



UNIVERSITY OF RWANDA

SCHOOL OF LAW

LAW2214
SPECIAL CRIMINAL LAW

Study guide for students

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Justice: What's The Right Thing To Do? Episode 01 "THE MORAL SIDE OF MURDER"

<https://www.youtube.com/watch?v=kBdfcR-8hEY>

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INTRODUCTION AND WELCOME REMARKS

1. WELCOME

Dear student,

Welcome to the Module ***Special Criminal Law*** (also known as "***Specific Crimes***" in most English-speaking countries) offered in the School of Law at the University of Rwanda. We are sure you will find this course interesting to study and highly useful for your future career as a lawyer.

Whereas the earlier module titled 'General Criminal Law' (also known as "General Principles of Criminal Law") concentrates on the general principles of criminal liability, the purpose of the Module titled 'Specific Crimes' is to build onto the knowledge and skills that students acquired from General Principles of Criminal Law, by **applying the principles of criminal liability to selected specific offences** such as murder¹ (intentionally causing the death of another person) and manslaughter² (negligently causing the death of another person).

2. ASSUMPTIONS OF PRIOR LEARNING

In order to successfully complete this course, students should:

- (1) Have a sound knowledge of the general principles of criminal liability, and the defences to criminal liability as well as the general rules concerning penalties;
- (2) Be capable of communicating competently in written and spoken English;
- (3) Be able to work/study independently by reading, extracting and analysing relevant information from various sources of law;

¹ Art 107 Law n° 68/2018 of 30/08/2018 determining offences and penalties in general (*Official Gazette no Special of 27/09/2018*), hereinafter referred to as the Penal Code (PC).

² Art 156 PC. This crime is popularly known as "involuntary homicide", from the French "*homicide involontaire*".

- (4) Know how and where to access resources, and so be capable of using the library and electronic resources;
- (5) Have the ability to follow appropriate legal referencing conventions in written work.

3. MODULE LEARNING OUTCOMES

At the end of this course, students will be able to:

- (1) Identify constitutive elements (*actus reus* and *mens rea*) of the numerous crimes found in various laws in Rwanda
- (2) Characterise offences by matching facts to legal provisions
- (3) Understand and appreciate the influence of constitutional principles on specific crimes;
- (4) Evaluate the adequacy of Rwandan specific crimes and suggest law reform where necessary.

4. RESOURCES

In order to assist your preparation for lectures, reference to relevant core readings will be provided as the course progresses. It will be in your own interests to read more widely than the readings provided, and you will find the leading judgments on aspects of criminal law in the *Rwanda Law Reports*, which may be accessed electronically at the website of the Supreme Court.

Prescribed reading materials

Students are required to read the following materials in order to pass this course:

- (1) This Study Guide
- (2) The various laws that are indicated in this Study Guide

5. RECOMMENDED TEXTBOOKS

The following materials are recommended. This means that you will not be penalised for not possessing or reading them.

- (1) Burchell, E *Principles of Criminal Law*, 3rd ed (Butterworth, 2013)
- (2) Kint R, *Droit pénal spécial, manuel de droit rwandais* (Printerset, 1993)
- (3) Snyman, CR *Criminal Law*, 5th ed (LexisNexis, 2008)

6. PRESCRIBED CASE LAW

6.1. CONSTITUTIONAL ISSUES

Students must read these Supreme Court cases and try to understand why the Court did or did not declare certain criminal provisions unconstitutional:

- (1) *MURORUNKWERE S v The State*, SC, RS/Inconst/Pén.0001/08/CS (26/07/2008)
- (2) *KABASINGA F v The State*, SC, RS/INCONST/SPEC 00003/2019/SC (4/12/2019).
- (3) *KABASINGA F and NIYOMUGABO N v The State*, SC, RS/INCONST/SPEC 00005/2020/CS (12/02/2021)
- (4) *MUGISHA R s The State*, SC, N°RS/INCONST/SPEC 00002/ 2018/SC RS/INCONST/SPEC 00002/2018/SC (24/04/2019)

6.2. RETRACTED CONFESSIONS

- (1) *DUSABIMANA J v NPPA*, SC, RPAA 0066/15/CS (04/01/2019)
- (2) *MUKESHIMANA v NPPA*, CA, RPAA 00053/2019/CA (27/04/2020)

6.3. MITIGATING CIRCUMSTANCES

- (1) *SHAKABATENDA JD v NPPA*, CA, RPAA 00039/2021/CA (2/7/2021)
- (2) *NZAFASHWANAYO JDD v NPPA*, CA, RPAA 00032/2019/CA (28/02/2020)
- (3) *IYAKAREMYE J M V v NPPA*, HC, RPA 00009/2020/HC/MUS (13/08/2021)
- (4) *MUTIBAGIRWA A, IYAKAREMYE J M V, Me UWIMANA M G v NPPA*, HC, RPA/ECON 00009/2020/HC/MUS (13/08/2021)
- (5) *MUKANYAMIBWA v NPPA*, HC, RPA 00061/2021/HC/KIG (29/09/2022)

- (6) *NPPA v NYIRABAZIFASHA E*, TB GISENYI, RP 00813/2021/TB/GI (21/11/2021)

6.4. QUALIFICATION OF OFFENCES

John Edward Kienapple vs The Queen [1975] 1 R.C.S, 729

6.5. MISTAKE OF FACT

NPPA v BIKORIMANA RP 00445/2018/TGI/MUS (08/05/2019)

6.6. BEST INTERESTS OF THE CHILD

NZERI JDD v NPPA, HC, RPA 00388/2020/HC/KIG (17/03/2022)

7. ASSESSMENT CRITERIA

The final mark for this course will be comprised of the following components:

- **14 Reflective Journals** (corresponding to the 14 UNITS): 40 marks
- **A Video Narrative book**
- **Final Examination:** 50 marks

Total: 100 marks

Templates and instructions for the Reflective Journal and the Video Narrative Book are attached to this Study Guide.

Please note this: Watch the videos in the order they are presented in this Study Guide. You must watch and summarise all the videos. Other instructions for dealing with the videos are found in the template for Video Narrative Book.

8. FINAL EXAMINATION

The final examination for this course will take place at the end of the Trimester. It will comprise a two-hour long paper. Students can expect both theory and problem-type questions in the examination. There are usually around 4 questions.

GENERAL INSTRUCTIONS FOR REFLECTIVE JOURNALS

This course is divided into 14 UNITS (parts). Each student will thus write **14 REFLECTIVE JOURNALS** in which they summarize what they are reading in the **PRESCRIBED** materials for each unit. Reference to the materials is done by way of footnotes and the bibliography. Indicate the exact page you are referring to. When what you are re-stating is contained in a legal provision, refer to the law (the provision and the law) itself.

Although referring to the prescribed materials will suffice to pass this course, reading and referring to more resources (especially those available on the internet) is ENCOURAGED. Students who will indicate in the footnotes and bibliography that they consulted more resources than those that are prescribed in this Study Guide will be credited for that.

It is not easy to say how long a Reflective Journal must be. One may say that it should be around half (slightly below or slightly more) of the total pages of the prescribed materials. This criterion, however, is not easily applied to SLIDES and LEGAL PROVISIONS contained in various laws. Therefore, let's agree that the Reflective Journal should **SUBSTANTIALLY** cover the prescribed materials that are being summarised. The bigger the Reflective Journal, the more scores you will get.

Please also note, a Reflective Journal is not just a summary of what you are reading. To the best of your ability as a university student, show the examiner that you are "thinking" (hence the name "reflective") about what you are reading. You may do this by giving examples of cases that you already know and making valid and needed comments about the provisions of the law or the Lecturer's scholarly statements that are in the Study Guide or the slides (if any). For example, is the definition of this

particular offence clear? Is the offence broadly defined to cover all the typical situations that should fall under its ambit? What about the penalty (sentence)? Is it proportional to the gravity of the offence? For instance, is 20 years of imprisonment for consensual sexual intercourse with a 17-year-old prostitute a proportional penalty? If not, is that sentence not **unconstitutional**? If so, what provisions of the Constitution do you think are violated? Is there any foreign judgment or decisions of international human rights tribunals that support your argument(s)? This is what a Reflective Journal is all about.

As a final note, as far as possible, try to write your Reflective Journals in **your own words**. This is called **PARAPHRASING**. This is the basic requirement in academic writing. Copy-paste is not WRITING!

As indicated above, Reflective Journals will carry 50% of the total mark for this course.

WATCH VIDEO

▪ DEATH PENALTY

1. Judge Sentences Heather Keaton to Death Sentence by Lethal Injection

<https://www.youtube.com/watch?v=oZsER9o0J-4>

2. Sammantha Allen sentenced to death for the murder of her cousin, Ame Deal
19-year-old sentenced to death

<https://www.youtube.com/watch?v=i8Dfp8ujQ94>

3. Sammantha Allen sentenced to death for the murder of her cousin, Ame Deal

<https://www.youtube.com/watch?v=S0m3XzF2Vx8>

4. Admitted Central Food Mart murderer sentenced to death

<https://www.youtube.com/watch?v=mUEXLIMlICc>

5. Judge sentences man who murdered Salvation Army employee

<https://www.youtube.com/watch?v=Cd2nMW8JHUE>

6. A jury sentenced Mark Sievers to death

<https://www.youtube.com/watch?v=73BP4hdGVuI>

7. Marlin Joseph Death Penalty | Law Office of Patrick R. McKamey, P.A.

<https://www.youtube.com/watch?v=UYhylx6-34>

8. Tiffany Moss gets death penalty, execution scheduled for June

https://www.youtube.com/watch?v=7rwo_nRtjNc

9. Tiffany Moss reacts as jury recommends death penalty

<https://www.youtube.com/watch?v=M7m8qAzz-go>

10. Judge hands down death sentence for child rapist, killer Granville Ritchie

https://www.youtube.com/watch?v=pEsOJ7eWM_c&t=22s

11. Raw video: Brandon Bradley sentenced to death

<https://www.youtube.com/watch?v=XOv7MqfIA9Y>

▪ ANGRY JUDGES

12. Angry Judge tells convicted murderer "I hope you die in prison"

<https://www.youtube.com/watch?v=l8EMCiDgC1o>

13. Man given 6 more years after yelling at judge during sentencing for home invasion

<https://www.youtube.com/watch?v=DgrNurrfWVI>

UNIT I

REVISION: SOME IMPORTANT TOPICS TO REVISE FROM GENERAL CRIMINAL LAW

REFLECTIVE JOURNAL N° 1:

This UNIT is divided into two lessons. In your first Reflective Journal, read and then summarise the content of the first two lessons that make this UNIT.

LESSON 1

THE MATERIAL (*ACTUS REUS*) AND MENTAL (*MENS REA*) ELEMENTS OF CRIMES

1. Meaning of material and mental elements of crimes

As you were taught in the course of the module titled **General Criminal Law**, once it is established that there was an **act** or omission (conduct) on the part of a person (the accused), the next step in the determination of criminal liability is to investigate whether the conduct in question **complied** with (**or corresponds to**) the “definitional elements” of the crime with which the accused is charged.

The definitional elements signify the concise **description of the requirements set by the law for liability for a specific crime**. In every crime, there are two elements: **the material element (*actus reus*) and the mental element (*mens rea*)**.

2. The material element

The material element comprises all the elements contained in the definition of the prohibition other than the mental element. It may not only refer to the kind of act that is prohibited (for example possession or sexual intercourse) but also to the **circumstances** in which the act must take place, such as, for instance, the particular way in which the act must be committed (for example “violently”³), the **characteristics of the person** committing the act (for example, a “soldier” in the crime of desertion), **the nature of the object** in respect of which the act must be committed (for example “movable corporeal property” in theft) and sometimes a particular **place** where the act

³ For example, see article 231 Penal Code (*Hindering implementation of ordered works*): “Any person who, by any act of violence, opposes the implementation of work commissioned or authorised by a competent authority, commits an offence”.

has to be committed (for example in a “public place”)⁴ or a particular **time** when or during which the act has to be committed (for example “during war time”).⁵

3. The mental element

3.1. The notion

The mental element consists in either “intention” or “negligence”. For example, the ***actus reus* (material element)** of murder is the “killing” (1) of “another human being” (2), while the ***mens rea* (mental element)** of this offence consists in the “intention to cause death” (or *animus necandi* in Latin). If Paul **kills** his friend, John, **by accident**, no murder is committed because the requisite ***mens rea*** in the form of **intention** is lacking. Instead, if the “accident” happened as a result of Paul’s “negligence” (*uburangare* in Kinyarwanda), Paul will be found guilty not of the crime of murder, but of “**negligent homicide**”.⁶ **If, no negligence can be established at all, no crime (even involuntary homicide) has been committed, because *mens rea*⁷ in the form of negligence is also lacking.**

⁴ See for example article 268 PC: “Any person who is drunk in **public, in the streets, squares, paths, bar, in a gymnasium or any other public places**, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than eight (8) days but not more than two (2) months and a fine of not more than twenty thousand Rwandan francs (FRW 20,000) and not more than one hundred thousand Rwandan francs (FRW 100,000) or only one of the penalties”.

⁵ See for example article 316 PC: “Any non-officer who intentionally, in **wartime**, self-inflicts mutilation, allows himself/herself to be mutilated or who uses any means for the purpose of mutilation in order to evade service, even for a short period of time is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years”. See also War crimes [art 96-103].

⁶ Some people call this offence “involuntary homicide” (from French *homicide involontaire*). This is a mistake, however, because in crimes of negligence the act is still voluntary. For example, being distracted by your telephone while driving is a voluntary act. But it is a negligent act because a careful person should not use his telephone while driving.

⁷ The term *mens rea* can be translated literally as “guilty mind”. But, as will be seen later, a person may be said to have *mens rea* and be guilty of a crime even though he is unaware that he is committing a crime. This is the case if X is convicted of a crime requiring *mens rea* in the form of “unconscious negligence” (which will be discussed below). It is for this reason that Snyman describes the term *mens rea* as an “unfortunate and ambiguous term” (CR Snyman, *op.cit*, p. 144.

3.2. Intention

3.2.1. Definition of intention

Defined concisely, one can say that intention is to **know** (*connaître*) and to **will** (*vouloir*) an act or result.⁸

3.2.2. The 3 forms of intention

There are three forms of intention, namely direct intention (*dolus directus*), indirect intention (*dolus indirectus*) and *dolus eventualis*. In a crime requiring intention, the intention requirement is satisfied if the accused entertained any one of these forms of intention.

A. Direct intention (*dolus directus*)

A person acts with direct intention if the causing of the forbidden result is his **aim** or **goal**. For example, X wants to kill Y. X takes his pistol, presses it against Y's head and pulls the trigger. The shot goes off and strikes Y in the head and Y dies instantly.

B. Indirect intention (*dolus indirectus*)

A person acts with indirect intention if the causing of the forbidden act is not his main aim or goal, but he realizes that, in achieving his main aim, his conduct will **necessarily cause** the result in question. For example, X shoots through a closed glass window at a target. His main purpose is to hit the target, but he realises that by doing this he must **necessarily also shatter the window**. If he decides nevertheless to act to attain his main purpose, he naturally also wills those consequences which he realises must invariably accompany his main purpose. If he shoots at the target and shatters the window, he cannot be heard to say that he never intended to shatter the window.

8 CR Snyman, *op.cit*, p. 180.

C. Dolus eventualis

A person acts with *dolus eventualis* if the causing of the forbidden result is not his main aim, but:

- he subjectively **foresees** the **possibility** that, in striving towards his main aim, his conduct **may** cause the forbidden result, and
- he **reconciles** himself with this possibility.

The following is an example: John wants to burn down a building. He **foresees** the possibility that somebody **may** be inside it (1), but nevertheless **decides to proceed with his plan, not caring** that there might be somebody in the building (2), and sets fire to the building. Paul is indeed inside, and dies in the flames. **In the eyes of the law, X intentionally caused Y's death.**

Dolus eventualis is extremely important in Criminal Law and you should be able to define it properly in the examination. The important key words are: **foreseeability**, **possibility**, and **reconciling oneself** with that possibility. Keep these three words in mind for examination purposes.

3.2.3. The test for intention is subjective

When a court is determining what the state of mind of a particular person (the accused) was when he committed the act, the question is never whether he **should** have foreseen the result, but whether he foresaw it as an **actual fact**.

3.2.4. Proof of intention

How is intention proved in court? Sometimes there may be **direct** evidence of intention: if, in the course of being questioned, X admits that he acted intentionally (**confession or admission**), and if the court believes him, there is no problem for the court to find that he in fact acted intentionally. However, in the great majority of cases, there is no such confession or admission by X. If this happens, a court may base a finding that X

acted intentionally on **indirect** proof of intention (**circumstantial evidence**). This means that the court may **infer** the intention from evidence relating to X's outward conduct at the time of the commission of his act as well as the circumstances surrounding the events. For example, the fact that X had a motive (enmity feelings) to kill Y and the fact that he shot Y in the head means that X intended to kill, not merely to cause bodily injuries.

3.2.5. Defences excluding intention

You have already learnt that intention must relate to all the circumstances set out in the definitional elements. If X is unaware of any of them, it cannot be said that he intended to commit the crime as defined in the statute. Intention may be excluded by a mistake or by a state of intoxication.

A. The defence of mistake (and ignorance)

(a) The concept of mistake

The defence of "**mistake**" or "**error**" **exists on** X's part if he imagined the facts to be different from what they in fact were. Mistake (or ignorance) may be one of fact (**mistake of fact**) or one of law (**mistake of law**).

(b) Mistake of fact

The following is an example of a mistake of fact:

X is hunting chimpanzees. In the dusk he sees a figure which he thinks is a **chimpanzee**, and shoots at it. It turns out to be a human being whom he has killed. He is then not guilty of murder since **he did not know that he was killing a human being**.⁹

9 Only if X's mistake was unreasonable he may be found guilty of "involuntary homicide".

In the above example, X was mistaken about the nature of his target: i.e., whether he was shooting at a chimpanzee or a human being. This is a mistake of fact.¹⁰

Another hypothetical example of a mistake of fact would be the one of a young woman who has sexual intercourse with a married man, without knowledge of the fact that the man in question is married. If one correctly applies the principles of Criminal Law under discussion, such woman should escape criminal liability because her “ignorance” (which has the same effects as “mistake”) negates the mental element (intention) required to be an accomplice of the crime of adultery.¹¹

(c) Mistake of law

Mistake of law can also negate the required mental element of a particular crime. A classic example is the English case of *Roberts v Inverness Local Authority*,¹² where the accused was acquitted of “**moving a cow from one district to another without a licence**” because he believed the two districts had been amalgamated into one. He **did not know** that he was moving a cow “**from one district to another**”.¹³ This mistake (of law) negates intention required in the definitional elements of the crime.

Another English case that may help to illustrate a situation where ignorance of law negates the mental element of the crime charged is *Secretary of State for Trade and Industry v Hart*.¹⁴ In this case, the accused had acted as an auditor for a company of which he was an officer. Section 13 of the Companies Act 1976 (UK) made it an offence for a “disqualified person” to act as an auditor. Section 161(2) of the Companies Act 1948 (UK) provided that a disqualified person included any officer of the Company. The crime for a disqualified person to act as an auditor was provided for in section 13(5) of the Companies Act 1976 (UK) as follows:

¹⁰ Please note, “mistake” and “ignorance” have the same effects.

¹¹ See articles 136 PC.

¹² [1974] 1 All ER 632.

¹³ See summary of the case at <https://vlex.co.uk/vid/roberts-v-local-authority-807053741> [26/09/2021].

¹⁴ [1982] 1 All ER 817, (1982) 1 WLR 481.

No person shall act as auditor of a company at a time when **he knows that** he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of such disqualification.

In *Secretary of State for Trade and Industry v Hart*, the accused, who had acted as an auditor of a company while he was disqualified in terms of the above statute argued that he did not have the *mens rea* required under s 13(5) of the Companies Act 1976 (UK) because he was ignorant of the statutory provision contained in s 161 of the Companies Act 1948 (UK). The trial judge accepted the accused's argument and the Secretary of State appealed. On appeal, Wolf J held that the phrase "knows that he is disqualified" included knowledge of his legal status. If that knowledge were absent due to mistake or ignorance of law, then, one element of the crime as defined was missing.

(d) Mistake need not be reasonable: the test is subjective, not objective

Whether there really was a mistake which excludes intention is a **question of fact**. What must be determined is X's true state of mind and conception of the relevant events and circumstances. The question is not whether a reasonable person in X's position would have made a mistake. The test in respect of intention is **subjective**, and if one compares X's state of mind and view of the circumstances with those of a reasonable person in the same circumstances, one is applying an **objective** test in respect of intention, which is not warranted.

To say that mistake can exclude intention only if it is reasonable, would be the same as saying that it is essential that a reasonable person should have made a mistake under those circumstances. This would be incorrect and **every intention would become negligence**. An unreasonable, but genuine mistake is therefore a mistake and negatives intention.

A. The defence of intoxication

Intention may be excluded in case of severe intoxication. For example, it cannot be said that a severely intoxicated person who is distributing bank cheques to all persons present in the night club has the requisite intention to be guilty of the crime of issuing bouncing cheques which is only committed when a person “knowingly” issues a bouncing cheque.

3.2.6. General and specific intentions

In Criminal Law, the term general intention is used to mean the intent to commit the criminal act as defined in the statute, for example, the “intention to kill” (*animus necandi*).¹⁵

On the other hand, specific intention (*dolus specialis*) can be defined as, to use Samaha¹⁶'s words, “**general intent 'plus'**”. Here, X has a general intention of, for example, killing a human being, plus a specific intention (*le dol special*) of, for example, “destroying an ethnic group as such”. It is this kind of intention which distinguishes murder from genocide. In the legal literature, crimes of this kind are sometimes also referred to as crimes of “**double intention**”.

Another example of a crime of special intention can be found in article 179 (arson by the property's owner) which provides as follows:

Any person who **for fraudulent purposes** sets fire on own building, transport means or any other valuables, commits an offence.

3.2.7. Distinction between “motives” and intention

Intention must not be confused with the motive for committing the crime. In determining whether X acted with intention, the motive behind the act is immaterial. In French, this idea is commonly expressed in the following adage: “*les mobiles sont inopérants*”.

15 J Samaha *op. cit*, p. 110.

16 Idem, p. 110.

If therefore, X acted intentionally, the fact that his motive was laudable or that one may have sympathy for him cannot serve to exclude the existence of intention. For example, X is guilty of **theft** even though he steals from the rich in order to give to the poor. The general rule is that motives (and purposes) are not part of the mental element of crimes.

However, there are a few crimes for which motive forms part of the mental element (intention). An example of these crimes can be found in article 112 (Torture) PC, which reads as follows:

For the purpose of this Law, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such **purposes** as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind.

In the above example, intention consists in intentionally inflicting physical or mental pain to a person, with (double intention) the purpose of, say, extracting information from him. Here, the motive is an essential part of the definition of the crime. If the required motive is not present, the elements of the crime are not fulfilled and, consequently, the crime in question is not committed.

Another example is **euthanasia**. This is where X administers a fatal drug to his ailing father to release him from a long, painful and incurable illness. In this crime, the motive is part of the definitional elements (mental element) of the offence.

A further example of a crime of "*dolus specialis*" may be found in article 194 PC (**Spreading false information or harmful propaganda with intent to cause a hostile international opinion against Rwandan Government**) which reads as follows:

Any person who spreads false information or harmful propaganda with intent to cause public disaffection against the Government of Rwanda, or where such information or propaganda is likely or calculated to cause public disaffection or a hostile international environment against the Government of Rwanda commits an offence.

In the above example, the simple intention of spreading false information **knowing that** it is false is not sufficient to constitute the crime provided for in article 194 PC. **In order for that crime to be committed, the liar must do so with a “specific intention” of creating a hostile international opinion against the Rwandan Government.**

These above crimes are also referred to in the legal literature as crimes of “**double intention**”. They are also known as crimes of “specific intention” or *dolus specialis* in Latin.

3.2.8. Intention as a general rule

As a general rule, all crimes require a mental element (*mens rea*) in the form of either **intention (*dolus*) or negligence (*culpa*)**. This is provided for in article 83(2) of the Law n° 68/2018 of 30/08/2018 determining offences and penalties in general (hereinafter referred to as the Penal Code),¹⁷ which reads as follows:

Only a person who intentionally commits an offence is punishable. However, if the law so provides, a person commits an offence as a result of his/her recklessness, clumsiness, negligence or any other form of carelessness.

The words “recklessness”, “negligence” and “carelessness” refer to the same concept which is generally simply referred to as **negligence**. Thus, for the purpose of simplicity and clarity only the word negligence will be used in this course as a degree of *mens rea* short of intention.

The proviso “unless otherwise provided by the law” that is used in article 83(2) means that where it is not clear which mental element (intention or negligence) is required by the law, it must be assumed that the crime in question is one of intention.

¹⁷ Official Gazette no Special of 27/09/2018.

3.3. Negligence

3.3.1. The notion

As stated earlier, in accordance with article 83(2) PC, crimes are not only committed intentionally. According to this article:

If the law so provides, a person commits an offence as a result of his/her recklessness, clumsiness, negligence or any other form of carelessness.

The words “recklessness, clumsiness, negligence or any other form of carelessness” contained in article 83(2) PC all refer to the same concept: negligence.

