

of 476,000. The appeal court did not consider her arguments to convoke the witnesses whose written testimonies were contradictory and let them be cross-examined.

The principle of cross-examination has been incorporated in domestic laws but its applicability remains an issue. In case there is an issue raised by the parties regarding the contradiction among written testimonies, the court should convoke the witnesses and let them be cross-examined directly on their testimonies¹²⁰.

¹²⁰ This aligns with what is stated in article 153, 6°, of the law on criminal procedure which states that : “parties to the proceedings, prosecution or defence witnesses are examined by the judge, or parties directly cross-examine each other or witnesses, and disputed points of testimonies given are debated and the court decides thereon”.

PART III: CONCLUSION AND RECOMMENDATIONS

This research was intended to analyze cases relating to corruption and other related offences in relation with the quality of courts' decisions *vis-a-vis* the implementation of laws. It has also assessed the legal reasoning in similar cases and it provided guidance for the future.

Concerning the legal framework, it has been ascertained that the courts refer to the existing domestic laws such as the Rwandan penal code, especially when they want to show the legal basis of the offence and its punishments, the basis of the mitigating or aggravating circumstances; the law of evidence and the law of criminal procedure. However, there are other important legal instruments that are not used whereas they are relevant to the cases in hands.

There are, for example, the United Nation Convention against corruption which was ratified by Rwanda on 4th October 2006 and African Union Convention on preventing and combating corruption ratified by Rwanda on 26th June 2006. Conventions occupy the third status after the Constitution and Organic Laws which means that these instruments should be referred to when deciding cases of corruption and related offences. It is also to note that the legislator has not defined what to understand by “embezzlement or destruction of property” but instead, has stated it as an offence with its punishment without defining it¹²¹. Its definition would guide the court in handling related cases.

In general, cases analyzed do not show a lot of imperfections. But, in some isolated situations, it was found that there are still difficulties to apply mitigating and aggravating circumstances, there are disparities in sentencing for cases presenting the same facts, the use of case law, the issue of cross-examination of witnesses and the issue of deciding on the fate of the seized property.

The research has found the following shortcomings and formulated the recommendation thereon:

Issue n° 1. Fragmentation of laws

The legal infrastructure on corruption in Rwanda is characterized by fragmented laws instead of having a single act that governs all prohibited acts of corruption. For example, TI Rwanda has identified eighteen laws that contain provisions on prevention and criminalization of corruption.

¹²¹. See article 325 of the Organic Law n° 01/2012/OL of 02/05/2012 instituting the Penal code.

This is a big challenge in the implementation of the laws on corruption because there may be conflicts between laws. It is recommended to enact a single act on corruption and related offences.

This recommendation was formulated before the enactment of the law n° 54/2018 of 13/08/2018 on fighting against corruption. There is now a single law which contains preventive measures and sanctions on corruption and related offenses.

Issue n° 2. Qualification of the offence of corruption

It was found that sometimes the investigation at the first level does not pay much attention to the qualification of the crime while collecting evidence. For this issue, we recommend that Investigators and Prosecutors should, when dealing with corruption and related offences, pay much attention, and that is from the preliminary investigations up to the trial, in order to properly qualify the act and support it with compelling evidence to reach an equitable and fair justice.

Issue n° 3. Disparities in sentencing

The research has identified that judges use much discretionary power when determining punishments. In order to avoid disparities in sentences for corruption, it is recommended to the Supreme Court to put in place sentencing guidelines that would precise relevant factors to take into account when determining the offence level, hence the level of the penalty. Factors such as the offense involving more than one bribe or extortion, the value of the payment, the benefit received or to be received in return for the payment, value of anything obtained or to be obtained by a public official or others acting with a public official, the loss to the government from the offense would be crucial in determining the penalty.

Issue n° 4. Acceptance or rejection of mitigating or aggravating circumstances

The discretionary power of judges in accepting or rejecting mitigating or aggravating circumstances is very huge. It was realized that two persons may be under the same circumstances and requesting to consider the existence of the circumstances surrounding the case but the judge may accept to apply them to one of them and refused to the other. We recommend that the application of mitigating and aggravating circumstances should be the same for similar

cases especially those presenting the same facts. This would avoid having contradictory judgments.

Issues n° 5: Use of case law

It was also found that Judges do not use case law in the same manner and the consequences are sometimes the noncompliance with those leading cases and, as a result, it affects the rights of the accused. It was, for example, realized that the Supreme Court has decided that the reduction of the sentence cannot be applied twice for the same offence. If the court of the first instance has reduced the sentence, the court of appeal does not have right to reduce it again. In the research, we have found, however, that some judges do not comply with this case law.

It is recommended to apply the case law to similar cases. Since the Supreme Court Judgments are now binding to all lower courts in the country, the first task of the judge with a case in hands would be to research whether the Supreme Court has not decided over a similar case. Indeed, it would be recommended also to look at other foreign judgments and borrow judge's reasoning susceptible to support the judge's motivation

Issue n° 6. Cross-examination of witnesses

Another issue we have identified in this research is the lack of accuracy of affidavits which are submitted to courts. In this case, there is a contention relating to the plausible contradiction between the written testimonies. It is better to summon the witnesses and let them be cross-examined as it is now acceptable in Rwandan laws.

