# INTRODUCTION TO PUBLIC LAW

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# PART I. GENERALITIES ABOUT THE RWANDAN PUBLIC LAW

- **ORIGIN AND EVOLUTION OF RWANDAN PUBLIC LAW**
  - **Historical evolution of the Rwandan Public Law**
    - **Pre-colonial period**
      - It is very difficult to specify the starting date of this period, but in any case it starts from the very old time and ends with the arrival of the colonists in 1885.
      - During this period, the public law was entirely **customary law**. All **powers were in the hands of only one person**, the King, assisted by his appointed chiefs.
      - Before the arrival of the first colonists, the customary law regulated all sectors of life in society. On the politico-administrative level, there was a centralized political structure based on a territory-based administration.
        - » This central administration was strongly developed. The *Umwami* governed alone.

- On the economical level, in accordance with the contract of *ubuhake*, the peasants who were indebted to the Lords, had to provide a multiple of services and share their harvests with their respective Lords.
- Likewise, the basic social structure was fundamentally based on customs with regard to family links, marriage, dowry, engagement, etc.

– **Colonial Period.**

– This period runs from 1885 to 1962.

- During the Berlin conference held on 1st July 1885, it was recognized through ratification of a treaty between **Germany and the United Kingdom** that the Germans have control over a big portion of the territory of East Africa including Rwanda and Burundi.
  - Germans, in their turn, recognized to England the control of Uganda, as well as having some influence on Zanzibar.
- In 1899, the protectorate of the Ruanda-Urundi was established under a governor's administration, the Count **Von Gotzen**.

- Towards the end of WWI marked by the adoption of the Versailles Treaty, during the 1919 Conference of Peace in Paris, the territories of the Ruanda-Urundi were given to Belgium.
- On 31st August 1923, Belgium received from the League of Nations (LN), a mandate to manage these territories.
- Belgium accepted officially in 1924 the mandate given to them by the LN.
- The Belgian Government adopted an organic law combining the administration of Rwanda and Burundi with the Belgian Congo.
  - The administration of the Belgian Congo was governed by a general governor and the legislation applicable to these territories emanated not only from the Belgian parliament (Laws) but also from the King of Belgians (decrees).
  - In case of emergency, the general governor could also legislate through enacting some "orders".
    - The executive power was exercised by the King of Belgium

- In June 1945, the UN Charter as adopted in San Francisco turned the guardianship exerted on territories under mandate from the League of Nations into UN mandate.
  - In this context that on 13 December 1946, Ruanda-Urundi was placed under supervision of the UN and the administration of the two territories was once again entrusted to Belgium until Rwandan got its independence on the **1st July 1962.**
    - During this colonial period, it should be noted that the **customary law** coexisted with the **written legislations** of the mandate and guardianship.

- **Post-independence period**
- The adoption of constitution of 1962 confirmed the abolition of the monarchy and the setting-up of a republican democracy in Rwanda.
  - **The 1962 constitution** is actually the origin of Rwandan Public Law.
    - It provided for the equality of all citizens without any distinction, It also provided for the protection of civil liberties.
    - It created three constitutional branches; **the Office of the President of the Republic**, the **National Assembly** and the **Supreme Court**.
    - It prescribed for a pluralistic democratic regime.
      - However, the then president Grégoire KAYIBANDA had quickly established a system based on a unique political party, the Republican Democratic Movement (MDR).
        - In May 18, 1973, an amendment to the constitution was adopted to allow the president to be re-elected for an undetermined mandate. After this amendment, a group of officers led by General Juvénal HABYARIMANA took over power in a putsch.

- In July 5, 1973, the officers who had fomented the coup dismissed president KAYIBANDA and replaced him by HABYARIMANA.
  - The National Assembly was dissolved, the government was replaced by a **committee for peace and national unity**, and all powers were concentrated in the **president's hands** who finally suspended several provisions of the 1962 constitution.

– After referendum on the adoption of the new constitution, that took place on December 17, 1978 president HABYARIMANA proclaimed the new **constitution on the 20th December 1978**.
  - The new constitution instituted
  – the National Council of Development (CND),
  – the mono-party system with the principle that the President of the ruling political party, (The National Revolutionary Movement for the Development :MRND), was the only eligible candidate to the presidency of the Republic and
  – all Rwandan citizens were automatically full members of the MRND.

