

LAW N° 23/2003 OF 07/08/2003 AIMS AT PREVENTION, SUPPRESSION AND PUNISHMENT OF CORRUPTION AND RELATED OFFENCES

J.O. n° special bis of 03/09/2003

WE, KAGAME Paul,
President of the Republic,

THE TRANSITIONAL NATIONAL ASSEMBLY HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING LAW, AND ORDER IT TO BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

The Transitional National Assembly in its session of July 8, 2003;

Given the Constitution of the Republic of Rwanda of June 4, 2003, especially in its articles 62, 90, 93, 108 and 201;

Given the decree-law n° 9/80 of July 7, 1980 on organization and competence of the judiciary as modified and completed to date, especially in its article 48 confirmed by the law n° 1/82 of January 26, 1982 confirming decree-laws;

Given the decree-law n° 21/77 of August 18, 1977 instituting the penal code in its articles 221, 222, 223, 224, 225, 226, 227, , 307, 308, and 309;

ADOPTS:

TITLE ONE: GENERAL PROVISIONS

Article one:

This law aims at preventing, suppressing and punishing corruption and related offences committed in service sector organs, public and private institutions as well as in non-governmental organizations.

Article 2:

In this Law:

a) "Public service" refers to services that should be delivered to the public and the non-fulfilment of which, by the official responsible, would cause harm or loss to the welfare of the beneficiaries;

b) “Measures of the prevention of corruption and related offences” are any procedures aimed at preventing corruption and related offences from being committed;

c) “Public servant” refers to any person with public authority of whatever rank, or one with public mandate either through regular election or by civil service appointment, one in charge of state mission or public service, who involved in the management of the property of the State, District, Municipality, Town, City, Province, a public service organ, public company or enterprise;

d) “Laundering” refers to the fact of facilitating by whatever means, the justification of the source of property and revenue as well as profit obtained by the author of an offence provided for by this law.

Equally constituting “laundering” is the fact of lending support by safe guarding, concealing or converting by direct or indirect means, a product that is a result of an offence provided for by this Law.

e) “State organs” constitute public service sector organs utilizing the property of the State and that of public institutions.

TITLE II: PREVENTION OF CORRUPTION AND RELATED OFFENCES

UNIQUE CHAPTER : MEASURES RELATING TO THE PREVENTION OF CORRUPTION AND TELATED OFFENCES

Article 3:

The officials in organs of the public service and public institutions, those in private institutions, companies and non-governmental organizations are under obligation to set up mechanisms for the prevention of corruption and related offences.

Article 4:

To prevent corruption and related offences, every institution and public establishment must, at least:

- a) have its own procedure manual describing the decision making process;
- b) determine the time limit for decision making and related regulations;
- c) respect the procedure of public invitation to tender;
- d) have an internal audit department;
- e) present a report to the relevant authorities;
- f) adopt a code of conduct for its officials and employees;
- g) recruit its employees by competition;
- h) ensure professional ethics;
- i) ensure equal treatment of those seeking services without subjecting them to delaying and tiresome manoeuvres.

Article 5:

To prevent corruption and related offences, private institutions and non governmental organizations which are not charged with providing services that are of public interest must, in providing these service, avoid inequality and discrimination of any kind with regard to beneficiaries with equal rights.

Article 6:

Notwithstanding provisions of international conventions ratified by Rwanda, institutions international organizations operating or wishing to operate in Rwanda must set up mechanisms for the prevention of corruption and related offences.

Article 7:

Notwithstanding legal provisions governing employees of public and private services organs, the employer must inform his or her new workers about what can lead them into corruption and related offences as well as the disastrous consequences. The employer must also bring to the employee's knowledge the laws governing the code of conduct of the level at which he or she will be employed. This code must be displayed in an open place.

Notwithstanding legal provisions governing the employees of public and private services organs, the employer must inform his or her employees and the public about the disciplinary sanctions imposed on employees found guilty of corruption and related offences.

Article 8:

Every senior official must conscientiously and in transparency evaluate his or her subordinates with regard to corruption and related offences. He or she also has the obligation of regularly sensitizing his or her subordinates about the dangers of corruption.