Issue n° 7. Determination of the offence of embezzlement and its harmonization with UNCAC

The Rwandan legislator has considered embezzlement as an offence not related to corruption whereas it is not the case in the UNCAC. Such situation mostly causes the issue of definition and qualification and, as a result, an attempt to confuse it with other offences. The legislator would see how to define and incorporate the offence of embezzlement among offenses related to corruption.

This recommendation was formulated before the enactment of the law n° 54/2018 of 13/08/2018 on fighting against corruption. This new law on corruption considers embezzlement as an offense related to corruption.

Issue n° 8. Establishment of the relationship between embezzler and the institution and or property

In all cases of embezzlement, the position of the accused person was known but no supportive document was evoked like the employment contract or the appointment letter. It is recommended that whenever deciding over the case of embezzlement, the consideration of the position, the power of the accused and the relationship between him/her and the institution together with the embezzled property is very important. This helps to qualify the offence properly and refrain from thinking about other neighbouring offences such as theft and breach of trust.

Issue n° 9: The fate of the seized property

Another issue concerns the seized property subject to corruption. It has been ascertained that in some cases, courts decide upon their fate and in others courts remain silent. It would be convenient to court to decide on the fate of these properties, either order to be deposited in the public treasury in case of conviction of the accused or order to be restituted to the accused person in case of acquittal.

Issue n° 10: Providing evidence on corruption and related offenses

Given the advances in technologies, the 2004 law on evidence should be revised to accommodate all technological developments in proof and evidence laws.

Issue no 11: Specialised chambers on economic crimes (at the level of Intermediate Courts)

It is recommended to use the bench of three judges in cases of corruption and related offenses. Furthermore, the jurisdiction of this chamber should be extended to the embezzlement in private sector. There should be also the regular use of experts in economic and financial matters in order to understand the technicalities of economic and financial matters. If the use of expertise is expensive, the use *amicus curiae* as experts should be encouraged.

Issue n° 12: Knowledge and skills about corruption and related offenses

There should capacity building of judges and prosecutors on anti-corruption laws, in general, and the criminalization of corruption and related offenses, in particular.

Issue n° 13: Monitoring of trials of corruption and related offenses

Based on the issues identified in this report, the inspection of courts should make a follow up on reported judges' discretionary powers abuses. Furthermore, there should be a coalition civil society organizations in charge of monitoring of trials and report periodically on the issues identified.

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ANNEXES

Annex 1: Comparison between UNCAC, AU Convention and the Laws related to corruption in Rwanda

The table below offers a comparison of the main provisions contained in the UNCAC, AU Convention on corruption and Rwandan laws on corruption and related offences. For avoiding the repetition of the provisions of the conventions and laws, it does not transcribe whole articles but provides a summary of the relevant articles.

COMPARATIVE ANALYSIS OF THE PROVISIONS OF THE UNCAC, THE AU CONVENTION AND RWANDAN LAWS ON CORRUPTION AND RELATED OFFENSES			
PREVENTIVE MEASURES			
Issue	UNCAC	AU Convention	Rwanda Laws
Anti-corruption policies	Article 5: Development of effective anti-corruption policies, practices	Article 2: Coordination and harmonisation of the policies and legislation between state parties for the purposes of prevention, detection, punishment and eradication of corruption	We could not measure how much legislations are harmonised and coordinated between Rwanda and other countries. However, Rwanda has joined different organisations at the international and regional levels which aim to fight against corruption among other things and harmonise best practices ¹²² .
Preventive anti-corruption body	Article 6: Existence of a body or bodies responsible for preventing corruption having necessary independence and resources	Article 5: Establish, maintain and strengthen independent national anti-corruption authorities or agencies (Law n° 76/2013 of 11/9/2013 Determining the mission, powers, organization and functioning of the Office of the Ombudsman Article 3: provision on the independence of the Office of the ombudsman.
Codes of conduct	Article 8: Promotion of integrity, honesty and responsibility among public officials through, inter alia, codes or standards of conduct that prevent conflicts of interests, accompanied by sanctions for non-	Article 7: Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitise and train public officials on matters of ethics	Organic law no 61/2008 of 10/09/2008 on the leadership code of conduct as modified and complemented Article 5: Provision of considerations when appointing leaders. Article 6: Provision on good

¹²² See Open Society Initiative for East Africa and Transparency International Rwanda, *Effectiveness of anti-corruption agencies in East Africa-Rwanda*, Nairobi, Kenya, (2017): 7.

