

UR/CASS & NPC
School of Law - Huye & Musanze Campuses

Organisation, Competence & Functioning of Rwandan Courts

Syllabus

By Louis GATETE

Description of the course

- The *Organization, Functioning and Jurisdiction of Courts* (OFJC) is a module which ensures that students are initiated with the structure and functioning of Rwandan courts.
- The various Rwandan courts as well as people called to make them function are built in a pyramid form, representing the various levels of the Rwandan legal system. The course is divided into six (6) broad lessons :
 - ✓ The introduction to the judicial law;
 - ✓ Structure and functioning of ordinary courts;
 - ✓ Structure and functioning of specialized courts;
 - ✓ Structure and functioning of the Superior courts;
 - ✓ Legal status of judges & Prosecutors;
 - ✓ Other representatives of the law.
- The module includes teaching and case-based work loads. As for class meetings, we will have a total of around 9, an average of 2 meetings per topic.
- Readings will be required on average for each meeting. One expects that students read documents allocated for each meeting before this one takes place, and should be prepared to discuss about it in class.

Objectives of the course

- At the end of this course, the student should be able to understand and explain the organization and functioning of Rwandan judicial courts.

Methodology of teaching & Methods of evaluation

- Lecture based on concrete examples
- Discussion of the subject by students

- Mainly exercises posing problems to be solved by students.
- 3 ways of evaluation:
 - ✓ **In-class & Collaborative** Assignments: 50%
 - ✓ **Final** Exam.: 50%

Necessary readings

a. Books

1. Williams J. CRAIG, *How to Get Sued: An Instructional Guide*, Kaplan Trade, 2008, 254 pages, (ISBN: 978-1427797711)
2. William HALTOM, *Distorting the Law: Politics, Media, and the litigation Crisis*, 2nd edition, University of Chicago Press, 2004, 332 pages, (ISBN: 978-0226314648)
3. Margaret L. MOSES, *The Principles and Practice of International Commercial Arbitration*, 1st edition, Cambridge University Press, 2008, 358 pages, (ISBN: 978-0521685627)
4. Brian Z. TAMANAHA, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging*, Princeton University Press, 2009, 264 pages, (ISBN: 978-0691142807)
5. Paul Craig ROBERTS, Lawrence M., JR. STRATTON, *The Tyranny of Good intentions: How Prosecutors and Law enforcement are Trampling the Constitution in the Name of Justice*, Three Rivers Press, 2008, 288 pages (ISBN: 978-0307396068)
6. *Legal Review of the Bars*, February - June 1999, N° 55/56, Paris, Dalloz.
7. Alex STEIN, *Foundations of evidence law*, Oxford university Press, 2005, 264 pages, (ISBN: 978-0198257363)
7. H.L. HO, *A philosophy of evidence law: Justice in the search for truth*, Oxford

University Press, 2008, 300 pages (ISBN: 978-0199228300)

8. Philip HAMBURGER, *Law and Judicial Duty*, 1st edition, Harvard University Press, 2008, 704 pages, (ISBN: 978-0674031319)

9. American Law Institute and UNIDROIT, *Principles and Rules of Transnational Civil Procedure*, Cambridge University Press, 2005, 238 pages, (ISBN: 978-0521855013)

10. Renaud DEHOUSSE, *The European Court of justice: Politics of Judicial integration*, Palgrave Macmillan, 1998, 240 pages, (ISBN: 978-0333693179)

11. Jennifer E. BEER, Eileen STIEF & alii, *Mediator's Handbook*, 3rd Revised edition, New Society Publishers, 176 pages, 1997, (ISBN: 978-0865713598)

12. Daniel ROUX, Jean Pierre SCARANO et Françoise SERRAS-BERAUD, *Les institutions Juridictionnelles en Qcm*, 3e édition, Ellipses Marketing, 2008, 157 pages, (ISBN: 978-2729840914)

13. Patricia VANNIER, *Procès et institutions juridictionnelles*, Ellipses Marketing, 2008, 143 pages, (ISBN: 978-2729836795)

b. Judicial laws

➤ Constitution

➤ Law (02/06/2018) determining the Jurisdiction of Courts

➤ Organic Law (04/04/18) establishing the Court of Appeal

➤ Law (04/04/18) determining the Organization, Functioning and Competence of the *National Public Prosecution Authority* and the *Military Prosecution Department*

➤ Law (04/04/18) determining the *Organization & Functioning of courts*

➤ Law (08/03/2013) governing the *statutes of judges and judicial personnel*

Plan of the course

Part 1. General considerations:

- ✓ Definition, content and nature of judicial law
- ✓ Application and sources of judicial law
- ✓ Justice and other modes of conflict settlement; separation of powers; Guiding principles.

Part 2. Courts

- ✓ Ordinary inferior courts
- ✓ Specialized courts & chambers
- ✓ Superior Courts

Part 3. Actors of justice

- ✓ Primary actors (Judges & Prosecutors)
- ✓ Other contributors of justice

PART 1. GENERAL CONSIDERATIONS

TITLE 1. INTRODUCTION TO JUDICIAL LAW

I. Definition

- Legislative provisions:
 - ✓ regulating organization of various courts and the judicial staff statute;
 - ✓ defining competence of each court as well as the way criminal or civil action is introduced, investigated and judged.

II. Contents and Nature

- Judicial law includes :
 - ✓ judicial organization ;
 - ✓ competence of courts
 - ✓ and *procedure* in civil (civil procedure) and criminal (criminal procedure) courts.
- Judicial law has a mixed nature:
 - ✓ in criminal field, rules are mainly imperative (*mandatory rules*)
 - ✓ in civil field, they are sometimes suppletive (*i.e. default rules*)

III. Application of judicial laws

- Non – retroactive nature : judicial instruments are governed by the law in force at the time of their achievement:
 - ✓ in theory, a law lays out only for the future
 - ✓ However, legislator can derogate from this principle (e.g. transitional measures)
- Principle of territoriality :
 - ✓ In theory, rules from judicial law apply only to the territory of the Rwandan republic

- ✓ However, foreign judicial instruments can be applied to Rwanda with the help of *exequatur* procedure by the Rwandan judge
- Strict interpretation (but also application of general principles of law in case the law is unclear.)

TITLE 2. PUBLIC UTILITY OF JUSTICE

I. Justice and other ways of conflict settlement

A. Ordinary non-jurisdictional modes

- A jurisdictional measure raises the question of wondering about the violation of a legal provision; and that measure emanates in theory from a court.
- On contrary, in case of non-jurisdictional measure,...
 - ✓ there is *no court*;
 - ✓ one does *not* propose to deduce a solution from the *strict application of the law*
 - ✓ he/she instead, seeks *more to extinguish the conflict than to judge*.

1. Their reason to be

- *Non-legal disagreements* : some are not posed in truly legal terms. It is the case especially for those which, one could describe as «political» disputes. This will be in particular to reconcile both sides.
2 disciplines provide examples :
 - ✓ Labour law : employees being opposed to their employer, further to a petition requesting an increase of their remuneration go on strike.
 - ✓ Public international law : A State claiming against another, adjustment of its borders.
- *Legal disagreements* : some of legal nature, can bring, by the will of both sides, a solution which isn't rigidly dictated by law (in other words, which draws aside a jurisdictional settlement) : soft justice
 - ✓ for various reasons :
 - ❖ the *winner – defeated* status (established by any judgement) affects deeply future relations between parties in the lawsuit ;

❖ induce parties to compose and accept an arrangement, while ruling in equity.

✓ For example: conflicts related to neighbourhood.