Article 9:

Notwithstanding the legal provisions governing the Press, the Press must get involved in the prevention and the fight against any act of corruption and related offences by publicizing the acts of corruption and related offences discovered in all sector service organs.

Institutions involved in the prevention and fight against corruption must put in place mechanisms of collaborating with the Press in this respect.

TITLE III. PUNISHMENT OF CORRUPTION AND RELATED OFFENCES

CHAPTER ONE: PUNISHMENT OF CORRUPTION

Section one: Punishment of passive corruption

Article 10:

Whoever will have explicitly or implicitly demanded, indirectly or directly received gifts or any other profit for oneself or for others, or who will have accepted it as a promise in order to render a service within his or her function, mission, mandate or whoever will have used them to do it, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit solicited.

Article 11:

Whoever will have explicitly or implicitly demanded, indirectly or directly received gifts or any other illicit profit for oneself or for others or who will have accepted it as a promise in order to accomplish an illegal act or refrain from carrying out his or her duties, shall be sentenced to a term of imprisonment of between 5 years to 10 years and a fine ranging from twice to 10 times the value of illicit profit solicited.

Article 12:

Notwithstanding heavy sentences provided for by other penal provisions, whoever mentioned in articles 11 and 12 of this law, who will have explicitly or implicitly demanded, benefited from or carried out sexual act of unconsented nature or who will have accepted it as a promise in order to accomplish, or refrain from carrying out his or her duties shall be sentenced to a term of imprisonment provided for in articles 11 and 12 of this Law, in accordance with the distinctions therein established, and a fine ranging from 50,000 RWF to 100,000 RWF.

Article 13:

Notwithstanding provisions of articles 11 and 12, any judge or arbitrator who will be found guilty of corruption and related offences that influenced the sentence pronounced, shall be sentenced to a term of imprisonment of between 15 and 20 years and a fine ranging from twice to 10 times the value of the profit solicited.

If by the effect of corruption in the said hearing, one was sentenced to a term of imprisonment of more than 20 years, this sentence will be applied to the judge found guilty of corruption.

Every member of the judiciary, public prosecution or police force who will be found guilty of receiving or accepting presents or promises in order to exert an influence on the taking of an unfair decision, will be sentenced to a term of imprisonment of between 10 and 15 years and a fine ranging from twice to 10 times the value of illicit profit demanded.

Section 2: Punishment of active corruption

Article 14:

Whoever will have explicitly or implicitly offered, indirectly or directly proposed, gifts or any other illicit profit, to a person in charge of a function, mission or mandate or who will have promised it in order to render for him or her or for somebody else a service that is within his or her attributions or who will use the latter for that service to be rendered, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit accorded.

Article 15:

Whoever will have explicitly or implicitly offered, indirectly or directly proposed, accorded gifts or any other illicit profit, to a person in charge of a function, mission or mandate or who will have promised it in order for him/her or somebody else to be rendered an illegal service or to refrain from carrying out the usual duties, shall be sentenced to a term of imprisonment of between 5 and 10 years and a fine ranging from twice to 10 times the value of illicit profit offered.

Article 16:

Notwithstanding heavier penalties provided for by other legal provisions, whoever will have explicitly or implicitly, attempted to or carried out sexual acts of an in consented nature or will have promised them in order to accomplish or refrain from his or her duties, shall be sentenced to a term of imprisonment provided for in articles 11 and 12 of this law, in accordance with the distinctions found, therein and a fine ranging from 50.000 RWF to 1,000,000 RWF.

CHAPTER II: PUNISHMENT OF OFFENCES RELATED TO CORRUPTION

Section one: Punishment of the acts of demanding, receiving in excess of the justified, exempting from tax or non taxation, giving away for free or at a very low price, public property by public servants

Article 17:

Any public servant who will be found guilty of misappropriation of public funds by arranging to receive, demanding or knowingly receive what was more than due for fees, taxes, contributions, fines or surety, revenues or interests, benefits or salaries, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit received.

Article 18:

Any public servant who, in whatever form or for whatever motive, without authorization by law, will have accorded exemptions from fees, duties, taxes, fines or surety and other fees or will have effected freely or at an unsuitable price, the delivery of public goods and services, shall be sentenced in accordance with article 18 of this law.

