

Questionnaire related to the right of anyone deprived of his or her liberty by arrest or detention to bring proceeding before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful

1) Please describe your national institution's concern and practice with the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.

The Rwanda National Commission for Human Rights (RNCHR) is governed by Law N°19/2013 of 25/03/2013 determining missions, organisation and functioning.

Article 6 (3°) of this Law entrusts the RNCHR the special mission of carrying out visits to custodial places with the purpose of inspecting whether the rights of detainees are respected and urge relevant authorities to address identified cases of violation of the rights of detainees.

Among others, the RNCHR the following powers:

- to have access to any place where human rights violations are alleged or reported **including places of detention** for the purpose of investigations; (See article 7 (2°) of the Law N°19/2013 of 25/03/2013);
- to request relevant organs to unconditionally restore the rights of any person where it appears that his/her rights have been violated; (See article 7 (6°) of the Law N°19/2013 of 25/03/2013);
- to request relevant organs to bring to justice any person having committed offences related to the violation of Human Rights. (See article 7(7°) of the Law N°19/2013 of 25/03/2013).

In addition, the RNCHR has the power to file legal proceedings in civil, commercial, labour and administrative matters for violation of human rights provided by the Constitution, international treaties ratified by Rwanda and other laws. In that regard, the Commission may be represented in courts by its employees authorized by relevant authority on the request of the Chairperson of the Commission. The Commission may also be represented by a council of its choice. (See article 9 of the Law N°19/2013 of 25/03/2013).

However, while exercising judicial police powers and power to file legal action, the Commission shall respect the national laws without prejudice to other organs' responsibilities, and apply such powers in case of violation of public, individual interests, or if other relevant organs fail to carry out their legal duties. (See article 10 of the Law N°19/2013 of 25/03/2013).

2) How far is the right of anyone deprived of his or her liberty to bring proceedings before court part of the laws of your country?

When all conditions that warrant pre-trial detention are established, a public prosecutor can, after interrogating the accused pleading on his or her own or in the presence of his or her advocate, place him or

her under provisional arrest and take him or her to the nearest jurisdiction with the exception of the High Court of the Republic and the Supreme Court. The accused should appear before the magistrate or Judge in a period of not more than seventy-two (72) hours from the time the warrant of the provisional arrest was issued. **See article 96 of the Law N° 13/2004 Relating to the Code of Criminal Procedure**

In any case, an accused is detained pending trial pursuant to a court's order which clarifies, grounds based on facts and law, and should particularly specify concrete grounds for suspecting that he or she committed the offence. **See article 97 of the Law N° 13/2004 Relating to the Code of Criminal Procedure**

An order for preventive detention is one which is signed by a Magistrate or Judge and a court registrar, if after the hearing he or she is of the view that the accused who is detained should remain in custody because of the evidence against him or her. A preventive detention is authorised by the nearest court to the place where the suspect is arrested, with the exception of the High Court of the Republic and the Supreme Court. The trial and judgement shall be open. A judge or magistrate can rule out that a trial be conducted in camera upon request by the prosecutor or the accused". **See article 98 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

A decision ordering for preventive detention should be delivered within 24 hours after the time the court is seized upon request by the public prosecution and after hearing the defence of the accused upon his will, his or her advocate and the Prosecutor. The defence and grounds advanced by the accused person are recorded in writing. The Magistrate or Judge immediately informs the accused of the decision in writing or orally and then reduced into writing. **See article 99 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

In all offences, an accused person or his or her counsel can at any time apply for bail to the public prosecutor charged with the preparation of the case or to a Judge or Magistrate depending on the stage of investigation. A Judge or Magistrate delivers a ruling on the application and its legal basis within five (5) days. When the release is guaranteed, the accused may be ordered to respect some conditions. **See article 101 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

When a Magistrate or Judge does not find sufficient evidence for prosecution, an accused person shall be immediately released.

When a Judge or Magistrate finds that there is enough evidence to warrant detention of the accused, an order for preventive detention can be made; or he may not be detained but ordered to respect certain conditions.

