SOME ASPECTS OF JUDICIAL REFORM IN RWANDAFROM 2004 TO 2019

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ABSTRACT

Like other public institutions that suffered devastation in human and material terms during the Genocide against the Tutsi, the Rwanda Judiciary has been going through a period of rebuilding itself but has also been undertaking reforms aimed at transforming and modernizing the institution since 2004. This article outlines some of the key reforms that have impacted that process. It shows that through capacity building, quality control and application ofa code of ethics, professionalism among judicial officers has been enhanced resulting in an improved quality of justice. Through use of modern court technologies, efficiency in service delivery has greatly improved, and various strategies have been employed to expand access to justice. These reforms haveled to a high level of public confidence in the justice system and in the future ofthe country both nationally and internationally.

1. INTRODUCTION

Rwanda has been undergoing reforms in various sectors of state and society since 1994. The events of the Genocide against Tutsi caused not only loss of lives, but also destruction of property, infrastructure, and publicinstitutions. Most of these institutions came to a standstill and had to be slowly and progressively rebuilt over the years after the genocide. These included government ministries and agencies, the legislature, educational institutions, police, other security services, and more particularly the judiciary. The process of rebuilding the country has necessarily involved reform of institutions and laws in order not to just restore what was destroyed, but to modernize them in line with developments in the restof the world. There was need to transform Rwanda and bring it out of the stagnation of the colonial and post-colonial past.

The most significant reform was the introduction of the democratic Constitution of 2003. The Constitution of 2003 was passed in a referendum after years of consultations with the intelligentsia, ordinary citizens, and civil society organizations. It contains many important and transformative provisions intended to make Rwanda a better country in terms of its social, political, economic, and cultural formation. Among other things,

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it guarantees the separation of powers[1], independence of the judiciary[2], respect for the rule of law[3], the democratic form of government and power-sharing[4]. It emphasizes the need for national unity and reconciliation, as well as committing Rwanda to the fight against divisionism that led to the catastrophe of 1994. Other laws were introduced to operationalize the promise of judicial independence and the rule of law, as well as a properly functioning judicial system.

The pre-1994 judicial system was inefficient and lacked credibility forvarious reasons, including lack of accountability, the fact that most judicial officers were not legally qualified and corruption was endemic. There was also the problem that there were too many courts that were not properly coordinated. The Supreme Court had five Chambers[5], all claiming semi- autonomy. The Court was not a final court of appeal, but rather acted asa review court that considered cases on procedure and, where necessary, sent them back to the courts of appeal for rehearing. This meant that manycases spent many years going up and down the hierarchy of the courts withnegative consequences for the litigants and for the economy of the country. The 4 courts of appeal themselves were semi-autonomous, with little coordination. There were too many primary courts (144 Canton courts) with 465 junior judges (magistrates) handling only very minor matters. Oneresult of the inefficiency was the build-up of a backlog of cases.

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[1] The Constitution of the Republic of Rwanda of 2003 revised in 2015. Article 60 provides:"The Branches of Government are the following:

1 The Legislature
2 The Executive
3 The Judiciary

The three branches are separate and independent from each other but are all complementary. Their responsibilities, organisation and functioning are defined by this Constitution. The Statemust ensure that duties in the Legislature, the Executive and Judiciary are entrusted to personsof competence and integrity".

[2] Ibid. Article 150 provides: "The Judiciary is independent and exercises financial andadministrative autonomy".

[3] Ibid, Article 10. The article is a declaration of fundamental principles of governance, includingeradication of discrimination and divisionism and a commitment to respect for the rule of law, pluralistic democratic government and equality between men and women affirmed by aguarantee of women occupying 30% of positions in decision-making organs.

[4] Ibid, Article 62, which provides that members of Cabinet are selected from political organisations on the basis of their seats in the Chamber of Deputies without excluding the possibility of appointing to the Cabinet other competent people who do not belong to politicalorganisations. It further provides: "a political organisation holding the majority of seats in theChamber of Deputies may not exceed fifty percent (50%) of Cabinet members".

[5] Cour de Cassation, Cour des Comptes, Cour Constitutionelle, Conseil d'Etat and the divisionof Administration of Courts.

In what follows, I attempt to trace judicial reforms that have been taking place since 2004 and which have brought the judiciary to where it is today: a judiciary that can confidently claim to be modernized, efficient, and that commands public trust, based on the assessments done internally and externally by independent organisations. I first look at the structural or organizational reforms. These organisational reforms had a significant impact in improving the efficiency of the courts and the quality of administration of justice in the country. However, it was necessary to carry out other reforms that would improve the quality of justice and service. In the sections that follow, I briefly outline those reforms that I believe have had the most significant impact in securing public trust in the judiciary. These reforms relate to the capacity building, use of technology in the courts, strengthening integrity and accountability and access to justice.