3.3.2. Definition

A person’s act is negligent if:

- (i) A **reasonable person** in the same circumstances would have **foreseen** the possibility that:
 - the particular circumstance might exist, or
 - his conduct might bring about the particular result;
- (ii) A **reasonable person** would have taken steps to guard against such a possibility; and
- (iii) The conduct of the person whose negligence is being determined differed from the conduct expected of the **reasonable person**.

3.3.3. The concept of a "reasonable person"

The reasonable person referred to when determining negligence is merely a **fictitious person** which the law invents to **personify** the objective standard of **reasonable conduct** which the law sets in order to determine negligence. By **reasonable person** is meant an ordinary, normal, average person. He is the man of ordinary knowledge or intelligence. He is neither, on the one hand, an exceptionally cautious or talented

person, nor, on the other, an underdeveloped person, or somebody who recklessly takes chances. In legal literature the reasonable person is often referred to as the ***bonus pater familias*** or ***diligens pater familias***.¹⁸

The reasonable person is not somebody who runs away from every foreseen danger; he may sometimes take a **reasonable risk**. Driving a car, for instance, creates a risk of causing injuries or even death on the road, but the reasonable person can take this risk because it is **justified**. It is a risk that the society accepts as necessary.

¹⁸ “*Pater familias*” may also be written as “*paterfamilias*”.

WATCH VIDEOS: ELEMENTS OF CRIMES

14. Elements of Crime (Mens Rea, Actus Reus)

<https://www.youtube.com/watch?v=CgE1rp8Q2LY&t=34s>

15. Actus Reus and Mens Rea - Level Justice

<https://www.youtube.com/watch?v=Qn- EYInCXM>

16. Actus Reus: The Physical Act of Committing a Crime

<https://www.youtube.com/watch?v=B2FFApuOnXY>

17. Actus Reus

<https://www.youtube.com/watch?v=ClIG65ILS9c&t=100s>

18. Criminal Law Video Presentation 2 Actus Reus

<https://www.youtube.com/watch?v=Z62LBLyut7Q>

19. 1 Criminal Law - Omissions

https://www.youtube.com/watch?v=Rg2ftIJWR_A

20. Mens rea

<https://www.youtube.com/watch?v=DTGX5hDwCqI&t=12s>

21. 12 - Intention - Direct and Oblique

<https://www.youtube.com/watch?v=Ht1OzsETNz8&t=20s>

22. Criminal Law Video 7 - Murder - Intentional Killing

https://www.youtube.com/watch?v=6WYFj7bp_UI

23. Specific vs. General Intent

https://www.youtube.com/watch?v=Whxcz_IhHAc

24. General Intent versus Specific Intent

<https://www.youtube.com/watch?v=aotacUXRFIs>

25. Criminal Law Video Presentation 5 Mistake of Fact and Law

<https://www.youtube.com/watch?v=EY1hteC5me0&t=13s>

26. Mistake of Fact and Mistake of Law Defenses

<https://www.youtube.com/watch?v=5jGrgZkqp4E>

27. What is negligence?

<https://www.youtube.com/watch?v=mnPakaCc-Ys>

28. The Reasonable Person Standard

<https://www.youtube.com/watch?v=U2sL-PYrxAo&t=62s>

29. The Reasonable Person Standard

https://www.youtube.com/watch?v=J8-E_jIJgX0

30. What is the crime of attempt?

<https://www.youtube.com/watch?v=pL3CfTTpcaY>

LESSON 2

RULES OF CHARACTERISATION (QUALIFICATION) OF OFFENCES

1. Introduction

In criminal law, the term “characterisation” or “qualification” of offences refers to the intellectual exercise of matching the “**facts**” to the provisions of the “**law**”. Is, for example, eating a dog a crime under any legal provision? Is a judge allowed to change the charges chosen by the prosecutor or the court *aquo*¹⁹? Will a person be convicted for theft (or robbery) if he has returned the stolen property to the victim?

In case of multiple offenses, even more pronounced questions arise. For instance, is a person who uses a forged document (*faux et usage de faux*) to defraud money (*escroquerie*) guilty of one or two crimes? Or, if a person, by a single act, offends different criminal provisions, will he be convicted of all the crimes or only one of them will be retained? Finally, are prosecutors allowed to re-qualify the facts and re-prosecute the acquitted defendant for a different offence arising from the “**same facts**”?

The purpose of this lesson is to equip students with a sound understanding of the rules that govern the characterisation (qualification) of offences under Rwandan law. Some of these rules (principles) directly derive from the provisions contained in the law. Most of them, however, are taken from the writings of French and

¹⁹ The court *aquo* is the court from which an appeal was lodged. The court of first instance.

Belgian writers and the rules developed by French and Belgian courts and followed by Rwandan courts.²⁰

We will distinguish between the rules that apply to both the qualification of a single offence and multiple offences (2), and the rules that only apply when the accused has committed several acts that are aimed at accomplishing a single criminal intent (3.1), or when the accused has committed a single act that can be qualified into multiple offences (3.2).

2. Basic rules of qualification: Five rules that apply to both a single offence and multiple offences

There are five rules that apply both when the accused has committed a single offence as well as when he has committed a multitude of offences. We can call them “basic” rules of qualification.

2.1. The principle of correspondence of conduct with the constitutive (definitional) elements of the offence

Article 3 of the Penal Code provides that:

No one can be held guilty of an offence on account of any act or omission which did not constitute an offence under national or international law at the time when it was committed.

This rule, known as the **principle of legality** is also enshrined in article 29(1)(4) of the Constitution. It seeks to shield individuals against prosecutions arising from facts that do not constitute an offence under the law. This calls the investigator, prosecutor or judge to determine whether the accused’s conduct (act) “corresponds” to the constitutive (material and mental) elements of any offence in the Penal Code or any other law that contains criminal provisions.

²⁰ Rwandan law derives from Belgian law, the former colony. Belgian law on its turn has the same history and origins as French law.

Thus, in accordance with the principle of legality, and the corollary principle of “correspondence with the constitutive (or definitional) elements of the crime”, investigators and prosecutors have released persons who had been arrested for “eating a dog”. They were released because the act of eating a dog does not correspond to any “definition” of a crime under the various laws in force in Rwanda.

Likewise, in accordance with the same principle of correspondence with the constitutive (or definitional) elements of the crime, investigators, prosecutors and judges retain the characterization (qualification) that best suits the facts and turn down any other qualification if they deem that the charge does not fit with the conduct of the accused. For example, judicial authorities will retain voluntary battery or injuries resulting into death without the intent to kill²¹ over murder²², if the intention to kill (*animus necandi*) is not established. In other words, the rule says that judicial authorities will arrest, prosecute and convict a person only if and for the crime whose definitional elements correspond with his/her conduct.

2.2. The prohibition of analogy

In determining whether the conduct corresponds with the constitutive elements of the crime, judicial authorities are prohibited from taking an EXTENSIVE interpretation of the legal provision that defines the offence. This rule, known as the prohibition of analogy, is contained in article 4 PC which reads as follows:

Criminal laws cannot be interpreted broadly, they must be construed strictly.
Courts are prohibited to make judgment by analogy.

The prohibition of extensive interpretation in criminal law is expressed in Latin as *ius strictum* rule. In one unreported case, an unmarried woman was caught sleeping with a married man. Since adultery is by definition committed by a

²¹ Art 121(5) PC.

²² Article 107 PC.

married person, the woman was arrested only as an “accomplice” of the married man. Article 91(2^o) of the 1977 Penal Code that was in force at the time (this happened around 2010 or 2011 under the territorial jurisdiction of the Kagugu Police Station) classified as an accomplice a person who “**procured the means that were used by the perpetrator to commit the crime**”. The question was whether the sexual organs of the woman could be considered as “**means**” (*ibikoresho*) used by the married man to commit adultery? Well, that was the interpretation taken by the judicial police officer in charge of the case. The prosecutor differed, and rightly so, on this extensive interpretation of the word “means” and released the woman. His view, which seems the correct one, is that the word “means” refers to physical and technological instruments that may be used to commit crimes, not body parts of a person.²³

2.3. The principle of alternative or optional qualification

It may happen that the accused has only committed a single crime but that determining which charge to retain against him calls the judicial authority to make a choice among many charges, and that once one charge is maintained, all others have to be excluded.

For example, a person who beats to death another may be prosecuted under the qualification of **murder**,²⁴ if the intent of killing is established. Alternatively, he/she may be prosecuted for **voluntary battery or causing injuries resulting into death** without the intent to kill²⁵ if the beating was intentional but the resulting death was not intended (when even *dolus eventualis* can’t be established). The third possible charge is for such a person to be charged with **negligent homicide**

²³ It can be noted here that the Penal Code was changed in 2013 and 2018 paving way for the prosecution of the partner in adultery. It seems, however, that the word “co-author” used in article 136 of the 2018 Penal Code is inappropriate. The correct word should be “partner”.

²⁴ Article 107 PC.

²⁵ Art 121(5) PC.

(*homicide par negligence*)²⁶ if the blow which caused the death was itself unintentionally inflicted, but his/her conduct is deemed negligent.

The point here is that you can't charge the accused with killing the victim both intentionally and unintentionally at the same time. The charges are optional or alternative, but mutually exclusive.

2.4. The principle of successive characterisations

According to the principle of successive characterisations (or successive qualifications), the competent authority may, as the investigation or trial progresses, in the light of new evidence, abandon the first characterisation (qualification) to adopt a new one (re-characterisation or re-qualification). This operation will continue until such time as it is determined that the qualification corresponds exactly to that required by the law, to the exclusion of any other.

This means that the prosecution is not bound by the classification by the judicial police officer (investigator) or by the injured party (victim) in his/her complaint. Likewise, when the trial court is seized, it can change the qualification which had been retained by the Prosecutor or by the plaintiff in case of private prosecution.

The appellate court is also not bound by the qualification of the trial judge. Judges are also seized *in rem* (with the facts). But they are throughout free to re-characterise the charges if they think the facts correspond best with a different crime.

2.5. The principle of crystallization or intangibility of the qualification

According to this principle, once an offence is committed, it remains an offence even if after its commission some of its constitutive elements have disappeared. In other words, the characterisation must remain valid and indifferent to the changes

²⁶ Art. 111 PC.

that may subsequently occur in favour of the accused. For example, the charge of theft²⁷ or fraud (*escroquerie*)²⁸ remains unchanged even if the offender subsequently returns the object of the offense to the victim. Likewise, issuing a bouncing cheque²⁹ remains an offence even if after a certain time the accused has deposited money on his bank account which was empty or had insufficient funds at the moment of the issuing of the cheque.

3. Rules of characterisation that apply only when the accused has committed a multitude of offences

It sometimes happens that the accused has committed not just one offence, but many offences. In the legal jargon, that situation is described as “**concurrence of crimes**”.

Concurrence of offences may be **real** or **ideal**.³⁰ **Real concurrence** of offences arises when materially distinct and unrelated acts occur one after another and result in separate offences. In this case, no problem of qualification occurs because the crimes are completely unrelated. The accused will be charged with all the crimes. If the accused is convicted, the judge imposes penalties for each offence and combines them, subject to some limits.³¹ Here is an example: John is suspected of raping Jane. He tries to escape from arrest and upon being ordered to

²⁷ Art 166 PC.

²⁸ Art 174 PC.

²⁹ Art 3, Law n° 47/2018 of 13/08/2018 modifying Law n° 03/2010 of 26/02/2010 concerning payment system as modified to date.

³⁰ Art 61(2) PC.

³¹ Art 62(3) PC: “In case of real concurrence of offences, the judge imposes penalties for each offence and combine them, taking into account the following:

1° the penalty of life imprisonment outweighs all other penalties of imprisonment;

2° the combination of penalties of fixed-term imprisonment cannot be more than twice the maximum of the most severe penalty;

3° the combination of the sentences of community service cannot exceed two (2) years;

4° the combination of penalties of fine cannot be more than twice the maximum of the most severe penalty;

5° the combination of penalties of ban on residence or compulsory residence in a particular location or penalties of deprivation of civic rights cannot be more than twenty-five years (25).

stop by the police he pulls his gun and fatally shoots a police officer. He will be charged with the following crimes:

- (a) Illegal possession of a firearm
- (b) Rape
- (c) Murder

These crimes are completely distinct and will all be charged. In contrast with this situation, is the situation described as “**ideal**” concurrence of offences. In this case, the different offences are “united” either because “a single act constitutes several offences”³² or because “separate acts, which constitute separate offences, are related among themselves as they are aimed at accomplishing a single criminal intent”.³³ It is in these two situations of ideal concurrence of offences that problems of characterisation (or qualification) of offences arise.

It is important to note that article 61(3) of the PC, that governs ideal concurrence of offences, only defines what ideal concurrence of offences is but does not provide for which offence should be preferred over the others by the judicial authority in charge of the criminal case. Article 62 of the PC only provides that in case of ideal concomitance the judge will:

- 1) **impose the penalties** provided for the most serious offence, when the accused has committed a single act that can be qualified into multiple offences, or
- 2) **impose the maximum penalty** provided for the most serious offence, if the accused committed separate acts which constitute separate offences, but are related among themselves because they are aimed at accomplishing a single criminal intent.

³² Art 61(3)(1^o) PC.

³³ Art 61(3)(2^o) PC.

These however, are rules for **sentencing**, not characterisation of offences. What would happen if all the offences were punishable with the same penalty? Which offence would be retained and which one would be dropped? Determining the offence is a distinct exercise from sentencing. This exercise is carried out first in the office of the investigator while sentencing only enters into play at the end of the trial. Characterising offences is also necessary to determine the competent court. Genocide and murder may not be tried by the same court although both may attract a life imprisonment sentence. Also, genocide is not subject to statutes of limitation (prescription) while murder is. Likewise, genocide ideology and sectarianism may be tried by different courts although they may both be punishable with the same penalties. It is therefore important to learn the rules that have been developed by French and Belgian writers as well as in court decisions both in France and in Belgium on this subject.

The principle that, in case of ideal concomitance of crimes, the accused should be **tried (not just sentenced)** for only one offence has been constantly reminded by the French Court of Cassation (*Chambre Criminelle*) since 2016. The *Chambre Criminelle* of the Court has constantly held that in accordance with the *ne bis in idem* rule:

the facts which proceed from a single action characterized by a single criminal intention cannot give rise, against the accused, to two convictions of a criminal nature, even concomitantly.³⁴

We will discuss successively the rules that apply when the accused has committed a single act that constitutes several offences and the rules that apply when the accused committed separate acts which constitute separate offences, but are related among themselves because they are aimed at accomplishing a single criminal intent.

³⁴ « Les faits qui procèdent de manière indissociable d'une action unique caractérisée par une seule intention coupable ne peuvent donner lieu, contre le prévenu, à deux déclarations de culpabilité de nature pénale, fussent-elles concomitantes ». Crim. 26 oct. 2016, n° 15-84.552, Dalloz actualité, 7 nov. 2016, obs. S. Fucini ; D. 2016. 2217 ; *ibid.* 2017. 2501, obs. G. Roujou de Boubée, T. Garé, C. Ginestet, M.-H. Gozzi, S. Mirabail et E. Tricoire ; AJ pénal 2017. 35, obs. J. Gallois ; RSC 2016. 778, obs. H. Matsopoulou ; JCP 2017. 16, note N. Catelan ; Dr. pénal 2017. Comm. 4, obs. P. Conte ; Gaz. Pal. 2017. 413, obs. S. Detraz).

3.1. Ideal concomitance of offences: Rules of characterisation that apply when the accused has committed a single act that can be qualified into multiple offences

3.1.1. The rules

When the accused has committed a single act that can be characterised into multiple offences three principles apply: **the principle of the finality of the incrimination, the principle of the most serious offence, and the principle of speciality of the incrimination.**

3.1.1.1. The principle of the finality of the incrimination

This principle allows the judicial authority to consider the **offence-goal** (*infraction-fin/ infraction but*) and turn down the **offence-consequence** (*infraction- consequence*) and the **offence-means** (*infraction-moyen*). The offence-goal is the targeted offence or the finality pursued by the offender.

For example, in case of theft, the offender cannot be prosecuted at the same time for theft³⁵ (**offence-goal**) and the concealment of objects obtained from an offence³⁶ (**offence-consequence**) because the concealment of stolen objects is the natural consequence of theft as one steals to appropriate the stolen things.

Likewise, for a person who assaulted his victim to death with the intention to kill her, we retain the offence of murder³⁷ which is the **offence-goal** and not battery or injuries³⁸ which constitutes an **offence-means**.

Another important point to note is that the principle of finality applies only when the offence-goal (*infraction-fin*) is more serious than the offence means (*infraction-moyen*) or the offence-consequence (*infraction-consequence*) or when they are of

³⁵ Art 165 and 166 PC.

³⁶ Art 247 PC.

³⁷ Art 107 PC.

³⁸ Art 121 PC.

equal gravity. This is logical because a crime cannot be swallowed by another of a less serious gravity. This point is further discussed below under the principle of the most serious offence.

3.1.1.2. The principle of the most serious offence (*le principe de la plus haute expression pénale*)

The principle of the most serious offence is a corollary of what was just stated above. It states that when the **offence-goal** is less serious than the **offence-means** or **offence-consequence**, it is the most serious offence that has to be retained.

For example, if A destroys a tomb (graveyard) and steals the materials used to build the tomb, two crimes are committed: degradation of a tomb³⁹ and theft.⁴⁰ It is the **offence-means** (degradation of a tomb) that shall be retained against the accused, because the degradation of the tomb is the most serious offence compared to theft (**offence-goal**). The former is punishable with a maximum imprisonment of five years while that later attracts only two years maximum.

If the degradation of the tomb (and the stealing of the coffin, for example) also resulted into exposing the body to rain or any way constitute a ``dehumanizing treatment`` of the body buried in the grave, a third offence would also be committed. In this case, it is the **offence-consequence** that would be retained because it carries more penalties than the **offence-goal** (theft) and the **offence-**

³⁹ Art 184 PC: "Any person who unlawfully destroys, brings down, breaks or damages tombs, memorial symbols or defiles tombs or graveyard is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000) or only one of these penalties."

⁴⁰ Art 166. Any person convicted of theft is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000), community service in a period of six (6) months or only one of these penalties.

means (degradation of a tomb). Inflicting dehumanizing treatment on a dead human body is punishable with a maximum imprisonment of seven years.⁴¹

3.1.1.3. The principle of speciality of the incrimination

According to this principle, in case of two qualifications, one being general and the other being special, the special one is to be considered. This is the application of the *specialia generalibus derogant* rule, which dictates that, general provisions must yield to special ones.

Thus, if a person dies after being poisoned, judicial authorities will retain **poisoning**⁴² and not **murder**⁴³ because poisoning is a particular and special mode of murder. This rule is in line with the provision of article 5 PC, which provides that:

When several laws punish the same offence, the specific law takes precedence over the general law, unless the law provides otherwise.

3.1.2. The exception

The French Court of Cassation has developed a rule that, when a single criminal act violates several “**distinct protected interests**”, judicial authorities must retain both charges. The *ne bis in idem* rule, the Court held, is not offended when the accused is charged with both charges when “**the second offense seeks to protect a specific interest expressly excluded from the scope of the first**”.⁴⁴

⁴¹ Art 130 PC: “ Any person who, maliciously hides, exhumes, mutilates or inflicts dehumanizing treatment on a human body in any way, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.”

⁴² Art 110 PC.

⁴³ Art 107 PC.

⁴⁴ Le principe *ne bis in idem* n'empêche pas de retenir deux qualifications « lorsque, fondées sur les mêmes faits, la seconde incrimination tend à la protection d'un intérêt spécifique expressément exclu du champ d'application de la première » (Crim. 16 avr. 2019, n° 18-84.073, Dalloz actualité, 16 mai 2019, obs. S. Fucini ; AJDA 2019. 906 ; D. 2019. 819 ; RSC 2019. 369, obs. E. Monteiro ; RTD com. 2019. 517, obs. B. Bouloc ; 17 avr. 2019, n° 18-83.025, Dalloz actualité, 16 mai 2019, obs. S. Fucini,

Murder and Poisoning, for instance, protect the same interest (life). Water and fish living in the river, however, are different interests. Thus, a person was charged in France for both pouring toxic substances into a river (1) and killing fish living in the river (2). If you can read French, try to understand the reasoning of the French Court in the brief article below:⁴⁵

Principe *ne bis in idem* et cumul de qualifications : régression de la protection ?















par [Sébastien Fucini](#)

Le principe *ne bis in idem*, dans sa dimension s'opposant au cumul de plusieurs qualifications pour les mêmes faits au sein d'une même poursuite, donne lieu à une jurisprudence particulièrement abondante de la chambre criminelle, qui semble ces derniers temps ouvrir les possibilités de cumul de qualifications. C'est ce qu'elle a fait par deux arrêts du 16 et 17 avril 2019. Dans le premier arrêt, la chambre criminelle a accepté le cumul de deux délits environnementaux pour le rejet, par une commune, de substances toxiques dans une rivière: il s'agit de la qualification de **déversement de substances nuisibles à la santé, à la faune et à la flore dans les eaux** et celle de **rejet en eau douce de substances nuisibles au poisson ou à sa valeur alimentaire**. Pour ce faire, elle a affirmé que « la seconde incrimination tend à la protection spécifique du poisson que l'article L. 216-6 exclut expressément de son propre champ d'application, de sorte que seul le cumul de ces deux chefs de poursuite permet d'appréhender l'action délictueuse dans toutes ses dimensions ». Dans le second arrêt, elle a approuvé le cumul du délit de **favoritisme** et de celui de **prise illégale d'intérêts**, en ce qu'ils sont fondés « sur des faits dissociables, la première infraction étant constituée par les irrégularités commises en connaissance de cause par le maire durant la procédure de marché tandis que la seconde est caractérisée par la seule décision prise par celui-ci de faire signer à l'attributaire du marché l'acte d'engagement des travaux et de publier l'avis d'attribution du marché ». Ces deux arrêts approuvent un cumul de qualifications, et écartent le principe *ne bis in idem*. Ces arrêts s'inscrivent cependant dans la jurisprudence dégagée depuis quelques années par la Cour de cassation.



Depuis 2016, la Cour réaffirme régulièrement, au visa du seul principe *ne bis in idem*, que « les faits qui procèdent de manière indissociable d'une action unique caractérisée par une seule intention coupable ne peuvent donner lieu, contre le prévenu, à deux

préc. ; AJDA 2019. 905 ; D. 2019. 890 ; AJCT 2019. 350, obs. Y. Mayaud ; JCP 2019, n° 510, obs. J.-M. Brigant).

⁴⁵ The full article can also be accessed at <https://www.dalloz-actualite.fr/flash/principe-ne-bis-idem-et-cumul-de-qualifications-regression-de-protection#.X07mBjVIDIV> [01/09/2020].

déclarations de culpabilité de nature pénale, fussent-elles concomitantes » (Crim. 26 oct. 2016, n° 15-84.552, Dalloz actualité, 7 nov. 2016, obs. S. Fucini ; D. 2016. 2217 ; *ibid.* 2017. 2501, obs. G. Roujou de Boubée, T. Garé, C. Ginestet, M.-H. Gozzi, S. Mirabail et E. Tricoire ; AJ pénal 2017. 35, obs. J. Gallois ; RSC 2016. 778, obs. H. Matsopoulou ; JCP 2017. 16, note N. Catelan ; Dr. pénal 2017. Comm. 4, obs. P. Conte ; Gaz. Pal. 2017. 413, obs. S. Detraz). Elle l'a affirmé dans ce premier arrêt s'agissant du cumul pour les mêmes faits du recel et du blanchiment, et elle l'a réaffirmé par la suite pour le cumul entre l'abus de biens sociaux et l'auto-blanchiment (Crim. 7 déc. 2016, n° 15-87.335, Dalloz actualité, 18 janv. 2017, obs. J. Gallois ; D. 2016. 2572 ; *ibid.* 2017. 2501, obs. G. Roujou de Boubée, T. Garé, C. Ginestet, M.-H. Gozzi, S. Mirabail et E. Tricoire ; RTD com. 2017. 205, obs. L. Saenko ), pour celui entre l'escroquerie et le faux ayant constitué la manœuvre frauduleuse de l'escroquerie (Crim. 25 oct. 2017, n° 16-84.133), pour le cumul de deux délits d'abus de confiance pour les mêmes faits (Crim. 17 janv. 2018, n° 17-80.418) ou pour celui des violences d'une part et des appels malveillants, menaces, dénonciation mensongère, faux et usage d'autre part (Crim. 24 janv. 2018, n° 16-83.045, Dalloz actualité, 15 févr. 2018, obs. S. Fucini ; D. 2018. 241 ; AJ pénal 2018. 196, obs. E. Clément ; RSC 2018. 412, obs. Y. Mayaud ). La position de la chambre criminelle depuis 2016 a consisté à remettre en cause la possibilité de cumuler plusieurs qualifications pour les mêmes faits lorsque les qualifications protégeaient des valeurs sociales distinctes. En revanche, lorsque les faits sont dissociables et que les différentes qualifications reposent sur des faits distincts, rien ne s'oppose au cumul. C'est ce qu'a pu dire la chambre criminelle à propos du cumul du faux et de l'escroquerie dans l'hypothèse particulière où le faux, en plus d'avoir été utilisé pour commettre l'escroquerie, **a également été utilisé à une autre occasion** (Crim. 16 janv. 2019, n° 18-810.566, Dalloz actualité, 29 janv. 2019, obs. D. Goetz ).