	<p>compliance</p> <p>Article 12: Promotion of the development of standards to safeguard integrity in the private sector, including through codes of conduct</p>		<p>conduct that must characterize a leader.</p> <p>Article: 12: provision on incompatibilities.</p> <p>Presidential order n°45/01 of 30/06/2015 establishing the code of professional ethics for public servants</p> <p>Article 7: provision on Decency and integrity</p> <p>Article 8: provision on Zero tolerance to corruption, rape and sexual harassment</p>
Recruitment and treatment of public officials	<p>Article 7: Provision to adopt systems for the transparent and efficient recruitment of public officials on the basis of the objective criteria of merit, equity and aptitude; to provide sufficient training and remuneration to public officials</p>	<p>Article 7: Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service</p>	<p>Law n°39/2012 of 24/12/2012 determining the responsibilities, organisation and functioning of the Public Service Commission</p> <p>Article 4: provision on the duty of the commission to verify whether Government institutions recruit staff using a transparent and equitable candidate selection approach which gives equal opportunity to all.</p>
Political party financing	<p>Article 7: Provision to take measures to enhance transparency in the funding of candidatures and in the funding of political parties</p>	<p>Article 10: Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties, and incorporate the principle of transparency into the funding of political parties</p>	<p>Organic Law n°10/2013/OL of 11/07/2013 governing Political Organizations and Politicians</p> <p>Article 23: provision on sources of the property of the political organization</p> <p>Article 24: Provision on Donations and bequests of political organizations</p> <p>Article 25: provision on items prohibited to be given or received by a political organization or a politician</p>
Access to information	<p>Article 10: Provision to adopt measures to facilitate access to information</p>	<p>Article 9: Give effect to the right of access to any information that is required to assist in the</p>	<p>The Law no 04/2003 of 08/02/2013 relating to access to information</p>

		fight corruption against	<p>Article 3: Provision on the right of access to information in possession of a public organ and some private bodies.</p> <p>Article 6: Provision of the public interest to disclose the information to ensure that any public authority with</p> <p>regulatory mission properly discharges its functions</p> <p>Law No. 23/2003 Related to the Punishment of Corruption and Related Offences</p> <p>Article 35: provision on the waiver of bank secrecy and other professional secrets when the Judicial police officer, the public prosecutor or judge are seeking for information about corruption.</p>
Public procurement and management of public finances	Article 9: Establishment of appropriate systems of procurement based on transparency, competition and objective criteria and measures to promote accountability and transparency in the management of public finances	<p>Article 5: Create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services (mandatory)</p> <p>Article 7: Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service</p>	<p>Law n°25/2011 of 30/6/2011 establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning</p> <p>Article 1: Establishment of the Rwanda Public Procurement Authority (RPPA) to focus on regulatory measures, monitoring and building capacity in public procuring entities.</p> <p>Law n° 12/2007 of 29/03/2007 on Public Procurement as modified and complemented by the Law n°05/2013 of 13/02/2013</p> <p>Article 4: Provision on fundamental principles in public procurement</p> <p>Article 15 (as amended): Provision on anti-corruption measures</p> <p>Organic Law n° 12/2013/OL of 12/09/2013 on State finance and property</p> <p>Article 4: provision on fundamental principles of public finance</p>

			management
Participation of society	Article 13: Provision to take measures to promote the active participation of individuals and groups outside the public sector in the fight against corruption	Article 11: Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights Article 12: Civil society to be fully engaged in the fight against corruption; to be enabled to hold governments to the highest levels of transparency and accountability in the management of public affairs; to participate in the implementation and monitoring of the convention	The Republic of Rwanda, Rwanda anti-corruption policy, Office of the Ombudsman, Kigali, June 2012, pp. 9-10: The role of civil society, private sector and citizens in the fight against corruption is emphasized. However, there are no clear mechanisms of their involvement.
Private sector	Article 12: Provision to adopt measures regarding the maintenance of books and accounts, financial statement disclosures, and accounting and auditing standards in the private sector	Article 11: Prevent and combat acts of corruption and related offences committed to and by agents of the private sector, encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights and prevent companies from paying bribes to win tenders	N°17/2018 of 13/04/2018 governing Companies ¹²³ Article 114: Provision on company records to be kept Article 119: Provision of the duty to keep accounting records Article 129: Provision of the direction to conduct an audit Article 133: Provision on the right of access to information
Revolving doors	Article 12: Provision to impose restrictions on professional activities of former public officials or on the employment of public officials by the private sector after	Not dealt with	Rwandan laws do not deal with restrictions on professional activities of former public officials or on the employment of public officials by the private sector after resignation or retirement. However, it is worth to mention

¹²³ In *Official Gazette* n° Special of 18/04/2018.

	resignation or retirement		that in case of retirement, there is a kind discouragement for retirees to seek a new job. For example, article 18 of Law n° 05/2015 of 30/03/2015 governing the organization of pension schemes ¹²⁴ states that "for a member (retiree) to access monthly old-age benefits, he/she shall have ceased to perform any remunerated activity". In my opinion, this is a restriction on the retirees who may wish to be reemployed but, again, it does not prohibit private sector to employ them. Thus, it is possible to reemploy them and the only effect is to lose the benefit of the monthly pension.
Asset declaration	Article 7: Provision to adopt systems to prevent conflicts of interests Article 8: Provision to adopt measures requiring public officials to make declarations regarding outside activities, employment, assets, gifts and benefits for which a conflict of interest might arise Article 52: Provision to establish effective financial disclosure systems for appropriate public officials and to require public officials to report authority over a financial account abroad to the authorities	Article 7: Require all or designated public officials to declare their assets at the time of assumption of office, during and after their term of office in the public service	Organic law no 61/2008 of 10/09/2008 on the leadership code of conduct as modified and complemented Article 19: Provision of the Declaration of assets for leaders Law no 76/2013 of 11/9/2013 Determining the mission, powers, organization and functioning of the Office of the Ombudsman Article 37: Provision on the period of declaring the property Article 38: Provision on the content of declarations of property Article 39: Provision on the filing of declarations of property Article 40: Provision on faults relating to declaration of property and their administrative sanctions
Criminalisation and law enforcement			
Issue	UNCAC	AU Convention	Rwandan Laws
Bribery of national public official	Article 15: Criminalisation of active and passive	Article 4: Criminalisation of active and passive	Articles 633 (e), 634, 635, 640, 641 of the Penal code: Criminalization