2. REFORMS IN THE STRUCTURE OF THE JUDICIARY

The problems identified above were addressed in the initial reforms of 2003 to 2004. First, the new Constitution introduced a new court structure making the Supreme Court a single, unified court that heard appeals and made final decisions on procedural as well as substantive issues. The Supreme Court also now had responsibility for coordinating all courts. The newly introduced unified High Court replaced the courts of appeal with wide- ranging primary and appellate jurisdiction. The jurisdiction of subordinate courts was also revised to ensure a more appropriate division of labour and efficiency in the courts. The 144 Canton (District) Courts were reorganized and reduced to 106 and subsequently to 60 in 2006. This reorganization helped the judiciary to drop judicial officers who had no law degree. The jurisdiction of primary courts was also increased: in criminal cases they handled cases with a penalty of up to 5-years imprisonment, while in civil cases they decided cases with a value of up to 3million francs (about USD 6,000 at the time). Specialized chambers were created in the Intermediate Courts (Tribunal de Grande Instance) for juveniles, for administrative cases, and for labour cases. Genocide cases not within the first category were sent to the neo-traditional Gacaca Courts. In 2008, specialized Commercial Courts were established to speed up adjudication of commercial disputes in order to boost business confidence in the administration of commercial justice. This was of vital importance in a country that was prioritizing attraction of investors. A further reduction of primary courts to 41 came in 2018.The purpose was to combine small (district) courts and make them more efficient with the sharing of resources. At the same time, the specialized chambers of intermediate courts were restructured, introducing a new chamber for economic crimes to handle corruption, embezzlement, money laundering and similar offences. The juvenile chamber became a chamber

for minors and the family while the third chamber combined administrativeand labour matters.[6]

The year 2018 also saw the establishment of a new single Court of Appeal to hear appeals from the High Court, the Commercial High Court and the Military High Court, and thus reduce the burden on the Supreme Court. Before that, the Supreme Court was clogged with all types of cases including criminal, commercial, administrative, labour, family, and succession cases. A large part of the caseload was made up of land disputes, which is not surprisingly given the rural nature of the majority of Rwandan society,the comparatively large population, and small land mass. Perhaps the most complex of the land cases were those involving owners who had fled atrocities and harassment in 1959 and in the 60s and returned after the Genocide only to find their lands occupied by others who claimed to have acquired them from the authorities. These cases had emotional and politicalovertones with often irreconcilable positions from the litigants.

The Supreme Court had no power to sift through cases brought on appeal to weed out those without merit, and was obliged to hear all appeals abovefrom the High Court, the Commercial High Court after its creation in 2008, and from the Military High Court. It had to sit as a bench of at least three judges in all cases. Although the Supreme Court decided an average of 600 cases a year, this did not stem the build-up of cases over the years. The establishment of the Court of Appeal was, therefore, a welcome relief tothe Supreme Court and the litigants. Unlike the Supreme Court, a case is heard by one judge unless the nature or complexity of the matter in disputedemands a larger number. Within one year of its creation, the Court of Appeal had disposed of virtually all of the more than 800 cases that it took over from the Supreme Court. The Supreme Court now handles only cases of a special nature, such as those where it is determined that there may have been miscarriage of justice. The Supreme Court also has jurisdiction over the following disputes at first and last instances:

1° to make a decision on petitions on the unconstitutionality of organic laws, international instruments, laws and decree-laws;

2° to resolve disputes relating to the interpretation of the Constitution;3° to

resolve disputes relating to the preservation of public interest;

4° to provide authentic interpretation on laws

5° to give authentic interpretation on traditional unwritten customs in caseswhere written law is silent;

[6] Law determining the Jurisdiction of Courts, N°30/2018 of 02/06/2018**,** Articles 33-38.