2. *Principal modes*

➤ Conciliation : the involved parties get along directly with assistance from a conciliator

✓ who can be a judge himself or a conciliator of justice

✓ this is free

➤ Mediation :

✓ done by a third party : more active role (he proposes some elements of agreement to parties but without imposing them) (e.g.: Ombudsman)

✓ also free (but sometimes paying)

➤ Transaction : it can be reached during a lawsuit or to avoid a conflict (significant application in insurance law); it involves at least 2 people,

✓ each one putting forward claims;

✓ litigation extinct or is prevented only at the price of a mutual abandonment of part of these claims .

B. *Nonjurisdictional modes suitable for the administrative law*

➤ litigation arise between a public legal entity and a private individual

➤ 2 administrative categories of recourse (see art. 98 SFP):

✓ an internal administrative appeal for reconsideration (*recours gracieux*) – the 1st level which is carried to the authority from whom the act blamed emanates, with a view to obtaining a discretionary withdrawal or repeal of the act in question.

✓ a formal complaint to a higher authority (*recours hiérarchique*) - the 2nd level which is carried to the superior of the authority mentioned above (in Rwanda, it is a commiss^o)

C. Jurisdictional modes

- Solution of litigations sought through jurisdictional award : the authority **resolves or decides a conflict** – settles once and for all (« trancher ») – in accordance with the law
 - ✓ the authority is organized so as to be independent from parties (impartiality)
 - ✓ and is compelled to comply with purely formal rules
- 2 categories : private jurisdictions/courts on one hand, and official public courts on the other hand.

1. Arbitration

- Principal difference with preceding forms : the fonction conferred to the arbitrator (private judge)
 - ✓ He/she settles him/herself the dispute
 - ✓ he/she gives a ruling, in accordance with law (Statue en droit)
- Need for prior agreement between parties (unlike official courts)
 - ✓ Arbitration **agreement** (Compromis)
 - ✓ Arbitration clause (Clause compromissoire) (art. 31, Arbitration Rules¹)
- In case of non-performance (inexécution) : the State holds the monopoly of constraint. procedure of exequatur or «recognition»
- Possible ways of recourse : appeal against foreign arbitrator's decision²
- Characters (advantages & disadvantages):
 - ✓ more celerity in general, than justice of State
 - ✓ remuneration can be more expensive (arbitrators are expert lawyers or technicians)

¹ Ministerial Order n° 16/012 of 15/05/2012 determining Arbitration Rules of Kigali International Arbitration Center (KIAC)

² According to art. 39, al. 6 *in fine*, Arbitration Rules), litigants, by submitting their dispute to arbitrators under KIAC Rules, shall be deemed to have waived their right to any form of appeal, review or recourse to any other judicial authority.

- ✓ discreet justice (no public) and based on agreement between parties

➤ Application :

- ✓ Commercial international law
- ✓ It can't be applied to public legal entities.

2. Resort to official courts

➤ Jurisdictional activities of courts

- ✓ any disagreement has vocation to be settled by a public court ; let us note 2 elements :
 - ❖ power to declare which one of the claims in conflict is in conformity with the right in force (droit en vigueur)
 - ❖ power to pronounce an enforceable decision (force exécutoire) (= imperium ≠ jurisdictio)
- ✓ records (**actes de juridiction**) can also be without litigation: (gracieux) control by the judge to simply ensure guarantee of competence and impartiality (ex: to approve an act whose content was decided beforehand by the interested parties: change of the marriage settlement)

➤ Nonjurisdictional activities :

- ✓ legal administration measures (management of the jurisdiction); ex: to register a lawsuit.
- ✓ Nonjurisdictional acts linked with solution of the litigation: judge conferring executory force on a transaction.

II. Separation of powers

- Rwandan Courts (both ordinary and specialised) are organised in a sort of pyramid
- ...
- ... on top of which there is the Supreme Court

A. Judicial authority and Parliament

1. limited Protection of the judicial authority

- As soon as the process is under way, the textual data of the lawsuit cannot be modified any more; (the decision issued by the judge is not likely any more to be deprived of effect by the legislator)
- However, there can be interference of the Parliament in the litigations whose courts have to take cognizance; 2 types of laws are concerned:
 - ✓ interpretative law :
 - adoption of this law which comes to be incorporated in the text that it interprets to give a different direction; it has a retroactive effect
 - ✓ law of amnesty:
 - ❖ it extincts the prosecutor action and erases the pronounced penalty, but does not erase the material facts and their civil consequences
 - ❖ it represents a blow to the independence of the penal judge when it occurs during progress of procedure (the judge is deprived of the proceedings which are off - the Parliament replaces, somehow, the courts)

2. Wide protection of the legislature against the judge

The legislative function of the Parliament profits from a particular protection by 2 principles that all the courts have to obey:

- Subordination of jurisprudence:
 - normative role of the judge is inevitable (the judge is possibly brought to create whole or part of the law). To guarantee against this potential movement into his field, the legislator enacts specific rules:
 - ✓ prohibition of 'authoritative judgements' (in French: « arrêts de règlement »): It is forbidden for the judge to give his verdict by way of general provision or regulations (dispositions réglementaires) on causes which are submitted to him.

- ✓ prohibition to refer legislative projects to the Parliament; however the annual report of the Supreme Court enables to make available some appropriate law reform to authorities.

➤ Obligation for the judge to apply the law:

He wouldn't, under any circumstance, draw pretext from the gaps or imperfections of the law, to refuse to rule. The judge cannot censure nor ignore a law.

However, a nuance: jurisdictional control of the constitutionality of the laws (the control of the conformity of the laws to the Constitution is of jurisdictional nature)

B. Judicial power and Government

1. Protection of the Government vis-a-vis the judge

➤ Principle: No interference of the judge in the administration

➤ Most applications of the principle:

- ✓ theory of the acts of the government:

Some acts, known as "acts of the government" profit from jurisdictional immunity (can't be subject recourse). For ex:

❖ acts related to relations between the Government and the Parliament (decision of the president of the Republic to send soldiers in a foreign country)

❖ acts related to international relations (exercise of the diplomatic function)

- ✓ prohibition for the judges to make act of administration:

It is forbidden for judges to replace the administration ...

❖ ... while carrying out acts of administration (For ex: the judge cannot reclassify a civil servant – un fonctionnaire)

❖ However, the judge can order administration to take a legal measure ('possibilité d'injonctions')

2. Protection of the judge vis-a-vis the Government

- It is necessary that the statute of the judge contributes to his impartiality (by preserving him of the risk of pressure on behalf of the State). However the professional judge is also a civil servant.
- Problem of his/her independence in 3 components:
 - ✓ impartial recruitment of the magistrates:
it is essential that only qualified judges are recruited. Various modes of recruitment:
 - ❖ drawing lots (tirage au sort)
 - ❖ election
 - ❖ nomination : the most widespread system; but according to which criteria?
 - if arbitrary, without any condition of competence: possibility of abuse
 - if nomination by competition (sur réussite à un concours): it ensures better than others the control of competence.
 - ✓ promotion of the magistrates:
to avoid arbitrary and favouritism, you have to guarantee an automatic promotion with seniority.
 - ✓ problem of judicial tenure / irremovability (inamovibilité): requirement of the judge's consent for any transfer (mutation)

III. Guiding Principles

A. Organization of Justice services

- Principle of separation :
 - ✓ separation, inside the judicial order, of the civil and repressive courts
 - ✓ separation also of the bodies functioning inside each court : magistrate who sits on the Bench (magistrats du siège ou juges) c/ Prosecutor (magistrats du parquet ou debout)
- Principle of hierarchy :

- ✓ need for allowing parties to profit from a second examination of their legal action (right to appeal to a higher court)
- ✓ need to standardize jurisprudence, to control divergent solutions produced from the same question (procedure before the Supreme Court)

➤ Principle of independence and impartiality:

- ✓ Independence of courts towards
 - ❖ political power (see supra)
 - ❖ experts
 - ❖ themselves.
- ✓ independence does not merge with impartiality; it is a prerequisite (condition préalable).

➤ Principle of collegial structure, quid?