- In October, 1st, 1990, the Rwandan Patriotic Front (RPF) launched an attack and that conflict between the RPF and the Rwandan Government led to an unprecedented political instability.
  - In this situation, a **new constitution had to be adopted in June 10, 1991** and reinstituted
    - the multi-party System and
    - the separation of the three powers.
- After the genocide and following the victory of RPF in July 17, 1994, a declaration was adopted in which the RPF reaffirmed:
  - its intention to respect the Arusha Peace Accords negotiated from 1990 and signed on the 4th of August 1993
  - its support to the power-sharing between the Rwandan patriotic Front (RPF) and other political parties in Rwanda.
- Since 1994 up to June 4, 2003, Rwanda was governed by the **"fundamental Law of the Republic of Rwanda"** comprising several texts:
  - the constitution of June 10, 1991,
  - the Arusha Peace Agreements of August 4, 1993,
  - the RPF declaration of July 17, 1994,
  - the protocol of November 24, 1994 ratified by different Rwandan political parties that were not involved in genocide.
    - As far as the hierarchy was concerned, article 2 of the fundamental law stipulated that in case of conflict between the different texts, the **Arusha Peace Agreements** would have precedence on the **constitution of 1991**, and that the **RPF declaration of July 17, 1994** would have precedence on the **Arusha Agreements** and the **Protocol of November 24, 1994**.
      - » Since the fundamental law was composed of several documents, it was therefore necessary to elaborate a new constitution, the one of **June 4, 2003** .

## ➢ Definition of the Public Law and its relations with the private law

- The public law is that branch of law which determines and regulates **the organization and functioning** of states (country).
    - Also it regulates the **relation of the state (country) with its subjects**.
  - Public Law regulates the **relationships between individuals (and organizations) with the state and its organs** (Examples include criminal law, human rights related matters, etc); while private law regulates **relationships between people, organizations, and companies** (Examples include contract, tort, land, company and employment law).
    - Broadly speaking, public law is the term that covers all areas of law that bring us into contact with the State power and its application; public law is essentially **vertical in nature**, whereas private law is an umbrella term of all areas of law that are **horizontal in nature**

## ✓ SOURCES OF RWANDAN PUBLIC LAW

➢ **National sources of public law:** The sources of Rwandan law are classified in consideration of the hierarchy of norms.

## ✓ The Rwandan Constitution (Supreme Law)

- A constitution can be defined as being a **body of rules** which:
  - regulates the **system of government** within a state.
  - It establishes the **bodies and institutions** which form part of that system,
  - it provides for **the powers** which they are to exercise,
  - it determines how they (institutions) **are to interact and coexist** with one another and, perhaps most importantly of all,
  - it is concerned with the **relationship between government and the individual**.

- Rwanda has known, from the independence to date, many successive constitutions:
  - the constitution 1962, that of 1978, that of 1991 and another constitution of 1994 to 2003 known as the "Fundamental Law" which was made of the following four legal texts:
    - The Constitution of 16th June 1991;
    - The Arusha Peace Agreement of 4th August 1993;
    - The RFP Declaration of 17th July 1994 on the establishment of the republic Institutions;
    - The protocol agreement between the political parties: RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR on the establishment of National institutions.
- The recent and actual constitution governing Rwanda is the Constitution of the Republic of Rwanda of 2003 revised in 2015 published on 24/12/2015 after a referendum.

## ✓ The Organic Laws

- The organic laws are the laws voted by the parliament at a **special majority** in order **to precise and complete** the provisions of the constitution.
- In fact, according to article 95 paragraph 3 of the **the Constitution of the Republic of Rwanda of 2003 revised in 2015** "Organic laws are those designated as such and empowered by this Constitution to regulate other key matters in the place of the Constitution".
  - E.g:
    - Organic laws determining the functioning of the Chambers of Parliament ( art 67 par 3);
    - Organic law governing elections determines conditions and modalities for conducting elections(art 2 par 4);
    - Organic law governs Rwandan nationality Article 23(6);
    - Organic law determines the modalities for the establishment and functioning of political organizations, the conduct of their leaders, and the process of receiving State grants( Art 54 par 4)
    - Organic law determines the functioning of each Chamber of Parliament (art 73);
    - An organic law may establish or remove an ordinary or a specialised Court (art 152 par 3).
    - Etc ,…

- According to article 91 paragraph 2 of the Rwandan Constitution "Organic laws are passed by a three fifths (3/5) majority vote of Deputies or Senators present entitled to vote".

✓ **International treaties ratified by Rwanda**

✓ **Ordinary Laws**

- Ordinary Laws are those laws voted or passed by an **absolute majority** of the members of each chamber present (See article 91 paragraph 1 of Constitution). These ordinary laws are also provided by the constitution in different several domains.

E.g: . A law determines the organisation, territorial jurisdiction, competence and functioning of the *Abunzi* Committee (art 141 par 3);

- A law determines the organisation, functioning and competence of the National Public Prosecution Authority (Art 142 par 4);
- A law determines the organisation, powers and functioning of the High Council of the Judiciary (Art 149 par 2);
- A law determines the organisation, functioning and jurisdiction of Courts (152 par 4);
- Etc,...

## ✓ Decree Laws

- Decree Laws are laws having binding force of law passed by **the government**; when the parliament is in **absolute impossibility to hold a session**; in a domain normally within **the jurisdiction of the parliament**.
  - Article 92 of the Rwandan Constitution stipulates that "If it is absolutely impossible for the Parliament to sit, the President of the Republic may during that time promulgate decree-laws approved by Cabinet. These decree-laws have the same force as ordinary laws. These decree-laws cease to have legal force if not adopted by the Parliament at its next session".

## ✓Regulatory acts

- Regulatory Acts include Presidential Orders, Prime Minister Orders and Ministerial Orders.