C'est dans un contexte en partie semblable que s'inscrit l'arrêt du 17 avril 2019. Un maire a été condamné à la fois pour favoritisme et pour prise illégale d'intérêts. Il avait commis des irrégularités dans l'attribution d'un marché afin de le faire attribuer à une société qui allait ensuite faire appel à son entreprise pour réaliser certains travaux. La chambre criminelle a considéré que les deux qualifications reposaient sur des faits dissociables : le favoritisme repose sur les irrégularités constatées dans l'attribution du marché et la prise illégale d'intérêts repose sur la décision d'attribuer le marché à la société en question. Le prévenu soutenait qu'il s'agissait d'une double condamnation pour les mêmes faits, en ce que les irrégularités n'avaient d'autre but que de commettre la prise illégale d'intérêts. Cela pourrait être comparé au faux qui est utilisé pour commettre une escroquerie. Or, les deux situations ne sont pas comparables. S'agissant de l'escroquerie, l'usage de faux est un des actes matériels de l'escroquerie, tandis que les irrégularités dans l'attribution du marché ne sont que les actes préparatoires de la prise illégale d'intérêts. Or, rien ne s'oppose au cumul d'une infraction commise pour préparer la commission d'une autre infraction avec cette dernière, les deux qualifications reposant alors sur des faits distincts.

Il en va différemment dans l'arrêt du 16 avril 2019. Il était reproché à une commune d'avoir pollué un cours d'eau en aval d'une station d'épuration. Pour ce **fait unique**, la chambre criminelle a approuvé le cumul du délit de déversement de substances nuisibles à la santé, à la faune et à la flore dans les eaux souterraines, superficielles ou de la mer et de celui de rejet en eau douce ou pisciculture de substances nuisibles au poisson ou à sa valeur alimentaire. Elle le justifie en affirmant que la première incrimination, prévue par l'article L. 216-6 du code de l'environnement, **exclut expressément** de son champ d'application la seconde incrimination. Cet article punit en effet « le fait de jeter, déverser ou laisser s'écouler dans les eaux superficielles, souterraines ou les eaux de la mer dans la limite des eaux territoriales, directement ou indirectement, une ou des substances quelconques dont l'action ou les réactions entraînent, même provisoirement, des effets nuisibles sur la santé ou des dommages à la flore ou à la faune, **à l'exception des dommages visés aux articles L. 218-73 et L. 432-2** [...] ». Ce dernier article est le siège de la seconde incrimination. Or, ce faisant, la chambre criminelle accepte le cumul de deux qualifications pour les mêmes faits qui procèdent bien d'une action unique et d'une même intention coupable. Elle l'a déjà fait, très récemment, en approuvant le cumul de **l'homicide involontaire** par violation d'une obligation de prudence ou de sécurité prévue par la loi ou le règlement et de **l'infraction sanctionnant la violation de cette obligation** (Crim. 9 avr. 2019, n° 17-86.267, Dalloz actualité, 7 mai 2019, obs. M. Recotillet ; D. 2019. 762 ). Cela était d'autant plus contestable dans cette dernière espèce que la chambre criminelle le justifiait en ce qu'il n'y **avait pas une action unique caractérisée par une seule intention coupable**: parler d'intention coupable pour l'homicide involontaire n'est pas satisfaisant, et cette qualification ne pouvait ici être retenue que parce qu'il y avait la violation d'une obligation de prudence ou de sécurité, qui était donc un fait constitutif de l'homicide involontaire.

Dans le présent arrêt, le cumul est justifié différemment. Il y a bien un seul fait et une action unique procédant d'une même intention coupable : un rejet de substances polluantes dans le cours d'eau. Mais le cumul est admis en ce que la seconde incrimination est **exclue par la première**. Mais l'interprétation de cette exclusion n'est pas certaine : soit le législateur a voulu favoriser le cumul des deux qualifications pour pouvoir appréhender spécifiquement, en cas de dommages sur le poisson, ce dernier préjudice, soit il a au contraire voulu affirmer qu'en cas d'atteinte au poisson, seule la dernière qualification doit s'appliquer. La valeur protégée par les deux incriminations est la même : il s'agit de protéger l'environnement. La première incrimination protège la faune et la flore aquatique tandis que la seconde protège spécifiquement le poisson. **Le** cumul devrait alors se résoudre au profit de la disposition spéciale et au détriment de la disposition générale (v. Rép. pén., v° Eau, par A. Beziz-Ayache, n° 10). En vertu de ce principe, seule la seconde incrimination aurait dû être retenue en ce qu'elle est plus spécifique. Quoi qu'il en soit, le cumul a ici été admis en ce que la qualification générale excluait de son champ d'application la qualification spéciale et en ce que le **résultat de l'infraction est allé au-delà de la seule destruction du poisson protégé par la qualification spéciale**. Cela ne devrait pas remettre en cause la jurisprudence que

construit la chambre criminelle sur le fondement du principe *ne bis in idem* depuis 2016.

3.2. Ideal concomitance of offences: Rules of characterisation that apply when the accused has committed separate acts which constitute separate offences, but are related among themselves because they are aimed at accomplishing a single criminal intent

When the accused has committed separate acts which constitute separate offences, but are related among themselves because they are aimed at accomplishing a single criminal intent, the same three rules described above apply. These are the **principle of the finality of the incrimination**, the **principle of the most serious offence**, and the **principle of speciality of the incrimination**.

Thus, one cannot charge a thief with the offence of **theft**⁴⁶ and the offence of **violation of domicile** which is an offence-means. Likewise, in case of theft after the destruction⁴⁷ of a window, judicial authorities should retain **theft** and abandon the offence of **damage to property** because it is an offence-means.

In accordance with the same rules, the offence-consequence should also be preferred over the offence-means and the offence-goal, if it is the offence-consequence that carries higher penalties. This is also dictated by the provision of article 62(2) of the PC which states that the judge shall impose the maximum penalty provided for the most serious offence. If investigators and prosecutors were allowed to characterise otherwise, the will of the legislator would be defeated.

⁴⁶ Art 165 & 166 PC.

⁴⁷ Art 182 PC.

4. Characterising offences and multiple trials

Rules of characterisation of offences are intimately linked to the *ne bis in idem* rule. Although this rule (*ne bis in idem*) is found almost in all legal systems of modern States, however, different jurisdictions have taken different approaches to its relationship with the rules for characterising offences.

In South Africa, for example (and this line of thinking would probably be preferred by Rwandan courts), the *ne bis in idem* rule applies only when a second trial is based on the “**same offence**”. A person cannot be accused of murder in respect of the same victim two times. Once he/she is acquitted in a final trial, he/she can’t be prosecuted a second time in respect of the “**same offence**”. He can be tried in a second trial, however, for a different offence arising from the “**same facts**” – for example for negligent homicide or intentional assault resulting into death.

Conversely, French courts have held that prosecutors and judges have an obligation to “**exhaust**” all possible characterisations in one trial and, if the accused is acquitted, to let him/her alone. In accordance with this rule, a person cannot be tried for a second time even for a **different offence**, if the second trial is based on the “**same facts**” as the first. Thus, if a person was tried for murder, and the charge of negligent homicide was not examined as an alternative charge, he/she can’t be tried in a second trial for negligent homicide if he/she was acquitted of murder in the first trial, since the second trial would be based on the **same facts** as the first.

Which approach do you think accords more with justice, taking into account not only the interests of the accused (due process) but also society’s need to effectively deal with crime (crime control)? Which approach should Rwanda emulate?

WATCH VIDEOS: AMERICAL AND ENGLISH CRIMINAL LAW



▪ FELONY MURDER DOCTRINE

31. What is the felony murder rule?

<https://www.youtube.com/watch?v=e1-n32XYV3k&t=5s>

32 Criminal Video Presentation 9 - Felony Murder

<https://www.youtube.com/watch?v=IfHKH8xhbI>

33 Felony Murder Rule explained- Criminal Law

<https://www.youtube.com/watch?v=bPxEDaLBS6o>



▪ MENS REA

34 Mens Rea: The Criminal State of Mind

<https://www.youtube.com/watch?v=MzFaeOcAgX4>

35 mens rea

<https://www.youtube.com/watch?v=cLJP4jqPhPI>

36 Mens Rea for Murder | Criminal Law

<https://www.youtube.com/watch?v=y22vQPPZS0k>

▪ WILLFUL BLINDNESS

37 Mens Rea 4 Wilful Blindness

<https://www.youtube.com/watch?v=j1Q7eJJ-2Ko>

38. The Accidental Felon: Challenging the Expansion of the Willful Blindness Doctrine

<https://www.youtube.com/watch?v=5zPJo3aBH78>

- FIRST DEGREE, SECOND DEGREE MURDER AND MANSLAUGHTER

39. Explained: 1st degree murder, 2nd degree murder, and manslaughter?

<https://www.youtube.com/watch?v=NuyhxlKdp54>

40. Jodi Arias Found Guilty of First-Degree Murder

<https://www.youtube.com/watch?v=8UxNwN8Ahj8>

- STRICT LIABILITY

41. What is a strict liability crime?

<https://www.youtube.com/watch?v=zfh9pr2seBs>

42. Criminal Law Strict Liability

https://www.youtube.com/watch?v=-r4L_bOkLNq

- DEFENCES IN CRIMINAL LAW

43. Criminal Defence - Criminal Law

https://www.youtube.com/watch?v=V5066_GD7Gc

44. Duress - Criminal Law

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEFA6&index=19>

45. Duress and necessity summary

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

46. **Necessity**

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

47. **Defence of Necessity**

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

48. **Criminal Law Defences - Necessity**

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

49. **The Lifeboat Case (Lecture 1 & 2)**

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

50. **Intoxication defence summary**

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEF EA6&index=19>

▪ **ACCOMPLICE LIABILITY**

51. **Criminal Law Video Presentation 10- Accomplice Liability**

https://www.youtube.com/watch?v=cOA88gETg_Q

52. **Accomplice Liability**

<https://www.youtube.com/watch?v=KnfjqLICAbE>

UNIT II

COMMON CRIMES: Crimes found in Law n°68/2018 of 30/08/2018 determining offences and penalties in general (*Official Gazette n° Special of 27/09/2018*)

REFLECTIVE JOURNAL N° 2:

This UNIT is divided into around 50 lessons. Each lesson covers the crimes that are related. For example, those that protect similar interests. These lessons cover all the crimes found in the Law that will be referred to as the Penal Code (although this name has not been retained in the Law itself). It is the main law that defines crimes and penalties in Rwanda.

In your second Reflective Journal, read and summarise the content of these lessons.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty. Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) that you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

LESSON 3

THE STRUCTURE AND CLASSIFICATION OF CRIMES IN THE "SPECIAL" PART OF THE "PENAL CODE"

Before we start the study of each specific crime contained in the Penal Code, it is important to first have a look at its structure and organisation. This is important to facilitate your understanding of the crimes.

The Penal Code is divided into two parts. Part One (entitled "general provisions") deals with general principles of criminal law applicable to all crimes and the sentences in general (from article 1-90). **Part two** ("offences and their penalties") defines each crime and provides specific sentences that judges may impose for each crime.

In Part **Two** of the Penal Code, crimes are organised as follows:

- 1. TITLE ONE: OFFENCES AGAINST PERSONS [FROM ARTICLE 91]**
- 2. TITLE II: OFFENCES AGAINST PROPERTY**
- 3. TITLE III: OFFENCES AGAINST THE STATE**
- 4. TITLE IV: MILITARY OFFENCES**

For purposes of simplicity and clarity, the above classification will not be followed. Instead, this study guide will be structured into many **UNITS** which in turn will be comprised of many **LESSONS**. Crimes which are not classified in the same chapters in the penal code will sometimes be put together in this syllabus to form a lesson.

LESSON 4

GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES

This lesson is about offences of genocide, crimes against humanity and war crimes. In your Reflective journal, highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. The crime of genocide

1.1. Constitutive elements

1.1.1. Mental element

For the crime of genocide to be committed, the prohibited acts must be committed with the “**intent to destroy, in whole or in part**” one of the protected groups.⁴⁸ It is this specific intention (***dolus specialis***) that distinguishes genocide from other crimes, in particular crimes against humanity.

1.1.1.1. The material element

In the material element of genocide, we find the groups that are protected as well as the acts that are prohibited.

1.1.1.1.1. The protected groups

Genocide can only be (legally) committed in respect of one of the following groups:⁴⁹

(1) A national group;

(2) An ethnic group;⁵⁰

⁴⁸ Article 91 PC.

⁴⁹ Article 91 PC.

(3) A racial group; or

(4) A religious group.

1.1.1.1.1. The prohibited acts

The conducts that may amount to genocide are the following: ⁵¹

- (1) Killing members (hence more than one member) of a protected group;
- (2) Causing serious bodily or mental harm to members of a protected group.⁵²
- (3) deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or in part;⁵³
- (4) taking measures intended to prevent births within the group;⁵⁴

⁵⁰ In *Akayesu*, *Ruzindana*, and *Rutaganda*, the ICTR held that two different tests can be applied to determine the notion of “group”, in particular an “ethnic” one:

(a) The objective test: common language and culture;

(b) The subjective test:

- a group which is perceived by the perpetrator of genocide as belonging to a group slated for destruction; or
- A group which distinguishes itself as such (self-identification).

⁵¹ Article 91 PC.

⁵² In *Krstic*, the ICTY made the following remark: “In line with the *Akayesu* judgement [para 502], the Trial Chamber states that serious harm need not cause permanent and irremediable harm [...], it must be harm that results in a grave and long-term disadvantage to a person’s ability to live a normal and constructive life. In subscribing to the above-case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury” [para 513].

⁵³ In *Akayesu*, the TC held that this expression includes the “deprivation of resources indispensable for survival, such as food or medical services” [para 15]. In *Brdanin*, the ICTY added that: “included is the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion” [para 691].

⁵⁴ In *Akayesu*, it was held that these measures could consist of “sexual mutilation, the practice of sterilisation, forced birth control and the separation of the sexes and prohibition of marriages [para 507]. In addition these measures may be not only physical but also mental [para 508]. They may also include

- (5) forcibly transferring children of the group to another group.⁵⁵

1.1.1.2. Other acts punished as the crime of genocide

Without prejudice to other provisions of the Penal Code in relation to attempt, conspiracy and complicity, the following acts are punishable by the penalties stipulated for the crime of genocide:⁵⁶

- 1° conspiracy to commit genocide;
- 2° planning of the genocide;
- 3° direct or indirect incitement to commit genocide;
- 4° attempt to commit genocide;
- 5° complicity in genocide.

1.1.1.3. Punishment of the crime of genocide

The crime of genocide is punishable with life imprisonment that cannot be mitigated by any circumstances.⁵⁷

Companies, cooperatives, private entities with legal personality which, by any means, support the crime of genocide are liable to the penalty of dissolution or that of being subject to revocation of their authorization to carry out their activities in Rwanda.⁵⁸

rape as an act directed to prevent births when the women raped refuses subsequently to procreate [para 508]. See also Rutaganda (T), para 53 and Musema (T), para 158].

⁵⁵ Forcibly transferring children of a group to another group, if carried out over a long period of time, will inevitably result in the physical destruction of the group.

⁵⁶ Art 93 PC.

⁵⁷ Art 92 PC.

⁵⁸ Art 104 PC.

1.2. Crimes against humanity [art 94-95)

1.2.1. Constitutive elements

1.2.1.1. Mental element

The mental element of this crime is “intention”. This consists in:

1. The intention proper to the underlying offence (murder, rape, torture, deportation...) and
2. Awareness of the existence of a widespread or systematic practice.

Both two elements must cumulatively exist when the *actus reus* is committed.

1.2.1.2. Material element

The material element of crimes against humanity consists in the contextual element (1), the victims of the offence (2), and the prohibited acts (3).

3.2.1.2.1. The contextual element (the contextual “threshold”)

Crimes against humanity are not isolated or sporadic events. They must be committed as part of a *widespread*⁵⁹ **or** *systematic*⁶⁰ *attack (the prohibited acts: practice of atrocities)* directed against a *civilian population*.

3.2.1.2.2. The victims of the offence

For a crime against humanity to be committed, the prohibited acts must be perpetrated against a “*civilian population*”.

⁵⁹ “Widespread” attack means that a single crime be an instance of a repetition of similar crimes or be part of a massive commission of such crimes.

⁶⁰ For a crime to qualify as a crime against humanity, if the attack is not widespread, it must be committed as a manifestation of a policy or a plan of violence worked out, or inspired by, State authorities or by the leading officials of a *de facto* State-like organization, or of an organized political group.

The word “population” indicates that a larger body of victims is visualized, and that single or isolated acts against individuals fall outside the scope of the concept. “Population” must also be constituted of people with a common characteristic, such as nationality, political affiliation, ethnicity, religion or social status (such as sexual orientation).

3.2.1.2.3. The prohibited acts

The prohibited acts are:

1° murder;

2° extermination;⁶¹

3° enslavement;

4° deportation or forcible transfer of population;⁶²

5° imprisonment or other severe deprivation of physical liberty against a person in violation of law;

6° torture;

7° rape, sexual slavery, forced prostitution, forced sterilization, or any other form of sexual violence of comparable gravity;

8° persecution against a person on political, racial, national, ethnic, cultural, religious grounds or any form of discrimination;

9° enforced disappearance of persons;

⁶¹ Extermination means mass or large-scale killing (which does not qualify as genocide-the motivation is for example to spread terror or the targeted group is not protected by the Genocide Convention, such as a political group);

⁶² Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within a State. ICTY TC, *Krstic* case, para 521.

10° the crime of apartheid;⁶³

11° other inhuman acts of a similar character intentionally causing great suffering, or serious injury to mental or physical health.⁶⁴

3.2.1.3. Punishment of crimes against humanity [art 95 PC]

Crimes against humanity provided under items 1°, 2°, 3°, 6°, 7°, 9° and 11° of article 95 of the PC are punishable with life imprisonment.

Crimes provided for under items 4°, 5°, 8° and 10° are punishable with imprisonment of twenty (20) years to twenty five (25) years.

Companies, cooperatives, private entities with legal personality which, by any means, support crime against humanity are liable to the penalty of dissolution or that of being subject to revocation of their authorization to carry out their activities in Rwanda.⁶⁵

3.2.1.4. Aggravating circumstance

When crimes provided for under items 4°, 5°, 8° and 10°, are accompanied by **inhuman and degrading treatment**, the offender shall be liable to life imprisonment.⁶⁶

⁶³ Art 7(2)(j) Rome Statute defines apartheid as follows: “inhumane acts [...], committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”.

⁶⁴ This “residual clause” was deemed necessary because: “[h]owever much care were taken in establishing all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes”. ICTY TC, *Blaškić*, para. 237. In the ICTR and ICTY jurisprudence, the “other acts” that have been characterized as inhumane acts include: mutilation, severe bodily harm, beatings, serious physical and mental injury, inhumane or degrading treatment falling short of the definition of torture, imposing inhumane conditions in concentration camps, forced nudity and forced marriage. [one can also imagine throwing stones on the roofs of houses of members of a targeted group].

⁶⁵ Art 104 PC.

⁶⁶ Art 95(3) PC.

3.3. War crimes [art 96-103]

War crimes will be studied in the course of International Humanitarian Law which is taught in the third year of the LLB program. The distinguishing element of war crimes is that they are committed during “**armed conflict**”.

Examples of war crimes include:

1. Killing prisoners of war (POW);
2. Use of human shields;
3. Perfidy (such as using flags of international humanitarian organisations, or prohibited tricks to injure or kill the enemy).

It is important to note that, unlike crimes against humanity, war crimes have no requirement of widespread or systematic commission. **A single isolated act can constitute a war crime.**

3.4. Superior (command) responsibility for crimes of genocide, crimes against humanity and war crimes [art 105 PC]

3.4.1. The notion

Superiors, military or civil, can be held responsible for the crimes (of genocide, crimes against humanity or war crimes) of persons under their charge if:

1. they knew (intention), or had reason to know (conscious or unconscious negligence),
2. that their subordinates were committing crimes and failed to take all feasible steps to prevent the violations, or to punish the offender and inform relevant authorities (material element).

3.5. *Punishment:* It seems that a provision on the sentence applicable to the crime of command/superior responsibility is missing. This is rather paradoxical.

3.6. Irrelevance of the defence of “superior orders” for crimes of genocide, crimes against humanity and war crimes [art 105 (2) PC]

The fact that the accused committed a crime in the execution of an order of a government or a superior does not relieve the accused of criminal liability for genocide, crimes against humanity and war crimes. The law assumes that orders to commit these crimes are always “manifestly unlawful”. This is, however, only true for genocide and crimes against humanity. Orders to commit war crimes may not be manifestly unlawful. This is also the approach taken in the Statute of the International Criminal Court (ICC).

However, the accused can still rely on the defence of mistake or duress arising from the orders of his superior(s). You will understand this when studying International Criminal Law in your last year of the LLB program.

WATCH VIDEOS

V
53. International Law In Action II - 1.2 An Introduction to International Crimes

<https://www.youtube.com/watch?v=xQfNchKlII8>

54. International Law In Action II - 1.3 Core Crimes Genocide

<https://www.youtube.com/watch?v=WbpP8BYBsis&t=48s>

55. Genocide | International Criminal Law

https://www.youtube.com/watch?v=_9IgKYKj2ZM

VI
56. International Law In Action II - 1.4 Core Crimes Crimes Against Humanity

<https://www.youtube.com/watch?v=5NM2W49gYFU&t=3s>

57. Crimes Against Humanity | International Criminal Law

<https://www.youtube.com/watch?v=6GK-iozvO7s>

58. International Law In Action II - 1.5 Core Crimes War Crimes

https://www.youtube.com/watch?v=8Ffmc_xCpw

59. What are War Crimes? | Rome Statute and International Law

<https://www.youtube.com/watch?v=MhXhh4gGH0Y>

VI
60. War Crimes

<https://www.youtube.com/watch?v=3PjMNdqgwv70>

61. International Law In Action II - 1.8 Illustrating the Lubanga Case

<https://www.youtube.com/watch?v=2m91hribW8M&t=2s>

VI

62. DR Congo warlord Thomas Lubanga released from prison

<https://www.youtube.com/watch?v=G2Uxzb01yBI>

63. ICC finds Congo warlord Bosco Ntaganda guilty of war crimes | DW News

<https://www.youtube.com/watch?v=fJGsHB83pl0>

64. Unique modes of Liability

<https://www.youtube.com/watch?v=9VyAGt95DkE>

65. Individual Responsibility and International Criminal Law

VII

<https://www.youtube.com/watch?v=pLWTa6eWcZg&t=499s>

LESSON 5

HOMICIDE: MURDER

Homicide, that is the killing of another person (*homo - caedere*), can be perpetrated intentionally or result from one's negligence. When it is perpetrated intentionally, it is called **murder**. When it is caused by one's negligence, it is called "**negligent homicide**" (or, albeit incorrectly, "involuntary" homicide).⁶⁷

In your Reflective Journal, highlight the constitutive elements of murder (intentional homicide), its various forms and their punishment, and the aggravating circumstances attached to it by the law.

1. Constitutive elements of murder

1.1. *Mental element*

The mental element of this crime is "intention". The author (the person who committed the crime) must have "intended" the death of the killed person (***animus necandi***).⁶⁸

1.2. *Material element*

The material element of murder consists in causing the death of another person.⁶⁹ A person capable of being murdered is one who is already born; not a child who is still in its mother's womb.

2. Punishment of murder

Murder is punishable with life imprisonment.⁷⁰

⁶⁷ Negligent homicide is referred to by the Penal Code as "manslaughter".

⁶⁸ Art 107 PC.

⁶⁹ Art 107 PC.

3. Special forms of murder

The following are special forms of murder: **Parricide, spousal homicide** and **infanticide**. It is noteworthy, however, that the penal code does not indicate any manner whatsoever, in which way these special forms of murder aggravate the liability of the author. Both simple murder and these “special” forms of murder are punishable with life imprisonment.

3.1.1. *Parricide*

Parricide is the killing by a person of any of his/her parents, whether or not such parents are biological or by way of law. Like murder, parricide is punishable by life imprisonment.

3.1.2. *Spousal homicide*

Spousal homicide is the killing by a person of his/her spouse. Like simple murder, spousal homicide is punishable with life imprisonment.

3.1.3. *Infanticide*

Infanticide is the killing by a **woman** of her own biological child (whose age is not above twelve (12) months),⁷¹ because of “postpartum depression or by effect of lactation.” Infanticide is punishable with a term of imprisonment of not less than five **(5) years but not exceeding seven (7) years.**⁷²

⁷⁰ Art 107 PC.

⁷¹ Art 108 PC.

⁷² Art 108 PC.

LESSON 6

HOMICIDE: NEGLIGENT HOMICIDE

As said in the previous unit about murder, homicide - which is the killing of another person (*homo-caedere*) - can be perpetrated intentionally or result from negligence. When it is perpetrated intentionally, it is called **murder**. When it is caused by negligence, it is called “**negligent homicide**” (or, albeit incorrectly, “involuntary” homicide).⁷³

In your Reflective Journal, highlight the constitutive elements of the offence of negligent homicide, its punishment, and the aggravating circumstances attached to it by the law.

