extension shall be determined by the Transitional National Assembly on the basis of a three-fifths majority vote. In this regard, the Broad-Based Transitional Government shall consider the need for an extension, three months before the expiry of the Transition Period, and shall make appropriate recommendations to the Transitional National Assembly, in consultation with third parties involved in the implementation of the Peace Agreement, namely the United Nations, the OAU and the Facilitator.

Done at Arusha, on the third day of the month of August 1993, in both French and English Languages, the original text being in French.

# RPF Declaration of July 17, 1994 concerning the Establishment of Institutions

Patiently negotiated in order to bring an end to the war and to institute in Rwanda the Rule of Law, which implies democracy, pluralism, the respect of fundamental freedoms and rights of the individual, the Arusha Peace Agreement constituted the base of a lasting peace sought by the Rwandese people for present and future generations. For this purpose, the Peace Agreement provided for the creation of a National Army composed of government forces and those of the Rwandese Patriotic Front as well as the institution of power sharing within the framework of a Broad-Based Transitional Government, for a transitional period which would culminate in the organization of free, transparent and democratic elections.

Since the signature of this Peace Agreement, on August 4, 1993, the regime of the late President Juvenal Habyarimana has multiplied obstacles to the implementation of the Agreement, while at the same time accelerating preparation of the ethnic genocide and massacres which continue in the portion of the national territory under the control of the former Government Armed Forces, who are now in total disorganization. By agreement to enforce an ideology contrary to universal principles and the fundamental principles of the Peace Agreement, these Armed Forces have failed in their principal mission, which is to protect the citizenry and its property. Even worse, they have actively participated in the perpetration of genocide and massacres.

Forced to renew hostilities in order to stop the genocide and massacres, the Rwandese Patriotic Front intends to complete its task of liberating the Rwandese people from the control of the fascist political-military clique already in flight and whose defeat is total and inevitable. At the present time, this task necessitates that peace and tranquillity, propitious for the reconstruction of the country and the revival of all forms of activity, be consolidated by the installation of a Government and a local administration.

Within this framework, the Rwandese Patriotic Front intends to proceed as follows:

1. It declares its commitment to the principles which constitute the framework of the Arusha Peace Agreement, namely:

   a. The institution of the Rule of Law;

   b. The formation of a National Army open to all Rwandans and devoted to the interests of the people as a whole;

   c. The institution of power sharing within the context of a Broad-Based Transitional Government;

   The RPF recognizes the Constitution of June 10, 1991 and the Peace Agreement as indissolubly forming the Fundamental Law which governs the country, subject to amendments made necessary by the tragic situation in the country.

2. It announced the establishment on Tuesday, July 19, 1994 of a largely representative Government of National Unity. This Government will be directed by a Prime Minister and will comprise the number of ministerial portfolios provided in the Peace Agreement. However, the position of Vice-President of the Republic, to be held jointly with a ministerial portfolio, is also created. Nevertheless, given that the political parties have been strongly disturbed by the systematic liquidation of their supporters by the authors of the genocide and the massacres, the political weight cannot consequently be the same as that which prevailed at the time the Protocol of Agreement on Power-Sharing was concluded. The Government will therefore be composed of personalities chosen by the Prime Minister in consultation with and with the approval of the President of the Republic, as a function of their powers and the degree they represent the effective political forces prior to the beginning of the genocide and the massacres.

3. The MRND, the CDR and all other parties or tendencies which were in political alliance with these parties or which manifested any support for the self-proclaimed Government of April 9, 1994, shall be excluded from any participation in the Institutions. The post of the President of the Republic, the ministerial portfolios and the seats in the Legislative Assembly assigned by the Arusha Peace Agreement to the

political formations excluded from participation in power-sharing shall devolve to the Rwandese Patriotic Front, to whom its mission and its special role in the struggle against fascism confer upon it an historical responsibility to ensure that the process of pacification, of national reconciliation and of reconstruction are not hindered by political maneuvering.

4. The Legislative Assembly, composed of the same number of seats as provided for in the Arusha Peace Agreement, shall be set up within one month from the establishment of the Government. In the interim, legislative texts shall be adopted by Decree-Law of the Cabinet. Deputies of the Legislative Assembly shall be proposed by the political formations identified for this purpose in the Peace Agreement, and subject to an evaluation of their tendencies and political attitudes before and after April 6, 1994, in order to eliminate any elements that have manifested support or sympathy for fascist and sectarian ideology.

   The principle of the representation of the forces of order within the institutions, and within the Legislative Assembly in particular, is henceforth recognized.

5. The duration of the transitional period shall be five years.

6. The President of the Republic shall be empowered to initiate changes in the Government and to revoke the Prime Minister after notifying the Legislative Assembly. In such a case, a new Prime Minister will be appointed after consultation with the political forces participating in the Institutions. The legal modifications required by this provision will be introduced into the Fundamental Law of the country after the Legislative Assembly has been established.

7. The Executive Power shall be exercised collectively, through decisions taken by the Cabinet, by the President of the Republic and by the Government. If, after exhausting the decision-making procedure provided by article 21 of the Protocol on Power-Sharing, the Cabinet is unable to take a decision, the President of the Republic shall have the sovereign power to decide.