6° to resolve disputes relating to referendum, presidential elections and parliamentary elections.[7]

An unusual competence is that the Supreme Court has jurisdiction "toreview the direction of the final judgments taken by the courts to protect the law and give direction on request by the Rwanda Bar Association or theNational Public Prosecution Authority".[8] This can be used, for instance, to reverse a precedent that is out of sync with current circumstances. So far this power has not been used. The other notable jurisdiction of the SupremeCourt is that of trying high ranking officials of the country: the President, the President of Senate, the Speaker of Parliament, the Chief Justice, and the Prime Minister in criminal matters[9], and trying the President for high treason or subversion of the Constitution.[10]

3. CAPACITY BUILDING

Before 2004 there were 702 judges[11]. Among them only 84 had degreesin law. The Constitution of 2003 required that judges have a Bachelor of Laws as a minimum qualification for appointment. The Constitution was followed in 2004 by a recruitment drive that aimed at fully professionalizing the judiciary. The number of judges was progressively reduced to the current 288. As of 2019, all the judges except one primary court judge had at least the Bachelor of Laws degree, while 39 had Master of Laws and 3 hadDoctorates. 87% of all registrars have a Bachelor of Laws, 9 of them with a Master of Laws.[12]

As far as gender balance is concerned, in 2004 there were 108 women out of the 702 judges (or 15%) in the Judiciary. There were only 19 women out of84 judges (22.61%) who had law degrees[13]. In line with the national policy of promoting gender equality and equity, and the general sensitization of women to go into the legal profession, by 2018 women judges comprised 44%, while the number rises to 50% when registrars are included. However, gender equality in leadership positions is still low, with only 27.4% of court presidents and 21.4% of vice-presidents being women in 2018.[14]

[7] Law determining the Jurisdiction of Courts N°30/2018 of 02/06/2018, Article 65.
[8] Ibid. Article 65.
[9] Ibid. Article 66.
[10] Ibid. Article 67.
[11] In Rwanda, unlike other Commonwealth countries judges and magistrates all carry the title of judge (juge in French) without distinction as to rank.
[12] Supreme Court Annual Report of the Judiciary 2018/2019, pp.42-43 (In Kinyarwanda).[13] *Bimwe mu byagezweho nyuma y'ivugururwa ry'inzego z'ubucamanza (2004-2011)* pp.4-5 (Some of the achievements of the Judiciary 2004 to June 2011, pp.4-5).
[14] Raporo y'Ibikorwa by'Urwego rw'Ubucamanza y'Umwaka wa 2017-2018, p.41. (Judiciary Annual Report for the year 2017-2018), p.41 Kigali, September 2018.

In order to provide practical skills to judicial officers and other professionalsin the justice sector, a post-graduate legal training institute, the Institute of Legal Practice and Development (ILPD), was established in 2008. It offers courses in practical legal skills necessary for judicial officers, prosecutors, legislative drafters and legal practitioners. For members of the Judiciary, the courses offered include the conduct of a trial, preparation and delivery of judgments, principles of sentencing, and Alternative Dispute Resolution.This is a nine-month programme leading to a post-graduate Diploma in Legal Practice. All the sitting subordinate court judges, except a few, now have the diploma, and it is a requirement for new recruits to the bench andto the bar. The judiciary would have preferred a fully specialized judicial training institution like there are in the other East African countries and elsewhere, which would give more time and specialized training to judicialofficers, but the lack of adequate resources, both financial and human, have not made this possible. Nevertheless, it is important to note that many of the trainers are senior judges and have the requisite knowledge and experienceto train junior judges and other trainees at ILPD.

Over the years, judicial officers attended various courses and workshops in different areas of the law as part of a continuing legal education programmeas well as seminars on new laws and legal issues identified as problematic, arising from cases decided. In 2007, the Judiciary prepared a 5-year judicial training plan with the purpose of enhancing the competence and professionalism of its judicial officers to meet the demands of an increasingly complex legal and litigation landscape. The training plan covered a wide range of legal areas, including basic skills relating to the work of a judicial officer, such as preparation and conduct of a court hearing, judgment writing, principles governing the judicial profession and the code of conduct, as well as court management. There were also specialized courses such as international criminal law and procedure (including principles of fair trial, extradition and universal jurisdiction), sentencing, human rights, cyber-crime, and the use of science and technology-based evidence et cetera. Trainings on international law were conducted with the assistance of staff from the International Criminal Tribunal for Rwanda and the Kingdom of theNetherlands, whereas a number of trainings were conducted by the UnitedNations. After the initial 5-year training plan, annual training programmes were prepared by the Inspectorate General of Courts to ensure judicial officers keep abreast of developments in the legal field.