- ✓ single judge:
 - + positive financial aspects
 - + he is accountable - however see the mode of recruitment
- ✓ collegial structure
 - + concertation (more thoughtful and nourished decision) - but problem of personal competence and training of judges
 - + independence (each one doesn't personally fear to be blamed) - issue of character or temperament
 - + impartiality (judges work under control from/to each other) - issue of character or temperament
- ✓ no valid arguments in favour of the collegial structure; perhaps distinguish according to nature and degree of the court. Examples :
 - ❖ single judge or college in accordance with appreciation of the president of the court.
 - ❖ single judge at the 1st degree in civil matter and a collegial structure at appeal level.

B. Functioning of Justice services

➤ Principle of equality in court:

- ✓ all the parties being in the same situation, must be judged by the same courts, according to same rules' of form and content (même règles de fond & forme).
- ✓ Limits :
 - ❖ obligation for a foreign plaintiff to deposit a guarantee known as "cautio judicatum solvi" to ensure his solvency
 - ❖ jurisdictional assistance (aide juridictionnelle)

➤ Free access to Justice (Gratuité de la justice) (relative concept):

- ✓ government service (service public) :
 - ❖ Judges being civils servant, could not receive remuneration from litigants (otherwise, offence of misappropriation – délit de concussion)
 - ❖ however, litigants are responsible for part of the courts' functioning budgetary cost; in other words, the following are not free:
 - records from the court (différents actes de justice)
 - costs of the lawsuit (dépens) supported by the loser
 - pleading fees (droits de plaidoirie)
 - ❖ for criminal lawsuit expenses, we distinguish:
 - overhead charges (corresponding to the courts' functioning cost supported by the State: ex magistrates pay)
 - special expenses:
 - * prosecution expenses: incurred by prosecution authorities to contribute to the manifestation of the truth (ex: technical operations of the police)
 - * defense expenses: incurred by litigants to be assisted or represented by a lawyer
- ✓ assistance from other representatives of the law (auxiliaires de justice):

- ❖ possibility for a penniless litigant, to profit from assistance of a self-wilful lawyer appointed by the bar.
- ❖ evolution of the legal aid to legal assistance (jurisdictional assistance vs system aiming at ensuring access to justice in general, consultation for example)

➤ Neutrality of the judge:

✓ technical neutrality

- ❖ «accusatory/adversarial system» (oral, public and contradictory procedure): parties play a dominating role in the control of the lawsuit; legal evidence
- ❖ «inquisitorial procedure » in criminal matters (written, secret and noncontradictory procedure): judges carry out an active role because there is a need to control preliminary investigations and search for evidence;; evidence appreciated according to judge's inward conviction.
- ❖ principle of party disposition (in French: "principe dispositif"), under which the parties exercise, in principle, sole control over legal proceedings; the judge is bound by the lawsuit framework as lay out by litigants.
- ❖ principle of unavailability of the criminal lawsuit since prosecution initiative is entrusted to the Prosecutor
 - civil matter:
 - «accusatory procedure» subjected to the «parties' disposition» principle (possibility to advise a litigant very reduced)
 - criminal matter:
 - unavailable «inquisitorial» procedure (during preliminary investigation) and «accusatory» procedure (during pleadings hearing).The judge can advise applicant.

✓ social and political neutrality:

- ❖ protection of litigants against judge's personal convictions or knowledge about their dispute/lawsuit
- ❖ the judge can abstain from sitting (disclaim competence) if there is alliance or family tie with litigants; as he can be challenged in some indicated cases
- ❖ the judge is subjected to professional ethics

➤ Continuity of civil service:

civil service of Justice functions permanently

➤ Public nature (or openness) of Justice:

- ✓ debates and pleadings are open to public, except cases where the law requires or allows that they take place in camera.
- ✓ decision/sentence: hearing should not take place in public, but judgement must be publicly issued/pronounced.

PART 2. COURTS

- unit of civil and criminal justice: 2 common features show it:
 - ✓ in spite of certain magistrates' specialization, courts belonging to the judicial order sit at the same time in civil and criminal matters: the same magistrates are hearing, sometimes civil cases, sometimes criminal ones (see art. 9 OFJC for IC -TGI)
 - ✓ all these courts are, without exception, attached to the supreme Court..
- We will respect a fundamental division in civil procedure: that of the common or ordinary courts and specialized courts. We'll end on a title devoted to the Supreme Court. For each court, we will specify in a very summary way its competence and organization.

TITLE 1. ORDINARY COURTS

Chapter 1 Primary courts (PC - TB)

A. Organization

- The scope of the PCs as their denomination are found in appendix of the law determining the Jurisdiction of Courts (see art. 66, OFC).
- In accordance with the same legal provision, attributions of the PC are carried out at the seat of the court which is fixed by the same law aforementioned

However itinerant hearing may be hold for all courts except the Supreme Court (Article 42, al. 1 OFC)

- The court is staffed by at least 2 judges, one of them being the president (art. 67, al. 1 OFC); and the traditional panel structure had been replaced by single judge (Article 67 al.2 OFC).
- Responsibility and powers of the president of the court:
 - ✓ He/she is carrying out control and monitoring of judges (Art.43 OFC),
 - ✓ He/she organizes administrative service and distributes lawsuit cases (Article 43 al.2, 5° OFC),

- ✓ He/she can delegate a 3rd category of attribution to other judges: hearing urgent cases (summary procedures) (Article 69 OFJC)

B. Competence

1. Civil competence

PC civil competence must be specified from a double point of view: jurisdiction *ratione materiae* and jurisdiction *ratione loci*.

➤ Jurisdiction *ratione materiae*:

- ✓ exclusive competence for disputes related to *civil status and family* [Mariage, divorce and judicial separation, filiation, etc.](Article 27, 5° JC); *land, livestock* and their succession (Article 67, 2° OFJC).
- ✓ Rate of the scope/jurisdiction:
 - ❖ it rules without appeal when the the complaint is about *Abunzi* committees' decisions (Article 28 JC): sole competence
 - ❖ it rules with appeal opportunity, for:
 - cases on movables & estate (excluding farming land & livestock) with a value between 3 and 20 M. RWF (Article 27, 2° & 3° JC)
 - issues on emphyteusis without land certificate (Article 27, 3° in fine JC);
 - disputes between individuals & legal entities of less/equal to 20 M (art.27, 1°)
 - commercial cases of less/equal to 5 M (art. 27, 4° JC)

Plurality of claims exceeding those limits, as well as the same action comprising requests of which ones would not be of PC competence, make it unqualified (see article 4 al. 1 & 2 JC)

➤ Jurisdiction *ratione loci*: The applicable rules are not for public order – ordre public (Article 178 al.2 OFJC).

- ✓ lawsuit is in theory, carried before the PC of the place where the defendant lives [*actor sequitur forum rei*: plaintiff seizes the court of the defendant domicile] (see art. 13 al. 1 JC)
 - ❖ if the defendant is an *individual*, he/she resides where is his/her domicile [About the elected domicile, see art.18 JC], or failing that his/her residence (Article 13 al. 1 OFJC); and in case of none of them, the plaintiff's one (see al.3)

❖ if the defendant is a legal entity (company or organisation), the place where it has its registered office (headquarters or principal place) is considered. (Article 15 JC)

✓ exemptions from the principle *actor sequitur forum rei*:

❖ the law can imperatively indicate another court : thus as regards real action *in rem* – action réelle immobilière, the competent court is that of the situation of the real estate – biens immeubles (Art. 21, al.1 JC and al. 2 & 3 for other alternatives). See also art.22 and 22 JC [for succession and guardianship - tutelle].

❖ an option can be allowed to the plaintiff: as regards contract, he/she can refer the matter to the court of the place where contractual obligation was born – formation du contrat, or that of the place of its fulfilment – exécution du contrat (Article 17 al. 1 JC).