  - The President of the Republic enacts presidential orders by virtue of the powers vested in him or her by this Constitution and other laws(Art 112).

Ex: implementation of laws if it is within his or her responsibility; establishment and determination of responsibilities of services in the Office of the President, the Senate, the Chamber of Deputies, and in the Supreme Court;

The President of the Republic may delegate to another official some of the powers referred to in this Article.

-The Prime Minister countersigns orders signed by the President of the Republic(art 120 par 1).

- Orders of the Prime Minister are countersigned by Ministers, State Ministers and other Cabinet members responsible for their implementation (art 120 par 2)
- Ministers, State Ministers and other Cabinet members implement laws through orders when it is in their responsibilities(Art 121).

- The Cabinet meeting deliberates on the following: draft laws and draft decree-laws; drafts of presidential orders, Prime Minister‟s orders, orders issued by Ministers, State Ministers and other Cabinet members; all other matters in its competence by virtue of this Constitution and other laws (Art 122 par 1).
- A presidential order determines the functioning, membership and decision-making procedures of Cabinet (Art 122 par 2).

- ✓ **Province Governor and District Council decisions**
  - The governors, mayors and district executive secretaries have been give power to take certain measures in their respective attributions. The measures or decisions taken by them shouldn't be in contradiction with not only the constitution but also other laws in force in Rwanda.
- ✓ **General Principles of Law**
- Certain unwritten rules are unanimously accepted as laws in a determined society. The application of those rules is considered as compulsory.
  - In other words some unwritten principles are generally accepted in legal community as exercising influence even to the legislator. He cannot easily depart from them and they inspire him/her in legislation process.

- The following are some of many general principles of law recognized in Rwandan law:

➢ **None is presumed to be ignorant of law or "*Ignorantia juris non excusat*".**

- According to article 176 paragraph 2 of the Rwandan constitution "Ignorance of the law which has been duly published shall not be a defence".
  - The *Ignorantia juris non excusat* is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely because he or she was unaware of its content.
- The rationale of this principle is that if ignorance were an excuse, a person charged with criminal offenses or a subject of a civil lawsuit would merely claim that he or she is unaware of the law in question to avoid liability, even though the person really does know what the law in question is.

- **Law provides for the future "the principle of non-retroactivity of the law"**
- The principle that people should be free from retroactive law has its roots in another principle: that there is no crime or punishment except in accordance with law: the Latin maxim "***nullum crimen sine lege, nulla poena sine lege***".
  - The principle of non- retroactivity has been established by article 24(par 2) of the constitution.
    - 3 Exceptions:
      - Retroactivity in mitius: A soft law will always have a retroactive effect;
      - Interpretive Laws are always retroactive;
      - By the will of the legislator.

- **Nemo *auditur suam turpitudinem allegens'* (*Nul ne peut invoquer sa propre turpitude)*.**

- The principle of ***"nemo auditor suam turpitudinem allegans"*** is applied in most legal systems and prevents anyone asserting a right acquired by fraud.
  - The rule is generally expressed in form of two Latin maxims : *Nemo auditor propriam turpitudinem allegans* (**no one shall be heard, who invokes his own guilt**) and *in pari causa turpitudinis cessat repetitio* (**where both parties are guilty, no one may recover**).
    - It means that acts, conventions, illegal actions which result from or are based on illegal or prohibited behavior cannot produce any legal effect.
      - **E.g:** Claiming debts from prostitution

- **The rule that Fraud annihilates everything: "FRAUS OMNIA CORRUMPIT".**
  - "Fraud tarnishes everything" or "fraud vitiates everything".
- The notion that an administrative decision obtained through fraudulent means is vitiated by this very fact and may be cancelled is a general principle in both the common law and the civil law traditions.
  - This means that the fraud to law deprives the fraudulent act of any legal rule value.
    - ***E.g***: The fraud of nationality.
  - Moreover, in dealing with the law of necessity, it was seen that where a person has deliberately and fraudulently placed himself in a state of necessity in order to circumvent the law, he can no longer benefit from the immunity accorded to acts done under the *jus necessitatis*.

## ➢ *Innocent until proven guilty*

- The basis of our system of criminal justice is that a person, although charged with an offence, is considered innocent until proved guilty of the offence.
  - The judge or court, as the case may be, must be satisfied **beyond any reasonable doubt** that the person is guilty. Where there is a reasonable doubt, the person must be *acquitted* (that is, found to be not guilty of the offence).
    - The fact that a person has been charged does not mean that she or he is guilty, and any discussion of the charge should make it clear that at this stage the offence is only alleged.

## ➢ *Burden of proof*

- The task of proving the guilt of a defendant falls on the prosecution - it is not up to the defendant to establish her or his innocence. This rule applies in all criminal trials.