Some of the conditions, which can be imposed on the accused, include the following:

- 1° to live in the area where the prosecutor charged with the preparation of the case file works;
- 2° not to travel beyond a prescribed area without obtaining prior permission of the prosecutor charged with the preparation of the case file or his or her representative;
- 3° not to travel to specific areas or not to be found in certain areas at given times;
- 4° to report at given periods before a public prosecutor who is charged with the preparation of the case file or a public servant or before any such other officer as may be determined by the magistrate or judge;
- 5° to appear before a public prosecutor in charge of preparation of his or her case file or before a Judge or

Magistrate when he or she will be required to do so;
6° to present persons of integrity who can stand for his or her surety.

In order to provide precisely how the conditions provided for in the preceding paragraph are respected, an order releasing an accused on bail may also indicate any of the conditions to be satisfied among those enumerated.

Upon request by the public prosecutor charged with the preparation of a case file, a Judge or Magistrate can at any time, modify the conditions imposed in order to match with changing circumstances. He or she can as well order redetention of the accused, if deemed necessary, because of the new and serious circumstances. **See article 102 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

A Judge or Magistrate who, orders for detention pending trial, may release the accused on bail by requiring him or her to execute a bond with or without any one or several of the conditions provided for in the preceding article. The bond guarantees the appearance of the accused whenever required in court as well as payment of damages arising from the offence, property to be restituted and fines. **See article 103 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

In felonies and misdemeanours, an accused should appear in person. However, when there are strong reasons prohibiting a person from appearing, he or she can be represented by a duly authorised agent. In contraventions, an accused can be represented by a counsel except when a Judge or Magistrate requires his or her personal appearance. **See 139 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

In case the court is seized, before the date of hearing, its President, upon request by one of the parties or *suo motto*, if the complainant has no capacity to sue, has no counsel or any other legal counsel to represent him or her, can examine or order for the examination of the cost of destroyed property, record or order the recording of statements, do or order for the any other matter which need to be completed to be done. **See article 141 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

When a case is complete for hearing, parties are summoned to court for trial. A summon sets out the offence charged, the law punishing the offence, court seized, place, day and hour of the trial. The summon also should specify whether the accused will appear in person and/or represented by a counsel. **See article 142 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

Any person who has filed a complaint is notified by the court of the date of hearing. **See article 143 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

While conducting the trial, the presiding Judge or Magistrate shall take into consideration different things, among them: the fact that the accused gives his or her defence and narrates how the offence was committed if he or she admits it the fact that the accused person is given the last chance to be heard. **See article 144 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

When a person who has been duly summoned does not appear, he or she is tried *in absentia*. When the prosecution falls to appear without any justified reason whereas the accused is provisionally detained, the court orders his/her release and examines the case with the exception of the crime.

When the judgement is passed *in absentia*, it is notified to the accused by a court bailiff in an instrument containing essential elements of the case.

See 155 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.

A minor who is being prosecuted must be defended by a counsel. If the minor or his or her guardians cannot choose one, the prosecution can ask the President of the lawyers Association bar to appoint one.
See article 185 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.

A judicial police officer or a public prosecutor charged with the investigation of a case makes all diligence and carries out necessary investigation so that the truth and personality of the minor as well as appropriate means for his or her rehabilitation can be demonstrated. For that purpose, he or she can issue necessary warrants or order judicial inquiry in accordance with ordinary law. Through investigation, he or she will gather all the evidence concerning the status of the life of the child, his or her education and school life and the manner in which he or she was brought up. A public prosecutor shall order for medical examination, and, if necessary, orders psychological examination into the behaviour of the child. He or she decides to put the child in a centre where his or her behaviour can be observed.

See article 186 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.

After the procedures provided for in article 186 of this law have been conducted, the prosecutor can:

- 1° release the child when he or she finds that the charge against him or her has not been well established and hands him or her to his or her parents or guardians;
- 2° hand him or her to a competent court;
- 3° put the child in a rehabilitation centre while awaits a court decision. **See article: 187 See 155 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

A court chamber that is competent to try children is the one situated in the area where the offence was committed, where the child resides or where parents or guardians reside, where the child was found or where he or she was sent by a court.