2. Criminal competence

➤ It is a question of knowing which court will have to rule for a precise offence

➤ 4 criteria make it possible to determine competent court to judge an offence:

- ✓ Jurisdiction *ratione temporis* (according to the time period during which some specific offences had been committed): only genocide against Tutsis and other crimes against humanity committed between October 1st 1990 and December 31, 1994 are concerned (since Gacaca courts completed their work³) – see art. 26 al. 1, 2^o JC
- ✓ jurisdiction *ratione personae* (according to personal characteristics of offender): Leadership authorities⁴ at former sub-prefecture and commune levels, involved in the genocide and crimes against humanity between October 1st 1990 and December 31, 1994 – see art. 26 al. 1, 2^o, h) JC.
- ✓ jurisdiction *ratione materiae* (according to seriousness of offences):
 - ❖ for common criminal acts (see art. 26 al. 1, 1^o JC), ...
 - PCs are competent to judge minor offences – contraventions and more serious offences (or misdemeanours) – délits .
 - PCs are unqualified to judge *felony*
 - ❖ About crimes against humanity committed between October 1st 1990 and December 31, 1994, PCs are, in accordance with art. 26 al. 1, 2^o, a) to g) JC competent for:

³³ Organic Law n° 04/202/OL of 15/06/2012 Terminating Gacaca Courts and Determining Mechanisms for Solving Issues which were under their Jurisdiction, in Official Gazette (special n°) of 15/06/2012, pp. 9-22

⁴ ~~Public administration, Police and gendarmerie, political parties, religious denomination, militia~~

- Homicide, serious attack causing death, dehumanizing acts on dead bodies,
 - Rape, sexual torture, and other acts of torture;
 - Injuries with intention to cause death and criminal acts without intention to kill
- ✓ jurisdiction *ratione loci* (according to geographical localization of the offence): to attach geographically a criminal lawsuit to a court, there are 3 possibilities:
- ❖ place of commission of the offence (Art. 10, 1° JC),
 - ❖ the offender's domicile or, failing that, his/her residence (Art. 10, 2° JC),
 - ❖ place of arrest (Art. 10, 3° JC).

In the event of *pendency of case*, the court seized 1st is preferred (Art. 100 5° JC).

In the event of *connexity*, it is the court *ratione loci* qualified to judge the most serious offence to which are referred all the offences (Art. 97 JC).

Chapter 2. Intermediate Courts (IC – TGI)

A. Organization

- Scope and Seat of the ICs as their number and denomination are indicated in appendix of the law determining the jurisdiction of courts (Art. 62 JC);
- The *composition* of each court includes:
 - ✓ at least 7 judges (of which a president and a vice-president) (Art. 64 al. 1 OFC).
 - ✓ and 3 specialised chambers (see art. 63 OFC):
 - ❖ the chamber for children and family cases
 - ❖ the chamber for corruption and economic crimes
 - ❖ the and the chamber for labour and administrative cases
- to perform its jurisdictional functions,
 - ✓ the IC sits at the 1st degree, as at appeal level, with *single judge* or a *bench* of 3 judges according to the president's appreciation (Art. 64 al.2 OFC);

- responsibility and powers of the *president* (Art. 65 OFC):
 - ✓ Attributions of judge (jurisdictional duties; he/she can, as for the vice-president, chair sittings of the specialised chambers - see art. 63 al. 3 OFC)
 - ✓ Administrative organization and functioning of the IC and all PCs located in its scope.
 - ✓ Conduct of judges, registrars, and staff in those courts,
 - ✓ a quarterly meeting with judges & registrars operating in those courts

B. Competence

1. Civil Competence

- Jurisdiction *ratione materiae*:
 - ✓ Residual jurisdiction: IC takes cognizance of all the civil lawsuits not having been expressly assigned to any other courts (Art. 31 al.1 JC).
 - ✓ moreover, it has an exclusive competence as regards insurance disputes brought before ordinary courts (i.e. excluding commercial courts) (Art. 31 al.2 JC)

✓ it is also competent for appeal against 1st degree decisions and tried cases brought in by PCs (Art. 32 JC)

➤ Jurisdiction *ratione loci*:

✓ the *actor sequitur forum rei* principle (art. 13 JC), like its exemptions (art. 15 to 25 JC) analyzed previously for PCs, apply **for cases brought before the IC as a 1st instance**.

✓ as an instance of appeal, the IC has its jurisdiction *ratione loci* with regard to all the PCs having their seat inside the IC's scope.

2. Criminal Competence

➤ Jurisdiction *ratione temporis* for genocide against Tutsis and other crimes against humanity committed between October 1st 1990 and December 31, 1994 (since Gacaca courts completed their work) – see art. 29, 2^o JC

➤ Jurisdiction *ratione personae*: Leadership organs⁶ at national and former prefecture levels, involved in the genocide and crimes against humanity between October 1st 1990 and December 31, 1994 – see art. 29, 2^o, b) JC.

➤ Jurisdiction *ratione materiae*:

✓ specifically for offences related to *planning, organization, supervision* and *incitement* to Tutsis' genocide and crimes against humanity committed between October 1st 1990 and December 31, 1994 – see art. 29, 2^o, a) JC.

✓ Offenses qualified as *felony* or *crime* (> 5 yrs) (art. 29, 1^o JC);

✓ appeal against decisions delivered by PCs under the IC's scope (Art. 30 JC)

➤ Jurisdiction *ratione loci*:

art.10, 97 and 100 JC seen previously for PCs are applicable.

⁶ Public administration, Police and gendarmerie, political parties, religious denominations, militias

Chapter 3. High Court

A. Organization of the High Court

- According to art.59, al. 1 OFC,
 - ✓ there is only one *High court*;
 - ✓ whose *seat* is established in the town of Kigali;
 - ✓ and its scope* matches the whole extent of Rwanda, divided in 5 chambers:
 - ❖ Chamber of *Nyanza* (covering Muhanga, Huye and Nyamagabe ICs' scope);
 - ❖ Chamber of *Musanze* (covering Musanze and Rubavu ICs' scope);
 - ❖ Chamber of *Rusizi* (covering Rusizi and Karongi ICs' scope);
 - ❖ Chamber of *Rwamagana* (covering Ngoma and Nyagatare ICs' scope);
 - ❖ While the remaining ICs' areas (Nyarugenge, Gasabo & Gicumbi) are covered by the HC's seat
 - ❖ A *specialized chamber* for international & transnational crimes (covering the whole national territory)
- Each chamber has its own administration (i.e it has its jurisdictional and administrative attributions and includes full-time judges (Art. 59, al.2 OFC)
- The composition of the high court includes at least 30 judges (among them, the president and the vice-president) (art. 60, al. 1 OFC)
- to perform its jurisdictional functions, the HC sits at the 1st instance, as at appeal level, with *single* judge or a *bench* of 3 judges, according to the complexity of the case appreciated by the president (art. 60, al. 2 OFC)

*See art. 89, JC

- Power of the president (art. 61 OFC):
 - ✓ Attributions of a judge; he can even chair sittings of the chambers (art. 61, 2^o OFC);
 - ✓ Administrative organization and functioning of the HC, all ICs and PCs (art. 61, 1^o OFC): he/she can even send judges from those courts, to work in any of them with the same level as those to which they were assigned; and this is in his/her power for a period not ~~exceeding~~ 6 months (see art. 61, 5^o OFC)
 - ✓ He/she convenes meetings of judges and of all staff in the HC, at least every 6 months (art. 61, 3^o & 4^o OFC)

B. Competence

1. Civil Competence

- Jurisdiction *ratione materiae*:
 - ✓ HC has an exclusive competence as regards *exequatur* (art. 44 JC)
 - ❖ ... of *decisions* taken by foreign courts⁷;
 - ❖ ...of *authentic deeds* [which must not be against Rdan public order & be authentic] drawn up by foreign authorities
 - ✓ HC takes cognizance of appeal against judgments delivered by ICs ...:
 - ❖ ... in the 1st instance (art. 45 JC),
 - ❖ ... and exceptionally in the 2nd instance (art. 46 al. 1, 1^o to 5^o JC);
- Jurisdiction *ratione loci*:
 - ✓ the *actor sequitur forum rei* principle (art. 13 JC), like its exemptions (art. 15 to 25 JC) analyzed previously for PCs & ICs, apply **for cases brought before the HC as a 1st instance.**
 - ✓ As an instance of appeal, the HC has its jurisdiction *ratione loci* with regard to all the ICs having their seat inside the scope allotted to each of its chambers.