¹²⁴ In Official Gazette n° 20 of 18/05/2015

	bribery	bribery	of active and passive corruption
Bribery of foreign official and officials of public international organisations	Article 16: The criminalisation of active and passive bribery of foreign public officials and officials of public international organisations	Not dealt with	Article 633 (1.a) of Penal Code: Criminalisation of active and passive bribery of foreign officials and officials of international organisations
Embezzlement, misappropriation or diversion of property by a public official	Article 17: Establishment of the criminal offence of embezzlement, misappropriation and other diversions	Article 4: Diversion by a public official of any property belonging to the state or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position	Article 325 Penal code: Embezzle by an employee the public or private property, funds, negotiable instruments, documents, or movable property which are entrusted to him/her, by virtue of his/her office Article 585: Any person who embezzles seized objects by virtue of his/her office or when they are entrusted to him/her by judicial organs N.B.: In the Rwandan context, embezzlement is punished as a crime not related to corruption!
Embezzlement in the private sector	Article 22: Criminalisation of embezzlement in the private sector	Article 11: Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed to and by agents of the private sector	Article 325 Penal code: the same provision is applied to the private sector.
Abuse of functions	Article 19: Criminalisation of the intentional abuse of function or position	Article 4: Any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party	Article 633 (1.c) Penal Code: Any act of using a person with a position, power or honour in order to benefit from an illegal advantage or a service contrary to the law;
Trading in influence	Article 18: Criminalisation of active and passive	Article 4: Any undue advantage to or by any person who is able to exert any improper	Article 644, 645, 646 (sex) Penal code: improper use of influence by officials

	trading in influence	influence over the decision making of any person performing functions in the public or private sector	
Illicit enrichment	Article 20: Criminalisation of intentional illicit enrichment	Article 4: Criminalisation of illicit enrichment Article 8: Establishment of the offence of illicit enrichment of state parties and provision of assistance and cooperation to the requesting state with respect to the offence	Article 636 Penal code: illicit enrichment (Any civil servant or any other person who enriches him/herself without indicating the justification of honest and legal source)
Bribery in the private sector	Article 21: Criminalisation of active and passive commercial bribery	Article 4: Criminalisation of active and passive by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else	Article 649 Penal code: the criminalisation of private sector corruption. Law No. 23/2003 Related to the Punishment of Corruption and Related Offences Article 31-34: Provisions on the establishment of liability of legal entities
Money laundering and concealment	Article 23: Criminalisation of the laundering of the proceeds of crime Article 24: Criminalisation of the concealment of retention of property resulting from any offence listed in this convention	Article 4: The use or concealment of proceeds derived from any of the corruption acts covered by the convention (mandatory) Article 6: The conversion, transfer or disposal of property, the concealment or disguise of the true nature, source, location, disposition, movement or ownership of property, the acquisition, possession or use of property knowing that such property is the proceeds of corruption	The penal code deals with the crime of money laundering and concealment as a crime not related to corruption (Article 652-658 Penal Code). However, the Law no. 23/2003 Related to the Punishment of Corruption and Related Offences had provided for the offence of laundering as an offence related to corruption (see article 25-27). The penal code also contains specific articles to the crime of concealment of objects obtained from an offence or which were used or meant to be used to commit a crime (see article 326-327 Penal Code).

Favours of sexual nature	Not dealt with	Not dealt with	Demanding and offering favours of sexual nature in exchange for a service (article 637-338 Penal Code)
Corruption by judicial officers	Not dealt with	Not dealt with	Harsh punishment for corruption committed by judges, arbitrators, judicial officers, prosecutors, police officers or other judicial police officers (article 639 Penal Code)
Undue or excessive money	Not dealt with	Not dealt with	Demanding or receiving undue or excessive money (article 642 Penal code)
Illegal exemption	Not dealt with	Not dealt with	illegal exemption (article 643 Penal Code)
Favouritism, friendship, hatred or nepotism	Not dealt with	Not dealt with	Making a decision based on favouritism, friendship, hatred or nepotism (article 647 Penal Code)
Unlawful favours	Not dealt with	Not dealt with	Appropriation of unlawful favours (article 648 Penal Code)
Participation and attempt	Article 26: Participation in any capacity, such as an accomplice, assistant or instigator, in an offence established in accordance with this convention as well as the attempt and preparation of such an offence	Not dealt with	Law no 23/2003 Related to the Punishment of Corruption and Related Offences Article 29-30: punishment of co-authors and accomplices. The notions of participation and attempt are not dealt with.
Obstruction of justice	Article 25: Criminalisation of the obstruction of justice (to interfere in the giving of testimony or production of evidence, to induce false testimony, to interfere in the exercise of law enforcement) in relation to the commission of any offence listed in this convention	Not dealt with	Not dealt with in the context of corruption and related offences. However, there are such crimes as to give false testimony due to a gift, to give false declaration before judicial organs, to threaten judicial officers in order to manipulate them, influencing witnesses, etc., in the penal code (see, for example, article 580, 584, 587, 581 Penal Code).