1. Constitutive elements of negligent homicide

1.1. Mental element

The mental element of this crime is “negligence”. Please pay attention: this is not a crime that results only from an “accident”, as popularly said. The author must have committed some sort of, to use the Penal Code’s words, “**clumsiness, carelessness, inattention, negligence, failure to observe the rules or any other lack of precaution and foresight**”.⁷⁴

1.2. Material element

The material element of negligent homicide consists in causing the death of another person.⁷⁵ As you will notice, the material element of this crime is the same as that of the crime of murder. The difference between the two crimes lies in their mental

⁷³ As noted earlier, this latter form of homicide is referred to by the Penal Code as “manslaughter”.

⁷⁴ Art 111 PC.

⁷⁵ Art 111 PC.

elements, one being committed with intention to cause death, the other being committed out of negligence.

2. Punishment of manslaughter

The crime of involuntary manslaughter is punishable with a term of imprisonment of six (6) months to two (2) years and a fine of five hundred thousand (500,000) to two million (2,000,000) Rwandan francs **or one of these penalties.**⁷⁶

⁷⁶ Art 111(2) PC.

LESSON 7

HOMICIDE: ASSAULT OR BATTERY RESULTING INTO DEATH

Murder and negligent homicide are often confused with “**assault or battery resulting into death**”. This lesson examines the constitutive elements of the latter, how it is different from murder and negligent homicide, as well as its punishment. It must be noted from the outset that this is not truly speaking a crime on its own; it is rather a form of aggravated “assault or battery”, which is aggravated by the fact that the victim of the assault or battery has, unexpectedly, died as a result of the assault or injuries. It is only for the sake of academic clarity that a specific chapter is devoted to this offence.

In your Reflective Journal, highlight the constitutive elements of this offence, its punishment, and the aggravating circumstances attached to it by the law.

1. **Constitutive elements of assault or battery resulting into death**

1.1. The material element of assault or battery resulting into death

Assault or battery resulting into death consists in assaulting or battering a person which results in his death. The death must therefore be a direct consequence of the assault or battery. Causation is an important element here.

1.2. The mental element of assault or battery resulting into death

The mental element of this crime consists in the intentionally battering or assaulting a person without intention to cause death. The death must not have been intended. An example would be the parent who beats up his child with the intention of disciplining him but the punishment results in the death of the child.

2. Penalties for the offence of assault or battery resulting into death

Assault or battery resulting into death is punished with imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years and a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).⁷⁷

⁷⁷ Art 121(5) PC.

LESSON 8

POISONING AND RELATED CRIMES

In this lesson attention is devoted to the offence of poisoning and related crimes. In your Reflective Journal, highlight the constitutive elements of these offences, their punishment, and the aggravating circumstances attached to them by the law.

1. Poisoning

1.1. Constitutive elements

1.1.1. Mental element

The mental element of this crime is “intention”. The accused must have “**intended to kill**” by administering poison.

1.1.2. Material element

This crime is committed by a person who “*administers a substance to another person which can cause death more or less promptly **regardless** of the substance used or its mode of administration and **consequences***”.⁷⁸

You should note from the definition of poisoning that this crime is a “formal” or “formally defined” crime which is committed once the perpetrator has “administered” the poison, irrespective of the **consequences** of that act. Whether the victim has succumbed to the poison or not, the crime has already been accomplished. Even when the victim has been medically treated, the crime has already been committed. The perpetrator is not guilty of **attempted** poisoning, he is guilty of poisoning because the

⁷⁸ Art 110 (1) PC.

crime consists in “administering” poison. Attempted poisoning would occur only when the victim did not take the poison.

1.2. *Punishment of the crime*

The crime of poisoning is punishable with life imprisonment.⁷⁹

2. Administering noxious substances (*administration de substances nuisibles*) (art 115 PC)

2.1. *Constitutive elements*

2.1.1. Mental element

The mental element of this crime is “intention”. Although the author does not intend to cause death, he must have administered the substances to the victim “knowing” that they are “noxious”.

Noxious substances are substances which can seriously impair the health, **whether they can cause death or not**. However, the author must not have intended to cause death.

2.1.2. Material element

This crime is committed by a person who “causes illness or incapacity to work to another person by [intentionally] administering a substance **which may cause death or not** but can seriously impair the health, **without intention to cause death**.”

2.2. *Punishment of the crime*

This crime is punishable with a term of imprisonment of two (2) years to three (3) years and a fine of three hundred thousand (300,000) to five hundred thousand (500,000) Rwandan francs.

⁷⁹ Art 110 (2) PC

2.3. *Aggravating circumstance (art 115(3) PC)*

The penalty will be increased to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years and a fine of more than five hundred thousand (500,000 FRW) Rwandan francs and not more than one million Rwandan francs (FRW 1,000,000), if the administered substance causes:

- (1) an incurable illness,
- (2) permanent incapacity to work, or
- (3) full loss of function of an organ.

LESSON 9

TRANSMISSION OF AN ILLNESS TO ANOTHER PERSON

This lesson examines the offence of wilfully transmitting an illness to another person. We will examine the constitutive elements of this offence as well as its punishment.

1. Constitutive elements

It is a crime to “wilfully” (intentionally) transmit to another person an illness **likely to cause disability**. The term “wilfully” here does not necessarily imply that the purpose of the contact with the victim was to transmit to her the illness. It would suffice that the perpetrator knows that by entering into contact with the victim, the illness would be transmitted. Indirect intention and *dolus eventualis* would suffice.

Therefore, for this crime to be committed, the author must have been aware that he himself suffered from that disease and that his contact with the other person would transmit the disease to the other person. The motive is irrelevant.

2. Penalties for wilful transmission of an illness to another person

This crime is punishable with a term of at least two (2) years and not more than three (3) years and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000).⁸⁰

In case the illness transmitted is **incurable**, the penalty is imprisonment of at least twenty (20) years and not more than twenty-five (25) years and a fine of more than

⁸⁰ Art 117(1) PC.

five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).⁸¹

⁸¹ Art 117(1) PC.

LESSON 10

EUTHANASIA

This lesson examines the crime of euthanasia provided for in article 109 PC. This article provides that any person who kills another at the latter's serious and insistent request and for an honourable reason especially on compassionate grounds shall be liable to a term of imprisonment of three (3) years to five (5) years.⁸²

From the above, these conditions are required for murder to be characterised as euthanasia:

- 1) The victim must have made insistent request to be killed
- 2) The accused must have acted for an honourable motive, such as releasing a seriously ill person from unbearable pain.

⁸² Article 109 PC.

LESSON 11

CRIMES RELATED TO SUICIDE

Suicide is not a crime.⁸³ In this lesson attention is devoted to offences of inciting, assisting and causing a person to commit suicide due to harassment. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. **Inciting and assisting a person to commit suicide [art 116(1) PC]**

1.1. Constitutive elements

1.1.1. Mental element

The mental element of this crime is “intention”. The author must have intended to incite a person or assist her to commit suicide.

1.1.2. Material element

This crime is committed by a person who “incites”⁸⁴ or “assists” another to commit suicide.

1.2. Punishment of the crime

These crimes are punishable with a term of imprisonment for three (3) years to five (5) years.

⁸³ Art 116 PC.

⁸⁴ Inducing is translated in Kinyarwanda as “gushishikariza”.

2. Causing a person to commit suicide because of harassment [art 116 PC]

2.1. Constitutive elements

2.1.1. Mental element

The mental element of this crime is “intention”. Although not clearly mentioned, the author of the persecution must have intended to push a person into committing suicide. This is in keeping with the general rule that, unless specifically provided, all crimes are committed with intention, and that intention must relate to all the elements of the crime charged. Thus, the perpetrator must intend both to harass another person and to cause him to commit suicide.

2.1.2. Material element

This crime is committed by a person who causes another person to commit suicide by inflicting persecution on him/her.

2.2. Punishment of the crime

These crimes are punishable with a term of imprisonment for three (3) years to five (5) years.⁸⁵

⁸⁵ Art 116 PC.

LESSON 12

ASSAULT OR BATTERY

In this lesson attention is devoted to offences of battery, bodily injuries and related crimes. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. **Intentional assault or battery [art 121]**

1.1. Constitutive elements

1.1.1. Mental element

The mental element of this crime is “intention”.

1.1.2. Material element

This crime is committed by a person who “[wilfully], injures, beats or commits any **serious violence** against another person”.

The term “serious” seems to exclude “minor” violence. This is problematic however, because minor violence which was a crime under the abolished 2012 Penal Code is not catered for under any other provision of the 2018 Law. It would thus appear that minor violence may go unpunished, unless both the prosecutor and judge accept to characterize the violence as “serious”.

1.2. Punishment of the crime

This crime is punishable with a term of imprisonment of not less than three (3) years and not more than five (5) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).

1.3. *Aggravating circumstance*

- (a) Battery or assault is committed against a child, a parent, a spouse or a person unable to protect himself/herself because of his/her physical or mental state: imprisonment for a term of more than five (5) years and not more than eight (8) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).⁸⁶
- (b) Assault or battery has caused illness or non-permanent incapacity to work: imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).⁸⁷
- (c) Assault or battery has resulted in an incurable illness, permanent disability to work, full loss of function of an organ or serious mutilation: imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).⁸⁸
- (d) Assault or battery is committed with premeditation or ambush: imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).⁸⁹
- (e) Assault or battery has caused death: imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years and a fine of not less

⁸⁶ Art 121(2) PC.

⁸⁷ Art 121(3) PC.

⁸⁸ Art 121(3) PC.

⁸⁹ Art 121(4) PC.

than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).⁹⁰

2. Unintentional bodily injuries (Kubabaza umubiri bidaturutse ku bushake): Art 118 and 120

2.1. *Constitutive elements*

2.1.1. Mental element

The mental element of this crime is “negligence”. The Penal Code uses the following words to describe negligence: “clumsiness, carelessness, inattention, negligence, failure to observe the rules or any other lack of precaution and foresight.

2.1.2. Material element

This crime is committed by a person who “[through clumsiness, carelessness, inattention, negligence, failure to observe the rules or any other lack of precaution and foresight], causes unintentional bodily injuries to another person”.

2.2. *Punishment of the crime*

There appears to be a mistake in the Penal Code, whereby this crime is punishable under both article 118 (three (3) months to six (6) months and a fine of at least FRW 500,000 and not more than FRW 1,000,000 or only one of these penalties) and article 120(2) (imprisonment of eight (8) days to two (2) months and a fine of not less than FRW 100,000 and not more than FRW 200,000).

Under article 120(3), if the offender caused injuries to several persons, he/she is liable to imprisonment for a term of more than two (2) months and not less than three (3) months and a fine of not less than FRW 500,000 and not more than FRW 1,000,000, or only one of these penalties.

⁹⁰ Art 121(5) PC.

In accordance with the general principle of law that conflicts of laws must be resolved in favour of the weaker party-in this case the accused-it seems that the penalties provided for in article 120 should be preferred to those provided for in article 118.

The provision of article 120 also has the merit of catering for the situation of unintentional injuries caused to many victims. Article 118 is therefore totally not applicable to this situation.

3. Throwing at another person anything likely to inconvenience or dirty him/her [art 119]

3.1. Constitutive elements

3.1. Mental element

The mental element of this crime is “**intention**”. The Penal Code requires that the crime be committed “in bad faith”.

3.2. Material element

This crime is committed by a person who “[in bad faith], throws anything likely to inconvenience or dirty at another person”.

3.3. Punishment of the crime

This crime is punishable with a fine of not less than two hundred thousand Rwandan francs (FRW 200,000) and not more than three hundred thousand Rwandan francs (FRW 300,000).⁹¹

⁹¹ Art 119(2) PC.

LESSON 13

TORTURE AND SEXUAL TORTURE

In this lesson attention is devoted to the offences of torture and sexual torture. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Torture

1.1. Constitutive elements of torture

Under article 112(1) PC, torture means:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind.

Torture is thus a crime of “special” (or double) intention. In addition to the primary intention to cause pain, the torturer must have another intention of, for example forcing his victim to make a confession or provide information.

1.2. Penalties for torture: Article 113(1) PC

Any person convicted of torture is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty- five (25) years.

1.3. Aggravating circumstances

Life imprisonment will be pronounced if torture:⁹²

⁹² Art 113(2) PC.

(1) results in an incurable illness, permanent incapacity to work, full loss of function of an organ or mutilation of any key body organ or death; or

(2) is committed by a public official in his/her duties.

2. Sexual torture [Article 114 PC]

Sexual torture is punishable with life imprisonment. To be characterised as sexual torture, the crime must first meet the requirements for the crime of torture, and be directed against the sexual organs of the victim.

LESSON 14

ABORTION AND RELATED CRIMES

In this lesson attention is devoted to the offence of abortion and related crimes. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Self- induced abortion [Article 123 PC]:

Any person who self-induces an abortion is liable to imprisonment for a term of not less than one (1) year and not more than three (3) years and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000).

2. Performing an abortion on a woman with or without her consent

Any person who performs an abortion on a willing or unwilling woman is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years.⁹³

3. Negligent causing a woman to abort

Any person who, because of negligence or carelessness, causes another person to abort is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand Rwandan francs (RWF 300,000) and not more than five hundred thousand Rwandan francs (RWF 500,000) or only one of these penalties.⁹⁴

⁹³ Art 124(1)&(2) PC.

⁹⁴ Art 124(3) PC.

Aggravating circumstances for the crime of performing abortion on a woman or negligently causing it

If abortion causes disability certified by a relevant medical doctor, the offender is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years.⁹⁵

If abortion causes death, irrespective of whether the person having an abortion has given her consent, the offender is liable to life imprisonment.⁹⁶

QUESTION

Is there any punishment for a woman on whom abortion is performed by another person?

Yes, in application of article 2(5°) (a) PC, the woman may be punished as an accomplice of the offence, if she "by means of remuneration, promise, threat, abuse of authority or power has caused an offence or given instructions for the commission thereof".

Exemption from criminal liability for abortion [art 125]

There is no criminal liability for a woman who commits abortion and a medical doctor who helps a woman to abort if one of the following conditions is met: ⁹⁷

1° the pregnant person is a child;

2° the person having abortion had become pregnant as a result of rape;

⁹⁵ Art 124(4) PC.

⁹⁶ Art 124(5) PC.

⁹⁷ An application to abort a child is made by persons with parental authority over her after agreeing upon it. If persons with parental authority over a child disagree among themselves or if they disagree with the child, the wish of the child prevails. The request is filed with a recognised medical doctor, accompanied with the child's birth certificate. Art 126 PC.

3° the person having abortion had become pregnant after being subjected to a forced marriage;

4° the person having abortion had become pregnant as a result of incest up to the second degree;

5° the pregnancy puts at risk the health of the pregnant person or of the foetus.

The exemption from criminal liability under article 125 is permitted only if abortion is performed by a recognized medical doctor, under the conditions determined by an Order of the Minister in charge of health.⁹⁸

If, after an abortion, it is evident that the person on whom abortion was performed applied for it with no legal basis, such a person is punished as a person who performed a self-induced abortion.⁹⁹

4. Advertising means of abortion [art 127PC]

Any person who, by any means, advertises drugs, materials and any other substances believed to induce abortion shall be liable to a term of imprisonment of not less than one (1) year and not more than two (2) years and a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000) or only one of these penalties.

LESSON 15

⁹⁸ Art 125(2) & 3 PC.

⁹⁹ Art 125(4) PC.

THREATS TO HARM A PERSON AND BLACKMAIL

In this lesson attention is devoted to offences of threats to harm a person. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Threats to harm a person

Any person who uses threats with intent to harm another person, whether such threats are verbal, gestures, images or in writing, is liable to a term of imprisonment of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000).¹⁰⁰

If such threats are accompanied by imposing conditions on the victim, or by depriving him/her of property, the penalty is imprisonment for a term of more than two (2) years and not more than three (3) years and a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000).¹⁰¹

2. Blackmail

Blackmail is an act of demanding a signature from a person, acceptance or denial of a responsibility, disclosure of a secrecy, remittance of funds, negotiable instrument or any other asset by **threatening to denounce him/her, to disclose or attribute such information**, whether true or false, that may damage the honour or reputation of the victim or any other person who, if threatened, may cause harm to the victim.¹⁰²

¹⁰⁰ Art 128(1) & (2) PC.

¹⁰¹ Art 128(3) PC.

¹⁰² Art 129 (1) PC.

Blackmail is punished with imprisonment for a term of not less than one (1) year and not more than three (3) years and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than three hundred thousand Rwandan francs (FRW 300,000).¹⁰³

If the person who commits blackmail executes his/her threats, the penalty is imprisonment for a term of more than three (3) years and not more than five (5) years, and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).¹⁰⁴

LESSON 16

RAPE AND OTHER SEXUAL OFFENCES

¹⁰³ Art 129 (3) PC.

¹⁰⁴ Art 129 (4) PC.

In this lesson attention is devoted to the offence of rape and other sexual offences. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Rape [Article 134 PC]

Rape is the causing of another person to engage in any of the following acts without consent by use of force, threats, trickery or by use of authority or because of the vulnerability of the victim:

1^o insertion of a sexual organ of a person into a sexual organ, anus or mouth of another person;

2^o insertion of any organ of a person or any other object into a sexual organ or anus of another person.

Rape is punishable with imprisonment for a term of not less than ten (10) years but not more than fifteen (15) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) but not more than two million Rwandan francs (FRW 2,000,000).

If rape was committed on a person aged over sixty-five (65) years, a person with a disability or illness that makes him/her unable to defend himself/herself, the penalty is imprisonment for a term of more than fifteen (15) years but less than twenty (20) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) but not more than two million Rwandan francs (FRW 2,000,000).

If rape resulted into an incurable illness or disability, the offender is liable to imprisonment for a term of more than twenty (20) years but not more than twenty-five (25) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) but not more than one million Rwandan francs (FRW 1,000,000).

The penalty is life imprisonment if rape:

1^o was committed by more than one person;

2^o resulted into the death of the victim;

3^o was committed on a relative up to the second level.

4^o was committed with intention to infect the victim with an incurable illness.

2. Indecent assault [Article 135]

2.1. The notion

Indecent acts (such as homosexual acts) committed between adult persons and consensually are not punishable. Indecent acts include all acts of a sexual or intimate nature which cannot fall under the definition of rape. They would include kissing and inappropriate touching of another. Like rape, indecent assault is committed only if the other person did not consent.

2.2. Punishment of indecent assault and aggravating circumstances

Any person who performs an indecent act against another person's body in any manner whatsoever, is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years, and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than three hundred thousand Rwandan francs (FRW 300,000).

If indecent assault is committed in public, the offender is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years, and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).

Penalties provided for above are doubled if the offender:

1^o is a descendant or an ascendant of the victim;

2° is in the category of those who have authority over him/her;

3° is a teacher;

4° is a civil servant, a representative of the administrative authority, a minister of worship who has abused his/her position, or a medical doctor or medical staff who commits such an offence against a person placed under his/her authority by virtue of his/her duties;

5° was assisted by one or several persons in committing the offence;

6° used force or threats;

3. Sexual harassment

Sexual harassment consists in repeated remarks or behaviour of sexual overtones towards a person that either undermine, violate his/her dignity because of their degrading or humiliating character which create against him/her an intimidating, hostile or unpleasant situation.¹⁰⁵

Any person who commits sexual harassment is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000).

In case the offender is an employer or any other person who uses his/her responsibility to practice acts of sexual harassment on a subordinate through instructions, threats or intimidation with intention to achieve sexual pleasure, he or she is liable to imprisonment for a term of more than one (1) year and not more than two (2) years and a fine of not less than two hundred thousand Rwandan francs (FRW 200.000) and not more than three hundred thousand Rwandan francs (FRW 300.000).

¹⁰⁵ Art 149 PC.

4. Child defilement (*viol sur un enfant*) [art 133]

Child¹⁰⁶ defilement means any of the following sexual acts with a child:

1^o insertion of a sexual organ into the sexual organ, anus or mouth of the child;

2^o insertion of any organ of the human body into a sexual organ or anus of a child;

3^o performing any other act on the body of a child for the purpose of bodily pleasure.

Any person who commits child defilement, is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years.

If child defilement is committed on a child under fourteen (14) years, the penalty is life imprisonment ~~that cannot be mitigated by any circumstances.~~¹⁰⁷

If child defilement committed on a child of fourteen (14) years of age or older has resulted into an incurable illness or disability, the penalty is life imprisonment.

If child defilement is followed by cohabitation as husband and wife, the penalty is life imprisonment ~~that cannot be mitigated by any circumstances.~~¹⁰⁸

N.B:

There is no crime when child defilement is committed between children aged at least fourteen (14) years without violence or threats.¹⁰⁹

LESSON 17

¹⁰⁶ A child is any person below the age of 18. Art 2 (8^o) PC.

¹⁰⁷ The last words (that cannot be mitigated by any circumstance) have been declared unconstitutional by the Supreme Court.

¹⁰⁸ The last words (that cannot be mitigated by any circumstance) have been declared unconstitutional by the Supreme Court.

¹⁰⁹ If a child aged fourteen (14) years but who is not yet eighteen (18) years commits child defilement on a child under fourteen (14) years, he/she is punished. Art 133(6) PC.

OFFENCES AGAINST RELATIVES AND DEPENDANTS

This lesson is devoted to offences committed against relatives and dependents. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Neglecting the care for the person entrusted into one's care

Any person responsible for the care of another person who, in bad faith and without intent to kill, subjects him/her to hunger, thirst or who fails to provide medical care or who deprives him/her of anything that could have saved his/her life, is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.¹¹⁰

If this offence is committed against a child or a person unable to protect himself/herself because of his/her physical or mental state, the penalty is imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

If the offender acted with intent to kill, the penalty is life imprisonment.

2. Abandonment of a dependant unable to protect himself/herself

Any person who abandons or causes to abandon in an open place or neglects his/her dependant because of his/her physical or mental state is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000).¹¹¹

¹¹⁰ Art 122(2) PC.

¹¹¹ Art 144 PC.

If a person unable to protect himself/herself was abandoned in an isolated place with intention to hide him/her, the penalty is an imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000).

If the abandonment or neglect of a person causes serious illness, loss of one of the parts of the body or disability, the penalty is an imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

If the abandonment or neglect of a person results into the death, the penalty is life imprisonment.

LESSON 18

CRIMES AGAINST SPOUSES AND FAMILY PROPERTY

This lesson is devoted to offences against spouses and family property. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Harassment of a spouse

Any person who harasses a spouse with the intention of preventing him/her from living a peaceful life is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.¹¹²

2. Denial of freedom to practice family planning

Any person who, on grounds of marriage, commits violence or harassment against his/her spouse because of the spouse's decision to practice family planning is liable to imprisonment for a term of not less than two (2) months and not more than six (6) months.¹¹³

3. Sexual violence against a spouse

Physical violence of a sexual nature between spouses is punishable imprisonment for a term of not less than three (3) years but not more than five (5) years.¹¹⁴

4. Fraudulently giving, selling, mortgaging or using of family property

Any spouse who fraudulently gives, sells, mortgages or uses a family property is liable to imprisonment for a term of not less than three (3) months but less than six (6) months.¹¹⁵

If the person prosecuted for this offence returns the property before the court convicts him/her, prosecution immediately ceases.¹¹⁶

5. Desertion of the marital home [Article 139 PC]

¹¹² Art 147 PC.

¹¹³ Art 147 PC.

¹¹⁴ Article 137 PC.

¹¹⁵ Art 150(1) PC.

¹¹⁶ Art 150(2) PC.

A spouse who, without serious reasons, deserts his/her marital home for more than two (2) months and evades his/her obligations, is liable to imprisonment for a term of not less than three (3) months and not more than six (6) months.

The same penalties apply to a husband who, willfully and without serious reasons, deserts his wife for more than one (1) month knowing that she is pregnant.

Article 149(4) PC creates a defense to the crime of family desertion. This is when, separation follows mistreatment of one of the spouses and the deserting spouse has informed the nearest local administration and a record relating thereto has been drawn.

6. Adultery

Adultery is the sexual intercourse of a legally married person with a person other than his/her spouse.¹¹⁷

Any person convicted of adultery shall be liable to a term of imprisonment of six (6) months to one (1) year.¹¹⁸

These penalties also apply to the partner in adultery.¹¹⁹

7. Concubinage [Article 138 PC]

Concubinage is committed when a person lives as a husband and wife with a person other than his/her spouse while one or both of them are married. Concubinage is punished with imprisonment for a term of more than one (1) year and not more than two (2) years.

¹¹⁷ Art 136 (1) PC.

¹¹⁸ Article 136(1) PC.

¹¹⁹ Article 136(1) PC.

LESSON 19

OFFENCES RELATED TO THE RIGTH TO MARRIAGE

In this lesson attention is devoted to the offences related the right to marriage. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Playing a role in forced cohabitation

Any person who plays a role in forcing cohabitation of a man and a woman is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than two hundred thousand Rwandan francs (FRW 200.000) and not more than three hundred thousand Rwandan francs (FRW 300.000).¹²⁰

2. Bigamy (Article 141 PC)

Is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000), any person who:

- 1° enters into a second marriage while the first marriage is still valid;
- 2° knowingly, accepts to marry another person who is still married;
- 3° officiates a marriage ceremony knowing that the first marriage is valid.

LESSON 20

STIGMATISATION OF A SICK PERSON

¹²⁰ Art 146 PC.

This lesson examines the offence of stigmatisation of a sick person. Article 145 PC provides as follows:

Any person who stigmatizes¹²¹ a sick person, without the intention to protect the sick person or other persons is liable to imprisonment for a term of not less than one (1) month but less than six (6) months and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000) or only one of these penalties.