⁷ which must not be against Rwandan public order, have a force of res judicata, be authentic & respect rights of defense

2. Competence *ratione materiae* in administrative and labour disputes

- According to art. 47 al. 1 JC, the HC has, as a 1st instance, competence for :
 - ✓ ... administrative disputes, from decisions taken in the last instance by the President of the Republic, the President of the Senate, the Speaker, the Prime minister, Ministers, and Ministers of State, ...
 - ❖ ... seeking annulment (on grounds of *incompetence, abuse of power or breach of general statutes for civil servants* – see art. 47 al. 1, 1^o & 3^o JC)
 - ❖ ... seeking damages based on above grounds (art. 47 al. 1, 2^o JC)
 - ✓ The HC rules also on incompatibilities of official functions and political posts (see art. 47 al. 1, 4^o JC)
 - ✓ The HC has, in accordance with art. 47, al. 2 & 3 JC, the competence to decide on disputes related to extradition & asylum.
- As a 2nd instance, the HC has, in accordance with art. 48 JC, the competence to deal with decisions of the IC's Administrative & Labor Chamber.
- The HC is trying in a sole instance (i.e. first & last resort) disputes arising within the Bar Association⁸ (art. 49, 1^o JC)
- The HC hears disputes regarding elections at Provinces & Kigali City levels (i.e. local level) - see art. 49, 2^o JC.
- The HC has jurisdiction on political parties disputes (whether they challenge national unity, territorial integrity; are about discrimination, or against the administration) - see art. 49, 3^o & 4^o JC.
- The HC has, against administrative authorities, the power :
 - ✓ ... to issue injunctions (or orders) - see art. 50, 1^o JC;
 - ✓ ... to ask them to pay compensation in kind or cash - see art. 50, 2^o JC;
 - ✓ ... to instruct them, under threat of personally paying damages - see art. 50, 3^o JC.
- According to art. 50, 4^o JC, the HC receives the oath of :
 - ✓ ... Council & Executive Committee members at Province and City of Kigali levels,
 - ✓ ... Bar Association members, and other authorised persons.

⁸Decisions taken by the Bar Association Organs and disputes related to elections therein.

➤ As a 2nd instance, the HC has, in accordance with art. 51 JC, the competence to rule on labor law cases decided at 1st instance by the IC chamber dealing with that matter.

3. Criminal competence

➤ Jurisdiction *ratione materiae*:

- ✓ .Competence of *ordinary chambers* (4) to try at 1st instance the offences ...
 - ❖ of high treason (art. 39, al. 1, 1^o JC);
 - ❖ of attack on National security (art. 39, al. 1, 2^o JC);
 - ❖ of terrorism (art. 39, al. 1, 3^o JC).
- ✓ Competence of the *specialized chamber* as regards ...
 - ❖ Cases transferred to Rda from MICT (Mechanism for International Criminal Tribunals) or foreign criminal courts (art. 42 al. 1 JC);
 - ❖ transnational crimes [hostage taking, human trafficking; - see art. 42, al. 2, 1^o & 2^o JC]
 - ❖ International crimes (genocide - other than the one perpetrated against Tutsi-, war crimes and other crimes against humanity⁹ - see art. 42, al. 2, 5^o, 7^o, 6^o, 3^o, 4^o, and 8^o JC)
 - ❖ Appeal against Judgments on genocide of Tutsi and related crimes, delivered by ICs on the 1st instance (art. 43 JC)

➤ Jurisdiction *ratione loci*:
art.10, 97 and 100 JC seen previously for PCs and ICs are applicable.

⁹ slavery, extrajudicial execution, abduction & rape, torture, etc

TITLE 2. SPECIALIZED COURTS & CHAMBERS

Chapter 1. Commercial, Labour & Administrative specialized courts / chambers

A. Commercial courts

Commercial courts are the *Commercial High Court* (CHC) and *Commercial Courts* (CCs) (art. 68 OFC)

1. Commercial Court (CC)

a. Organization

- According to art.71, al. 3 OFC, there is one CC, with a scope covering the entire national territory and a seat in Kigali.
- The court includes a president, a vice-president and at least 13 *judges*, a chief registrar, registrars and other necessary staff. (art. 71 al. 1 OFC).
- The president, as peers from other courts,
 - ✓ ... in addition of jurisdictional duties (he always chairs the hearings in which he/she is taking part - see art. 43, 1° OFC),
 - ✓ ... is charged with the administrative organization of the court (adopting appropriate strategies to improve the court functioning - see art. 43, 4° -; convening meetings with all judges & staff on a monthly basis - see art. 43, 6° -; setting hearing dates and distributing cases among judges - see art. 43, 2° & 3°)
 - ✓ monitoring of the performance and the discipline of his staff (art. 43, 5°)
- Each case before the court is settled by a single judge or a bench of 3, depending on the president's appreciation (art. 71 al.2 OFC)

1°. *ratione materiae*

- CC is, under 81 JC, competent to be referred to, at the 1st degree, financial, tax and commercial cases (excluding those with a value of less than 5 M - see PCs) that follow:
- ✓ disputes relating to *contracts & activities* considered as commercial; (al. 1, 1°)
 - ✓ disputes relating to *negotiable instruments* (al. 1, 2°);
 - ✓ disputes relating to transactions between individuals and *banks* (al. 1, 3°);
 - ✓ cases related to the *insurance* litigation, *but not including* compensation claims from a third litigant, victim of a *road accident* (al. 1, 5°);
 - ✓ actions relating to *transport* disputes. (al. 1, 7°)
 - ✓ requests relating to *intellectual property* (al. 1, 10°);
 - ✓ litigations related to *trade competition & consumer protection* (al. 1, 13°);
 - ✓ actions relating to *tax* disputes (al. 1, 6°);
 - ✓ litigations concerning *commercial companies in trouble* (al. 1, 4°);
 - ✓ actions related to registration or banning from *register of business* (al. 1, 11°);
 - ✓ requests relating to *bankruptcy* (al. 1, 9°);
 - ✓ requests for purposes of appointment/removal of the *liquidators* of company (al. 1, 12°).
 - ✓ disputes between *shareholders*, directors, auditors, liquidators, etc. (al. 1, 8°);

- It also hears cases related to the EAC Customs Management Act (art. 81, al. 2 JC)

2°. *ratione loci*

- In theory, the domicile of the defendant (*actor sequitur forum rei*) court principle as previously seen applies in case the latter is an individual (see art. 13 JC). In case it is a company, its principal place of business / concerned branch is considered (see art. 16 JC)

- Exceptions:

- ✓ Disputes related to contracts on movables, are heard in the court of the place where it was concluded / performed (see art. 17 al. 1 JC)

- ✓ For real estate disputes, the place where it is located is considered (see art. 21 al. 1 JC).
- ✓ In case of statement of domicile for the performance of a contract, any dispute arising on that occasion will be brought before the court of that place (art. 18 JC).
- ✓ Actions against directors, administrators, accountants and other agents commissioned by justice in bankruptcy cases must be carried before the *court which appointed them*. (art. 19 al. 1 JC)

2. Commercial High Court

a. Organization

- According art. 69 al. 1 and 4 al. 1 OFC, there is 1 Commercial High Court for all the extent of the Republic, with its seat in the town of Kigali.
- It counts at least 5 judges of whom, the president and the vice-president (art. 69 al. 1 OFC).
- In its jurisdictional duties, the CHC sits with single judge or by a bench of 3 judges, depending on the appreciation of the president (art. 69 al. 2 OFC).
- As for attributions of the president, see those of CC president

b. Competence

1° *ratione materiae*

- It is qualified to rule at 1st instance on execution of:
 - ✓ ... judgements in commercial, financial & tax matters rendered by foreign courts (art. 82, al. 1 JC; see the 4 conditions) ;
 - ✓ ... authentic deeds written by foreign authorities (art. 82, al. 2 JC; see the 2 conditions) appeal against judgments issued by CCs.
- It rules in a sole instance (at 1st & last resort) on legality of awards rendered by arbitrators (see art. 82 al. 3 JC)
- It rules at appeal level, on requests against judgments rendered by the CC (see art. 82, al. 4 JC)

2° *ratione loci*

- Provisions seen previously for CCs apply.