Section 2: Punishment of trafficking of influence

Article 19:

Whoever will have explicitly or implicitly , solicited, promised, or directly or indirectly received gifts or any other illicit profit for himself or herself or somebody else, whether the exerted influence produces expected results or not, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit solicited, promised or received.

Article 20:

Anybody who will have explicitly or implicitly, offered to somebody else, attempted to give, promised directly or indirectly, gifts or any other illicit profit intending by use of authority or acquaintances to influence decision making by another person, whether the illicit, profit is for himself or herself or for somebody else, whether the exerted influence produces the expected results or not, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit given or promised.

Article 21:

Notwithstanding heavier sentences provided for by other penal provisions, whoever will have explicitly or implicitly demanded, benefited from, carried out sexual acts of an unconsented nature or will have promised them asserting himself or herself as being capable of influencing decision making by another person, whether the exerted influence produces expected results or not, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from 50,000 RWF to 1,000,000 RWF.

Section 3: Punishment of favoritism

Article 22:

Any official of a private institution or his or her representative whose mission is connected with public interest, who will have taken a decision based on favoritism, nepotism or enmity shown with regard to a person seeking service, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from 50,000 RWF to 1,000,000 RWF.

Section 4: Punishment of the seeking of benefits by employees from activities outside of their attributions

Article 23:

A sentence to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit received shall be imposed on:

a) any public servant and any other person who openly, by fictitiously effected acts or fraudulent representation of one's identity by use of third party, will have taken or accepted to receive, in violation of the law governing him or her, whatever benefits from acts, public tenders, in public enterprises or others of which he or she has or had, at the time of commission of the act, whether as a whole or in part, the administration or the supervision of;

b) any public servant and any other person who will have, in violation of laws which govern him or her, taken whatever benefits, from an affair for which he or she was in charge of authorizing payment or liquidation.

Section 5: Punishment of illicit enrichment

Article 24:

Any public servant or any other person who will have enriched himself or herself without being able to justify the honest and legal source of his or her property, shall be guilty of illicit enrichment.

He/she will be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of the property the legal source of which, he or she is not able to justify.

The court of law will automatically deliver the verdict of the confiscation of the illicit property or revenue.

Section 6: Punishment of laundering

Article 25:

Whoever will have committed the offence of laundering, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit.

The court of law will automatically deliver the verdict of the confiscation of the illicit property or revenue that was laundered.

Article 26:

Laundering is punished with a term of imprisonment of between 5 and 10 years and a fine ranging from twice to 10 times the value of illicit profit given, if it was committed:

- a) as a habit;
- b) on the basis of professional authority;
- c) in an organized gang.

Article 27:

When the offence resulting into the property and revenue on which the operation of laundering were based is punishable by a term imprisonment longer than that provided for in articles 26 and 27 of this law, the sentences applicable for the laundering will be that provided for that offence where it is pointed out that the offender was aware of the offence beforehand. And if this offence is accompanied by aggravating circumstances, only the sentence provided for aggravating circumstances known by the offender shall be applicable.

**CHAPTER III: COMMON PROVISIONS FOR THE PUNISHMENT OF
CORRUPTION AND RELATED OFFENCES.**

Article 28:

An accomplice in offences provided for by this law shall be liable to the same sentences as the offender. The accomplice may be prosecuted even if no proceedings have been brought against the offender.

Article 29:

An accomplice is any person who:

- a) knowingly, will have helped the author or the co-author in the preparation, complicity and commission of the offence;
- b) anyone who, indirectly or directly, will have benefited from illicit profit knowing that the illicit profit results from the offence.

Article 30:

Notwithstanding other sentences provided for by the penal provisions applicable to offences provided for this law, the court of law can deliver an additional verdict as follows:

- a) The confiscation of the object or item which was used or meant to be used to commit the offence;
- b) The confiscation of the product of the offence as well as the money or object which the author or co-authors or accomplice have illicitly received.

When the confiscated object has not been seized or cannot be substituted, the confiscation is arranged in money value.

CHAPTER IV: THE LIABILITY OF LEGAL ENTITIES

Article 31:

Legal entities, whether public or private, are liable for corruption and related offences provided for by this law, when they are committed by their representatives or by those who occupy leadership posts acting on behalf of these legal entities on the basis of:

- a) power of representation
- b) power to take decisions;
- c) power of supervision;
- d) those who have been accomplices or those who have encouraged the authors of offences to commit them.