Liability of legal persons	Article 26: Establishment of the criminal, civil or administrative liability of legal persons for the participation in the offences listed in this convention	Not dealt with	<p>Article 33 Penal code: Establishment of criminal liability of State institutions, public or private companies, enterprises, associations or organizations with legal personality</p> <p>Article 649 Penal Code: Public or private companies, enterprises, organizations or associations with legal personality which commit corruption or related offences, shall be liable of a fine...</p> <p>Law n° 23/2003 Related to the Punishment of Corruption and Related Offences</p> <p>Article 31-34: Provisions on the establishment of liability of legal entities</p> <p>Article 33: Sanctions: fine; exclusion from public tenders; displaying or publicizing the court judgment by all possible means of communication.</p>
Statute of limitations	Article 29: Establishment of a long statute of limitations period for the commencement of proceedings for any offence listed in this convention and establishment of a longer period or suspension of the statute of limitations in cases of evasion	Not dealt with	<p>Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure</p> <p>Article 5: the Prescriptive period of a criminal action</p> <p>Article 6: Determining the commencement of the prescriptive period of a criminal action</p> <p>Article 7: Interruption of the prescriptive period of a criminal action</p> <p>Article 8: Grounds for suspension of the prescriptive period of a criminal action</p>
Prosecution and sanctions	Establishment of appropriate sanctions with consideration to	Not dealt with	Article 634-651 Penal code: Provisions on the sanctions of

	the gravity of the offence, the right to defence, immunities,		corruption and related offences Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure ¹²⁵ Article 38-39: rights of the suspect
Freezing, seizure and confiscation	Article 31: Establishment of measures to enable the identification, tracing, freezing, seizure or confiscation of the proceeds of crime and of the property and equipment used in offences established in this convention	Article 16: Establishment of measures to enable the identification, tracing, freezing, seizure, confiscation and repatriation of the proceeds of crime	Article 651 Penal code: Confiscation of proceeds of corruption and other related offences See, in general, the Law n° 42/2014 of 27/01/2015 governing recovery of offence-related assets
Specialised authority	Article 36: Establishment of a state body specialised in combating corruption through law enforcement Article 46: Designation of a central authority in charge of receiving and executing requests for mutual legal assistance	Not dealt with	Law no 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman Article 1: Establishment of the Office of the Ombudsman
Bank secrecy	Article 40: Establishment of appropriate mechanisms to overcome obstacles that arise from the application of bank secrecy laws Article 46: Provision for states not to decline to render mutual legal assistance on the ground of bank	Article 17: Empower its courts to order the confiscation or seizure of banking, financial or commercial documents, and enter into bilateral agreements to waive banking secrecy and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their	Law n° 23/2003 Related to the Punishment of Corruption and Related Offences Article 35: Professional secrets whether of banking nature or other professional secrets, cannot constitute an obstacle to investigation measures taken by the judicial police officer, the public prosecutor or the judge in their inquiries to get evidence.

¹²⁵ Official Gazette n° 27 of 08/07/2013.

	secrecy	possession	
Immunity from process	Article 30: Establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges	Article 7: Any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials	<p>Constitution of the Republic of Rwanda as revised in 2015</p> <p>Article 68: Immunity of members of Parliament and their prosecution</p> <p>Article 105: The decision authorizing charges to be filed against the President of the Republic</p> <p>Article 114: Exemption from prosecution for a former president of the Republic</p> <p>Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court</p> <p>Article 30: Jurisdiction of the Supreme Court to try high ranking officials with trial privileges</p>
Judicial independence	Article 11: Take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary	Not dealt with	Law n° 09/2004 of 27/04/2004 establishing the code of ethics for the judiciary
Protection of witnesses and victims	Article 32: Protection of witnesses, victims and experts that testify concerning offences listed in this convention, against retaliation and intimidation	Article 5: Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities	<p>Law no. 23/2003 Related to the Punishment of Corruption and Related Offences</p> <p>Article 36:</p> <p>Protection of the persons who have supplied information and witnesses who have made statements concerning the offences</p>
Whistleblowers	Article 8: Provision to facilitate the reporting by public officials of	Article 5: Adopt measures that ensure citizens report	Law no 44bis/2017 of 06/09/2017 relating to the protection of