B. Labor & Administrative chamber (LAC)

1. Organization

- Each IC includes a specialized chamber for labor & administrative matters (art.63 al. 1, 3^o OFC).
- General rules about organization of ICs seen previously apply to them.
- However,
 - ✓ ... judges sitting in that chamber may, if necessary and upon decision of the president, adjudicate other cases of the IC (see art.63 al. 2 OFC);
 - ✓ ... while the president & the vice-president may sit and chair cases handled by the chamber (see art. 63 al. 3 OFC).

2. Competence

- According to art.35 JC, LACs are qualified for labour cases, dealing with :
 - ✓ individual or collective *disputes between private workers and their employers* relating to employment or apprenticeship contracts, collective bargaining conditions or related administrative decisions (see art. 35, 1^o JC);
 - ✓ disputes related to all administrative *decisions & contracts* (employment & apprenticeship contracts, collective agreements) in connection with the labour legislation (see art. 35, 2^o JC);
 - ✓ disputes between social security organizations, workers and employers concerning implementation of *social security laws* (see art. 35, 3^o JC);
 - ✓ *damages* claims resulting from *offences* for breach of *labour laws*, without prejudice to legal provisions which allocate this responsibility to criminal courts when legal action is referred to them (see art. 35, 4^o JC).
- LACs are, also in accordance with art. 36 JC, qualified for administrative cases, and in this regard, deal at 1st instance with :
 - ✓ all administrative disputes that were not assigned to other courts - see residual competence (art. 36, 11^o)
 - ✓ disputes arising from *elections* at *local government* level (art. 36, 1^o);
 - ✓ disputes related to *administrative contracts* at local government level, under public or private law, *except those related to public procurement* (see art. 36, 6^o);
 - ✓ actions for *damages* arising from *liability inherent to public agents & institutions* (art. 36, 2^o) or due to *public interest activities* (art. 36, 5^o);

- ✓ requests for annulment against *decisions from local administrative authorities* vitiated by *illegality, abuse of power, lack of competence of the decision-maker* (art. 36, 3°), or by *non observance of the general statutes for Rwandan public service* (see art. 36, 4°)¹⁰.
- ✓ labour disputes between the *State or public institutions* and *individuals* (see art. 36, 7°);
- ✓ claims relating to *seizure for public interest* (art. 36, 8°) and *expropriation in public interest* (art. 36, 9°);
- ✓ disputes on real estate having been the subject of inconsistent decisions from a government institution (art. 36, 10°)
- ✓ Issuing *injunctions* to local government authorities *under their own civil liability* (see art. 37 al. 2 JC), and granting them the *right to choose* between paying in kind or cash (see art. 37 al. 1 JC)
- ✓ receiving *oaths* of the members of the *Council and Executive Committee of the District* (see art. 37 al. 3 JC).

¹⁰ NB: when such petitions/requests are against decisions from higher administrative authorities (President of the Republic, president of the Senate, the Speaker, the Prime Minister, Ministers & Ministers of State) the HC is competent at the 1st instance (see art. 93, 1° & 2°)

Chapter 2. Criminal Courts

A. Chamber for Children & Family Cases

1. Organisation

- Each IC includes a specialized chamber for minors & family cases (art.63 al. 1, 1^o OFC).
- General rules relating to IC (seen previously) apply to the chamber. However,
 - ✓ ... judges sitting its cases may, if necessary and upon decision of the president, adjudicate other cases of the IC (see art.63 al. 2 OFC);
 - ✓ ... while the president & the vice-president may sit and chair cases handled by the chamber (see art. 63 al. 3 OFC).

2. Competence

- Legal infancy is limited to 18 years (see art. 54 PC). The criminal responsibility varies according to whether, on one hand, the minor is under 14 years and, the other hand, he/she is 14 but under 18.
 - ✓ In the 1st case (minor under 14), only care/assistance and continuing education arrangements are considered. The child shall not be criminally liable (art. 54, al.1 PC)
 - ✓ In the 2nd (minor from 14 to under 18), the minor is sentenced to imprisonment and/ or fine, which does not exceed half of that planned for an offender who reached the age of majority (18 years and more) see. art.54 al. 1, 2^o PC. In the event that he/she could be subjected to a life imprisonment, the punishment is reduced to a range between 10 and 15 years (see art. 54, al. 1, 1^o PC).

All minors supposed to be guilty are subject to be tried at the 1st degree before that specialized Chamber (Art. 33 a.1, 1^o JC).
- This chamber is in addition qualified to decide at the 1st instance, on the following offences perpetrated in family and home: domestic violence, abortion, infanticide, parricide, spousal homicide (Art. 33 a.1, 2^o to 6^o JC).
- In non-criminal matters, the chamber has jurisdiction to decide ...:
 - ✓ ... at 1st instance, on abortion claims (Art. 33 al. 2 JC);
 - ✓ ... at appeal level, on all cases related to child's interests (like paternity issues - see art. 34 al.1 & 2, 2^o JC), family law (art. 34 al. 2, 1^o JC), marriage regime & succession (the latter being assessed at more than RWF 3 millions - see art. 34 al. 2, 3^o to 5^o JC)

B. Chamber for Economic Crimes & Corruption Cases

1. Organisation

- Each IC includes a specialized chamber for cases on corruption and economic crimes (art.63 al. 1, 2° OFC).
- General rules, together with their exceptions seen previously on other IC chambers apply (see art. 63 al. 2 & 3 OFC).

2. Competence

- The chamber deals with offences against legal entities' assets:
 - ✓ Misuse of public properties (art. 38, 2° JC)
 - ✓ Destruction of public assets, embezzlement and other related offences (art. 38, 4° & 12° JC).
- This chamber is also addressing white-collar crime:
 - ✓ Money laundering (art. 38, 3° JC)
 - ✓ Tax evasion (art. 38, 5° JC)
 - ✓ Fraudulent bankruptcy & related offences (art. 35, 6° JC)
- In addition, the chamber is cracking down corruption & other fraudulent actions used in public procurement:
 - ✓ Corruption & related offences (Art. 35 1° JC);
 - ✓ Illegal award of public tenders & unjustified advantages during their execution (art. 35, 7° & 8° JC)
- Lastly, the chamber deals with violations against the currency:
 - ✓ Counterfeiting of money or marketable securities (art. 35, 9° & 11° JC);
 - ✓ Uttering counterfeit or altered financial items (art. 35, 10° JC)

C. Penal Military Justice

- The Rwandan judicial law organises 2 levels within military justice: the *Military Tribunal* (1st degree) as well as the *Military High court*.
- In regard of their *jurisdiction ratione loci*, military courts ...
 - ✓ ... take cognizance of offences committed on all the extent and apart from the Republic of Rwanda, (Art. 83 al.1 JC)
 - ✓ ...and can sit in *any place on the territory of the Republic*.
- Concerning the *jurisdiction ratione personae*, people subject to be tried before military courts,
 - ✓ ... are soldiers, irrespective of their ranks (see art. 83 al. 1 JC)
 - ✓ However, people subject to be tried before ordinary courts,
 - ❖ when prosecuted as co-perpetrators or accomplices, are tried before qualified military courts (Art. 83, al.1 JC);
 - ❖ except when they are answerable to the Supreme Court (art.83 al.1 *in fine* JC).