In addition to local training workshops and seminars in various areas of thelaw, there have been opportunities for further studies abroad for instance in the Netherlands, Belgium, France, South Africa, Tanzania and the United States of America, mostly leading to the Master of Laws degree. Judicial officers have also undertaken study visits to other countries to observe their

administration of justice so that they can learn from them and be able to improve their work. One indication of the success of the training programmes in improving the quality of justice is that the number of judgments reversedor substantially modified on appeal have progressively reduced over the years. In 2012 the average percentage of judgments reversed on appeal was 20% while in 2015 it had dropped to 11% before stabilising at 8% in the years from 2017 to 2019.[15]

Judgment writing

Of particular importance was training on judgment writing. As mentioned earlier, in 2004 judges had to be recruited afresh, and many of them were fresh graduates from universities with no experience with judicial work. However, even those who had a few years of experience were not accomplished in the art of judgment writing. There was no tradition of clearly explaining reasons for the decision in a judgment. Instead the practice was for the judge to reproduce the facts and statements of the parties in the case, restate the relevant provision of the code, and in a few paragraphs state his or her decision and order. As has been said, "Writing is at the core of the judicial function. Judges rely on their ability to craft clear, concise and persuasive reasons to ensure that their decisions are understood and accepted by the parties, other courts and the public."[16] Before the training on judgment writing, there was no attempt to explain clearly why one party won and the other lost. Yet, judges should not write primarily for themselves, for lawyers or fellow judges but for the parties and the public. As the former President of the Supreme Court of the UnitedKingdom, Lord Neuberger, has said: "Judgments must speak as clearly as possible to the public…Every judgment should be sufficiently well written to enable interested and reasonably intelligent non-lawyers to understand who the parties were, what the case was about, what the disputed issues were, what decision was reached, and why that decision was reached."[17] For the parties involved, understanding the judgment is a function of the right to a fair trial or due process and therefore of justice. As was emphatically stated in *Flannery v Halifax Estate Agencies Ltd.,* "[F]airness surely requires that the parties, especially the losing party, should be left in no doubt why they have won or lost.[18]

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[15] Supreme Court, Annual Report of the Judiciary, 2018/2019 (October 2019) p.31 Available inKinyarwanda from the Supreme Court.

[16] Canadian Institute of Justice, 'Mastering the Skills of Judgment Writing' available at ciaj-icaj-ca/en/, Accessed on 16/01/2020

[17] Lord Neuberger, President of The Supreme Court, First Annual BAILII Lecture 'No Judgment – No Justice' 20 November 2012 at p.5. Available at www.supremecourt.uk › docs › speech-121120, accessed on 15/1/2020

[18] *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377 at 38.

Not only were the judgments not helpful to litigants and others who needed to access them, but it was easier to corruptly manipulate decisions in judgments that were not fully written and reasoned. This is part of the reason that the framers of the 2003 Constitution included the requirement that "every judgment must indicate its basis, be written in its entirety, and delivered in public together with the grounds and the decision taken."[19]

Since 2010 the Judiciary, with the support and assistance of USAID, undertookefforts to reform the nature of judgment writing. This was motivated by theneed to ensure consistency and improve the quality of court decisions by making them more logically structured, well-reasoned, and motivated in both law and facts and, importantly, make them more easily understood by the parties, especially the losing party, and others interested in knowing thebasis of court decisions.

The trainings and mentoring on the new judgment writing methodology have significantly contributed to improving the quality of court decisions andfostering a growing trust of Rwandans and other court users in the judiciary and the administration of justice. Training on judgment writing is, however, a work in progress that needs to be sustained. To this end, a manual[20] was developed which crystalized seven years of hard work that started withthe seminal workshop by Professor James Raymond[21] and the adoptionof the new judgment writing structure in 2010. The work continued with the elaboration, evaluation and adaptation of this structure culminating in the preparation of the manual by Professor Jean-Marie Kamatali with the collaboration of a number of judges. The manual is mainly designed to assistnewer judges with little or no experience, but should also assist experienced judges who are keen to continually improve the quality of their judgments.

It is only since 2010 that Rwandan judges slowly came to accept the doctrine of binding precedent at least insofar as decisions of higher courts are concerned.[22] Previously, Rwanda followed the civil law system in not regarding as binding a rule deriving from a previous case but only aspersuasive when it had become established after being consistently acceptedin a series of cases into established case law or *jurisprudence constante*. As there were no law reports, or other forms of publication of previous cases, even *jurisprudence constante* was mostly absent, leaving every judge to

[19] Constitution of Rwanda Article 151-3°

[20] Jean-Marie Kamatali, *Judgment Writing and Reasoning Manual in Rwanda*, published under the auspices of USAID and the Judiciary of Rwanda, 2018. Prof. Kamatali is a professor of law atClaude W. Pettit College of Law, Ohio Northern University.

[21] Professor James C. Raymond, President, The International Institute for Legal Writing andReasoning, New York.