## ➢ *Right to Remain Silent*

- While it is not entirely accurate to say that a person has a legal right to remain silent when questioned by the police, it is true to say that generally a person is not required to answer their questions.
  - Legislation has created some exceptions to this rule:
    - The main exception is that a police officer can request the name and address of a person found committing an offence, or who the police officer has reasonable cause to suspect has committed, or is about to commit, an offence or of a person who may be able to assist in the investigation of an offence or suspected offence.
      - In these circumstances a person who refuses to give her or his name and address, or who gives a false name and address, commits an offence.

## ➢ *Principle of Double jeopardy (No bis in idem)*

- The principle of criminal law called the double jeopardy rule is that **no person should be punished more than once** for the same offence and that no person ought to be placed twice in jeopardy (at risk) of being convicted.
  - This means that a person who has been charged, tried and acquitted cannot be charged again for the same matter.
    - There are two situations in which a person can be re-tried for an offence for which they have previously been acquitted:
    - Where **fresh and compelling evidence** not provided at the original trial is produced. This evidence must be reliable and substantial; OR
    - Where the acquittal is shown to be a **'tainted acquittal'.** A tainted acquittal occurs where a person was not convicted of an offence because an administration of justice offence was committed.

## ➢ The principle of the rule of law

- All are subject to law regardless of their status; in other words, **no one is beyond the reach of the law** even if he or she is a state official.
  - We all owe a duty to respect the law, both individuals and the state.
    - The rule of law also covers a second concept, which is that the **state should not exercise its power in an arbitrary fashion**. This means that a public body should be consistent in its exercise of power and should not use any discretion unfairly to favour one individual or group of individuals over another.

## ➢ The separation of powers

- There is some form of division between the three main powers of the state to ensure that a form of dictatorship cannot become established and abuse the power entrusted to the state by the people.
  - Leaders with absolute power are considered to be more at risk of abusing their power than are leaders who are checked or limited by other branches of the state as they exercise public power.

- ✓ **Jurisprudence or Case-Laws**
- The word jurisprudence is derived from Latin word *jurisprudentia*, meaning either **knowledge of law** or **skill in the law**. Jurisprudence or case law means in the wide sense, **decisions of courts and tribunals**.
  - In a narrower sense, the word jurisprudence serves to mean the way a given legal problem has been addressed or solved by the court.
  - It is in this sense that we say for example, that the jurisprudence has been established as to this precise question. This is to say that, this legal question is habitually addressed in this way by courts.
    - In Romano-Germanic legal systems, jurisprudence does not bind the judge. He may rule differently to his previous decision. A Common-law precedent has a binding force to the judge. He cannot easily depart from it.

## ✓ Doctrine

- By doctrine we mean **legal scholars' opinions** on critical questions of law. In the wider sense, doctrine refers to publications of persons deeply involved in the study of law. These are law professors, lawyers, etc.
  - Doctrine serves to better understand the **positive law** (***de lege lata***), which means those rules applicable in a given society at a precise time.
    - Briefly, the doctrine *LEGE-LATA* literary means concerning existing law. It draws the scope of existing rules.
  - Doctrine serves also to inspire possible law reforms by proposing rules that should be enacted by the legislator (***de lege ferenda***).
    - It thus adopts a more critical approach towards law and formulates suggestions for the modification of the existing law. It means literary "**the law which should be adopted**".

## ➢ SOURCES OF INTERNATIONAL PUBLIC LAW

- It is generally accepted that the sources of international law are listed in the Article 38(1) of the Statute of the International Court of Justice, which provides that the Court shall apply:
  - **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
  - **international custom**, as evidence of a general practice accepted as law;
  - the **general principles of law** recognized by civilized nations;
  - **judicial decisions** and **the teachings of the most highly qualified publicists** of the various nations, as subsidiary means for the determination of rules of law.

## ➢ THE HIERARCHY OF INTERNATIONAL NORMS

- In theory there is no hierarchy among the three sources of law listed in Article 38 of the ICJ Statute.
  - In practice, however, international lawyers usually look first to any applicable treaty rules, then to custom, and last to general principles, judicial decisions or writings.

# THE RWANDAN LEGISLATIVE PROCESS

- The process of drafting and enacting laws in Rwanda is structured through a familiar and constitutionally provided separation of powers between the executive and legislative branches of government in which:
  - the executive has primary responsibility for setting policies and drafting bills (i.e., legislations) while
  - Parliament has responsibility to review, amend, and pass bills into law.

## ➢Initiation of the law

- When the initiation of a law comes from the government, the draft legislations are initiated at the ministry level based on policy directives from the minister.
  - In practice there is both a **policy expert** and **a lawyer** with legal drafting skills involved early on.
    - According to article 3 of Instructions of the Minister of Justice N° 01/11 of 14/11/2006 relating to the drafting of the texts of laws "All draft legislation **shall be prepared and submitted to the Cabinet in three official languages** so that on each page article by article appears the three texts in parallel".
      - The draft legislations are sometimes initiated in either French, English or Kinyarwanda depending on which language the initial legal drafter is most familiar with.
        - » Once the draft legislation is complete, it is provided to the