1. Military Tribunal (MT)

a. Organization

- The Military Tribunal's seat is in the town of Kigali, with a scope covering the extent of all the country (Art. 74 OFC)
- It is made up:
 - ✓ ... of 10 judges at least,
 - ❖ of whom the president and the vice-president (Art. 73 OFC);
 - ❖ the first being replaced by this one, himself, in event of absence, being replaced by the senior judge in the highest rank among the members of the bench (al.2 of art.77 OFC)
 - ✓ ...as necessary registrars (with at least a rank of sergeant) and support staff. (Art. 76 OFC).
- MT sits by a panel with odd figure (at least 3 judges) assisted by a registrar, with a presiding judge holding a rank equal or higher than that of the accused (Art. 77 al. 1 OFC).

b. Competence ratione materiae

- MT takes cognizance at the 1st degree ...:
 - ✓ ... of all offences committed by soldiers, whatever their ranks (Art. 83 al.1 JC);
 - ✓ ...and the crime of genocide against Tutsis and other crimes against humanity committed by any soldier or gendarme (of former FAR) between October 1st 1990 and December 31, 1994 (art. 83, al. 2 JC)

2. Military High Court (MHC)

a. Organization

- Like the MT, the MHC has its seat in the town of Kigali, with a scope covering the extent of all the country (Art. 74 OFC)
- It is made up:
 - ✓ ... of at least 9 judges, of whom the president and the vice-president (Art. 72 OFC);
 - ✓ ... as necessary registrars (with at least a rank of sergeant) and support staff. (Art. 76 OFC).
- It sits by a panel with odd figure (3 judges at least) assisted by a registrar (Art. 77, al.1 OFC), with a presiding judge holding a rank equal or higher than that of the accused (Art. 77 al. 1 OFC).
- The president of the MHC is responsible for preparing the budget for both courts (art. 77, al. 3 OFC).

b. Competence ratione materiae

- MHC is qualified :
 - ✓ ...to deal at 1st instance with the offence of *attack on national security*, committed on the Rwandan territory or abroad (Art. 84 al.1 JC);
 - ✓ ... to examine requests for *rehabilitation* of people sentenced by all military courts (Art. 84 al. 3 JC)
 - ✓ ... and for *appeal* against decisions issued by the MT (Art. 84 al. 2 JC).

TITLE 3. SUPERIOR COURTS

- The first 3 levels of courts discussed above, and which together constitute "lower courts" (PCs, ICs & HC as ordinary courts; and CC, CHC, MT & MHC as specialised courts) have in common the fact that, at least a litigious case is beginning as a 1st instance before each of them, with the possibility for litigants not satisfied, to obtain that the case be retried by a next-in-line court, of higher instance.
- In addition, the two following court levels herein named "superior courts" shall not be challenged by any other remedies, except the Review. In other words, they constitute the last levels before which appeal against lower courts' rulings can be granted; while theirs cannot be attacked, except in particular case of Review (see art. 50 al. 1 OFC & 52 al. 6 JC).
 - ✓ It is in this light that one of the 2 courts, the recently created CA, is exclusively acting as an appellate jurisdiction;
 - ✓ ...while the other one (the SC), is especially assigned the task of the guardian, at the highest level, of legality and fair justice from all other courts.
 - ✓ Before those courts, it's mandatory to be assisted by a lawyer (art. 50 al.2 & 55 al. 2 OFC).

Chapter 1. Court of Appeal (CA)

A. Organisation

- Rwanda has one Court of Appeal (Art. 2 CA) ...
 - ✓ ... its seat being established in the town of Kigali (unlike the lower courts, no itinerant hearings are allowed for cases brought before this court - see art. 42 a.1 OFC.);
 - ✓ ... & its scope covering all the extent of the territory of the republic (art. 55, al. 3 OFC).
- In accordance with art. 56 al. 1 OFC, The CA is composed of:
 - ✓ ... a president who, ...:
 - ❖ ...in addition to ordinary powers conferred on courts' presidents by art. 43 OFC,
 - ❖ ... is responsible for all coordinated actions necessary in making case law (NB: When for example the law to be applied is unclear, and that there is disparity of judgments on similar cases rendered by lower courts, the established case law on the issue by a superior court - herein the CA - allows, for further similar disputes, to rely on it);
 - ❖ ... chairs every 6 months, a meeting of judges from the CA and high courts (HC, CHC and MHC) discussing on all issues related to justice (see art. 57 OFC).
 - ✓ ... a vice-president,
 - ✓ ... at least 11 other judges,
 - ✓ ... a chief registrar, registrars and other support staff.

B. Functioning

- According to art. 56 al. 2 OFC, cases before the CA may be heard by single judges;
- ... or by a panel with a variable odd number (3, 5, 7 or 9 judges), depending on the importance of the case and the president's appreciation.

C. Competence

The CA rules only as an appellate court (see art. 52 JC).

- As a first level of appeal, the CA shall hear again and decide on first-instance cases considered by the HC, CHC or MHC (see al. 1 of the above-mentioned art.).
- As a second level of appeal, cases that have been appealed to these high courts (HC, CHC or MHC), may exceptionally benefit from one last consideration (a 3rd instance, or 2nd appeal) before the CA, when:
 - ✓ ... they affect national security (see art. 52, al. 2, 1^o JC)
 - ✓ ... the financial amount at stake in civil disputes is at least equal to RWF 75,000,000 (see art. 52, al. 2, 8^o & al. 4 JC); while for criminal matters, only cases where a sentence of at least 15 years has been imposed are concerned (see art. 52, al. 2, 9^o JC). however, in accordance with art. 52 al. 3 JC, the appeal will not be admissible if the party who wishes to make it ...
 - ❖ admitted the charges brought against him/her;
 - ❖ lost the case before the 2 lower courts, for the same reasons.
 - ✓ ... the challenged court decisions suffered from some procedural irregularities, such as
 - ❖basing on evidence or submissions presented after closure of debates (see art. 52 al. 2, 4^o JC);
 - ❖ ruling by an incomplete panel of judges (see art. 52 al. , 5^o JC);
 - ❖ verdict by a judge who did not hear the case (see art. 52 al. 2, 6^o JC);
 - ❖ hearing in camera, without it being previously pleaded and decided (art. 52, al. 2, 7^o JC);
 - ❖ judgment by an incompetent court (see art. 52 al. 2, 3^o *in fine* JC)
 - ✓ ... the challenged court decision was vitiated by some substantial irregularities, such as ...
 - ❖a judge ordering sentences not provided for by the law (see art. 52, al. 2, 2^o JC);
 - ❖ruling based on a non-existent law or repealed legal provisions (see art. 52 al. 2, 3^o JC)
- There is no possibility to appeal against decisions of the CA (see art. 52, al. 6 JC)