The Kinyarwanda word for stigmatization is “*guha akato*”. This can be done in many ways. For example, forcing a student to use a cup or plate that has been marked “HIV POSITIVE” or “FOR ALBINO STUDENTS ONLY” and forcing them to sit on designated tables.

LESSON 21

OFFENCES OF IMMORALITY

¹²¹ Art 145 PC.

In this lesson attention is devoted to offences of immorality. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to it by the law.

1. Public indecency [Article 143 PC]

Public indecency (also known as “indecent exposure” in some countries) refers to conduct undertaken in non-private area, which is deemed indecent in nature, such as nudity, improper dressing, masturbation, or sexual intercourse in public view.

Any person who performs an indecent act in public, is liable to imprisonment for a term of not less than six (6) months and not more than two (2) years.

2. Bestiality [Article 142 PC]

Any person who engages in a sexual act with an animal, is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.

Any person who, in any manner whatsoever, causes another person to engage in a sexual act with an animal, is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years, and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).

3. Public drunkenness

Any person who is drunk in public, in the streets, squares, paths, bar, in a gymnasium or any other public places is liable to imprisonment for a term of not less than eight (8) days but not more than two (2) months and a fine of not more than twenty thousand Rwandan francs (FRW 20,000) and not more than one hundred thousand Rwandan francs (FRW 100,000) or only one of the penalties.

If the bar operator and his/her staff accept to host any persons in a state of excessive drunkenness in their facility and serve them alcoholic beverages they are liable to

imprisonment for a term of not less than eight (8) days and not more than two (2) months and a fine of not less than fifty thousand Rwandan francs (FRW 50,000) and not more than two hundred thousand Rwandan francs (FRW 200,000) or only one of the penalties.¹²²

LESSON 22

CRIMES RELATED TO THE HUMAN DEAD BODY

¹²² Art 268 PC.

This lesson is dedicated to offences related to the human dead body. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Hiding or exhuming, mutilating or inflicting dehumanizing treatment on a human dead body (Article 130)

Any person who, “**maliciously**” hides, exhumes, mutilates or inflicts dehumanizing treatment on a human body in any way, is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.

This crime is one of “special” intention. It is not sufficient that a person intentionally hid or exhumed the body. He must have acted for a malicious motive. The corresponding word for “malicious” in Kinyarwanda is “ku bw’ubugome”.

2. Cannibalism (Article 131)

Any person who eats human flesh or feeds other people with human flesh, is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

LESSON 23

ABDUCTION AND KIDNAPPING

This lesson examines the offences of kidnapping, unlawful detention and kidnapping provided for in article 151 of the Penal Code. This article provides as follows:

Any person who, by violence, deception or threats, abducts or causes to be abducted, unlawfully detains or causes to be detained¹²³ another person is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.¹²⁴

If the victim is a child, the penalty is an imprisonment for a term of more than seven (7) years and not more than ten (10) years.

LESSON 24

OFFENCES AGAINST FREEDOM OF WORSHIP

¹²³ “Detain” here is envisaged to be done by a private person, not a public official. Therefore, the proper term is kidnapping.

¹²⁴ Art 151 PC.

This lesson is devoted to offences against freedom of worship. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Obstruction of smooth running of religious rituals

Is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years or a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000), any person who:

1^o by use of violence, insults or threats, compels or prevents one or more persons from practicing religious rituals or celebrating religious festivities of a legally recognized religious denomination;

2^o causes trouble or disorder, prevents, delays or interrupts religious rituals conducted in public in a legally recognized manner;

In case acts referred to above are committed by an association of people, the penalty is an imprisonment for a term of not less than three (3) years and not more than five (5) years or a fine of three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).¹²⁵

2. Public defamation of religious rituals [ART 154 has been declared unconstitutional by the Supreme Court). You will find this judgment in Lesson 52.

LESSON 25

OFFENCES AGAINST PRIVACY, COMMUNICATION AND CORRESPONDENCE

¹²⁵ Art 153 PC.

This lesson is devoted to offences against privacy, communication and correspondence. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Violation of domicile

Except in cases provided for by law, any person who, without authorisation of the occupants, enters a home, a house, a room or accommodation of another person is liable to imprisonment for a term of not less than two (2) months but less than six (6) months and a fine of not less five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).¹²⁶

If entry into a person's domicile is by recourse to threats, housebreaking or use of false keys, the penalty is an imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of more than one million Rwandan francs (FRW 1,000,000) and less than two million Rwandan francs (FRW 2,000,000) or only one of these penalties.

2. Secretly listening to conversations, taking photos or disclosing them

Is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) or only one of these penalties, any person who, in bad faith and in any way, infringes the personal privacy of another person by:

1^o secretly listening to, or disclosing, people's confidential statements without authorisation;

¹²⁶ Art 155 PC.

2° taking a photo, audio or visual recording or disclosing them without one's authorisation;

If the acts referred to above are committed in full view and awareness of the persons concerned and without opposing the acts while they were able to do so, their consent is presumed.¹²⁷

The penalties referred to in article 156(2) PC also apply to a person who, in bad faith, distributes in any way whatsoever, a photo, audio and video, recordings or documents obtained as a result of one of the acts referred to above.

3. Publication of edited statements or images

Any person who, in bad faith, publishes in any way whatsoever an edited version of a person's statements, or images and photos without explicitly stating that it is not the original version is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).¹²⁸

4. Breach of professional secrecy

Any person who reveals professional secrecy entrusted as privilege to keep by virtue of function, occupation or mandate of a religion, whether in service or after leaving the service is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000).¹²⁹

However, it is not a breach of professional secrecy:

1° if the law requires or allows the disclosure of a professional secrecy;

¹²⁷ Art 156(3) PC.

¹²⁸ Art 157 PC.

¹²⁹ Art 158 PC.

2^o for a person providing information to judicial authorities.

5. Collection of individuals' personal information in computers

Any person who, in bad faith, records, collects individual's personal information or who archives or uses other ways of keeping the personal information in computers and other specialized equipment in a manner that is likely to adversely affect the individual's honour or his/her privacy is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).¹³⁰

Acts referred to above performed in a professional manner or in the context of one's duty and legally recognised do not qualify as an offence.

6. Offences committed against correspondences in the various telecommunication channels

Any person who uses any fraudulent means to open, remove, delay, divert correspondences or other documents, whether or not they have reached their destination is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than three million Rwandan francs (FRW 3,000,000).

The penalties referred to above also apply to the act of recording, intercepting, diverting or disclosing correspondence sent or received by any means of telecommunications or installing devices designed to carry out such interceptions without authorisation of the judicial or public prosecution authorities.¹³¹

¹³⁰ Art 160 PC.

¹³¹ Art 159 PC.

LESSON 26

PUBLIC INSULT

This lesson examines the offence of public insult. This crime is provided for in article 161 of the Penal Code.

This article provides that any person who publicly insults another person is liable to imprisonment for a term of not less than fifteen (15) days and not more than two (2) months; a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000); community service for a period of not more than fifteen (15) days or only one of these penalties.

Public insult can be committed by a sign, practice, statement or written document intended to deliberately and directly hurt another person.¹³²

NB: Prosecution for offences in LESSON 25 and 26

The offences referred to in LESSON 25 and 26 are prosecuted only at the request of the victim, his/her legally authorized representative or rightful claimant.¹³³ These are known in French as ``*infractions de plainte*``.

LESSON 27

FAILURE TO ASSIST A PERSON IN DANGER

Article 244 creates a duty for everyone to assist a person in danger. This lesson examines the crime of breach of this duty.

¹³² Art 161 PC.

¹³³ Art 162 PC.

Article 244 of the Penal Code provides that:

Any person who fails to assist or seek assistance for a person in danger while in a position to do so and when there could be no risk either for his/her personal action or for the third party is liable to imprisonment for a term of not less than one (1) year and not more than three (3) years and a fine of not less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.¹³⁴

LESSON 28

DISCRIMINATION AND INSTIGATING DIVISIONS

¹³⁴ Art 244 PC.

This lesson examines the offences of discrimination and instigating divisions. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Discrimination

Is liable to imprisonment for a term of not less than five (5) years but not more than seven (7) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) but not more than one million Rwandan francs (FRW 1,000,000), any person who commits one of the following acts:¹³⁵

1° act which inconveniences a person or a group of people or causes division among persons or a group of people on the basis of race, ethnicity, origin, clan, family connection, colour of skin, sex, region, nationality, religion, political ideology, economic classes, culture, language, social status, physical or mental disability or physical appearance;

2° acts aimed at denying a person or a group of people their rights granted under the Rwandan law or international conventions ratified by Rwanda, on the basis of race, ethnicity, origin, clan, family connection, colour of skin, sex, region, nationality, religion, political ideology, economic classes, culture, language, social status, physical or mental disability or physical appearance;

3° act instigating a person to deny another person or a group of people their rights granted under the Rwandan law or international conventions ratified by Rwanda, on the basis of race, ethnicity, origin, clan, family connection, colour of skin, sex, region, nationality, religion, political ideology, economic classes, culture, language, social status, physical or mental disability or physical appearance.

¹³⁵ Art 163 PC.

ADDITIONAL READING

Kindly read the letter written by Mr. GATWABUYEGE Claudien dated 14/10/1972 in which he requested the *Bourgemetre* (Mayor) to send him a **Hutu** woman to be appointed somewhere as a public servant. Do the facts correspond to the definitional elements of the offence of discrimination as defined above?

2. Instigating divisions

A person who makes use of speech, writing, or any other act which divide people or may set them against each other or cause civil unrest on the basis of discrimination is liable to imprisonment for a term of not less than five (5) years but not more than seven (7) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) but not more than one million Rwandan francs (FRW 1,000,000).¹³⁶

LESSON 29

THEFT AND RELATED OFFENCES

¹³⁶ Art 164 PC.

This lesson is devoted to the crime of theft and related offences. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Theft

1.1. Definition

Article 165(1)(1^o) PC defines theft as “taking another person’s property without his/her consent with an intention to make it his/her own property (*animus pro suo habendi*) or use it”. Under this definition, theft can be committed in two ways:

(1) by taking another person’s property with the intention of permanently appropriating it,

(2) or by taking the property of another person for temporary use.

1.2. Penalties for theft without violence

Any person convicted of theft is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000), community service in a period of six (6) months or only one of these penalties.¹³⁷

1.3. Aggravating circumstances of theft without violence

The penalty for theft doubles if:¹³⁸

¹³⁷ Art 166 PC.

¹³⁸ Art 167 PC.

1° the offender committed the crime through burglary (destruction), climbing or possession of keys other than the owner's;

2° the theft is carried out in an occupied house or in a building used for habitation or in its surroundings;

3° the theft is carried out by a civil servant taking advantage of his/her duties or a person responsible for any services of general interest;

4° the offender usurps false title or insignia of a civil servant or a person responsible for services of general interest or with a false mandate from public authority.

5° the theft is carried out during the night (between 6 PM and 6 AM);

6° the theft is carried out by more than one (1) person.

1.4. Penalties for theft committed with violence

If theft is carried out with violence or threats, the penalty is an imprisonment for a term of not less than five (5) years and not more than seven (7) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).¹³⁹

If the violence or threats used for theft resulted into illness or temporary loss of working capacity, the offender is liable to imprisonment for a term of more than seven (7) years and not more than ten (10) years.

If the violence or threats resulted into an incurable illness or a permanent loss of working capacity or permanent loss of a body organ, the offender is liable to imprisonment for a term of more than ten (10) years and not more than fifteen (15) years.

¹³⁹ Art 168 PC.

If the violence or threats are used with no intent to cause death but result in death, the offender is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years.

1.5. *Armed robbery*

Any person who carries out theft with a weapon, is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years and a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).¹⁴⁰

The penalty is an imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years and a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000) if:

- 1^o the armed robbery is committed by more than one (1) person;
- 2^o the weapon in possession is used;
- 3^o the armed robbery is committed in a dwelling house or its surroundings even if the house is temporarily inhabited or used as workplace.

If the armed robbery causes death or it is committed by an organized gang, the penalty that applies is life imprisonment.

2. Theft of a motor vehicle in order to take it to another country

Any person who steals a motor vehicle in order to take it in another country is liable to imprisonment for a term of more than five (5) years and not more than seven (7) years with a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than ten million Rwandan francs (FRW 10,000,000).¹⁴¹

3. Extortion

¹⁴⁰ Art 170 PC.

¹⁴¹ Art 169 PC.

Extortion is committed by using violence or coercion to demand from another person his/her signature, fingerprint or to be given any discreditable gain or payment. It is punishable with imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).¹⁴²

4. Retention or fraudulent alienating of another person's found property

Any person who finds or accidentally obtains a lost movable item belonging to another person and intentionally retains it or fraudulently gives it to another person is liable to a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000) or community service in a period of not less than fifteen (15) days and not more than thirty (30) days.¹⁴³

DISTINCTION BETWEEN THEFT, BREACH OF TRUST AND EMBEZZLEMENT

1. In the case of theft, the thief does not have any relation with the object of theft. He is a stranger in relation to it

2. In the case of embezzlement¹⁴⁴ and breach of trust, the accused has a relationship with the object of the crime.

2.1. In embezzlement, the accused is an EMPLOYEE of the victim (within the meaning of labour law) and the object of the crime is something related to his duties.

¹⁴² Art 171 PC.

¹⁴³ Art 172 PC.

¹⁴⁴ See Law on Corruption.

2.2. In breach of trust, the accused is NOT an employee of the victim but is linked to the victim and the object of the crime through another type of CIVIL contract (like a contract of transport, construction, deposit.....).

LESSON 30

CRIMES RELATED TO TRUST AND HONESTY

This unit is devoted to offences related to abuse of trust breach of honesty. We will highlight the material and mental elements of the crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Fraud (*escroquerie*)

Any person who, by deception, obtains another person's property, whole or part of his/her finance by use of false names or qualifications, or who offers positive promises or who threatens of future misfortunes, is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years, and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).¹⁴⁵

If this offence is committed by a person who falsely promises to issue shares, shareholders' bills, securities, bonds, vouchers or any other cash value, either for a business company, trading company or industry, the applicable penalty is an imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of more than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).¹⁴⁶

2. Non-payment of bills (*Grivèlerie*)

Any person who, knowing that he/she is unable to pay, orders for any item which cannot be re-used or returned back is liable to imprisonment for a term of not less than fifteen (15) days and not more than two (2) months, a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred

¹⁴⁵ Art.174 PC

¹⁴⁶ Art.174 (3⁰) PC

thousand Rwandan francs (FRW 200,000) and community service in a period of not more than fifteen (15) days or only one of these penalties.

Payment of the billed items and the money spent to recover them as well as court costs by the defendant or withdrawal of the case by the plaintiff terminate the prosecution.¹⁴⁷

3. Breach of trust (*Abus de confiance*)

Any person who is given or entrusted with an item and who is obliged to return it or use it as instructed but who misappropriates, embezzles, scatters or gives it to another person is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).¹⁴⁸

DISTINCTION BETWEEN THEFT, BREACH OF TRUST AND EMBEZZLEMENT

1. In the case of theft, the thief does not have any relation with the object of theft. He is a stranger in relation to it

2. In the case of embezzlement¹⁴⁹ and breach of trust, the accused has a relationship with the object of the crime.

2.1. In embezzlement, the accused is an EMPLOYEE of the victim (within the meaning of labour law) and the object of the crime is something related to his duties.

¹⁴⁷ Art 175 PC.

¹⁴⁸ Art 176 PC.

¹⁴⁹ See Law on Corruption.

2.2. In breach of trust, the accused is NOT an employee of the victim but is linked to the victim and the object of the crime through another type of CIVIL contract (like a contract of transport, construction, deposit.....).

4. Selling or pledging as a security a property of another person

Any person who sells or pledges as a security an immovable or a movable property knowing that he/she is not the owner is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).¹⁵⁰

5. Embezzlement or destruction of a mortgaged property

Any debtor, creditor or any other person who mortgaged a property, destroyed or embezzled the mortgaged property is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).¹⁵¹

¹⁵⁰ Art 177 PC.

¹⁵¹ Art 178 PC.

LESSON 31

ARSON

This lesson is devoted to crimes of arson of own and others' property. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Arson of own property

Any person who for fraudulent purposes sets fire on own building, transport means or any other valuables is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000) or only one of these penalties.¹⁵²

2. Arson of another person's house, transport means or any other places

Any person who deliberately sets fire on another person's building or transport means or any other places that may be occupied by persons is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years with a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).

If the fire resulted in death of a person but the person who caused the fire had no knowledge that there was a person at the premises, the applicable penalty is an imprisonment for a term of not less than twenty (20) years, and not more than twenty five (25) years with a fine of more than seven million Rwandan francs (FRW 7,000,000) and not more than ten million Rwandan francs (FRW 10,000,000).

¹⁵² Art 179 PC.

If the burnt property extends fire to the property unintended to be burnt, the offender is punished as if he/she intended to set fire on both the properties.¹⁵³

3. Arson of other properties

Any person who deliberately sets fire on property not mentioned in Article 180 PC is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000) or only one of these penalties.

If the setting of fire is as a result of negligence, recklessness or clumsiness, the penalty is an imprisonment for a term of not less than two (2) months but less to six (6) months and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000).¹⁵⁴

¹⁵³ Art 180 PC.

¹⁵⁴ Art 181 PC.

LESSON 32

DEMOLITION, AND DAMAGE TO OWN AND OTHERS' PROPERTY

This lesson is devoted to crimes of demolition and damage to own and others' property. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Demolition or damaging of private or public property

Any person who maliciously demolishes or damages in any way, in whole or in part of construction, building (house), bridge, dams, water pipes and their routes, railway rails or any other means of communication or electric power infrastructure, wells or any other constructions which do not belong to him/her is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).¹⁵⁵

If the destruction or damage of the constructions referred to above was committed deliberately, using dynamite, bombs, arms or any other explosive substance, the applicable penalty is an imprisonment for a term of not less than seven (7) years and not more than ten (10) years with a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).

If the deliberate destruction or damage of the constructions causes death, but which was not in the intention of the offender, the applicable penalty is an imprisonment for a term of more than fifteen (15) years and not more than twenty (20) years.¹⁵⁶

¹⁵⁵ Art 182 PC.

¹⁵⁶ Art 182 PC.

2. Demolition of monuments

Any person, who demolishes, brings down, breaks or damages monuments or other objects intended for public decoration, erected by competent authority or with its authorization is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years with a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000) or only one of these penalties.

If the acts referred to above are committed on monuments that are linked with the country's history, culture or teachings, the applicable penalty is an imprisonment for a term of not less than seven (7) years and not more than ten (10) years with a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).¹⁵⁷

3. Demolition of tombs, memorial symbols or defilement of tombs or graveyard

Any person who unlawfully destroys, brings down, breaks or damages tombs, memorial symbols or defiles tombs or graveyard is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000) or only one of these penalties.¹⁵⁸

4. Sale or use of properties resulting from destruction of private or public property

Any person found in possession of properties resulting from destruction of private or public property referred to in articles 182,183 and 184 of the Penal Code, sells or uses them in his/her activities, or gives them to another person in any way is liable to a fine

¹⁵⁷ Art 183 PC.

¹⁵⁸ Art 184 PC.

of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).¹⁵⁹

If the selling, buying or use of such properties relates to monuments that are linked with the country's history, culture or teachings, the applicable penalty is an imprisonment for a term of not less than seven (7) years and not more than ten (10) years with a fine of not less than five million Rwandan francs (FRW 5,000,000) and not more than seven million Rwandan francs (FRW 7,000,000).¹⁶⁰

5. Damaging or plundering of other properties

Any person who, maliciously damages or plunders movable or immovable property (other than buildings and other constructions covered in articles 182, 183 and 184) of another person is liable to imprisonment for a term of not less than two (2) months, and not more than six (6) months with a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000) or only one of these penalties.¹⁶¹

6. Damaging or plundering of trees, crops and agricultural tools

Any person who maliciously damages or plunders trees, crops, agricultural tools and any other property belonging to another person or belonging to him/her but with an effect on others is liable to imprisonment for a term of not less than one (1) year, and not more than two (2) years with a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) or only one of these penalties.¹⁶²

¹⁵⁹ Article 185(1) PC.

¹⁶⁰ Article 185(2) PC.

¹⁶¹ Art 186 PC.

¹⁶² Art 187 PC.

LESSON 33

CRIMES AGAINST DOMESTIC ANIMALS

This lesson examines crimes against domestic animals. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Mistreatment of domestic animals

Any person who, maliciously mistreats or transports livestock or domestic animals, in a way that compromises their health is liable to imprisonment for a term of not less than eight (8) days and not more than two (2) months, a fine of not less than fifty thousand Rwandan francs (FRW 50,000) and not more than one hundred thousand Rwandan francs (FRW 100,000) and community service in a period not exceeding fifteen (15) days or only one of these penalties.¹⁶³

If the malicious mistreatment or transport of livestock or domestic animals caused serious injury or death to such livestock or domestic animals the applicable penalty is an imprisonment for a term of not less than two (2) months and not more than (6) months.

2. Killing or injuring domestic animals

Any person who, maliciously kills or seriously hurts livestock or domestic animals belonging to him/her or to another person is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year with a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000) or only one of these penalties.

¹⁶³ Art 190 PC.

LESSON 34

REMOVAL OR DISPLACEMENT OF SIGNS OR GEODETIC LAND MARKERS

This lesson examines the crime of removal or displacement of signs or geodetic land markers. This crime is provided for in article 188 PC, which provides as follows:

Any person who, without authorization, removes or displaces signs or geodetic land markers or transforms them is liable to a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).¹⁶⁴

¹⁶⁴ Art 188 PC.

LESSON 35

REMOVAL, DISPLACEMENT OR PLUNDERING OF LAND MARKS

This lesson examines the crime of removal, displacement or plundering of land markers. This article is provided for in article 189 PC which provides that any person who, without authorization, maliciously removes, displaces or plunders land marks or trees planted to recognize the established boundaries between different properties is liable to a fine of not less than fifty thousand Rwandan francs (FRW 50,000) and not more than five hundred thousand Rwandan francs (FRW 500,000) or community service in a period of not less than fifteen (15) days and not more than thirty (30) days.¹⁶⁵

¹⁶⁵ Art 189 PC.

LESSON 36

OFFENCES AGAINST EXTERNAL STATE SECURITY

This lesson examines crimes against external State security. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Treason

Is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty-five (25) years, any Rwandan who:¹⁶⁶

1^o uses terrorism, subversion, armed attacks or threats of violence, with intention to annex Rwanda or its part to a foreign country;

2^o attempts to annex the Republic of Rwanda or its part under foreign domination;

3^o wages a war against the Government;

2. Revealing State secrets and other acts classified as treason or espionage

Commits the offence of treason when the offender is a Rwandan or of espionage when the offender is a foreigner,¹⁶⁷ and is liable, in wartime, to imprisonment for a term of not less than twenty (20) years and not more than twenty (25) years or, in peacetime, to imprisonment for a term of not less than ten (10) years to fifteen (15) years, any person who:¹⁶⁸

¹⁶⁶ Art 191 PC.

¹⁶⁷ Treason is always committed by a national while espionage is committed by a foreigner.

¹⁶⁸ Art 192 PC.

1^o discloses deliberately a State secret¹⁶⁹ by any means with the intention to hurt the interests of the Republic of Rwanda;

2^o seeks and obtains a State secret with a view of disclosing it;

3^o destroys or allows another person to destroy anything that contains a State secret with intent to favour another country;

4^o is entitled to have access to State secret and uses it illegally;

5^o deliberately discloses to a person not entitled to receive a State secret that he/she obtained in the course of his/her duties or functions;

6^o establishes, maintains or keeps relations with a foreign State, political organization, association, foreign institutions or any person working for them with a purpose of disclosing State secrets;

7^o commits acts of treason with an intention of undermining national defence, diplomatic relations or essential economic interest of the Rwandan Government;

When the acts mentioned above are performed unintentionally but due to clumsiness, recklessness or negligence, the penalty, during wartime, is an imprisonment for a term of more than five (5) years and not more than seven (7) years and, in peacetime, imprisonment for a term of not less than one (1) year and not more than three (3) years.

3. Maintaining relations with a foreign Government with intent to wage a war

Any person who collaborates, maintains or strengthens relations with a foreign Government, its institutions or their officials, with an intention to wage or support a

¹⁶⁹ State secret is defined as “any act or all acts, knowledge, any documents where they may be or any explanations prohibited by the law for purposes of defending the nation”.

war, a military attack or any other serious acts against the Republic of Rwanda is liable, in wartime, to a term of life imprisonment. In peacetime, he/she is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty five (25) years.¹⁷⁰

4. Spreading false information or harmful propaganda with intent to cause a hostile international opinion against the Rwandan Government

Any person who spreads false information or harmful propaganda with intent to cause public disaffection against the Government of Rwanda, or where such information or propaganda is likely or calculated to cause public disaffection or a hostile international environment against the Government of Rwanda is liable, in wartime, to a term of life imprisonment. In peacetime, he/she is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years.¹⁷¹

5. Handing over of a territory, troops or arsenals to a foreign country

Is liable, in wartime, to imprisonment for a term of not less than twenty (20) years and not more than twenty (25) years. In peacetime, he/she is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years, any person who:¹⁷²

1^o puts at the disposal of a foreign power or its agents, either troops, territories, towns, fortresses, constructions for war, organizations, shops, military industries and arsenals, equipment, ammunition, ships, buildings or airplanes, air navigation devices, owned by Rwandan State or allotted for its defence;

2^o destroys or hijacks a ship, an airplane, air navigation devices, military supplies, buildings or machinery or damages them so as to cause an accident in view of sabotaging national defence;

¹⁷⁰ Art 193 PC.