## ➢ Review by the Ministry of Justice

- When a legislation draft has been validated at the initiating ministry level, the relevant minister sends the legislation draft for a further review to MINIJUST, which has a Legislative Drafting Unit made of a team of legal drafters.
  - The role of MINIJUST being not **to alter the substantive intent** of the draft legislation, the legislative drafting team at MINIJUST not only **reviews the draft to ensure consistency** with the Constitution, the international treaties ratified by Rwanda, and existing law; but also **it makes sure**

## ➢Transmission of the draft project to the cabinet

- When the initiating ministry has complied with all recommendations done by the MINIJUST and when it has the approval of the Ministry of Justice, **the legislation draft is transmitted from the initiating minister to the cabinet**.
  - A cabinet paper that explains **the policy intent of the draft in non-technical language** is also drafted by the initiating ministry and includes the legislation draft itself in an annex.
- Once a draft is before the cabinet, it may be **(1) adopted**, **(2) adopted with amendment**, or **(3) refused**.
  - Adoption with amendment is most common.
  - The legislation drafts that move forward and supported by the cabinet are those that **are most central to the President's political agenda,** because the determination of which draft legislations move

## ➢ Transmission of the bill to the chamber of deputies

- When the cabinet adopts the legislative draft, the bill is generally transmitted by the **initiating minister** in a **plenary session** of the Chamber of Deputies of the Lower House of Parliament, at the request of the Prime Minister.
  - Once a bill is transmitted, it is considered by the plenary **for relevance**, or **opportunity,** then goes to a parliamentary committee.
- In practice, the Members of Parliament in a standing committee **discuss a bill and review and offer proposed amendments** that will be voted on by the plenary.
  - As part of its review, the standing committee may

## ➢ Transmission of the bill from the Chamber of Deputies to the senate

- According to the internal rules governing the Senate, the process for reviewing a bill in the Senate is similar to that in the Chamber of Deputies.
  - According to article 126 of the Organic Law n° 02/2005 of 18/02/2005 establishing Rules of Procedure of the Senate,
    - *"Upon adoption of a draft bill by the Senate, the President of the Senate shall inform the Chamber of Deputies in a period not exceeding fifteen (15) days.*
    - *When a draft bill is rejected, the President of the Senate shall, in brief statement, in a period not exceeding fifteen (15) days shall explain to the Chamber of Deputies the reasons of its rejection.*
    - *When a draft bill which has been amended is adopted by the Senate, the President of the Senate, in a brief statement, shall inform the Chamber of Deputies in a period not exceeding fifteen (15) days*".
  - It is important to point out that when the Senate votes

- Once both Chambers have passed the identical text, it becomes law and is then sent to the President of the Republic for promulgation by the speaker of the Chamber of Deputies.

➢ **Transmission to the President of the Republic**

- Once submitted to the President Office, not only the President of Republic can accept the law and promulgate it (within 30 Days), i.e., sign it as it is, but also he can use his right to request Parliament to reconsider it.
  - In this case, the Constitution provides Parliament with the option to override the request, by a majority of two-thirds for an ordinary law or

## ➢ Transmission to the prime minister

- The final stage in the whole process of adoption of a binding law is its publication in the official gazette.
  - This task is entrusted to the Prime Minister who countersigns the laws adopted by Parliament and promulgated by the President of the Republic.
- The Prime Minister's Office publishes the law in its three versions (English, French, Kinyarwanda) in the Rwandan Official Gazette.
  - It is only then, what was a legislative **draft becomes a binding law** that everyone should comply as since a law is published in the Rwandan

# THE PRINCIPLES OF RWANDAN PUBLIC LAW

## ➢THE RULE OF LAW AND THE SUPRIMACY OF LAW

### ✓Legality

- The rule of law is essential in any society where human rights are to be protected.
  - It acts as a **safeguard** for human rights firstly by guaranteeing them legally and secondly providing a **means for redressal** where violations occur.
    - Punishments awarded in such cases also serve a as **deterrent** against further abuse.
  - Most of the problems with protecting human rights occur at one of the above levels:

- The basic function of rule of law is to ensure **justice**, **peace** and **order** in society. It has the two following aspects:
  - **Substantive Content:** This implies that the content of law should reflect **the basic standards** of society, exhibit regularity and **consistency** and place the **human personality** above all else.
  - **Procedural Machinery:** This includes legal institutions, procedures and traditions all of which must pay attention to the judgment of individuals and the values of society.
- The rule of law, comprising the **principles of equality and due process**.