	acts of corruption to appropriate authorities (not mandatory) Article 33: Provision to protect any person who reports in good faith and on reasonable grounds to competent authorities any facts related to offences listed in this convention	instances of corruption without fear of consequent reprisals	whistleblowers ¹²⁶ Chapter III of this law is dedicated to the protection of whistleblowers
International cooperation			
Issue	UNCAC	AU Convention	Rwandan Laws
Extradition	Article 44: Provision to grant extradition of a person for the offences listed in this convention; to establish the offences listed in this convention as extraditable offences; in the case of an impossibility to extradite, to take a person into custody and prosecute the case. This article contains provisions to guarantee fair treatment and to protect individuals against discrimination of sex, race, religion, nationality, ethnicity or political opinion	Article 15: Extradition to be granted for the offences of this convention and included in the internal laws of state parties as crimes requiring extradition (mandatory). In the case of impossibility to extradite, provision to take a person into custody and prosecute the case	Constitution of the Republic of Rwanda as revised in 2015 Article 29: Rwanda cannot extradite any Rwandan to another country. Extradition of foreigners is authorised only if it is in accordance with the law or international agreements to which Rwanda is a party. Article 18-19 Penal code: Provisions on extradition Law n° 69/2013 of 02/09/2013 on extradition ¹²⁷ Article 3: Extradition procedure.
Mutual legal assistance and law enforcement cooperation	Article 46: Provision to afford other member states the widest measure of mutual legal assistance in judicial actions in relation to the offences covered by this convention. This	Article 18: Provision of the greatest possible technical cooperation and assistance in dealing immediately with requests from anti-corruption authorities and cooperate among	Constitution of the Republic of Rwanda as revised in 2015 Article 95: multilateral and bilateral agreements take precedence over domestic law. Rwanda concluded bilateral cooperation agreements with

¹²⁶ In *Official Gazette*, n° 41 of 09/10/2017.

¹²⁷ In *Official Gazette*, n°42 of 21/10/2013.

	<p>article contains provisions acknowledging the potential need for confidentiality, dual criminality requirements, the transfer of detained persons, situations where mutual legal assistance may be refused and the responsibility for the costs</p> <p>Article 48: Provision to closely cooperate to enhance the effectiveness of law enforcement</p> <p>Article 49: Provision to establish joint investigations</p>	<p>themselves in conducting and exchanging studies and research on how to combat corruption and related offences and to exchange expertise</p>	<p>Kenya, Luxembourg, Malawi, and Uganda¹²⁸, but we were unable to find the contents of these agreements.</p>
Technical assistance	<p>Article 60: Provision to develop training programmes and afford each other the widest measure of technical assistance, training</p>	<p>Article 18: Cooperation of state parties among themselves, where possible, in providing any available technical assistance in drawing up programmes, codes of ethics or organising, where necessary and for the benefit of their personnel, joint training courses</p>	<p>Not dealt with the laws</p>
Asset recovery			
Issue	UNCAC	AU Convention	Rwandan Laws
Detection of proceeds	<p>Article 52: Provision to require financial institutions to conduct due diligence on their customers, to maintain records (mandatory);</p>	<p>Article 19: Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by</p>	<p>Law n° 42/2014 of 27/01/2015 governing recovery of offence-related assets</p> <p>Article 19: cooperation for the</p>

¹²⁸ With Kenya: Extradition treaty on reciprocal recognition of judiciary decisions and Treaty on mutual legal assistance in criminal matters, all concluded in Nairobi on May 28, 1990. With Malawi: General Agreement on bilateral cooperation; and the Extradition Treaty. With Luxemburg: General cooperation agreement signed on December 16, 2002. With Uganda: Extradition convention, Protocol relating to rogatory commissions, both signed on February 6, 1988. Extradition treaty signed in July 2005, and Security cooperation agreement signed on August 8, 1992.

	provision to require financial disclosure for relevant public officials	freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin	<p>return of assets</p> <p>Directives no 001/FIU/2015 of 30/12/2015 of the FIU</p> <p>Article 13: provision on basic customer due diligence</p> <p>Article 14: Provision of enhanced customer due diligence</p> <p>Article 15: provision on simplified customer due diligence</p> <p>Article 16: Provision on due diligence related to a political leader</p>
Mechanisms for recovery	<p>Article 53: Measures for direct recovery of property through civil actions establishing title to or ownership of property acquired through the commission of an offence listed in this convention, or through court orders to pay compensation or damages</p> <p>Article 54: Measures for recovery through international cooperation in confiscation</p> <p>Article 55: International cooperation for the purposes of confiscation through measures to identify, trace and freeze or seize proceeds of crime</p> <p>Article 57: Measures for the return and disposal of assets (mandatory)</p>	Article 19: Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin	<p>Law n° 42/2014 of 27/01/2015 governing recovery of offence-related assets</p> <p>Article 18: International Cooperation in asset recovery</p> <p>See more details in a the report on asset recovery.</p>

Annex 2: Distribution of cases according to their categories

1 Corruption and corruption-related offenses

Court	Corruption	Related cases	Total
IC Nyagatare	5	5	10
IC Ngoma	5	5	10
IC Rusizi	3	7	10
IC Rubavu	10	0	10
HC Rwamagana	5	5	10
HC Kigali	8	9	17
HC Nyanza	7	8	15
IC Huye	5	13	18
IC Muhanga	17	0	17
IC Musanze	9	4	13
HC Musanze	4	0	4
IC Nyarugenge	16	4	20
IC Gasabo	16	4	20
IC Gicumbi	12	1	13
HC Rusizi	9	1	10
Supreme Court	2	1	3
Total	133	67	200

2 Public and private corruption and related offenses

Court	Public corruption cases and related offenses	Private corruption cases and related offenses	Total
IC Nyagatare	8	2	10
IC Ngoma	9	1	10
IC Rusizi	8	2	10
IC Rubavu	10	0	10

HC Rwamagana	10	0	10
HC Kigali	8	9	17
HC Nyanza	10	5	15
IC Huye	12	6	18
IC Muhanga	17	0	17
IC Musanze	12	1	13
HC Musanze	4	0	4
IC Nyarugenge	14	6	20
IC Gasabo	17	3	20
IC Gicumbi	12	1	13
HC Rusizi	10	0	10
Supreme Court	2	1	3
Total	163	37	200