¹⁷¹ Art 194 PC.

¹⁷² Art 195 PC.

6. Supporting a foreign country at war with the Government of Rwanda

Is liable, in wartime, to imprisonment for a term of not less than twenty (20) years and not more than twenty five (25) years, and in peacetime, to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years any person who:¹⁷³

1° incites Rwanda Defence Forces to fight for or side with a foreign country, facilitates their entry into that foreign country or recruits an army for a foreign country at war with the Government of Rwanda;

2° consents with a foreign country or its agents to favour its war enterprises against the Government of Rwanda;

3° knowingly carries out an act that demoralizes the Rwanda Defence Forces or the population, with an intention to hurt national defence;

7. Causing Rwanda to be at war or in hostility with another country

Is liable, in wartime, to imprisonment for a term of ten (10) years to fifteen (15) years and in peacetime, to imprisonment for a term of more than five (5) years to ten (10) years, any person who:

1° commits acts that are prohibited by the Government and who causes Rwanda to be at war with a foreign country;

2° commits acts prohibited by the Government and which result into hostility with another country;

8. Offer and acceptance of a price to cause war in Rwanda

Any person who offers or promises to offer a price with an intention to commit offences referred to in Article 195 PC or who accepts such an offer or the promise is liable, in wartime, to imprisonment for a term of not less than ten (10) years and not more than

¹⁷³ Art 196 PC.

fifteen (15) years. In peacetime, he/she is liable to imprisonment for a term of not less than five (5) years and not more than ten (10) years.¹⁷⁴

9. Obstruction to national defence (Article 199)

Any person who, knowingly commits an act likely to obstruct the national defence is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

10. Formation of an irregular armed group or joining it (Article 200)

Any person who by donations, remuneration, intimidation, abuse of power or promise of another interest, forms, incites or arranges for the formation of an irregular armed group or signs an agreement with this group for the purposes of supporting an armed attack of irregular forces is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

Any person who deliberately agrees to be hired or recruited to join an irregular armed force is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

The legal action against offences referred to in Paragraph One and 2 of this Article is instituted upon complaint or on the authorization of the Prosecutor General or the Military Prosecutor General, depending on their authors.

11. Punishment of offences committed against allies of Rwanda at war with an enemy (Article 201)

Any person who commits any of the acts referred to in Articles 192, 193, 194, 195, 196, 197, 198, 199 and 200 of the Penal Code against the ally of the Rwandan State in a common act to fight against a common enemy is liable to the same penalties as those applicable to acts committed against Rwandan State.

¹⁷⁴ Article 198 PC.

LESSON 37

OFFENCES AGAINST INTERNAL STATE SECURITY

This lesson examines crimes against internal State security. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Offence against the ruling power or the President of the Republic (Article 202 PC)

Is liable to a life imprisonment, any person who:

1^o carries out any act to harm the established Government or overthrowing it by use of military force or any other means;

2^o carries out any act against the President of the Republic with intent to harm the established Government or overthrowing it,

2. Conspiracy against the established Government or the President of the Republic (Art 203 PC)

2.1. Conspiracy

Any person who conspires to commit offences under Article 199 of the Penal Code (***Obstruction to the national defence***) is liable to term of imprisonment of not less than twenty (20) years and not more than twenty five (25) years if any act has been carried out in preparation to executing the offence.

2.2. Incitement to commit conspiracy

If there is any influence to conspire to commit offences above but not consented, the person who influences, is liable to imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years.

3. Causing uprising or unrest among the population (Art 204 PC)

Any person who publicly, either by a speech, writings of any kind, images or any symbols, whether displayed, distributed, purchased or sold or published in any manner, incites the population to reject the established Government, or who causes uprising in the population with intention to incite citizens against one another or disrupts the population with intention to cause unrest in the Republic of Rwanda, is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

4. Attack on the force of law (Art 205 PC)

Any person who incites others to rebel against the law is liable to imprisonment for a term of more than five (5) years and not more than seven (7) years.

Penalties provided for above are doubled if such incitement results into negative consequences.

5. Devastation, looting of the nation or massacre (Art 206 PC)

5.1. Devastation and looting

Any person who attempts to commit devastation of the nation, massacres or loots the nation is liable to imprisonment for a term of not less than fifteen (15) years and not more than twenty five (25) years.

5.2. Conspiracy to commit devastation and looting

Conspiracy aiming at committing offences provided for above is liable to imprisonment for a term of ten (10) to fifteen (15) years if there is any act carried out in the preparation of the commission of the offence.

If the acts referred to above result into death, the penalty is life imprisonment.

6. Commanding of a criminal gang (Art 207 PC)

Any person who styles himself/ herself as a commander of a criminal gang or who has authority or any position in the gang with the intent to commit any of the following acts:

1º stealing of public funds;

2º invading institutions, shops, industries, arsenals, ports, airplanes, boats, houses or other property of the State;

3º plundering or sharing public property;

4º attacking or fighting against security forces who fight against the perpetrators of such crimes; 5º leading a criminal gang or exercising any role in the gang;

Is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

7. Being caught in a seditious group (Art 208 PC)

Any person caught in a seditious group with intention to harm the existing government or the President of the Republic, even if the person is not one of the members in the leadership or does not exercise any role in the group is liable to imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years.

Any person who leads the group or who exercises in the same group any responsibility or any leadership role even if he/she is not caught on the spot, is liable to imprisonment for a term of more than twenty (20) years and not more than twenty-five (25) years.

8. Membership in a seditious group or gang (Art 209 PC)

Except for cases where the seditious group aims or intends to commit a crime provided for under Article 202 of the Penal Code, any person who participated in seditious gangs referred to under Articles 207 and 208 PC and was caught there without exercising any leadership role or any other role, is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

Penalties provided for above are doubled in regard to the leader of the group or any other person who exercises any role in the group.

9. Providing accommodation or sanctuary to seditious gangs (Art 210 PC)

Any person who is aware of the purpose or character of a seditious gang and provides accommodation, sanctuary, meeting venues or any other help to the gang or its division is punishable as an accomplice.

10. Non punishable sedition (article 211 PC)

Any person member of a seditious group who voluntarily withdraws from the group or who withdraws after a warning or order issued by civil or military authorities is not punished for the offence of sedition.

The same applies to a member caught elsewhere than in the seditious group who showed no resistance and was not armed. However, he/she is punished for any other offences committed individually.

11. Obstruction to the fight against an insurrection movement (article 213 PC)

Is liable to imprisonment for a term of not less than fifteen (15) years and not more than twenty (20) years, any persons who, in an insurrection movement:

1^o seizes, openly or in secret, arms or ammunition with the intent to wilfully attack or resist security forces,

2^o for the same reasons as those under item 1^o of this Paragraph, invade or occupy public buildings or houses whether inhabited or not, roads, public places or any other area;

3^o erect, cause or help to erect or to cause barricades or any other obstacles with intent to hinder intervention of security forces or to stop movement of citizens;

4^o hinder by force or threats, the convening or meeting of security forces;

5^o provoke or facilitate the meeting of insurgents either by means of force or threats, or by giving orders or announcements, or by carrying flags or other symbols of rally, or by any other means of communication;

6^o seize arms or ammunition, either by means of force or threats, or looting shops or public buildings, or by disarming security forces;

7^o invade a house, whether inhabited or not, by means of force or threats;

8^o hinder in any way the action of security forces or cause disobedience to public authorities;

12. Commanding an insurrection movement [Art 214 PC]

Commanders of insurrection movements referred to under article 213 PC are liable to imprisonment of not less than twenty (20) years and not more than twenty-five (25) years.

13. Non-disclosure of plans of treason, espionage or any other act that could impede national defence [Art 215 PC]

Is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years, any person who, in wartime, knows about a plan or any acts of treason, spying or other activities likely to impede national defence, and does not inform the security forces or any other authority of the State, even if bound by professional secrecy.

14. Mitigating circumstances on threatening against State security [Art 216 PC]

Any person who threatens State security benefits from the mitigating circumstances if:

1º the denunciation comes after the commission of the offence but before commencement of criminal investigations;

2º after the criminal investigations commence, one of the offenders assists in the arrest of co offenders and accomplices or other persons who committed other similar offences or offences with the same gravity.

LESSON 37

OFFENCES AGAINST THE GOVERNMENT

This lesson examines the crimes classified in the Penal Code as “crimes against the government”. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Rebellion against the authority (Art 230 PC)

Any person who, by any means rebels, by use of violence, assault or threats against authorities, civil servants or private employees, security agents in the course of enforcement of law, regulations, administrative or judicial decisions is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year. These penalties do not apply to a person who withdraws acts of rebellion at the first warning of authority, if he/she had no commanding role in these acts.

If the rebellious person is armed, the penalty that applies is imprisonment for a term of not less than two (2) years and not more than three (3) years;

If rebellion is committed by several persons without weapons and without prior consultation among themselves, the penalty that applies is imprisonment for a term of not less than one (1) year but less than two (2) years.

If rebellion is committed by several armed persons and without prior consultation among themselves, the penalty that applies is liable to imprisonment for a term of more than three (3) years and not more than five (5) years.

2. Hindering implementation of ordered works (Art 231 PC)

Any person who, by any act of violence, opposes the implementation of work commissioned or authorised by a competent authority, is liable to imprisonment for a

term of not less than six (6) months and not more than one (1) year and a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000) Rwandan francs or only one of these penalties.

If the hindering of the work is done by a group of people using violence, assaults or threats, the offenders is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years.

3. Disrespect of employment badges (Art 232 PC)

Any person who despises the employment badges adopted by the authority to indicate an official's position, documents or other objects issued to ensure compliance with laws or administration is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs or only one of these penalties.

4. Article 233: Humiliation of national authorities and persons in charge of public service [This article has been declared unconstitutional by the Supreme Court. You will read the judgment in Lesson 52]

5. Assault or violence against public authorities (Art 234 PC)

Any person who assaults or commits any other act of violence against a member of Parliament, a Cabinet member, a security officer or other official in the performance or in connection with the performance of his/her duties is liable to term of imprisonment of not less than three (3) years and not more than five (5) years.

If the assault results into physical injuries, the applicable penalty is imprisonment for a term of more than five (5) years, and less than seven (7) years.

If that violence is committed with premeditation or by ambush, the applicable penalty is imprisonment for a term of more than seven (7) years not more than ten (10) years.

If that violence is committed with an intention to kill, the applicable penalty is a term of life imprisonment.

6. Assault or violence against the President of the Republic (Art 235 PC)

Any person who commits violence or assault against the President of the Republic is liable to a term of imprisonment of not less than ten (10) years and not more than fifteen (15) years.

If violence or assault against the President of the Republic is committed with premeditation or by ambush, the applicable penalty is imprisonment for a term of more than twenty (20) years and not more than twenty five (25) years.

If violence or assault against the President of the Republic causes death or is committed with intention to cause death, the applicable penalty is a life imprisonment.

7. Insults or defamation against the President of the Republic (Art 236 PC)

This article has been abolished by the amendment law. See the Amendment Law.

8. Interfering with the smooth running of activities of the Parliament (Art 237 PC)

Any person who provokes, incites or causes unrest, establishment of criminal groups, and illegal demonstrations within or in the vicinity of the premises of the Parliament in view of interfering with the proper conduct of the activities of the Parliament is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million (FRW 1,000,000) Rwandan francs but not more than two million (FRW 2,000,000) Rwandan francs or only one of these penalties.

Any person who, unlawfully and by use of force or threat, prevents a Member of Parliament from participating in the activities of the Parliament is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years.

9. Entry into the premises of the Parliament with an intention to harm (Article 238 PC)

Any person who enters the premises of the Parliament with an intention to cause harm, commits acts, utters statements or manifests any other conduct that may disrupt the activities of the Parliament, is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years.

10. Interference with the activities within the premises of the Office of the President of the Republic or the Cabinet (Article 239 PC)

Any person who commits offences provided for under Articles 237 and 238 PC, in the vicinity of the premises of the Office of the President of the Republic or the venue for the meetings of the Cabinet, is liable to a maximum penalty provided for under those articles.

If the offences referred to above are committed within the usual or other premises of other public administration organs, the penalty is imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three million (FRW 3,000,000) Rwandan francs and not more than five million (FRW 5,000,000) Rwandan francs or only one of these penalties.

11. Unlawful break of seals (Art 240 PC)

Any person who, intentionally and without legal authority removes seals, is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) or only one of these penalties.

If the seals affixed by public authority are broken due to negligence of guards, the latter are liable to imprisonment for a term of not less than two (2) months and not more than six (6) months and a fine of not less than three hundred thousand (FRW

300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs or only one of these penalties.

If the person who breaks the seal is a guard himself/herself or an officer of the organ that affixed the seals, the applicable penalty is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

12. Refusal to answer questions of the intelligence or security organs (Art 253 PC)

Any person who refuses to answer questions by intelligence or security officers in the exercise of their duties or who deliberately provides false answers to such questions is liable to imprisonment for a term of not less than one (1) month and less than six (6) months and a fine of not less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.¹⁷⁵

13. Refusal to take oath before intelligence organs (Art 257 PC)

Any person who is required to take an oath before intelligence organs but who refuses to do so, is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years with a fine of less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.

¹⁷⁵ Refusal to answer questions from judicial, intelligence service and security organs is not considered as an offence when the person requested to answer considers that it may result into self-incrimination. Art 254 PC.

14. Refusal to appear before the organ in charge of investigation, public prosecution or other authority (Art 242 PC)

Any person who, except in case of force majeure, fails to appear when lawfully summoned by a prosecutor, an investigator or other authority in course of service is liable to imprisonment for a term of not less than one (1) month and less than six (6) months and a fine of not less than two hundred thousand (FRW 200,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs or only one of these penalties.

LESSON 39

OFFENCES AGAINST PUBLIC SECURITY

This lesson examines crimes against public security. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Formation of or joining a criminal association (Art 224 PC)

Any person who forms a criminal association regardless of number of its members or its duration to commit offences against persons or their property, who aids in its formation, who is its leader, who is its organiser, who joins, who encourages or forces others to join, is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

Without prejudice to the provisions of article 52 of PC, in case of recidivism, the penalty that applies is a term of imprisonment of not less than fifteen (15) years and not more than twenty (20) years.

2. Illegal demonstration or public meeting (Art 225 PC)

Any person who illegally holds a demonstration or a meeting or who demonstrates on a public place without prior authorization, is liable to imprisonment for a term of not less than eight (8) days and less than six (6) months and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000) or only one of these penalties.

If the acts referred to above have threatened security, public order or health, the penalty that applies is a term of imprisonment of not less than six (6) months and not

more than one (1) year and a fine of not less than three million (FRW 3,000,000) Rwandan francs and not more than five million (FRW 5,000,000) Rwandan francs.

The demonstration referred to above is any act of a group of people gathered in a public place with intent to demonstrate their feelings or opinion by speeches, actions or shouting. A public meeting means a gathering open for the public or in which the public is invited.

3. Noise nuisance

Any person who, unjustly or without an authorization, makes noise likely to disturb public is liable to a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million Rwandan francs (FRW 1,000,000).

In case of recidivism, the penalties is imprisonment for a term of not less than eight (8) days and not more than one (1) month and a fine of more than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) or only one of the penalties.¹⁷⁶

¹⁷⁶ Art 267 PC.

LESSON 40

ILLEGAL USE OF PUBLIC AUTHORITY AND ABUSE OF POWER

This lesson examines crimes of illegal use of public authority and abuse of power. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Taking a decision which hinders the enforcement of a law (Art 282 PC)

Any person vested with public authority, who, in the exercise of his/her functions, takes a decision aimed at hindering the application of a law is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).

If the offence referred to under Paragraph One of this Article has been consummated, the applicable penalty is an imprisonment for a term of more than five (5) years and not more than seven (7) years, with a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000).

2. Continued use of authority after termination of a service in accordance with law (Article 283 PC)

Any person vested with public authority or responsible for a public service mission or elective mandate, who, having been notified of the cessation of his/her duties or whose term of office has expired and continues to perform the said duties is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000).

3. Commission of an act which violates individual liberty (Art 284 PC)

Any person vested with public authority or responsible for a public service mission who, in the course of acting in the exercise of his/her duties, orders or personally performs an act which violates an individual freedom, except when provided for by the law is liable to imprisonment for a term of not less than three (3) years but more than five (5) years.

4. Unlawful detention (Art 285 PC)

Any civil servant who unlawfully puts or retains a person in detention or in prison is liable to a term of imprisonment equivalent to the term incurred by the illegally detained person and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than one million Rwandan francs (FRW 1,000,000) or only one of those penalties.

LESSON 41

CRIMES RELATED TO THE ADMINISTRATION OF JUSTICE

This lesson examines crimes related to the administration of justice. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Breaking of seals affixed by judicial organs or bailiffs on seized property (Art 241 PC)

Any person who breaks seals affixed by judicial organs or bailiffs on seized property is liable to a term imprisonment of not less than six (6) months and not more than one (1) year and a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000) Rwandan francs or only one of these penalties.

2. Refusal to appear before the organ in charge of investigation, public prosecution or other authority (Art 242 PC)

Any person who, except in case of force majeure, fails to appear when lawfully summoned by a prosecutor, an investigator or other authority in course of service is liable to imprisonment for a term of not less than one (1) month and less than six (6) months and a fine of not less than two hundred thousand (FRW 200,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan franc or only one of these penalties.

3. Non-disclosure of a felony or misdemeanour (Art 243 PC)

Any person who has information of a felony or a misdemeanour about to be committed or which has been committed and fails to immediately inform security, judicial or

administrative authorities when he/she is able to do so, while this information could help to prevent the commission or limit its effects is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than one hundred thousand (FRW 100,000) Rwandan francs and not more than three hundred thousand (FRW 300,000) Rwandan francs.

When this failure to disclose this offence led to its commission or failure to disclose the commission of the offence resulted into negative consequences, the penalty is imprisonment for a term of more than one (1) year and not more than two (2) years and a fine of more than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.

If the felony or the misdemeanour is about to be committed or has been committed against a child, penalties provided for under Paragraphs 2 and 3 above are doubled.

4. Obliteration of evidence (Art 245 PC)

Any person who, with an intention to obliterate evidence, commits any of the following acts:

1° to change in any manner whatsoever, the state of the premises of the commission of an offence;

2° to burn, destroy, conceal or alter, in any way whatsoever evidence or any other object that could facilitate the discovery of an offence, the identification of the witness or the sentencing of the perpetrators of the offence;

is liable to a term of imprisonment of not less than (2) years and not more than three (3) years and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

If the acts referred to under this Article are committed by a person requested by judicial authorities to help disclose the truth by virtue of his/her expertise or by any other staff member of judicial organs, the penalty is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than three million (FRW 3,000,000) Rwandan francs and not more than five million (FRW 5,000,000) Rwandan francs.

5. Concealing objects used or meant to be used to commit an offence (Art 246 PC)

Any person, except the author of the offence or his/her accomplice, who commits one of the following acts, commits an offence if he/she:

- 1^o knowingly conceals any item or tools used or meant to be used to commit a felony or a misdemeanour;
- 2^o by any means, steals, conceals, falsifies or destroys the objects which would be used in the prosecution of a felony or a misdemeanour, identification of evidence or repression.

A person convicted of any of the acts referred to above is punished as an accomplice of the offender.

The court may exempt the spouse of the offender and his/her relatives up to the fourth (4th) degree from the penalty normally applicable to them.

6. Concealment of objects obtained from an offence (Art 247 PC)

Any person who conceals the whole or part of objects knowing that they have been extorted, embezzled or obtained from a misdemeanour or a felony is liable to term of imprisonment of not less than one (1) year and not more than two (2) years and a fine of not less than one hundred thousand (FRW 100,000) Rwandan francs and not more than three hundred thousand (FRW 300,000) Rwandan francs.

Penalties provided for above also apply to any person who, knowingly, by whatever means, obtains a profit generated by a concealed item from a felony or a misdemeanour.

**7. Intentional destruction or embezzlement of seized or confiscated property
(Art 248 PC)**

Any custodian of seized or confiscated property who intentionally embezzles, damages or destroys them is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000) Rwandan francs.

8. Hiding a corpse of a murdered person (Art 249 PC)

Any person who hides a corpse of a murdered person is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.

9. Use of threats or intimidation to influence a complaint (Art 250 PC)

Any person who by use of tricks, price or threatens or intimidates a person, with intent to influence a complaint, to compel the complainant to lodge or withdraw a complaint is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years and a fine of not less than five hundred thousand (FRW500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

**10. Refusal to testify for an innocent person or report evidence of a crime
(Article 251 PC)**

Any person in possession of evidence of the innocence of another person prosecuted or convicted of a felony or a misdemeanor, who deliberately refuses to give such evidence to judicial authorities is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand

(FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.

11. Refusing to report evidence of a felony or misdemeanor(Article 251 PC)

Any person who possesses evidence on the commission of a felony or misdemeanor and who deliberately refuses to report such evidence to judicial authorities is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.

12. Refusal to answer questions from judicial authorities (Art 252 PC)

Any person who knows a perpetrator of an offence or the circumstances of the commission of a felony or a misdemeanor but refuses to answer questions from judges, prosecutors and investigators is liable to a term of imprisonment of not less than one (1) year but less than two (2) years and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs or only one of these penalties.¹⁷⁷

13. Misleading witnesses or judges (Art 256 PC)

Any person who declares his/her opinions with intention to mislead witnesses or a decision of a judge before the case is determined, commits an offence and is liable to imprisonment for a term of one (1) year to two (2) years and a fine of one million Rwandan francs (FRW 1,000,000) to two million Rwandan francs (FRW 2,000,000).

¹⁷⁷ Refusal to answer questions from judicial, intelligence service and security organs is not considered as an offence when the person requested to answer considers that it may result into self-incrimination. Art 254 PC.

14. Refusal to take oath before judicial organs (Article 257 PC)

Any person who is required to take oath before judicial organs but who refuses to do so is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years with a fine of less than three hundred thousand (FRW 300,000) Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs.

15. Influencing assistants in judicial organs (Art 258 PC)

Any person who influences a witness, an expert or an interpreter assisting in court to give false testimony is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years with a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

16. Insulting or causing violence to personnel in the judicial organs (Art 260 PC)

Any person who insults or causes violence to an investigator, a prosecutor, a judge, an advocate, a state attorney, a court clerk, a court bailiff, *umwunzi* or an arbitrator on duty or in connection with his/her duty, with an intention to disgrace his/her dignity or respect, by words, gestures or threats, writings or by image of any nature is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000) Rwandan francs.

If the insults or violence are expressed during court hearing, the penalty that applies is imprisonment for a term of not less than two (2) years and not more than three (3) years.

17. Threats against judicial personnel (Art 261 PC)

Any person who threatens an investigator, a prosecutor, a Judge, an arbitrator, an advocate, a bailiff, an *Umwunzi*, an expert, an interpreter or a translator or any other person commissioned by judicial organs with intention to manipulate him/her into personal interests on official duties is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000).

18. Discrediting a decision of judicial organs (Article 262 PC)

Any person who discredits an act or a decision of judicial organs, in a manner likely to cause contempt or lack of independence of the judicial organ, by use of statements, writings, images or any act is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three hundred (FRW 300,000) thousand Rwandan francs and not more than five hundred thousand (FRW 500,000) Rwandan francs or only one of these penalties.

LESSON 41

OFFENCES RELATED TO LYING AND PROVIDING FALSE INFORMATION

This lesson is devoted to offences related to lying and providing false information. We will highlight the material and mental elements of each crime, its punishment and, if any, aggravating circumstances attached to them by the law.

1. Giving false testimony (Art 255 PC)

Any person who deliberately gives false testimony before judicial organs is liable to imprisonment for a term of not less than one (1) year and not more than three (3) years, with a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

If false testimony was produced in criminal case where the accused was sentenced to imprisonment for a term of more than five (5) years, the witness who, intentionally gave false testimony against the accused is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than one million Rwandan francs (1,000,000 FRW) and not more than two million (FRW 2,000,000) Rwandan francs.

2. False declarations by an expert, interpreter or translator before judicial organs (Art 259 PC)

Any person called upon by judicial organs to assist as an expert, an interpreter or a translator, who deliberately declares or writes false information is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years, with a fine of not less than one million (FRW 1,000,000) Rwandan francs and not more than two million (FRW 2,000,000).

3. False accusations

Any person who knowingly makes false accusations against another person before an investigator, a prosecutor or a judge is liable to imprisonment for a term of not less than two (2) months but less than six (6) months and a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000), or only one of the penalties.¹⁷⁸

4. Providing false information required for national planning purposes

Any person who, in the course of his/her duties, is required to provide information for national planning purposes and provides such information knowing that or being supposed to know that such information is false is liable to imprisonment for a term of not less than three (3) months but not exceeding (6) months and a fine of not less than five hundred thousand Rwandan Francs (FRW 500,000) but not exceeding one million Rwandan Francs (FRW 1,000,000), or one of these penalties only.¹⁷⁹

¹⁷⁸ Art 152 PC.

¹⁷⁹ Art 132 PC.