[22] This was a following a resolution taken at a judges' retreat in Musanze.

decide cases by referring to the Code and scholarly writings of French and Belgian writers (doctrine). This did not appear to be strange given that most legal professionals had been taught that the judge was only the mouth-pieceof the law (*bouche de la loi*) in the Montesquieu tradition.[23] However, over time the benefits of consistency in decisions on particular points of law andon similar facts, the stability, predictability, and certainty in court decisionsare now seen to outweigh the freedom of the judge to fashion his decision in his or her own unique interpretation of the law and its application to thefacts. The principle of binding precedent is also seen as a factor buttressingthe right to equality before the law.

Reliance on precedent is now easier as the *Rwanda Law Report* containing selected judgments of higher courts is published every quarter and such judgments are also currently available online on https://decisia.lexum.rlr/en/nav.do.[24] Judgments are also posted on the Judiciary website, www.judiciary.gov.rw. In the judgment writing manual and in the electronic case management system (IECMS) used in preparing their judgments, judges are encouraged to use precedents and indicate previous decisions on the topic that they relied on in arriving at their decisions. The online availability of higher court decisions also helps legal practitioners to strengthen their arguments before the courts and enables researchers and students to follow the trends in Rwandan law. Judges are also encouraged to use comparative jurisprudence as a source to assist in arriving at just decisions. However, they are limited by the high cost of access to electronic legal databases suchas LexisNexis and Westlaw.

Reducing the backlog of cases

There was a huge backlog of cases in 2003 at the beginning of the reform, with 57,088 cases pending in the courts, some dating as far back as 1982[25]. Measures had to be taken to reduce this backlog. One of the measures was abandoning the system of a three-judge panel for every case and the adoption of a single judge bench in all courts except the Supreme Court.

[23] The French philosopher Baron de Montesquieu said: "the national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderatingeither its force or rigour", Montesquieu, 1748 #734 @bk XI ch 6 p 73, quoted in Rodrigo P. Correa G, 'The Judiciary and Democracy: To the Rescue of the Spirit of the Spirit available at https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1036&context=yls_sela accessed on 02/02/2020.

[24] At the time of writing, there were on-going negotiations to integrate law reporting into the Integrated Electronic Case Management System (IECMS) in the near future, perhaps with partnership with an international online legal resources provider.

[25] Bimwe mu byagezweho nyuma y'ivugururwa ry'inzego z'ubucamanza (2004-2011) p.29 (Some of the achievements of the Judiciary 2004 to June 2011, p. 29)

There was also the hiring of contract judges in primary courts and thus freeing the more experienced permanent judges to be temporarily assignedto courts higher up in the judicial system to hear and dispose of as many backlogged cases as possible.[26] Sensitizing judges to avoid unnecessary adjournments and to increase their productivity in order to deliver justice in a reasonable time as well as monitoring of court and individual judge performance by the Inspectorate of Courts had the effect of reducing the number of adjournments and increasing productivity. The law requires thata case filed in a court must be determined within 6 months. This time limit is generally observed and most courts take lesser time. The average case disposal rate between 2013/2014 and 2018/2019 was 3 to 4 months,[27] although in the higher courts the rate was always higher due to the nature of those courts. Once the hearing commences, the case must normally be disposed of within 30 days otherwise reasons for delay must be provided tothe president of the court.

From 2004, the number of cases decided increased several fold. Whereas in2003 only 69 cases were disposed of by the Supreme Court, from 2006 to 2018 the number of decided cases never fell below 600 per year. The upwardcase disposal trend was similar in other courts. In 2003 the courts of appeal which were subsequently replaced by the High Court, decided 1,567 cases whereas the number decided by the High Court progressively increased so that between 2009 and 2018 the average number of cases decided a year was 6,675.[28] At the same time, the number of adjournments declined over the years. In 2011/2012 adjourned cases were 29.78% of those heard,and they dropped to 11.3% in 2017/2018.[29] As a result of these measures, case backlog was substantially reduced. By the 2011/2012 judicial year, the number of backlogged cases had dropped to less than half of the 2003 number to 18,416, and by 2016/17 to 4,857 cases.[30]

Another mechanism that helped reduce adjournments and speed up adjudication of cases was the imposition of a fine on a litigant or advocate who willfully delayed proceedings. It was common practice for litigants or their counsel to fail to show up for a hearing without good reason or seek adjournment for untenable reasons, such as that the lawyer had not been

[26] Backlog cases are those which have taken longer than six months before they are finallydecided.
[27] Raporo y'Ibikorwa by'Urwego rw'Ubucamanza y'Umwaka wa 2018-2019, p. 15. (JudiciaryAnnual Report for the year 2018-2019) p.15.
[28] See Judiciary Annual Reports from 2009 to 2018.
[29] Raporo y'Ibikorwa by'Urwego rw'Ubucamanza y'Umwaka wa 2018-2019, p. 22. (JudiciaryAnnual Report for the year 2018-2019) p.22).
[30] Raporo y'Ibikorwa by'Urwego rw'Ubucamanza y'Umwaka wa 2016-2017, pp.14-15. (JudiciaryAnnual Report for the year 2016-2017), pp.14-15 Kigali, September 2017.