3. Active corruption and passive corruption

Court	Number of active corruption cases	Number of passive corruption cases	Total
Nyagatare	5	0	5
Ngoma	4	1	5
Rusizi	2	1	3
Rubavu	10	0	10
HC Rwamagana	5	0	5
HC Kigali	8	0	8
HC Nyanza	6	1	7
IC Huye	5	0	5
IC Muhanga	14	3	17
IC Musanze	8	1	9
HC Musanze	2	2	4
IC Nyarugenge	11	5	16
IC Gasabo	10	6	16

IC Gicumbi	12	0	12
HC Rusizi	9	0	9
Supreme Court	2	0	2
Total	113	20	133

4 Petty corruption and grand corruption and related offenses

Court	Number of petty corruption	Number of grand corruption	Total
IC Nyagatare	10	0	10
IC Ngoma	10	0	10
IC Rusizi	10	0	10
IC Rubavu	10	0	10
HC Rwamagana	10	0	10
HC Kigali	15	2	17
HC Nyanza	15	0	15
IC Huye	18	0	18
IC Muhanga	17	0	17
IC Musanze	12	1	13
HC Musanze	4	0	4
IC Nyarugenge	19	1	20
IC Gasabo	15	5	20
IC Gicumbi	13	0	13
HC Rusizi	10	0	10
Supreme Court	2	1	3
Total	190	10	200

Annex 3: Distribution of sentences faced by defendants in corruption cases

	Trial sentences	Number of defendants sentenced in corruption cases	Percentage of defendants sentenced in corruption cases
IC Nyagatare			

	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	3	60%
	5 years to less than 7 years	1	20%
	7 years to 10 years	0	0%
	Acquitted	1	20%
	Total	5	100%
IC Ngoma	Less than 1 year	0	0%
	1 year to less than 2 years	2	40%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	1	20%
	7 years to 10 years	0	0%
	Acquitted	2	40%
	Total	5	100%
IC Rusizi	Less than 1 year	0	0%
	1 year to less than 2 years	2	40%
	2 years to less than 5 years	1	50%
	5 years to less than 7 years	1	50%
	7 years to 10 years	0	0%
	Acquitted	2	40%
	Total	2	100%
IC Rubavu	Less than 1 year	0	0%
	1 year to less than 2 years	3	30%
	2 years to less than 5 years	3	30%
	5 years to less than 7 years	2	20%
	7 years to 10 years	0	0%
	Acquitted	2	20%
	Total	10	100%
HC Rwamagana	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	3	60%

	5 years to less than 7 years	2	40%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	10	100%
HC Kigali	Less than 1 year	0	0%
	1 year to less than 2 years	2	25%
	2 years to less than 5 years	1	12.5%
	5 years to less than 7 years	1	12.5%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Not Applicable ¹²⁹	4	50%
	Total	8	100%
IC Nyarugenge	Less than 1 year	0	0%
	1 year to less than 2 years	6	37.5%
	2 years to less than 5 years	3	18.75%
	5 years to less than 7 years	5	31.25%
	7 years to 10 years	0	0%
	Acquitted	2	12.5%
	Not applicable	0	0%
	Total	16	100%
IC Gasabo	Less than 1 year	0	0%
	1 year to less than 2 years	3	18.75%
	2 years to less than 5 years	6	37.5%
	5 years to less than 7 years	4	25%

¹²⁹ This is not applicable for pretrial detention.

	7 years to 10 years	0	0%
	Acquitted	2	12.5%
	Not applicable	1	6.25%
	Total	16	100%
IC Gicumbi	Less than 1 year	0	0%
	1 year to less than 2 years	1	8.3%
	2 years to less than 5 years	1	8.3%
	5 years to less than 7 years	5	41.7%
	7 years to 10 years	1	8.3%
	Acquitted	4	33.4%
	Total	12	100%
HC Rusizi	Less than 1 year	0	0%
	1 year to less than 2 years	3	33.3%
	2 years to less than 5 years	3	33.3%
	5 years to less than 7 years	2	22.2%
	7 years to 10 years	0	0%
	Acquitted	1	11.2%
	Total	9	100%
Supreme Court	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	1	50 %

	5 years to less than 7 years	1	50%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	2	100%
HC Nyanza	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	1	100%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	1	
IC Huye	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	0	0%
IC Muhanga	Less than 1 year	0	0%
	1 year to less than 2 years	1	33,3%
	2 years to less than 5 years	2	66.6%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	3	100%
IC Musanze	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%

	Acquitted	0	0%
	Total	0	0%
HC Musanze	Less than 1 year	0	0%
	1 year to less than 2 years	1	50%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	1	50%
	Total	2	100%

Annex 4: Distribution of sentences faced by defendants in related offence cases

	Trial sentences	Number of defendants sentenced in corruption cases	Percentage of defendants sentenced in corruption cases
IC Nyagatare	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	2	40%
	5 years to less than 7 years	1	20%
	7 years to 10 years	2	40%
	Acquitted	1	20%
	Total	5	100%
IC Ngoma	Less than 1 year	0	0%
	1 year to less than 2 years	2	40%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	2	40%
	7 years to 10 years	0	0%
	Acquitted	1	20%