LESSON 43

OFFENCES RELATED TO NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES AND OTHER PROHIBITED PRODUCTS

This lesson examines crimes related to drugs and prohibited substances. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Consumption of drugs

Any person who, in any way, eats, drinks, injects himself/herself, inhales or one who anoints oneself with psychotropic substances,¹⁸⁰ is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years or subject to a penalty of community service.¹⁸¹

2. Producing, transforming, transporting, storing and giving another person drugs

Any person who, unlawfully produces, transforms, transports, stores, gives to another or who sells narcotic drugs and psychotropic substances is liable to:¹⁸²

1^o life imprisonment and a fine of more than twenty (20.000.000 FRW) million Rwandan francs and not more than thirty million (FRW 30,000,000) Rwandan francs in regard to severe narcotic drugs;

2^o imprisonment for a term of not less than twenty (20) years and not more than twenty five (25) years and a fine of not less than fifteen million (FRW

¹⁸⁰ An Order of the Minister in charge of health establishes a list of narcotic drugs that constitute each category.

¹⁸¹ Art 263(1) PC.

¹⁸² Art 263(3) PC.

15,000,000) Rwandan francs and not more than twenty million (FRW 20,000,000) Rwandan francs in regards to severe narcotic drugs;

3^o imprisonment for a term of not less than seven (7) years and not more than ten (10) years and a fine of not less than five million (FRW 5,000,000) Rwandan francs and less than ten million (FRW 10,000,000) Rwandan francs in regard to simple narcotics.

If the acts mentioned above are performed to a child or if they are performed at the international level, the penalty is a life imprisonment and a fine of not more than thirty million (FRW 30,000,000) Rwandan francs and not more than fifty million (FRW 50,000,000) Rwandan francs.¹⁸³

3. Facilitating a person to use narcotic drugs or psychotropic substances

Any person who facilitates another person to use narcotic drugs or psychotropic substances is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years with a fine of not less than three million (FRW 3,000,000) Rwandan francs and not more than five million (FRW 5,000,000) Rwandan francs.¹⁸⁴

The penalties referred to above also apply to any person who gives narcotic drugs or psychotropic substances on the basis of prescriptions that clearly turn out not to be true.

4. Production, sell or prescription of prohibited substances in medicine

Any person who produces, sells or prescribes the following prohibited substances:

1^o a drug;

2^o harmful products;

3^o cosmetics or body hygiene substances;

¹⁸³ An Order of the Minister in charge of health establishes a list of narcotic drugs that constitute each category.

¹⁸⁴ Article 264 PC.

4° any other products derived from plants;

Is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000) or only one of these penalties.¹⁸⁵

¹⁸⁵ Article 266 PC.

LESSON 44

OFFENCES RELATED TO EMPRISONMENT AND RESTRICTION OF FREEDOM OF MOVEMENT

This lesson examines crimes related to imprisonment and restriction of freedom of movement. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Escape of a detainee or a prisoner

A detainee or a prisoner who escapes is liable to imprisonment for a term of not less than three (3) years, and not more than five (5) years.¹⁸⁶

Without prejudice to other penalties provided for under the Penal Code, any detainee or prisoner who escapes by burglary, bribery or violence, is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1,000,000) Rwandan francs.

In case of the use of a firearm, an explosive or a sedative substance, the penalty that applies is imprisonment for a term of more than seven (7) years and not more than ten (10) years.

2. Helping a detainee or a prisoner to escape

Any person charged with guarding a detainee or a prisoner, who assists the detainee or the prisoner to escape or who helps him/her in preparations to escape even though the guard abstains from acting is liable to imprisonment for a term of not less than five (5)

¹⁸⁶ Article 227 PC.

years and not more than seven (7) years and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million (FRW 1.000.000) Rwandan francs.¹⁸⁷

3. Breach of restriction of movement

Any person sentenced by a court with the penalty of prohibition or obligation to stay but who violates terms of sentence is liable to imprisonment for a term of a duration at least equal to the time remaining to serve the penalty of prohibition or obligation to stay.¹⁸⁸

¹⁸⁷ Article 228 PC.

¹⁸⁸ Article 229 PC.

LESSON 45

HOSTILE ACTS AGAINST FOREIGN HEADS OF STATE, OTHER FOREIGN SENIOR OFFICERS OR REPRESENTATIVES OF DIPLOMATIC AND CONSULAR CORPS AND INTERNATIONAL ORGANISATIONS IN RWANDA

This lesson examines crimes against foreign heads of state, other foreign senior officers or representatives of diplomatic and consular corps and international organisations in Rwanda. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Assaulting foreign Heads of States or representatives of foreign States or representatives of international organizations in Rwanda

Any person who physically assaults:

1 ° a foreign Head of State;

2 ° representatives of foreign countries or international organisations while in Rwanda in the performance of their functions;

is liable to imprisonment for a term of not less than seven (7) years and not more than ten (10) years, without prejudice to heavier penalties provided for under other provisions of the Penal Code.¹⁸⁹

Any person convicted of intentionally compromising safety or integrity of official buildings of the persons referred to above, their private residences or their means of

¹⁸⁹ Article 217 PC.

transport is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years, without prejudice to other heavier penalties provided for under other provisions of the Penal Code.

2. Humiliation or insult against one of the persons referred to under article 217 PC

Any person who publicly humiliates or insults one of the persons referred to under Article 217 of the Penal Code is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years.¹⁹⁰

3. Desecration of the flag or symbols of a foreign State

Any person who steals, destroys, damages or desecrates the flag or symbols of a foreign State, hoisted or exposed in public is liable to imprisonment for a term of not less than six (6) months and not more than two (2) years.¹⁹¹

¹⁹⁰ Article 218 PC.

¹⁹¹ Article 219 PC.

LESSON 46

OFFENCES AGAINST THE NATIONAL CURRENCY

This lesson examines crimes against the national currency. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Discrediting the value of national currency

Any person who, in any way, intentionally spreads false allegations in public that directly or indirectly discredit the value of the national currency or negotiable instruments is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than three million (FRW 3,000,000) Rwandan francs.¹⁹²

2. Inciting the public to undermine the financial sector

Any person who, by any means, encourages the public to undermine the financial sector through any of the following acts:

1° withdrawal of funds from the public treasury, coffers of public institutions or financial institutions operating deposit transactions;

2° selling of negotiable instruments or preventing their purchase or the execution of the contract of purchase.

is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years and a fine of not less than three million (FRW 3,000,000) Rwandan

¹⁹² Article 221 PC.

francs and not more than five million (FRW 5,000,000) Rwandan francs or only one of these penalties.¹⁹³

3. Illegal operations of currency sale or exchange

Any person who, by any means, illegally sells or exchanges, national or foreign currency is liable to imprisonment for a term of not less than six (6) months and not more than two (2) years or a fine of not less than two hundred thousand (FRW 200,000) Rwandan francs and not more than three million (FRW 3,000,000) Rwandan francs or only one of these penalties.¹⁹⁴

4. Counterfeit, falsification or alteration of currency or monetary signs or their distribution

Any person who, fraudulently counterfeits, falsifies or alters coins or bank notes which are legal tender in Rwanda or abroad, notes issued by the Treasury with its stamp or brand, either banknotes or alike that have legal tender in Rwanda or abroad, or one who introduces or issues in Rwanda such effects or notes with knowledge that they are forged or falsified is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years.¹⁹⁵

If the offence referred to above is committed at the international level, the applicable penalty is an imprisonment term of more than seven (7) years and not more than ten (10) years and a fine of not less than seven million Rwandan francs (FRW 7,000,000) and not more than ten million Rwandan francs (FRW 10,000,000).

Any person who knowingly acquires or receives coins or notes knowing that it is falsified, even if he/she is not one of the counterfeiters or importers of such monies is liable to imprisonment for a term not less than one (1) year and not more than three (3) years.

¹⁹³ Article 222 PC.

¹⁹⁴ Article 223 PC.

¹⁹⁵ Article 269 PC.

5. Damaging monies

Any person who maliciously damages monies is liable to imprisonment for a term of not less than two (2) months and not more than three (3) months.¹⁹⁶

6. Counterfeiting negotiable instruments, their use or circulation

Any person who counterfeits, uses or circulates, by any means, negotiable instruments is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of two (2) to ten (10) times of the value of the counterfeited amount.¹⁹⁷

¹⁹⁶ Article 270 PC.

¹⁹⁷ Article 271 PC.

LESSON 47

COUNTERFEITING OR FALSIFICATION OF SEALS, STAMPS, MARKS AND FORGERY

This lesson examines crimes related to counterfeiting, falsification and forgery. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Falsification of official marks of individuals, institutions or private associations with or without legal personality

Any person who:

1^o counterfeits the seal of the State;

2^o counterfeits or falsifies stamps or other equivalent documents of the same value and official symbols of the State;

3^o counterfeits the seal, stamp or the mark of an authority;

4^o counterfeits headed papers or official documents,

is liable to imprisonment for a term of not less than five (5) years but more than seven (7) years and a fine of not less than two million (FRW 2,000,000) Rwandan francs and not more than three million Rwandan francs (FRW 3,000,000).¹⁹⁸

If counterfeits or falsified objects belong to an individual, private institutions or associations with or without legal personality, the penalty is an imprisonment term of not less than three (3) years and not more than five (5) years and a fine of not less

¹⁹⁸ Article 273 PC.

than one million (FRW 1,000,000) Rwandan francs and not more than two million Rwandan francs (FRW 2,000,000).

2. Illegal use of marks

Without prejudice to more severe penalties, any person who uses or distributes by any means the documents, which are similar in nature to those used by public institutions, which may deceive the public on their authenticity is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.¹⁹⁹

3. Forgery, falsification and use of forged documents

Any person who, in any manner, forges or alters documents by forged signature or fingerprint, falsifying documents or signatures or impersonation, forging agreements, its provisions, obligations, or discharged obligations commits an offence.²⁰⁰

Any person who, with fraudulent intention, produces a false written document, causes to write false statements or produces a conflicting declaration is liable to imprisonment for a term of not less than five (5) years but not more than seven (7) years and a fine of not less than three million Rwandan francs (FRW 3,000,000) and not more than five million Rwandan francs (FRW 5,000,000) or only one of these penalties.

Any person who, knowingly makes use of a forgery document in any way is liable to penalties provided for in Paragraph 3 of this Article.

If forgery is committed by a public servant or any other person in charge of public service, the applicable penalty is an imprisonment term of not less than seven (7) years and not more than ten (10) years with a fine of not less than two million Rwandan francs (FRW 2,000,000) and not more than three million Rwandan francs (FRW 3,000,000) or only one of these penalties.

¹⁹⁹ Article 274 PC.

²⁰⁰ Article 276 PC.

4. Fraudulent acquisition or production and the use of forged documents and papers issued by competent authority

Any person who, by fraud, acquires for oneself or unduly issued domestic or foreign travel documents, degrees or certificates, transcript or report, driving license and other documents issued by competent authorities is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years with a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than three million Rwandan francs (FRW 3,000,000).²⁰¹

5. Issuance of a document to a person who is not entitled

Any person who issues or who causes the issuance of one of the documents provided for in article 277 of the Penal Code to a person knowing that the person is not entitled to it is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) or only one of these penalties.²⁰²

If the offence is committed by a public official, he/she is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years, and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).

²⁰¹ Article 277 PC.

²⁰² Article 278 PC.

LESSON 48

COUNTERFEITING OR ALTERATION OF KEYS

This lesson is devoted to the crimes of counterfeiting or alteration of keys, provided for in article 173 PC. This article provides that any person who fraudulently forges or alters keys or who fraudulently uses a master key is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000) or only one of these penalties.²⁰³

If the offender is a locksmith (a professional), he/she is liable to imprisonment for a term of more than one (1) year and not more than two (2) years and a fine of more than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000).

²⁰³ Art 173 PC.

LESSON 49

USURPATION OF DUTIES, TITLES AND UNIFORM WITH INTENT TO MISLEAD THE PUBLIC

This lesson examines crimes of usurpation of duties, titles and uniform with intent to mislead the public. We will highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Usurpation of titles and wearing a uniform with an intention to mislead the public

Any person who, without title usurps public, civil or military functions or poses the acts of one of these functions or falsely attributes to himself/herself the quality of a public official or publicly wears a costume, a uniform, badge or an emblem with an intention to mislead the public is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years, with a fine of not less than three hundred thousand Rwandan francs (FRW 300,000) and not more than five hundred thousand Rwandan francs (FRW 500,000).²⁰⁴

If the official or professional dress, insignia or emblem are not intended to suggest the existence of a public mandate but they are likely to cause confusion among the public because of their resemblance with the official dress, a person who wears them, who lets his/her servant wear them or forces him/her to wear them publicly is liable to imprisonment for a term of not less than three (3) months but not more than six (6) months with a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000) or only one of these penalties.

²⁰⁴ Article 279 PC.

2. Wearing badges, a ribbon or any other decoration by an unauthorized person

With the exception of imitation of lively events, anyone who publicly wears a rank sign or any other decoration of a group he/she does not belong to, or in fact uses them in any way, is liable to imprisonment for a term of not less than one (1) month but less than six (6) months and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000) or only one of these penalties.²⁰⁵

3. Claiming to be attached to a profession, a certificate, an official diploma or any other entitlement granted to a person meeting requirements

Any person who claims to be attached to a legally regulated profession, a certificate, an official diploma or any other entitlements granted by a competent authority to a person meeting requirements set by a competent authority is liable to an imprisonment for a term of not less than one (1) month and less than six (6) months and a fine of not less than five hundred thousand (FRW 500,000) Rwandan francs and not more than one million Rwandan francs (FRW 1,000,000) or only one of these penalties.²⁰⁶

²⁰⁵ Article 280 PC.

²⁰⁶ Article 281 PC.

LESSON 50

CRIMES AGAINST MILITARY COMMUNICATION SYSTEMS

This lesson examines crimes against military communication systems. These crimes are part of the TITLE dealing with MILITARY OFFENCES in the Penal Code. But they are not MILITARY offences because – as stipulated in the corresponding legal provisions - they can be committed by “**any person**”, soldier or civilian. *Stricto sensu*, military offences are those that are capable of being committed by soldiers only. This excludes all civilians, including policemen, prisons warders and District Administration Security Support Organ (DASSO) officers

In your Reflective Journal, highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

1. Unauthorized access to a military communication network

Any person who intentionally accesses, without authorization a secure military communication network is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.²⁰⁷

2. Using a military communication system to communicate with an unauthorized person

Any person who is authorised to use or operate a military communication system, who uses it to communicate with an unauthorized person is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.²⁰⁸

²⁰⁷ Article 324 PC.

²⁰⁸ Article 325 PC.

3. Jamming a military communication system

Any person who fraudulently blocks or jams the functioning of military communication system is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years, if committed in peacetime.²⁰⁹

If the acts referred to above are committed in wartime, the applicable penalty is imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

4. Obstructing the military communication system

Any person who obstructs military communication system by deleting or modifying information, is liable to imprisonment for a term of not less than five (5) years but less than seven (7) years, if he/she committed it in peacetime.²¹⁰

If he/she commits the offence in wartime, the applicable penalty is imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

If the acts referred to above are committed due to carelessness or clumsiness, the applicable penalty is imprisonment for a term of not less than two (2) months but less than six (6) months, in peacetime. If they are committed in wartime, the penalty is imprisonment for a term of not less than two (2) years and not more than five (5) years.

²⁰⁹ Article 326 PC.

²¹⁰ Article 327 PC.

LESSON 51

MILITARY OFFENCES AND THEIR PENALTIES

This lesson examines offences EXCLUSIVELY committed by soldiers (and their civilian accomplices) and their penalties.

In your Reflective journal, highlight the material and mental elements of the crimes, their punishment and, if any, aggravating circumstances attached to them by the law.

I. PENALTIES APPLICABLE TO SOLDIERS AND THEIR ACCOMPLICES

1. Classification of military penalties

Penalties that may be imposed on soldiers and their accomplices are classified as follows:²¹¹

(1) Main penalties

The main penalties applicable to soldiers are the following:

- 1^o imprisonment;
- 2^o a fine.

(2) Additional penalties

Additional penalties applicable to soldiers are the following:

- 1^o stripping off military ranks;
- 2^o demotion.

²¹¹ Article 288 PC.

2. The penalty of stripping off military ranks

The penalty of stripping off military ranks is imposed on a soldier if:²¹²

- 1^o he/she committed treason;
- 2^o he/she surrendered to the enemy a post or a position assigned to him/her or abandoned other soldiers on the battle field;
- 3^o he/she committed an insubordination or revolt in wartime;
- 4^o he/she refused to go to his/her place of deployment in wartime;
- 5^o he/she deserted;
- 6^o he/she committed the crime of Genocide;
- 7^o he/she committed the crimes against humanity;
- 8^o he/she committed the crime of rape;
- 9^o he/she committed a child defilement;
- 10^o he/she was convicted to imprisonment for a term which is more than five (5) years.

3. Consequences of stripping off ranks

Stripping off ranks has the following consequences:²¹³

- 1^o deprivation of rank and the right to wear related military insignias and uniform;
- 2^o inability to serve in Rwanda Defense Forces, in any capacity;
- 3^o loss of the right of access to public employment;
- 4^o loss of the right to vote and be elected;
- 5^o deprivation of the right to wear any decoration or any other sign worn as a mark of honor.

²¹² Article 291 PC.

²¹³ Article 292 PC.

4. Offences punishable by demotion

The court may impose a penalty of demotion against a soldier who commits military offences or any of the following ordinary offences:²¹⁴

- 1^o drunkenness on duty;
- 2^o indecent assault;
- 3^o aggravated assault or battery;
- 4^o fraud;
- 5^o theft;
- 6^o breach of trust;

5. Consequences of demotion

A soldier sentenced to demotion loses his/her rank and reverted to the rank preceding the one he/she had for a period between six (6) months and three (3) years.²¹⁵

The soldier's seniority in the rank is suspended in case of demotion. The penalty of demotion does not apply to soldiers holding the rank of private and second lieutenant.

II. MILITARY OFFENCES

1. Abandonment or surrender to the enemy of post or a position or abandonment of other soldiers on the battle field

Any soldier on battlefield, who surrenders a post or a position assigned to him/her to the enemy, without being compelled to do so by the superior forces of the enemy is liable to imprisonment for a term of not less than twenty (20) years and not more than twenty five (25) years.²¹⁶

Penalties provided for above also apply to any soldier who abandons other soldiers on the battle field.

²¹⁴ Article 293 PC.

²¹⁵ Article 294 PC.

²¹⁶ Article 295 PC.

2. Abandonment of post or disobeying its instructions

Any soldier on guard duties who abandons a post or disobeys instructions is liable to imprisonment for a term of not less than two (2) months but less than six (6) months.²¹⁷

If he/she commits such acts in wartime, he/she is liable to imprisonment for a term of not less than one (1) year, and not more than two (2) years.

If he/she commits such acts in the face of the enemy, he/she is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

3. Sleeping on guard duty

Any soldier who sleeps while on guard duty is liable to imprisonment for a term of not less than eight (8) days and not more than two (2) months, if committed in peacetime.²¹⁸

If the offence of sleeping on guard duty is committed in wartime, the applicable penalty is an imprisonment for a term of not less than six (6) months and not more than one (1) year.

If the offence of sleeping on guard duty is committed in wartime, and in the face of the enemy, the applicable penalty is an imprisonment for a term of more than one (1) year and not more than two (2) years.

4. Drunkenness on guard

Any soldier who is found drunk while on guard is liable to imprisonment for a term of not less than one (1) month but less than six (6) months, if drunkenness is committed in peacetime.²¹⁹

²¹⁷ Article 296 PC.

²¹⁸ Article 297 PC.

²¹⁹ Article 298 PC.

If drunkenness is committed in wartime, the applicable penalty is imprisonment for a term of not less than six (6) months and not more than one (1) year.

If drunkenness is committed in wartime, and in the face of the enemy, the applicable penalty is imprisonment for a term of more than one (1) year and not more than two (2) years.

5. Service abandonment

Any soldier other than a soldier on guard duty, who abandons service is liable to imprisonment for a term of not less than one (1) month but less than six (6) months, if committed in peacetime. If abandonment of service is committed in wartime, the applicable penalty is imprisonment for a term of not less than one (1) year and not more than two (2) years.²²⁰

If abandonment of service is committed by the commander of the post of service, he/she is liable to the maximum penalty.

If abandonment of service is committed in wartime, and in the face of the enemy, the offender, whether commander of the post or not, is liable to an imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

6. Absence from the post in wartime or when the army is on alert

Any soldier who, in wartime or when the army is on alert, fails to return on duty in the required time he/she is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.²²¹

²²⁰ Article 299 PC.

²²¹ Article 300 PC.

7. Insubordination

Any soldier who disobeys orders of his/her superior or who deliberately refuses to obey instructions given to him/her in relation to military service is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²²²

If the offence of insubordination is committed by a non-officer in wartime, the penalty is imprisonment for a term of not less than one (1) year and not more than two (2) years. If the convict is an officer, the applicable penalty is imprisonment for a term of not less than five (5) years and not more than seven (7) years.

If insubordination is committed in the face of the enemy, the officer is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years, while a non-officer is liable to imprisonment for a term of less than three (3) years and not more than five (5) years.

However, disobeying instructions that are contrary to the law is not qualified as insubordination.

8. Revolt

If two (2) or more soldiers refuse to obey simultaneously the orders from their superior they commit the offence of revolt.²²³

If convicted in peace time, they are liable to imprisonment for a term of not less than three (3) months but less than six (6) months. If revolt is committed in wartime, the penalty is imprisonment for a term of not less than one (1) year and not more than two (2) years.

Soldiers who are convicted to have committed an offence of a coordinated revolt, is liable to imprisonment for a term of not less than one (1) year and not more than three

²²² Article 301 PC.

²²³ Article 302 PC.

(3) years, if committed in peacetime. If a coordinated revolt is committed in wartime, the applicable penalty is imprisonment for a term of not less than five (5) years and not more than seven (7) years.

The instigators or leaders of the revolt are liable to the maximum penalty for this offence, depending on the time and the terms of its commission.

An officer convicted to have engaged in revolt with other soldiers is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years. If he/she commits such offence in wartime, the penalty is imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

If the revolt is committed in the face of the enemy, the offender, whether officer or not, is liable to imprisonment for a term of more than ten (10) years and not more than fifteen (15) years.

9. Strike

Any soldier who engages in a strike, whether with other military officers or civilians is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²²⁴

If a soldier acts as an instigator, leader or organizer of the strike, the penalty is an imprisonment for a term of not less than one (1) year, and not more than two (2) years.

10. Humiliation of a superior

Any soldier who humiliates a superior is liable to imprisonment for a term of not less than two (2) months but less than six (6) months.²²⁵

²²⁴ Article 303 PC.

²²⁵ Article 304 PC.

If a soldier humiliates a superior when on duty or in the course of duty, he/she is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.

11. Violence or threats against a guard

Any soldier who commits violence or threats to a soldier on guard is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²²⁶

If the violence or threats to a soldier on guard cause him/her an illness, an injury or disability or non-permanent incapacity to work, the penalty is imprisonment for a term of more than one (1) year and not more than two (2) years.

If the violence or threats to a guard result into an incurable illness, permanent loss of working capacity, total loss of use of an organ or serious mutilation, the penalty is imprisonment for a term of more than seven (7) years and not more than ten (10) years.

When violence or threats against a soldier on guard are committed in wartime, the maximum penalties mentioned above double.

If violence or threats against a soldier on guard result into his/her death, the penalty is life imprisonment.

12. Violence or threats against a superior

Any soldier who commits violence or threats to a superior is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.²²⁷

²²⁶ Article 305 PC.

²²⁷ Article 306 PC.

If violence or threats against a superior results into an illness, an injury, disability or non-permanent incapacity to work, the penalty is imprisonment for a term of not less than three (3) years and not more than five (5) years.

If violence or threats against a superior results into an incurable illness, permanent loss of working capacity, total loss of use of an organ or serious mutilation, the penalty is imprisonment for a term of more than five (5) years and not more than seven (7) years.

If violence or threats against a superior results into death, the penalty is life imprisonment.

13. Violence or threats against a superior in wartime

Any soldier who commits violence against or threats to a superior in wartime is liable to imprisonment for a term of not less than two (2) years and not more than five (5) years.²²⁸

If the violence against or threats to a superior are committed while on duty or in the course of duty in wartime, the penalty is imprisonment of more than five (5) years and not more than seven (7) years.

If the violence against or threats to a superior in wartime result in an illness or disability or non-permanent incapacity to work, the penalty is imprisonment for a term of more than seven (7) years and not more than ten (10) years.

If the violence or threats against a superior result into an incurable illness, permanent loss of working capacity, total loss of use of an organ or serious mutilation, the penalty is imprisonment for a term of more than ten (10) years and not more than twelve (12) years.

²²⁸ Article 307 PC.

14. Murder of a superior

Any soldier who kills a superior for work reasons or on duty related reasons is liable to life imprisonment.²²⁹

15. Desertion by an officer

Any officer who:

1^o disappears from his/her unit for more than one (1) month or leaves the territory of Rwanda without authorisation and remains absent for more than fifteen (15) days in peacetime;

2^o is absent from his/her unit for more than six (6) days or who leaves the territory of Rwanda without authorization, in wartime,

is liable to imprisonment for a term of not less than two (2) years and not more than three (3) years.²³⁰

An officer who:

1^o deserts with a gun, aircraft, boat, vehicle or other military equipment;

2^o deserts when he/she is on patrol, watch, guards a post or carrying out any other armed service,

Is liable to an imprisonment for term of not less than five (5) years and not more than seven (7) years,

16. Unauthorized extension of leave or permission by an officer

Any officer who is on official leave or permission who does not return to his/her unit for more than six (6) days in wartime, or more than one (1) month in peacetime, after the

²²⁹ Article 308 PC.