The liability of legal entities provided for in paragraph one of this article does not exclude individual penal prosecution of the representatives of the said legal entities or their accomplices.

Article 32:

Legal entities, whether public or private, that will be found guilty of offences provided for in this law will pay a fine of between five to ten times the value of illicit profit received or accepted, demanded, accorded or promised.

Article 33:

Notwithstanding provision of article 31 of this law, the court of law can, in case of legal entity liability, deliver an additional verdict of one or two of these penalties:

- a) Exclusion from public tenders for a duration not exceeding 2 years;
- b) Displaying or publicizing the court judgment by all possible means of communication.

Article 34:

In the legal proceedings against legal entities for offences provided for by this law, the legal representatives of these legal entities shall be given a notice of hearing and allowed to represent them.

Legal representatives of these legal entities cannot be prosecuted for offences whose liability is incumbent upon the legal entities whom they represent except in cases of individual liability.

CHAPTER V: MEASURES TO FACILITATE THE COLLECTION OF EVIDENCE

Section one: Evidence and protection of witnesses

Article 35:

In their investigations, the Judicial police officer, the public prosecutor or judge are duly authorized to demand for the banking, financial or commercial records and to seize them.

Professional secret whether of banking nature or other professional secret, cannot constitute an obstacle to investigation measures taken by the judicial police officer, the public prosecutor or the judge in their inquiries to get evidence.

Article 36

In the legal proceeding and judgment of offences provided for by this law, the judge or any qualified authority handling the offences provided for by this law, must take all the necessary measures to ensure effective and appropriate protection for the following persons:

- a) those who have supplied information concerning the offences provided for by this law or who collaborated in another way with authorities in charge of investigations or court proceedings;
- b) witnesses who have made statements concerning the offences.

Article 37:

The court will reserve a bonus for whoever will have contributed to the denunciation of offences provided for by this law, without having participated in committing these offences. The bonus shall be as follows:

- a) 1/10 of the value of the property confiscated from the author of the offence;
- b) 20,000 RWF to 100,000 RWF that shall be paid by the guilty person where the offence denounced could not lead to property confiscation.

Section 2: Mitigation measures

Article 38:

Whoever will have made a confession after the discovery of the offence or after the start of the investigation but before his or her file is transmitted to the court of law and whoever will plead guilty while supplying all the information on the offence committed, on those related offences concerning the identification of authors, co-authors and accomplices, the nature, the value of gifts or of any other illicit profit received or the nature of other things demanded, received, accorded, promised, as well the information related to product of the offence, shall be liable to a penalty equivalent to one-half of the penalty which the court of law would have imposed on him/her, the author, co-author or accomplice of offences provided for by this law.

Article 39:

Whoever will have made confession before any legal proceeding or before the affair is discovered and whoever will plead guilty while supplying information, on the offence committed and on those related offences, concerning the identification of authors, co-authors and accomplices, the nature, the value of gifts, of any other illicit profit received or the nature of other things demanded, received, accorded, promised, as well as the information related to product of the offence, shall be liable to a penalty equivalent to a quarter of the penalty which the court of law would have imposed on his/her, the author, the co-author or the accomplice of offences provided for by this law.

Article 40:

The mitigation measures provided for in articles 39 and 40 of this law is excluded when the offence committed relates to sexual acts of an unconsented nature.

Article 41:

The mitigation provided for by this law does not prevent the court from ordering the confiscation provided for by this law.

CHAPTER IV: FINAL PROVISIONS

Article 42:

Notwithstanding modifications made by this law, the provisions of the Penal Code, Book One, are applicable to offences provided for and punished by this law.

Article 43:

All previous legal provisions contrary to this law are hereby repealed.

Article 44:

This law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 07/08/2003

The President of Republic
KAGAME Paul
(se)

The Prime Minister
MAKUZA Bernard
(sé)

The Minister of Justice and Institutional Relations
MUCYO Jean de Dieu
(sé)

Seen and sealed with the Seal of the Republic:

The Minister of Justice and Institutional Relations
MUCYO Jean de Dieu
(sé)