See article 188 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.

A juvenile chamber decides a case after hearing from the child, witnesses, parents, guardians, the prosecution and defense counsel. It can also hear from the child's majority-age co-accused or accomplices.
See article 189 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.

A civil action against the child or against the one who is responsible for paying damages is filed before a juvenile court. When a child or children are jointly charged with one or several adult persons, an action for

damages is filed before a court, which is competent to try adults. In that case, the child or children do not attend the hearing but instead, their legal representatives attend. When a child or his or her legal representative falls to choose a counsel, one is automatically appointed. **See article 191 of the Law N° 13/2004 Relating to the Code of Criminal Procedure.**

It is also important to notice that there are grounds for deferring execution of sentence. Those are:

- Pardon;
- Conditional release of a sentenced person;
- Suspension of sentence.

According to the **Law n° 34/2010 of 12/11/2010 on the establishment, functioning and organisation of Rwanda Correctional Service (RCS)**, the prison management shall: 1° remind the Court and the Public Prosecution in writing at least seven (7) days before the date when the provisional detention period expires. If the Public Prosecutor does not tell the Prison Management that the incarcerated person's file was forwarded to the Court or that the provisional detention period was extended before the expiration of the provisional detention period, the Prison Management shall release him/her; 2° inform the relevant authorities which prisoners have completed one quarter (¼) of their sentences, subject to good conduct, in order for the prisoners to be discharged on provisional release in accordance with the provisions of the law; 3° release any prisoner after serving his/her term of imprisonment as determined by the court. A Prison Director who detains or continues to detain a person whose detention period has expired shall be punished in accordance with provisions of the Penal Code. **See article 51.**

If the rights of an incarcerated person or his/her family are violated, the victim or his/her lawyer shall have the right to seek the assistance from authorities or the courts. **See article 48 of the Law n° 34/2010 of 12/11/2010.**

Incarcerated persons are allowed to go out of prison for trainings, work, medical treatment, consulting their files, trial, giving testimony, entertainment, to participate in community meetings or any other reason that is not contrary to the laws governing incarcerated persons. In such circumstances, the incarcerated person's security shall be ensured by sufficient prison guards. **See article 42 of the Law n° 34/2010 of 12/11/2010.**

3) Please describe the most common problems individuals face in their realization of the right in the country.

The most common problem individuals deprived of their liberty to bring proceedings before court face in the realization of their right in the country is that the price of getting a lawyer is not affordable by a number of them. Likely, there has been developed a National Legal Aid Policy that will allow all people in need to bring proceedings before court.

4) How does your national institution assist individuals who do not enjoy the right to bring proceedings before the court?

In practice, the RNCHR carries out visits in detention premises, especially in prisons and in posts and Police Stations. The visits consist of monitoring the respect of detainees' rights, particularly the following rights:

- the rights related to detainees' living conditions;
- the rights related to the detainees' dossier status.

According to article 7(4°) of the Law N°19/2013 of 25/03/2013, the RNCHR has the ordinary power of having access to documents, consult them on the spot or get their copies as well as any other document required by the Commission to be able to analyze and collect Human Rights violation evidence. Documents or items given to the Commission shall be returned to owners or organs of origin in a period not exceeding three (3) months.

In this regard, the RNCHR conducts interviews with detainees and penitentiary authorities in order to know the detainees' dossier status. In police custodies and prisons, most of the cases of human rights violations reported are related to:

- Delays for the cases of pre-trial detention;
- The problem of cases that are adjourned several times due to free prisoners' co-accused who fail to respond to court summons;
- The problem of prisoners who are hear as their judgments verdict and whose copies of judgment do not reach them in time as this could lead to denial of their rights to appeal within the period provided for by the law;
- The problem of people who are in detention because they have been sentenced by Gacaca Courts in absentia and did not get the right provided to them by the law (to have their cases revised)
- Those still in detention and yet have already completed their term of sentence.