able to meet with the client in good time to prepare the case or had failed to file pleadings or responses before the hearing. Others would ask the judge to recuse himself/herself without any legal grounds. In the 2012 CivilProcedure Code, a civil fine for such delays was introduced[31] and despite protests from lawyers, who have to pay a heavier fine than litigants if the delay is caused by the lawyer, the fine was maintained in the 2018 law.[32] It is reasonable to think that the use of this mechanism had a positive effect on reduction in the incidence of adjournments, since in 2015/2016 after itsintroduction, there was a drop from 15.6% in the previous judicial year to 12.29% and a further drop in 2016/2017 and 2017/2018 to 11.76% and 11.31% respectively.[33]

4. TECHNOLOGY AND THE COURTS[34]

A brief history of digitization in Rwanda

Promoting the use of court technologies to increase efficiency, speed up court processes, and ease access to justice has been at the centre of judicial reforms since 2004. Until those reforms started, there were onlya handful of computers in the judiciary which were available only in the higher courts. Recording of proceedings was done by hand, all documents were kept in folders, and storage was poor, with the risk of damage or loss of the files whether intended or unintended. Finding a particular case file was very difficult since it meant physically searching through huge volumes of files. Equally, determining how many cases there were pending, for planning purposes, was slow and tedious, requiring physical verification through piles of folders. Today, all courts have access to the internet and communicate via email, and proceedings are digitized. Some courts have digital recording systems for proceedings, and electronic case management has been implemented in all courts.

In 2006, with the assistance of the Canadian Government, a document management system called *Registre de Dossier Judiciaire* (RDJ) was initiatedto ease access to case document information. With this system, cases were filed physically at the court, and all case processing, such as case number allocation was done manually. The court registrars would access RDJ to

[31] Law relating to the civil, commercial, labour and administrative procedure N0. 21/2012 of 14/06/2012, Article 15.

[32] Law relating to the civil, commercial, labour and administrative procedure No 22/2018 of 29/04/2018, Article 18. Whereas the maximum fine for litigants is RWF200,000, that for lawyersis between RWF200,000 and 500,000.

[33] Raporo y'Ibikorwa by'Urwego rw'Ubucamanza y'Umwaka wa 2018-2019, p. 15. (Judiciary Annual Report for the year 2018-2019) p.23.

[34] This part is largely derived from a presentation made by the author at the Commonwealth Magistrates and Judges Association Conference in Brisbane, Australia 9-14 September, 2018.

input the case information which could later be easily accessed to locate files, compared to searching physical documents. However, RDJ did not replace physical case documents, but was used concurrently to facilitate thesearch of case information. This did not help in terms of reducing the time orthe cost a litigant spent in filing the case nor was it very helpful to the courtstaff charged with processing cases. The system did not allow for uploadingof documents such as pleadings or evidence nor could it be accessed onlineby the parties.

With the assistance of development partners, by 2008 almost all courtshad computers for use by judges, registrars and other staff. In 2011 an *electronic filing* system (EFS) was developed by the judiciary staff, which made it possible for a litigant to file a case without having to come physicallyto court. Pleadings could be scanned and attached into the system. This wasan important step forward, saving time and cost for the litigant. However, the documents still had to be printed and compiled at the court registry to make them ready for the hearing. Case management after filing could not bedone in the system, and the litigant was not able to track developments in the case.

The *Electronic Document and Records Management System* (EDRMS) was then introduced in 2012 to supplement the EFS. EDRMS was conceivedas a document management system, basically as an off-the-shelf software that was intended to be adapted to work as a case management system. Apparently, it had been used in different public institutions in some countries, but had never been tried in courts. It did not include case filing, which means that litigants would file cases through EFS and court registrarswould manually fill information into EDRMS. It was not a web-based systemand each court worked in an isolated manner. The attempt to convert it into acase management system took a long time of tinkering with it, but ultimately it was abandoned with consequent loss of a substantial amount of money. The lesson learnt with EDRMS was that before purchasing an application for one's institution, a thorough study has to be done that fairly guarantees thatit will meet the exact needs and to ensure very close collaboration betweenjudicial staff and developers at every stage.