8. In accordance with the Arusha Peace Agreement, a truly national army will be established for the missions contemplated by the Peace Agreement. Nevertheless, given that the former Rwandese Armed Forces have continued to serve fascism despite numerous appeals from the leadership of the Rwandese Patriotic Army, the integration of elements of the former Rwandese Armed Forces shall be made by selecting those individuals who are healthy and who are not personally compromized by reprehensible acts. The implementation of this principle will be effected by appropriate amendments to the Protocol of Agreement on the Integration of the Armed Forces. Officers and enlisted soldiers who are selected shall be assigned to positions and tasks that correspond to their ranks prior to April 6, 1994.

   The provisions of the Peace Agreement concerning disengagement, garrisoning and the role of the UNAMIR in the process of forming the National Army shall be amended by *ad hoc* procedures.

9. The political Forces called to participate in the Institutions have endorsed the content of this declaration. By consensus of the Political Bureau of the RPF, Mr. Pasteur Bizimungu has assumed the functions of President of the Republic.

10. Mr. Faustin Twagiramungu will direct the action of the Government of National Unity as Prime Minister.

Made at Kigali, July 17, 1994

# Protocol of Agreement between the Political Forces RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR on the Establishment of National Institutions

The political forces that are signatory to the present protocol,

- Delighted by the victory of the Rwandese people over fascism and sectarian ideology which is contrary to principles of democracy and freedom;
- Grateful for the peace which has been restored after indescribable suffering inflicted upon the Rwandese people by the bloody regime which has now been defeated;
- Respectful of the memory of the victims of genocide and the massacres perpetrated by the regime, and decided to work so that this type of regime and the divisions that it served will never again exist in Rwanda or elsewhere;
- Resolved to carry through the task of liberating the Rwandese people begun by the Rwandese patriotic forces, notably by applying principles of national reconciliation, of tolerance and of solidarity, and in pursuance of the arduous task of reconstruction, of socio-economic development and the promotion of democratic culture;
- Recognizing the need for representation of the National Army within the National Assembly;

Agree as follows:

Article 1

They endorse the "RPF Declaration of July 17, 1994 concerning the Establishment of Institutions" made on July 17, 1994.

Article 2

The numerical distribution of seats in the National Assembly is as follows:

- RPF thirteen seats
- MDR thirteen seats
- PSD thirteen seats
- PL thirteen seats
- AN six seats
- PDC six seats
- PDI two seats
- PSR two seats
- UDPR two seats

Article 3

In case of reorganization of the Government or revocation of the Prime Minister, articles 53 and 54 of the Arusha Protocol of Agreement on Power-Sharing shall apply.

Article 4

Legal adjustments made necessary by the provisions of the present Protocol will be introduced in the Fundamental Law by the National Assembly.

Hereby made at Kigali, this 24th day of November, 1994.

# Universal Declaration of Human Rights

## Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this

Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human

rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

# African Charter of Human and Peoples' Rights

## Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights"

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter of Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples' of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of

economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have Agreed as Follows:

## Part I. Rights and Duties

### *Chapter I. Human and Peoples' Rights*

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:

a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

c) the right to defense, including the right to be defended by counsel of his choice;

d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offense at the time it was committed. No penalty may be inflicted for an offense for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics rights and freedoms of others.

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.

4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education.

2. Every individual may freely take part in the cultural life of his community.

3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources.

This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

## *Chapter II - Duties*

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;

2. To serve his national community by placing his physical and intellectual abilities at its service;

3. Not to compromise the security of the State whose national or resident he is;

4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;

6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society;

8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

## Part II. Measures of Safeguard

### *Chapter I. Establishment and Organization of the African Commission on Human and Peoples' Rights*

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity.

Article 32

The Commission shall not include more than one national of the same State.

Article 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

Article 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

Article 35

1. The Secretary General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;

2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

Article 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

Article 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

Article 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

Article 39

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Sec-

retary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.

3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

Article 40

Every member of the Commission shall be in office until the date his successor assumes office.

Article 41

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear cost of the staff and services.

Article 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.

2. The Commission shall lay down its rules of procedure.

3. Seven members shall form the quorum.

4. In case of an equality of votes, the Chairman shall have a casting vote.

5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

Article 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

Article 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

***Chapter II. Mandate of the Commission***

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular: a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments. b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation. c) cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' Rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

## *Chapter III. Procedure of the Commission*

Article 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Article 47

If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49

Notwithstanding the provisions of Article 47, if a State Party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been

exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

1. The Commission may ask the States concerned to provide it with all relevant information.

2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of human and peoples' rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the commission.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in Article 55 received by the commission, shall be considered if they:

1. indicate their authors even if the latter request anonymity,

2. are compatible with the Charter of the Organization of African Unity or with the present Charter,

3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,

4. are not based exclusively on news disseminated through the mass media,

5. are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and

7. do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

### *Chapter IV. Applicable Principles*

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recog-

nized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

Article 63

1. The present Charter shall be open to signature, ratification or adherence of the member states of the Organization of African Unity.

2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.

3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member states of the Organization of African Unity.

**Part III. General Provisions**

Article 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.

2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission.

Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

Article 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

Article 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

Article 67

The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

Article 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

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1997