A. Organisation & Functioning

1. Composition

- uniqueness of SC (Art. 51 OFC):
 - ✓ it is *single* for all Rwanda (like the CA); its *scope* covers all the extent of the territory of the republic;
 - ✓ its *seat* is established in the City of Kigali.
- Staff: according to art. 52 al. 1 OFC, the SC is composed of :
 - ✓ a president who:
 - ❖ carries out significant administrative duties :
 - he/she convenes and chairs a quarterly or even extraordinary meeting of the judges of the Supreme Court (General Assembly) on all matters relating to court decisions from all country's courts (see art. 53, 1° OFC);
 - he/she issues instructions to all courts including his own SC (see art. 53, 2° & 4° OFC), while monitoring their implementation (see art. 53, 3° OFC);
 - he/she may, in the Justice interest, send registrars and judges from lower courts, to work for a period not exceeding 6 months in higher courts (whether ordinary or specialised, except military courts) - see art. 53, 5° & 6° OFC;
 - ❖ at the same time, heads the 2 supreme organs of the judiciary (see art. 2 al. 2 OFC):
 - the *High Council of the Judiciary* - HCJ and its Bureau (see art. 6, 1° & 13, 1° OFC),
 - and the *Judicial Organ* - JO and its Bureau (see art. 3 & 26, 1° OFC)
 - ✓ a vice-president who:
 - ❖ replaces the president absent or held up (see art. 54 al. 1 OFC) and shall perform such other duties as may be assigned by the President (see art. 54 al. 2, 4° OFC).
 - ❖ More specifically (see art. 54 al. 2, 1° to 3° OFC), he/she is in charge of strategies to ensure the fairness of judgments before the courts, and monitors the functioning of the *Registry* and the *General Secretariat*.
 - ✓ five (5) judges at least;
 - ✓ registrars
 - ✓ and other civil servants:
 - ❖ Inspectorate General of Courts (see art. 31 to 34 OFC)
 - ❖ General Secretariat (see art. 35 to 37 OFC)
 - ❖ Office of the president (composed of *advisers*, legal *researchers*, administrative *assistants* and *other staff* members) - see art. 29 OFC.

2. *Jurisdictional duties (art. 52 OFC)*

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- SC sits in a collegial formation of 3 judges;
- It may, however, rule with an odd number of judges greater than 3, depending on the importance that the President attaches to the concerned case (see art. 52 al. 2 OFC).

3. *Non jurisdictional duties*

- Appointment, promotion and removal of judges, inspectors and registrars (art. 3, 1° OFC)
- Appointment & powers of the spokesperson of the judiciary and the staff assigned to the President's Office (art. 3, 9° & 11° OFC)
- Activities of the *H CJ* and *JO* Bureaus (see art. art. 3, 4°, 6° to 8°, & 10° OFC)
- Strengthening of international judicial cooperation (see art. art. 3, 2° OFC)
- Adoption of rules governing courts procedure in the event of silence of the law (art. 3, 5° OFC)
- Quarterly meetings of the courts' presidents, annual retreat of judges and registrars of all courts and ceremonies of the Judicial Year (Art. 3, 12° to 14° OFC)
- Annual report on the functioning of the Judiciary (arts. 3, 3° OFC). The document should allow:
 - ✓ to highlight the most significant decisions;
 - ✓ to reveal points on which legislative intervention appears necessary.

B. Competence

1. *Jurisdiction ratione materiae*: **Review (Power of modifying judgments that have exhausted all avenues of appeal)**

SC is qualified for ... :

- ... Review against judgments affected by injustice (see art. 53 to 64 JC)
 - ✓ Application for review shall, in accordance with art. 55 al. 1 JC, be admissible ...
 - ❖ ... for one of the following reasons:
 - corruption, nepotism or favouritism;
 - the judge ignored deliberately evidence or legal provisions
 - the judgment cannot, as rendered, be enforced.
 - ❖ ... and the contested judgment must have exhausted all the avenues of appeal, except in cases of injustice found by the General Inspectorate of Courts (see art. 53 al. 1 & 55 al. 2 JC)
 - ✓ The persons entitled to submit the application are, in accordance with art. 54 JC, as follows:
 - ❖ the Office of the Ombudsman, upon request by a litigant;
 - ❖ a president of the court having examined the case
 - ❖ a litigant in a dispute which has been considered by the CA

❖ and the Inspector General of Courts (for other possible cases).

✓ Being a corrective remedy like Appeal, the Review on grounds of injustice is in theory brought before the court immediately higher than the one that rendered the contested judgment (see art. 58 al. 1 JC).

❖ This is how Review will be referred to the SC, if the judgment under criticism has been rendered by the CA (see art. 58, al. 2 JC).

❖ However, in cases raised by the Inspector General of Courts (the only person authorized to use Review even when ordinary remedies have not yet been exhausted - see art. 55 al. 2 JC), ...

○ ... the SC may directly rule on Review of a judgment rendered by a lower court other than the AC, if it appears that its decision may become a judicial precedent.

○ Otherwise (i.e. if the decision cannot constitute a judicial precedent), it will nullify the judgment and refer the case to another court, higher than the one which rendered the contested judgment (see art. 53 al. 2 JC)

✓ The judgment rendered after such a review cannot be the subject of any other remedy (see art. 53 al. 4 and 58 al. 2 JC); it acquires the irrevocability of *res judicata*;

➤ ... Review aimed at reversing a case law (see art. 65 JC):

✓ As a reminder, let's first talk about what is meant by the expression "case law":

❖ This is a way typically chosen by a set of decisions rendered by different courts, in relation with a given legal issue, ...

❖ ... and which allows legal principles to be deduced from them.

✓ In that way, final judgments rendered by Rwandan courts in relation to a given legal problem may, under art. 65 al. 1 JC, have their orientation modified by an application for review brought before the Supreme Court.

✓ The only authorised applicants for this Review (pursuant to art. 65 al. 4 JC, they are exempt from the payment of court costs) are ...

❖ ... the Rwandan Bar Association,

❖ ... and the National Public Prosecution Authority (see art. 65 al. 1 *in fine* JC).

✓ Moreover, the judgment issued after Review in such a situation will not have any effect on previous cases that have become final, or on the parties to such disputes (see art. 65, al. 3 JC).

2. Jurisdiction *ratione personae* in criminal matters (art. 66 to 68 JC)

➤ The SC alone is competent to sentence at the first and last level, the following personalities, with their co-authors and accomplices (see art. 66 JC):

✓ ... the President of the Republic ...

❖ ... for treason and deliberate violation of the constitution (see art. 67 al. 1 JC)

❖ In order to be prosecuted, 2/3 of the parliament members must be in favour of charging him (see art. 68 al. 1 JC).

- ✓ ... presidents of the Senate and the Chamber of deputies
 - ❖ ... for any offence.
 - ❖ They, too, must be allowed to be prosecuted by at least 2/3 of the parliament members, unless they are caught in the act, committing an felony or misdemeanour (see art. 68 al. 3 JC).
- ✓ ... the president of the Supreme Court & the Prime minister ...
 - ❖ ... for any offence.
 - ❖ To be prosecuted, 2/3 of the parliament members at least must, like for the President of the Republic, be in favour of charging them (see art. 68 al. 2 JC)
- The bench shall be of, at least 5 judges (see art. 68 al. 4 JC).

3. *Ad hoc jurisdiction*

SC is competent for ... :

- ... some litigation of a particular nature (see art. 69 and 71, 3° JC):
 - ✓ electoral disputes (limited to referendum, presidential and legislative elections)
 - ✓ petitions for unconstitutionality of laws and international instruments,
 - ✓ disputes relating to authentic interpretation of the Constitution, the laws and customs,
 - ✓ disputes involving the protection of the Public Interest,
 - ✓ petition about a decision of expelling a Senator or a Deputy from parliament or political parties,
 - ✓ authority to decide on cases of *force majeure* preventing Parliament from sitting in the national capital
- ... procedures about appointing some country's authorities (see art. 70 and 71, 1° & 2° JC):
 - ✓ to administer oaths to the President of the Republic, members of National commissions, land title custodians and other officials as determined by the law,
 - ✓ to approve the list of senator candidates, other than those appointed by the President of the Republic,
 - ✓ to declare the office of President of the Republic vacant.