## ✓The principle of the separation of powers

- There are three distinct activities in every government through which the will of the people are expressed.
  - These are the legislative, executive and judicial functions of the government.
    - Corresponding to these three activities are three organs of the government, namely the legislature, the executive and the judiciary.
  - The legislative organ of the state **makes laws**, the executive **enforces them** and the judiciary applies them to the specific cases arising out **of the breach of law**.
  - The principle of separation of powers deals with the **mutual relations** among the three organs of

## ✓Independence of the Judiciary

- The judiciary is exercised by the Supreme Court and other Courts established by the Constitution and other laws.
  - The Courts established by the constitution are of two different types: **ordinary Courts** and **Specialized courts**.
    - The ordinary Courts include the:
      - Supreme Court,
      - High Court,
      - Intermediate Courts and
      - Primary Courts,
    - while specialized Courts include
      - Gacaca Courts (closed in June 2012),
      - Military Courts,
      - Commercial Courts.
  - Fact being that Justice is rendered in the name of the people and nobody may be a judge in his or her own

## ➢ DEMOCRACY AND PRINCIPLES OF DEMOCRACY

- The word ‘democracy» is a term that comes from Greek and it is made up with two other words ***“demos”*** means People and “*kratein*” means to govern, to rule.
  - “Democracy” can then be literally translated by the following terms: *Government of the People* or *Government of the Majority*.
    - In another way we can say that a government comes **from the people**; it is exercised **by the people**, and for the purpose of **the people’s own interests**.

- The following are the principles that any State should respect if it is to be considered as democratic:

✓ ***Citizen Participation***

- Participation is the key role of citizens in democracy. It is not only **their right**, but it is **their duty**.
  - Citizen participation may take many forms including standing for election, voting in elections, becoming informed, debating issues, attending community or civic meetings, being members of private voluntary organizations, paying taxes, and even protesting.

## ✓ *Equality*

- Democratic societies emphasize the principle that all people are equal.
    - Equality means that all individuals are valued equally, have equal opportunities, and may not be discriminated against because of their race, religion, ethnic group, gender or sexual orientation.
  - This is what has been provided in article 15 of the Rwandan constitution which stipulates that “All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the Law”.

## ✓ *Political Tolerance*

- Political tolerance is the willingness to extend basic rights and civil liberties to persons and groups **whose viewpoints differ from one's own**.
  - Democratic societies are politically tolerant. This means that while the majority of the people rule in a democracy, the rights of the minority must be protected. People who are not in power must be allowed to organize and speak out.
    - Minorities are sometimes referred to as the **opposition** because they may have ideas which are different from the majority.
  - If the majority deny rights to and destroy their

✓***Accountability***

- Broadly speaking, accountability exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, **are subject to another's oversight**, direction or request that they provide information or justification for **their actions**.
- The concept of accountability involves two distinct stages: **answerability** and **enforcement**.
  - Answerability refers to the obligation of the government, its agencies and public officials **to provide information about their decisions and**

✓ ***Transparency***

- A transparent government holds public meetings and allows citizens to attend. In a democracy, the press and the people are able to get information about what decisions are being made, by whom and why.
  - For government to be accountable the people must be aware of what is happening in the country. This is referred to as transparency in government.

✓***Regular, Free and Fair Elections***

- One way citizens of the country express their will is by electing officials to represent them in government. Democracy insists that these elected officials are chosen and peacefully

✓ ***Economic Freedom***

- People in a democracy must have some form of economic freedom.
- This means that the government allows some private ownership of property and businesses, and that the people are allowed to choose their own work and labor unions.

# PART II. BRANCHES OF RWANDAN PUBLIC LAW

- Public law is composed of five branches of law. These branches are:
  - constitutional law,
  - administrative law,
  - criminal law,
  - taxation law
  - Criminal procedure law

## ➢TAXATION LAW

- Taxation law or the law of taxation is a branch of public law dealing **with taxation mechanisms** by determining **taxable activities**, **tax rate**, **tax payers** and the adjudication of **fiscal disputes**.

### ✓The concept of Tax Law

### ❖Definition of Tax

- A tax can be defined as **a fee** charged by a **government** on a **product**, **income**, or **activity**, which is authorized by a law, with no direct consideration.
  - Taxes constitute the first mean of the government to raise revenues in order to ensure **its functions**.

## ❖Main characteristics of a tax

- **It is an authoritative imposition**
  - A tax is imposed authoritatively. It is not a voluntary contribution by the taxpayer. Failure of the taxpayer to pay the due tax is sanctioned.
- **Absence of direct consideration**
  - The money as tax is not subject to receipt of special and direct benefit conferred to the taxpayer.
    - There is however an “indirect consideration”: the taxpayer will benefit indirectly from different government activities, such as the construction of roads, schools, hospitals, etc

## ❖Tax base and taxable object

- A tax base is the specific source from which a taxing authority intends to derive tax revenue. Broad tax bases that are commonly used are:
  - Income
  - Consumption (or expenditure)
  - Wealth (property)

## ❖Functions of tax

- There are three functions that a tax fulfils; namely The financial, social and economic.
  - **The financial function of a tax**
    - The main function of taxes is to finance the Government's expenditure.
  - **The social function**
    - Taxes enable the Government to **redistribute** the national

- **The economic function**
  - Taxes also permit the Government to regulate the economic activity in a country.
    - Taxes can be used for example to regulate the inflation, as incentives for investment, or for discouraging certain behavior (like drinking and smoking).

- **MAIN PRINCIPLES OF TAX LAW**

❖**Constitutional Principles:**

✓**The principle of legality of tax**

- This principle is provided for by article 164 of the Constitution of the Republic of Rwanda of 04th June 2003 as amended to date. This article reads, "Tax is imposed, modified or removed by law. No exemption or reduction of a tax can be granted unless authorised by law".