Integrated Electronic Case Management System

The current Integrated Electronic Case Management System (IECMS) was introduced in 2016. It was developed by *Synergy International SystemsInc.*, an American company with its development office in Armenia, aftera thorough study. It was an initiative of the whole Justice Sector basedon a needs assessment conducted by the Sector. The Sector incorporates

the institutions involved in the justice chain; that is to say, the Rwanda Investigation Bureau (RIB), the National Public Prosecutions Authority (NPPA), the Judiciary, the Rwanda Correctional Services (RCS), and the Ministry of Justice. The system has a fully integrated process in criminal matters, from investigations where RIB officers capture suspect details, arrest statements, seizure, and other procedures after which they send the case to the Prosecution. At this level, the prosecutor has access to the whole investigation case file, general information on the accused and other case information is automatically filled into the prosecution case. The prosecutor only adds prosecution related information like suspect statement made before the prosecutor, indictment, etc. which he then transmits to the court within the system. The court, the defendant, and their lawyers have access to both the investigation and the prosecution case. Once court proceedingsare completed and a judgment is rendered, it is forwarded automatically toRCS for execution with all the supporting documents in the criminal processchain. Moreover, the system keeps track of the whole criminal record ofthe individual from detention through all appeals with the corresponding decisions from all the institutions.

On the civil litigation side, individuals and entities with legal personality as well as the civil litigation department of the Ministry of Justice have access to IECMS. The litigant files a case to court having filled the submissions within the system, the defendant is automatically informed of the case against them, and provided responses through the same system. After an admissibility compliance check by the registrar, an automatic case numberis generated. At each stage in the case process, each actor builds on the previous actor's work and completes only his/her relevant requirement until the file reaches case disposal.

The system was aimed at improving service delivery by reducing delays and costs with benefits both to litigants and the justice system. Unlike previous applications, IECMS was developed in close collaboration with stake holders and thus was able to capture most of their requirements from the outset, and is periodically upgraded based on the feedback and needs of users.

The main advantages of the system

The system can be accessed from anywhere on computer, tablet or mobile phone for electronic filing of a case, issuing of summons, receiving notifications, and reminders of any deadlines regarding case processes via e-mail, sms, and system notifications, and litigants can also follow-up on their cases regarding current status and what follows next. Pleadings and other documents can also be filed online and new evidence can be added

after the initial filing. Court fees can be paid using *mobile money* services over the telephone. A litigant can check whether his/her case has been appealed or not for execution purposes, which was one of the more frequent reasons that brought litigants to court. In 2014, the frequency of litigants coming to check whether their cases had been appealed was at 18.51% of all visits to courts, whereas in 2017 it had dropped to 8.36%. As copies of judgments can be obtained online, trips to court to obtain copies have also been reduced considerably. These services are available 24 hours a day, seven days a week. Litigants and lawyers do not have to leave work to file documents or check on the progress of their cases as they can do so from their offices or home or even when travelling abroad, saving them time andmoney.

IECMS makes work easier for registrars and court clerks in preparing files for court hearings. Integration means that the court staff can obtain data from other Justice Sector Institutions automatically. If there are delays in performing certain functions, the system sends a notification and laxity can easily be identified. Operation of IECMS has been summarized thus: "The case workflow automates the processing of cases from one agency to the next, so that there is a seamless integration of activities and communication.The system automatically sends in-system, email, and sms notifications to users, and users can create, assign, and track tasks. Information is capturedand passed on digitally, and data exchange is no longer fragmented. A detailed audit trail provides a record of all edits and status updates."[35]

Besides enhancing efficiency, there is little contact between litigants or their lawyers and the court, which minimizes opportunities for corruption. This view is supported by Transparency International (Rwanda) Bribery Index report, 2019, which shows that the top reasons why people give a bribe areto "speed things up" (54.80%) and to "access service they did not deserve" (24%).[36] It is also almost impossible for files to vanish. In addition, the system helps track unnecessary adjournments and other delays, and assists in compiling reports on the performance of a particular court or individualjudge, thus revealing where there might be a bottleneck or suspiciousconduct symptomatic of corruption. It also helps to generate a global reportfor the whole judiciary on a quarterly basis.

[35] Adam Watson, Regis Rukundakuvuga and Khachatur Matevosyan, "Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing Case Study of the Integrated Electronic Case Management System for the Ministry of Justice inRwanda" *International Journal for Court Administration, Special Issue, Vol. 8 No. 3, July 2017*

[36] Transparency International Rwanda, *Rwanda Bribery Index* 2019 dated 2/12/2019, launched in Kigali on 23/01/2020. The Power Point presentation by TI (R) was sent to the author by emailon 23/01/2020

For judges, the system also has advantages. It assists judges in the management of cases allocated to them and in making available in one place most of the information necessary for preparing orders and judgments, suchas pleadings, record of proceedings in lower courts, documentary evidence submitted, *et cetera*. After judgment delivery, judgments can be uploaded into the system for availability to parties free of charge.