²³⁰ Article 309 PC.

expiry of his/her leave or permission or after receiving a recall order to return on duty, he/she is liable to an imprisonment for a term of not less than one (1) year and not more than two (2) years.²³¹

17. Desertion in peacetime by a non-officer

Any non-officer who, in peacetime:

1^o leaves his/her unit or detachment for more than fifteen (15) days without authorization;

2^o has permission but does not return to his/her unit for more than one (1) month after the expiry of his/her leave or permission or after a recall order to return on duty,

Is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²³²

18. Desertion in wartime by a non-officer

Any non-officer who, during wartime, is absent for six (6) days or has permission or is on leave but does not return to his/her unit six (6) days after the expiry of his/her leave or permission or after receiving a recall order to return to duty is liable to an imprisonment for a term of not less than two (2) years, and not more than three (3) years.²³³

19. Aggravating circumstances for desertion by a non-officer

A non-officer convicted of desertion who:

1^o was previously convicted of desertion;

2^o crosses the boundaries of the Rwandan territory;

3^o uses a forged or altered authorization of leave or permission;

²³¹ Article 310 PC.

²³² Article 311 PC.

²³³ Article 312 PC.

4^o deserts for more than six (6) months;

is liable to imprisonment for a term of more than three (3) years and not more than five (5) years.²³⁴

The penalty referred to above doubles if a non-officer deserts:

1^o with a gun, aircraft, boat, vehicle or other military equipment;

2^o when he/she is on patrol, watch, guards a post or carrying out any other armed service;

20. Desertion by conspiracy

Any desertion carried out together by more than one (1) soldier is qualified desertion by conspiracy.²³⁵

Any soldier who deserts by conspiracy is liable to imprisonment for a term of more than two (2) years and not more than three (3) years, in peacetime. If it is in wartime, he/she is liable to imprisonment for a term of more than three (3) years and not more than five (5) years.

The head of desertion by conspiracy is liable to imprisonment for a term of not less than five (5) years and not more than seven (7) years, if it is in peacetime. If he/she commits the offence in wartime, the penalty is imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

21. Desertion in the face of the enemy

Any soldier who deserts in the face of the enemy is liable to imprisonment for a term of more than five (5) years and not more than seven (7) years.²³⁶

²³⁴ Article 313 PC.

²³⁵ Article 314 PC.

²³⁶ Article 315 PC.

If desertion is committed by an officer, the applicable penalty is imprisonment for a term of more than seven (7) years and not more than ten (10) years.

Any military officer who deserts heading to the enemy, is liable to imprisonment for a term of not less than ten (10) years and not more than fifteen (15) years.

22. Self-inflicted mutilation in wartime

Any non-officer who intentionally, in wartime, self-inflicts mutilation, allows himself/herself to be mutilated or who uses any means for the purpose of mutilation in order to evade service, even for a short period of time is liable to imprisonment for a term of not less than one (1) year and not more than two (2) years.²³⁷

When acts referred to above are committed by an officer, the penalty that applies is imprisonment for term of not less than three (3) years and not more than five (5) years.

23. Self-inflicted disability in the face of the enemy

Any soldier who self-inflicts body disability in the face of the enemy is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years.²³⁸

If the self-inflicted disability is committed by an officer, the applicable penalty is imprisonment for a term ranging from seven (7) years to ten (10) years.

24. Use of a weapon without an order from a superior

Any soldier who uses a weapon without an order from a superior is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²³⁹

²³⁷ Article 316 PC.

²³⁸ Article 317 PC.

25. Damaging, selling, diversion, stealing, intentional causing of disappearance of military equipment

Any soldier who, intentionally damages, sells or causes disappearance of a military communication equipment, causes disappearance, sells or steals weapons, ammunitions or any other military equipment is liable to imprisonment for a term of not less than three (3) years and not more than five (5) years, in peacetime.²⁴⁰

If the acts referred to above are committed in wartime, the penalty is imprisonment for a term of not less than seven (7) years and not more than ten (10) years.

26. Disclosure of a code or password of the military communication system

Any soldier with access to a code or a password of the military communication system who intentionally discloses it to a person who is not authorised to have access to it or, in any way, discloses to an unauthorized person the operating mechanism of the communication system is liable to imprisonment for a term of not less than two (2) years and not more than five (5) years, in peacetime. If he/she commits the offence in wartime, the applicable penalty is imprisonment for a term of more than five (5) years and not more than seven (7) years.²⁴¹

If he/she engages in such acts due to clumsiness, negligence, carelessness, lack of attention, failure to observe the rules or through any other default, the applicable penalty is an imprisonment for a term of not less than two (2) months but less than six (6) months, in peacetime. If he/she commits the offence in wartime, the applicable penalty is imprisonment for a term of not less than one (1) year and not more than two (2) years.

²³⁹ Article 318 PC.

²⁴⁰ Article 319 PC.

²⁴¹ Article 323 PC.

27. Damaging or causing loss of military equipment due to negligence

A soldier who negligently damages or who causes loss of military equipment is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²⁴²

If the acts referred to above are committed in wartime, the applicable penalty is an imprisonment for a term of more than one (1) year and not more than two (2) years.

28. Negligence causing injury or death of a person

A soldier who, by negligence to the service causes an injury to a person is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year.²⁴³

If the negligence referred to above causes death of a person, the applicable penalty is an imprisonment for a term of not less two than (2) years and not more than three (3) years.

If the acts referred to above are committed in wartime, the maximum penalty is imposed.

29. Violation by a soldier of some foreign legal and regulatory provisions

A soldier who violates a foreign law where he/she is serving, is prosecuted by Rwandan military courts in accordance with Rwandan law as if such an act has been committed on the Rwandan territory provided that it is punishable by the Rwandan law.²⁴⁴

If the act committed is not an offence under the Rwandan law, he/she is subject to disciplinary sanction.

²⁴² Article 328 PC.

²⁴³ Article 329 PC.

²⁴⁴ Article 330 PC.

30. Legal effect of documents related to offences committed by Rwandan soldiers in foreign countries

Documents related to acts that violate laws committed by Rwandan soldiers in foreign countries have legal effect before Rwandan Courts in accordance with the Rwandan laws.²⁴⁵

²⁴⁵ Article 331 PC.

LESSON 52

READING CASES

1. Introduction

This is the last lesson in UNIT II. It consists only in reading some important court decisions of Rwandan and foreign criminal courts to prepare students for careers in criminal law. Read the cases listed below and summarise in your Reflective Journal (no 2) what you learnt in each of them. Always briefly distinguish the FACTS and the LEGAL ISSUES.

2. CONSTITUTIONAL ISSUES

1. *MURORUNKWERE S v The State*, SC, RS/Inconst/Pén.0001/08/CS (26/07/2008)
2. *KABASINGA F v The State*, SC, RS/INCONST/SPEC 00003/2019/SC (4/12/2019).
3. *KABASINGA F and NIYOMUGABO N v The State*, SC, RS/INCONST/SPEC 00005/2020/CS (12/02/2021)
4. *MUGISHA R s The State*, SC, N°RS/INCONST/SPEC 00002/ 2018/SC RS/INCONST/SPEC 00002/2018/SC (24/04/2019)

3. RETRACTED CONFESSIONS

1. *DUSABIMANA J v NPPA*, SC, RPAA 0066/15/CS (04/01/2019)
2. *MUKESHIMANA v NPPA*, CA, RPAA 00053/2019/CA (27/04/2020)

4. MITIGATING CIRCUMSTANCES

1. *SHAKABATENDA JD v NPPA, CA, RPAA 00039/2021/CA (2/7/2021)*
2. *NZAFASHWANAYO JDD v NPPA, CA, RPAA 00032/2019/CA (28/02/2020)*
3. *IYAKAREMYE J M V v NPPA, HC, RPA 00009/2020/HC/MUS (13/08/2021)*
4. *MUTIBAGIRWA A, IYAKAREMYE J M V, Me UWIMANA M G v NPPA, HC, RPA/ECON 00009/2020/HC/MUS (13/08/2021)*
5. *MUKANYAMIBWA v NPPA, HC, RPA 00061/2021/HC/KIG (29/09/2022)*
6. *NPPA v NYIRABAZIFASHA E, TB GISENYI, RP 00813/2021/TB/GI (21/11/2021)*

5. QUALIFICATION OF OFFENCES

John Edward Kienapple vs The Queen [1975] 1 R.C.S, 729

6. MISTAKE OF FACT

NPPA v BIKORIMANA RP 00445/2018/TGI/MUS (08/05/2019)

7. BEST INTERESTS OF THE CHILD

NZERI JDD v NPPA, HC, RPA 00388/2020/HC/KIG (17/03/2022)

UNIT III

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° SPECIAL OF 20/09/2018

- A. Law **N° 42/2018 of 13/08/2018** modifying Law n°34/2008 of 08/08/2008 on the characteristics, description, ceremonial and respect of the National Flag as amended to date
- B. Law **N°43/2018 of 13/08/2018** modifying Law n°19/2008 of 14/07/2008 on characteristics and ceremonies of the National Anthem as amended to date
- A. Law **No 44/2018 of 13/08/2018** amending Law n°14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card
- B. Law **N°45/2018 of 13/08/2018** modifying Law n°01/2011 of 10/02/2011 regulating Capital Market in Rwanda as modified to date
- C. Law **N° 54/2018 of 13/08/2018** on fighting against corruption
- D. Law **N° 57/2018 of 13/08/2018** on immigration and emigration in Rwanda

REFLECTIVE JOURNAL N° 3

In your third Reflective Journal, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° SPECIAL OF 20/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is

there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT IV

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° 39 OF 24/09/2018

- A. Law **NO 36/2018 of 29/06/2018** determining the organization of education
- B. ~~Law N° 46/2018 of 13/08/2018 on counter terrorism²⁴⁶~~
- C. Law **N° 47/2018 of 13/08/2018** modifying Law n° 03/2010 of 26/02/2010 concerning payment system as modified to date
- D. Law **N° 50/2018 of 13/08/2018** amending Law n° 31/2009 of 26/10/2009 on the protection of intellectual property
- E. Law **N° 51/2018 of 13/08/2018** relating to the prevention, suppression and punishment of trafficking in persons and exploitation of others.

REFLECTIVE JOURNAL NO 4

In your fourth Reflective Journal, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° 39 OF 24/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is

²⁴⁶ This Law has been abrogated. You will find the new Law (**N° 039/2021 of 28/07/2021**) in *Official Gazette n° Special of 30/07/2021*. Please read up this new Law and include it in your Reflective Journal.

there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT V

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N^o Special of 25/09/2018

- A. Law **N^o 53/2018 of 13/8/2018** modifying Law n^o 04/2010 of 16/4/2010 regulating therapeutic, educational and scientific utilisation of organs and products of the human body
- B. Law **N^o 56/2018 of 13/8/2018** relating to arms
- C. Law **N^o 59/2018 of 22/8/2018** on the crime of genocide ideology and related crimes
- D. Law **N^o 60/2018 of 22/8/2018** on prevention and punishment of cyber crimes

REFLECTIVE JOURNAL NO 5

In your fifth Reflective Journal, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N^o Special of 25/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT VI

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° Special of 21/09/2018

- A. **Law N°48/2018 of 13/08/2018** on environment
- B. **Law N°49/2018 of 13/08/2018** determining the use and management of water resources in Rwanda
- C. **Law N°52/2018 of 13/08/2018** modifying Law n°21/2011 of 23/06/2011 governing electricity in Rwanda as modified to date
- D. **Law N°55/2018 of 13/08/2018** modifying Law n°05/2011 of 21/03/2011 regulating Special Economic Zones in Rwanda

REFLECTIVE JOURNAL NO 6

In your Reflective Journal n° 6, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° Special of 21/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT VII

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° 18 of 30/04/2018

- A. Law **N° 20/2018 of 29/04/2018** establishing regulations governing civil aviation
- B. Law **N° 21/2018 of 29/04/2018** modifying Law n° 42/2011 of 31/10/2011 relating to civil aviation security

REFLECTIVE JOURNAL NO 7

In your Reflective Journal n° 7, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° 18 of 30/04/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT VIII

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° 37 of 10/09/2018

- A. Organic Law **N° 005/2018.OL of 30/08/2018** modifying the Organic Law n° 10/2013/OL of 11/07/2013 governing political organisations and politicians
- B. ~~Law **N° 69/2018 of 31/08/2018** on prevention and punishment of money laundering and terrorism financing.~~²⁴⁷
- C. Law **N° 73/2018 of 31/08/2018** governing credit reporting system

REFLECTIVE JOURNAL N° 8

In your Reflective Journal n° 8, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° 37 of 10/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

²⁴⁷ This Law has been abrogated. You will find the new Law (N° 038/2021 of 28/07/2021) in *Official Gazette n° Special of 30/07/2021*. Please read up this new Law and include it in your Reflective Journal.

UNIT IX

CRIMES FOUND IN LAWS PUBLISHED IN OFFICIAL GAZETTE N° 37 BIS OF 10/09/2018

- A. Law **N°70/2018 of 31/08/2018** amending Law n°03/2015 of 02/03/2015 governing the organisation of community-based health insurance scheme
- B. Law **N°71/2018 of 31/08/2018** relating to the protection of the child
- C. Law **N°72/2018 of 31/08/2018** determining the organisation and functioning of faith-based organisations

REFLECTIVE JOURNAL N° 9

In your Reflective Journal n° 9, read and summarise the various crimes contained in the numerous laws published in OFFICIAL GAZETTE N° 37 of 10/09/2018.

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT X

CRIMES RELATED TO PUBLIC PROCUREMENT

(LAW N°62/2018 OF 25/08/2018 GOVERNING PUBLIC PROCUREMENT (*Official Gazette no. Special of 07/09/2018*)

REFLECTIVE JOURNAL N° 10

In your Reflective Journal n° 10, read and summarise the various crimes contained in the LAW N° 62/2018 OF 25/08/2018 GOVERNING PUBLIC PROCUREMENT *Official Gazette no. Special of 07/09/2018*).

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT XI

CRIMES RELATED TO EMPLOYMENT AND LABOUR RELATIONS

(Law **N° 66/2018 of 30/08/2018** regulating labour in Rwanda (*Official Gazette no. Special of 06/09/2018*))

REFLECTIVE JOURNAL N° 11

In your Reflective Journal n° 11, read and summarise the various crimes contained in Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda (*Official Gazette n° Special of 06/09/2018*).

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT XII

TAX OFFENCES

1) LAW N° 026.2019 of 18.09.2019 ON TAX PROCEDURES (*OFFICIAL GAZETTE N° SPECIAL OF 10/10/2019*)

2) LAW N° 02.2015 OF 25.02.2015 MODIFYING AND COMPLEMENTING LAW N° 37.2012 OF 09.11.2012 ESTABLISHING THE VALUE ADDED TAX (*OFFICIAL GAZETTE N° 11 BIS OF 16/03/2015*)

3) LAW N° 016.2018 OF 13.04.2018 ESTABLISHING TAXES ON INCOME (*OFFICIAL GAZETTE N°16 OF 16/04/2018*)

4) LAW NO 37_2012 OF 09_11_2012 ESTABLISHING VAT TAX (*OFFICIAL GAZETTE N° SPECIAL OF 05/02/2013*)

REFLECTIVE JOURNAL N° 12

In your Reflective Journal n° 12, read and summarise the various crimes contained in the following different laws governing taxes in Rwanda:

1) LAW N° 026.2019 of 18.09.2019 ON TAX PROCEDURES (*OFFICIAL GAZETTE N° SPECIAL OF 10/10/2019*)

2) LAW N° 02.2015 OF 25.02.2015 MODIFYING AND COMPLEMENTING LAW N° 37.2012 OF 09.11.2012 ESTABLISHING THE VALUE ADDED TAX, *OFFICIAL GAZETTE N° 11 BIS OF 16/03/2015*

3) LAW N° 016.2018 OF 13.04.2018 ESTABLISHING TAXES ON INCOME, *OFFICIAL GAZETTE N°16 OF 16/04/2018*

4) LAW NO 37_2012 OF 09_11_2012 ESTABLISHING VAT TAX, *OFFICIAL GAZETTE N° SPECIAL OF 05/02/2013*

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a

particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT XIII

OFFENCES RELATED TO INTELLECTUAL PROPERTY

REFLECTIVE JOURNAL N° 13

In your Reflective Journal n° 13, read and summarise the various crimes contained in the Law N° 50/2018 of 13/08/2018 amending Law n° 31/2009 of 26/10/2009 on the protection of intellectual property (*Official Gazette n° 39 of 24/09/2018*).

Each time, indicate the material (*actus reus*) and mental (*mens rea*) elements of the crime, as well as the applicable penalty.

Where applicable, make a personal comment: is the crime well defined. Is the penalty proportional to the gravity of the offence? Is there any constitutional issue(s) do you think a particular legal provision raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

UNIT XIV

TRAFFIC OFFENCES

- (1) LOI NO 34 / 1987 DU 17 SEPTEMBRE RELATIVE A LA POLICE DU ROULAGE ET DE LA CIRCULATION ROUTIERE (In French and Kinyarwanda only)**
- (2) PRESIDENTIAL DECREE NO 85/01 OF 02/09/2002 REGULATING GENERAL TRAFFIC POLICE AND ROAD TRAFFIC**
- (3) PRESIDENTIAL ORDER N° 40/01 OF 16/10/2005 MODIFYING AND COMPLEMENTING PRESIDENTIAL DECREE N° 85/01 OF 02 SEPTEMBER 2002 REGULATING GENERAL TRAFFIC POLICE AND ROAD TRAFFIC (O.G. No. 24 of 15/12/2005)**
- (4) PRESIDENTIAL ORDER N° 25/01 OF 25/02/2015 MODIFYING AND COMPLEMENTING PRESIDENTIAL DECREE N°85/01 OF 02/09/2002 REGULATING GENERAL TRAFFIC POLICE AND ROAD TRAFFIC AS MODIFIED AND COMPLEMENTED TO DATE**
- (5) INSTRUCTIONS OF THE COMMISSIONER GENERAL OF POLICE FIXING TRAFFIC FINES.**

REFLECTIVE JOURNAL N° 14

In your LAST Reflective Journal (n° 14), read and summarise the various Traffic “CONTRAVENTIONS” and their penalties, as well as the INSTRUCTIONS OF THE COMMISSIONER GENERAL OF POLICE FIXING TRAFFIC FINES.

Most of these CONTRAVENTIONS are not strictly speaking “criminal offences”. They are ADMINISTRATIVE penalties because they can’t be PROSECUTED in court by a prosecutor. UNLESS, you think they are PROSECUTABLE. Ask competent persons both in the Traffic Police, Rwanda Investigation Bureau (RIB) and National Public Prosecution Authority (NPPA) and answer this enigmatic question in your last REFLECTIVE JOURNAL.

If some are PROSECUTABLE (for example, DRUNKEN DRIVING) and others are not (for example NOT SEALING THE SEAT BELT), say it in your Reflective Journal).

Finally, what do you think about the practice of DETAINING persons who are found driving with alcohol in their blood (DRUNKEN DRIVING). Are the 5 days provided for in any law?

Is there any constitutional issue(s) do you think a particular legal provision or practice raises? Is there any domestic or foreign judgment or decision of an international human rights tribunal that supports your argument?

WATCH VIDEOS: RELEVANT ISSUES IN LEGAL AND POLITICAL PHILOSOPHY

66. Justice: What's The Right Thing To Do? Episode 01 "THE MORAL SIDE OF MURDER"

<https://www.youtube.com/watch?v=kBdfcR-8hEY>

67. Justice: What's The Right Thing To Do? Episode 02: "PUTTING A PRICE TAG ON LIFE"

<https://www.youtube.com/watch?v=0O2Rq4HJBxw&t=1498s>

68. Justice: What's The Right Thing To Do? Episode 03: "FREE TO CHOOSE"

<https://www.youtube.com/watch?v=Qw4l1w0rkjs&t=2691s>

69. Justice: What's The Right Thing To Do? Episode 04: "THIS LAND IS MY LAND"

<https://www.youtube.com/watch?v=MGyygiXMzRk>

70. Justice: What's The Right Thing To Do? Episode 05: "HIRED GUNS"

<https://www.youtube.com/watch?v=8yT4RZy1t3s>

71. Justice: What's The Right Thing To Do? Episode 06: "MIND YOUR MOTIVE"

<https://www.youtube.com/watch?v=8rv-4aUbZxQ>

72. Justice: What's The Right Thing To Do? Episode 07: "A LESSON IN LYING"

<https://www.youtube.com/watch?v=KqzW0eHzDSQ>

73. Justice: What's The Right Thing To Do? Episode 08: "WHATS A FAIR START?"

VII

https://www.youtube.com/watch?v=VcL66zx_6No

74. Justice: What's The Right Thing To Do? Episode 09: "ARGUING AFFIRMATIVE ACTION"

<https://www.youtube.com/watch?v=AUhReMT5uqA&list=PL30C13C91CFFEFEA6&index=9>

75. Justice: What's The Right Thing To Do? Episode 10: "THE GOOD CITIZEN"

<https://www.youtube.com/watch?v=MuiazbyOSqQ&list=PL30C13C91CFFEFEA6&index=10>

76. Justice: What's The Right Thing To Do? Episode 11: "THE CLAIMS OF COMMUNITY"

https://www.youtube.com/watch?v=iOotE9_OGGs&list=PL30C13C91CFFEFEA6&index=11

VIII

77. Justice: What's The Right Thing To Do? Episode 12: "DEBATING SAME-SEX MARRIAGE"

<https://www.youtube.com/watch?v=EzD9P-9sj4M&list=PL30C13C91CFFEFEA6&index=12>

78. Justice with Michael Sandel - CCCB: Bioethics: Designer children

<https://www.youtube.com/watch?v=aFcfygkMM0I&list=PL30C13C91CFFEFEA6&index=13>

79. Justice with Michael Sandel - CCCB: Bioethics: Testing utilitarianism

<https://www.youtube.com/watch?v=mXjBJUwO660&list=PL30C13C91CFFEFEA6&index=14>

80. Justice with Michael Sandel - BBC: Fair pay?

<https://www.youtube.com/watch?v=xKxta8FLTVY&list=PL30C13C91CFFFEA6&index=15>

81. Justice with Michael Sandel - BBC: Justice: Torture and human dignity

<https://www.youtube.com/watch?v=7FR-FuhN2HM&list=PL30C13C91CFFFEA6&index=16>

82. Justice with Michael Sandel - BBC: Justice: Collective responsibility

<https://www.youtube.com/watch?v=YfdIAR6ZI5c&list=PL30C13C91CFFFEA6&index=17>

83. BBC Radio's The Public Philosopher with Michael Sandel | Institute of Politics

<https://www.youtube.com/watch?v=cjFbdKyqDTA&list=PL30C13C91CFFFEA6&index=19>

END THANKS

VIDEOS IN FRENCH (NOT COMPULSORY)

Affaire du bon Juge Magnaud / Louise Ménard : Reconnaissance de l'État de Nécessité (4 mars 1898)

<https://www.youtube.com/watch?v=YYZFO0z2tyk>

Affaire de l'Ourse Cannelle : Illustration du Principe de Nécessité (Cour de Cassation, 1 juin 2010)

<https://www.youtube.com/watch?v=X0qIUQZg884>

Le Principe de Légalité l'Application Stricte de la Loi Pénale (arrêt du 1er juin 1992 ch. crim.)

https://www.youtube.com/watch?v=tCYzw_PBIys

Le principe de légalité des délits et des peines : [Droit pénal]

<https://www.youtube.com/watch?v=2Jcwnw1Bw40>

L'application de la loi pénale dans le temps - Présentation générale (1)

<https://www.youtube.com/watch?v=pIZgqeJzgVQ>

L'application de la loi pénale dans le temps - Les lois de fond (2)

<https://www.youtube.com/watch?v=ZKJiv2sGCRo>

L'application de la loi pénale dans l'espace : [Droit pénal]

<https://www.youtube.com/watch?v=rahiChrGN3o>

Arrêt Lacour : Tentative de meurtre et actes préparatoires (Cour de cassation, 25 octobre 1962)

https://www.youtube.com/watch?v=bmq_LQyMDx8

Arrêt Ben Haddadi : Principe de non-cumul et Concours réel d'infractions (Cour de cass, 3 mars 1960)

<https://www.youtube.com/watch?v=PcN3w-99gJk>

L'élément matériel en droit pénal : consommation, tentative - Pénal #3

<https://www.youtube.com/watch?v=TsGbGHIFa4w>

**Affaire du testing : Liberté et Loyauté de la preuve en procédure pénale
(Crim. 11 juin 2002)**

https://www.youtube.com/watch?v=fDWy3mVPI_I&t=104s

La loyauté de la preuve pénale (Ass.plén 10 novembre 2017 / Roi du Maroc)

<https://www.youtube.com/watch?v=NAIWTCNenIw>

Juge d'instruction

<https://www.youtube.com/watch?v=vG6whqOHwsQ>

Découvrir le métier de juge d'instruction en 5min

<https://www.youtube.com/watch?v=SAWQvKqYuC0>

END