✓**The principle of equality before tax**

- ✓**The principle of liberty**
  - This principle refers to the fact that any given taxpayer has full freedom to run and manage his/her business in the way he/she likes i.e. in a way that better fits his/her interests.
  - Thus, a person can decide to make profits or not and no person can compel someone else to make profits.
- ❖**Non Constitutional principles**
- ✓**The principle of non-retroactivity**
  - A tax law governs not only the future actions but also applies to ongoing situations.
    - Tax legislator may also declare some a given tax law to be retroactive and in the same sense, tax interpretative laws are always retroactive the same as *mitius* tax laws.
- ✓**The principle of territoriality**
  - This principle concerns the application of tax law in

## ➢ GENERALITIES ON CONSTITUTIONAL LAW

### ✓ *THE CONCEPT OF CONSTITUTION*

– Constitutional law is that branch of public law that concerns the constitution of a state. It is concerned with **the role and powers** of the institutions within the state and with the relationship between the citizen and the state.

### ✓ CLASSIFICATION OF CONSTITUTIONS

– The main classification of the constitutions are:

- Written and Unwritten constitutions;
- Rigid and Flexible constitutions;
- Federal and Unitary constitutions.

❖***Written and unwritten constitutions***

- A written constitution is one contained within a single document or a series of documents, with or without amendments, defining the basic rules of the state.
  - In England as opposed to France and the USA, constitutional law is not, however, expressed in a single written constitution for which modifications require formal procedures. It is said to be an unwritten constitution.

❖***Rigid and flexible constitutions***

- This classification rests primarily on the question whether or not the constitution can be changed or amended with ease.

❖***Federal and unitary constitutions***

- In many states, for example the USA, Canada, Australia, Nigeria and Malaysia there exists a division of powers between central government and individual states or provinces, which make up the federation.
  - The powers divided between the Federal Government and states or provinces will be clearly set down in the constituent document. Some powers will be exclusively reserved to the

# FEATURES OF THE RWANDAN CONSTITUTION

Normally, our constitution is composed of 12 chapters which are drafted in 177 articles as follows:

- **Chapter one:** Sovereignty of Rwandans and Supremacy of the Constitution: From article 1-3.
- Chapter two: Republic of Rwanda: From article 4-9
- Chapter three: Fundamental principles and home grown solutions: from article 10-11

# Continue….

- Chapter seven: Branches of government: 61-157
- Chapter eight: National defense force and security: 158-161
- Chapter nine: State finance and taxes: 162-166
- Chapter ten: International treaties and agreements: 167-170
- Chapter eleven: Transitional provisions: 171-

## ➢NOTIONS OF ADMINISTRATIVE LAW

- Administrative law as a Body of legal rules, is defined as a **set of rules applicable to administrative agencies of the State**. In fact, these are different rules relating to each area of administrative law.

### ✓Principles underlying the public service

### ○ Principle of continuity

- Any activity offered as public service is vital for the national or local life. It should be offered without interruption.
- The rule of continuity also justifies the refusal to accept an agent's request for resignation, and the administration's right to unilaterally extend his contract of employment despite its expiry.

### ○ The principle of equality

- Beneficiaries of the administration are born and remain equal in rights and freedoms(Art. 16, Constitution of 2003, as amended to date); equal

- **The Principle of adaptation**

- As earlier discussed, the public service is created to meet the needs of the general public. Since those needs are not stagnant, but rather evolve, the rule **permits the public service to adapt to the evolving** needs of the general public.
  - That's why, the creating power can from time to time, decide to change the rules of organisation, functioning and conditions of delivering public services, or stopping a given public service because it's no longer capable of serving the general interest.

- ✓ **Privileges of the Administration**
- ○ **The prerogative of expropriation for the public interest**
- Expropriation can be defined as the competence of the administration to compel an individual or group of individuals to sell to it their property for the purposes of the public interest.
  - This prerogative of the administration is an exception to the right to property that should not be interfered with. (Art. 34 of the Constitution of 2003 as amended to date).
    - The expropriation can only be effected in circumstances

- **Prerogative of requisition**
- Competence of the administration to formally demand property belonging to individuals and take them for official use; with the owner getting compensation (which may not necessarily cover the actual prejudice incurred).
  - Requisition may be resorted to in cases of extreme necessity or need of saving a public situation from deteriorating. Thus it is beyond the simple general interest.
    - Can be requisitioned: immovable property, movable property, or even services by individuals.

- **Other prerogatives**

❖***Automatic decisions enforcement***

- The administration is characterised by the principle of inequality in its relationships with individuals, whereby the general interest takes precedence over private interests. Therefore, the administration needs not to have recourse to courts to secure an individual's consent for the execution of its decision.
  - Moreover, when the administration's decision is contested, this will not prevent it from its enforcement. **The decision is presumed to be legal because meant to serve the general**

## ❖*Not being compelled to fulfil its obligations*

- Two reasons justify the existence of this prerogative.
  - First, there is a principle that **“the state is never insolvent”**. Therefore, since all public services are created by the state and its organs, their solvency will be guaranteed by the state, although they may not entirely dependent on the state financially.
  - Second, the fact that public property cannot be subject to seizure ensures respect of the principles of continuity and regularity underlying all public services.
    - Creditors of the administration concerned with their

## ✓TECHNIQUES OF ORGANISATION

- Three techniques of organisation of administrations also referred to as **modes of management of public services** by different authors.