At the end of the visit, every year the RNCHR submits thematic reports acknowledged through its investigations or researches on Human Rights violations and those with negative impact on such rights to competent organs, such as the President of the Republic, the Parliament, both Chambers, the Cabinet and the Supreme Court. (See article 13(2) of the Law N°19/2013 of 25/03/2013). With those reports, the RNCHR issues recommendations to competent organs in order to address the situation of human rights violations. E.g.: For a certain period, a team charged of analyzing the cases of unlawful detention in prisons raised by the RNCHR's reports was established by the Rwanda National Public Prosecution Authority. The job done by the team had a positive impact on the files of detainees to the extent that some of them were released and others saw their files brought proceeding before court.

Furthermore, the RNCHR has the ordinary power of requesting relevant organs to unconditionally restore the rights of any person where it appears that his/her rights have been violated pursuant to article 7(6°) of

the Law N°19/2013 of 25/03/2013. Within this framework, the RNCHR has some cases of human rights violations need immediate advocacy while others need collective advocacy after visits.

Aside from advocacy, the RNCHR has the ordinary power of requesting relevant organs to bring to justice any person having committed offences related to the violation of Human Rights according to article 7(7°) of the Law N°19/2013 of 25/03/2013.

The reporting system of the RNCHR plays an important role for the protection of the right of anyone deprived of his or her liberty by arrest or detention to bring proceeding before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful. Indeed, the RNCHR has the ordinary power of carrying out research on thematic issues and publish findings with the purpose of promoting Human Rights in conformity with article 7(8°) of the Law N°19/2013 of 25/03/2013. It has essentially the duty to submit to the Parliament, both Chambers, its activity report within a period not exceeding three (3) months from the end of the fiscal year, and reserve a copy thereof to the President of the Republic, the Cabinet and the Supreme Court pursuant to article 13 of the Law N°19/2013 of 25/03/2013. After the presentation of the Report, the Parliament sometimes exercises the oversight over the Executive. For example, due to the Report of the RNCHR, the Ministry of Justice was one day invited by the Parliament to explain the situation of illegal detention in the country.

5) Does your national institution assist your country in the realization and implementation of this right? If yes, please explain how.

Yes, the RNCHR assists my country in the realization and implementation of the right to bring proceedings before the court. During the annual visits in detention premises, the RNCHR produces reports with recommendations to competent organs. The NCHR discusses some cases in the High Council of the Judiciary and in the High Council of the National Public Prosecution Authority because the Chairperson is a member of both structures in order to find redress together with concerned organs.

The NCHR contributes to the realization and implementation of this right by organizing training to different categories of people, such as:

- The members of the Judiciary;
- The penitentiary authorities;
- Police Agents;
- Members of the Army;
- The population.

In addition, the contribution of the RNCHR consists of receiving, analyzing and investigating related cases brought by individuals and advising individuals. It helps individuals to bring proceedings before the court.

The RNCHR has the special mission of providing views, upon request or at its own initiative on laws, regulations of public organs in force in the country and bills so as to ensure their conformity to fundamental principles of Human Rights according to article 5(4°) of the Law n°19/2013 of 25/03/2013. It has provided views on bills related to the rights of detainees in general and those related to the criminal procedures in particular.

6) How would the general principles and guidelines that the Working Group has been entrusted to elaborate on the realization of the right to bring proceedings before court best support your work?

The contribution of the Working would be crucial for my work because the RNCHR would integrate activities related to the recommendations formulated in the Action Plan in connection with the promotion and protection of detainees' rights as priorities. In this regard, the RNCHR can ask relevant institutions to modify laws or to provide views on bills.

7) In your view, how would these general principles and guidelines best support your country?

The General principles and guidelines would best support my country by giving recommendations in line with the best practice for the protection of the right of anyone deprived of his or her liberty by arrest or detention to bring proceeding before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful. It will assist the country in fulfilling the obligation to avoid arbitrary deprivation of liberty in compliance with international human rights law.