	Total	5	100%
IC Rusizi	Less than 1 year	0	0%
	1 year to less than 2 years	2	28.5%
	2 years to less than 5 years	1	14.28%
	5 years to less than 7 years	3	42.8%
	7 years to 10 years	1	14.28%
	Acquitted	0	0%
	Total	7	100%
IC Rubavu	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	0	0%
HC Rwamagana	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	1	25%
	5 years to less than 7 years	2	50%
	7 years to 10 years	1	25%
	Acquitted	0	0%
	Total	4	100%
HC Kigali	Less than 1 year	0	0%
	1 year to less than 2 years	3	33.3%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	2	22.2%
	Not Applicable ¹³⁰	4	44.4%
	Total	9	100%
IC Nyarugenge	Less than 1 year	0	0%

¹³⁰ This is not applicable for pretrial detention.

	1 year to less than 2 years	0	0%
	2 years to less than 5 years	2	50%
	5 years to less than 7 years	1	25%
	7 years to 10 years	0	0%
	Acquitted	1	25%
	Not applicable	0	0%
	Total	4	100%
IC Gasabo	Less than 1 year	0	0%
	1 year to less than 2 years	1	25%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	1	25%
	7 years to 10 years	2	50%
	Acquitted	0	0%
	Not applicable	0	0%
	Total	4	100%
IC Gicumbi	Less than 1 year	0	0%
	1 year to less than 2 years	1	100%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	1	100%
HC Rusizi	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	1	100%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	1	100%
Supreme Court	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%

	2 years to less than 5 years	1	100 %
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	1	100%
HC Nyanza	Less than 1 year	1	10%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	1	10%
	5 years to less than 7 years	1	10%
	7 years to 10 years	5	50%
	Acquitted	2	20%
	Total	10	100%
IC Huye	Less than 1 year	1	7.6%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	2	15.3%
	5 years to less than 7 years	1	7.6%

	7 years to 10 years	4	30.7%
	Acquitted	5	38.4%
	Conditional release	1	7.6%
	Total	13	100%
IC Muhanga	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	0	0%
HC Musanze	Less than 1 year	0	0%
	1 year to less than 2 years	0	0%
	2 years to less than 5 years	0	0%
	5 years to less than 7 years	0	0%
	7 years to 10 years	0	0%
	Acquitted	0	0%
	Total	0	0%
IC Musanze	Less than 1 year	0	0%

	1 year to less than 2 years	1	25%
	2 years to less than 5 years	1	25%
	5 years to less than 7 years	1	25%
	7 years to 10 years	0	0%
	Conditional release	1	25%
	Acquitted	0	0%
	Total	4	100%

Transparency International Rwanda

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Tel. +250 (0) 788309583

Toll free : 2641 (to report cases of corruption)

E-mail : Info@tirwanda.org

Website: www.tirwanda.org

Let op: act.nr. is fout, moet
zijn: 27470

ORIGINEEL / GEWAARMERKT KOPIE

CRE-NUMMER

FASTSTELLING D.D. : 26.5.2015

☒ origineel voor contractenregister

☐ kopie voor A-dossier

☐ kopie voor F-dossier

PARAAF EN DATUM :

(10)(2e)



REPUBLIC OF RWANDA



Agreement between the Government of the Netherlands, represented by the Minister for Foreign Trade and Development Cooperation of the Netherlands.

And

The Government of the Republic of Rwanda, represented by the Minister of Justice/Attorney General

WHEREAS the Ministry of Foreign Trade and Development Cooperation is prepared to support the Rwanda-Netherlands Advisory Panel on Justice and Rule of Law, with reference to Article 12 of the Memorandum of Understanding (MoU), hereafter referred to as the Panel, dated 13 November 2014, with activity no 24707 up to a maximum of EUR 100.000 (hundred thousand euro);

AND WHEREAS the Ministry of Justice, through its JRLOS secretariat with reference to Article 13 of the aforementioned MoU, is prepared to take responsibility for the organizational aspects regarding the Panel;

CONSIDERING the purpose of activity 24707 which is to cover the costs of the Panel, with reference to Article 12 of the MoU, as specified in Annex 1 to this agreement;

NOW THEREFORE the parties agree by mutual covenant as follows;

1. The activity will be implemented as from 1 April 2015. It will be completed by 30 June 2018.
2. The Ministry of Justice will be responsible for the organizational aspects as stated in Article 13 of the MoU and specified in Annex 1 of this Agreement. The Ministry of Justice will make every possible effort to ensure timely and full implementation of the activity supporting the work of the Panel. No changes may be made to either the activity or its implementation without the written consent of both signatories. The Ministry of Foreign Trade and Development Cooperation bears no responsibility or liability vis-à-vis any third party for projects or activities administered by the Ministry of Justice and carried out pursuant to this Agreement.
3. The Ministry of Foreign Trade and Development Cooperation's contribution to the activity will not exceed EUR 100.000.
4. Funds for the activity will be based on the actual cost for the panel as indicated in Annex 2.
5. Funds payable to the Ministry of Justice under this Agreement will be transferred in instalments. The first instalment of EUR 35.000 will be transferred to a bank account,

Activity number 24707

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