### ○ Centralisation

- When power is centralised, it implies that the **created public service** will also be organised and managed by **the creating authority**.
  - This technique is characterised by the following:
    - Concentration of **all decision-making power into the hands of the creating authority,** i.e. direct management.

- **Decentralisation**
- With decentralization the **powers** initially meant for the central government **are transferred** to **decentralised entities**, also referred to as entities of local government.
  - The Criteria of this type of administration are:
    - Vesting with **legal personality** distinct from that of the creating power.
    - **Autonomous:** both financially and administratively. The decentralised entity has the real decision-making power in the matters related to the administrative and financial management.
    - Nevertheless, even though the powers are transferred from the Central government to decentralised entity, the central government is legally **allowed to oversee or supervise the**

- **Concession**

- This is a **contract** in which the administration confers the **management of a given public service on individuals or a private enterprise**, known as concessionaire.
  - The concession will always be subject to the rules of continuity, regularity, equality and adaptation, but without having to enjoy the same prerogatives as those recognised to the administration.
  - The concession is managed as public service intended to work for the general interest, and making profits (pecuniary interests) at the same time.

## ➢NOTIONS OF CRIMINAL LAW

- Traditionally, criminal law is divided into three different sub-branches:
  - General criminal law
  - Special criminal law;
  - Criminal Procedure law.

### ✓The general criminal law

- The general criminal law deals with general principles of incrimination and general rules of determination of sentences. The legal base of general criminal law provisions Law **№68/2018 of 30/08/2018** determining offences and penalties in general, from article 1 to 106. Those legal provisions constitute the first part of the Rwandan penal code.

## ❖Constitutive elements of an offence

- An offence (or an infraction) is defined as an act or omission which is considered as an attack against the social order, and which the law punishes by sentences.
  - An offence requires the necessary the existence of three elements, which are legal element, material element (*actus reus*) and moral or intentional element (*Mens rea*).

## ❑The legal element

- The legal element of an infraction refers to a legal text providing for an act or an omission considered as an infraction and for its penalty as well.

## ❑The material element (Actus reus)

- The material element of an infraction can be defined as the external (exterior) element by which the moral element is revealed.
  - For example if we consider “murder”, the material element is the fact of killing somebody. If we consider, theft, the material element is made of the fact of removing or abstracting something from somebody else.
    - Most of the time, the material element consists of a positive action, i.e. the fact of doing something prohibited by the law (delit d’action ou de commission). Most of the provisions of the Rwandan penal code deal with this kind of infractions.

## ❑The moral element (mens rea)

- The infraction exists, when, in addition to the two elements already studied, the moral element exists. In other words, the material act must have been a deed of the will of the author.
  - That link between the act and the author, called by English law ***mens rea*** (la volonté criminelle) by opposition of ***actus reus*** (acte criminal), constitutes a moral element.
- In the absence of that will, there is no infraction.
  - However, the will does not have always the same intensity or the same extent.
    - When the author **has wanted the act and its consequences**, and has accomplished that act, one talks about **criminal intention** (intention criminelle or dol penal).
      - This is the case for theft, murder, etc...
    - On the other hand, when the author **has wanted the act and**

## ❖Classification of offences

- According to article 16 of Law **Nº68/2018 of 30/08/2018** determining offences and penalties in general “Offences are classified according to their gravity as follows: felonies; misdemeanours and petty offences”.
  - **A felony** is an offence punishable under the law by a main penalty of an imprisonment of more than five (5) years.
  - **A misdemeanour** is an offence punishable under the law by a main penalty of an imprisonment of six (6) months to five (5) years.
  - **A petty offence** is an offense punishable under

## ❖Categories of Penalties

- The Rwandan penal code provides two types of penalties:
  - The **main penalties** applicable to natural persons shall be :
    - 1° imprisonment;
    - 2° fine;
    - 3° community service as alternative penalty to imprisonment.
  - **Additional penalties** applicable to natural persons shall be:
    - 1° special confiscation;
    - 2° ban on entry into a place or restriction of movements;

✓**Special criminal law**

- Special criminal law deals with precise or particular conditions of incrimination for each infraction.
  - It treats separately each infraction, defines its constitutive elements and modalities of repression.

✓**The criminal procedure**

- This is a branch of criminal law that regulates the enforcement of the substantive law, the determination of the guilty and punishment of those who are found guilty of crimes.
  - Between the commission of the infraction and the sentence pronounced there is a long process which goes from a complaint to the pronouncement of a judgment, going through police investigations, investigations made by the public prosecutor, debates

THANK YOU VERY MUCH