Implementation has been fairly successful, although it has not reached 100%. Electronic filing is now fully functioning in all courts and most other digital court services are widely used, reducing considerably the number of court users physically coming to court. Almost all the functions of the registry are performed within the system including chatting with litigants, assisting them on how to properly prepare and submit their claims, pleadings, evidence,*et cetera*. Case files are also exchanged between courts in the system. It is now easy for the head of the court to track the performance of individual registrars and court clerks as to how well they performed their duties.

Challenges in implementation

Implementation of the system has not been without challenges. One challenge was overcoming resistance to change and innovation among judges. There was need to change the mind-set, especially of the older more senior judges,to embrace electronic case management in cases assigned to them. Although there was adequate training in the use of the system, it took months for such judges to overcome the fear of technology to be able to perform functions within the system when their turn came. The problem of change of mind-set also predictably applied to legal practitioners who had to represent their clients in filing claims, pleadings and other documents in the system. There was considerable resistance at the beginning, but with the sensitization and training by the Judiciary's IT officers, as well as the courts' refusal to accept physical documents, led the practitioners eventually to come round and appreciate the system. They realized that it makes life easier for them, as it makes them better organized and systematic in their preparation for court proceedings and follow-up.

Another challenge was the inadequacy of necessary IT infrastructurein the Judiciary and the other partner institutions. Initially, the internet infrastructure did not reach all courts and other institutions like the Police which did not have enough computers in their outlying stations. For this reason, IECMS was initially deployed in 24 courts mostly in and around the capital city in January 2016. However, connection has progressively been extended so that by July 2017 all courts in the country were using the system.

There was also the challenge of getting ordinary litigants to file cases and submit documents online, especially given that only about 30% of Rwandansociety had access to the internet by December 2017 according to Rwanda Utilities Regulatory Authority statistics.[37] In order to get the litigant community to engage with online filing and other online services, there wasa campaign by the judiciary officials to sensitize the public on the benefits of electronic case management. This was mostly through regular talk showson local radio stations as most Rwandans have access to and regularly listen to the radio. In particular, the Judiciary has a weekly slot on a radio station where it regularly discusses current topics related to the work of thejudiciary including technology.

There was also, however, the need to educate the public on the use ofthe system. Given the very limited human resource capacity in the IT department, the sector came up with the innovative strategy of training young people, mostly students and recent graduates with skills or interest in law or IT, in the use of the system to serve as IECMS facilitators. They were then deployed across the country to offer their services to members ofthe public who wished to file their cases. For a small fee, facilitators assist potential litigants to create user accounts and file cases online. Operators incyber cafés, telecentres and smart villages were also trained to provide theservice. This strategy has worked well.

Litigants who are too poor to afford services at cyber cafés are able to accessthe services from employees of the *Maisons d'Access en Justice* (MAJ) or Access to Justice Centres located at the offices of every District and which will soon be available at Sector centres, closer to the citizens. These centresenable the very poor to file and follow-up on cases free of charge. In addition,user manuals and tutorial videos on YouTube have been distributed in both English and Kinyarwanda. However, despite the above strategies for easing access and use of the system by rural people, indications are that thepopulation is not fully satisfied with it. In 2019, the Rwanda Governance Scorecard which indicates citizen satisfaction with public services, gave a score of 40.70% for citizen satisfaction with online submission and filingof cases in courts compared to the overall score of 80.23% for use of ICT in Justice services. The report attributes the dissatisfaction to the "low rate of ICT literacy among ordinary citizens accompanied with weak infrastructure related to ICT, especially electricity and internet in rural areas."[38]

An on-going challenge is that the system, although developed in collaboration

[37] See http://www.internetworldstats.com/africa.htm

[38] Rwanda Governance Board, Rwanda Governance Scorecard, 6th Edition (2019) launched on31 October, 2019

with local stake holders, is to some extent still dependent on the external experts. The local technical staff were trained as administrators of the system and trainers of users. However, they are not trained software developers, and all needs for upgrade still have to be referred to the Armenia-based developers. This is expensive and not sustainable in the long term, as most added functionalities have to be paid for. A plan is being worked on to train local software developers to a level where they can not only effectively maintain the system but are able to develop and effect upgrades whenever necessary.

More to come in IECMS

Although the system was already doing a lot in terms of easing the workof the courts and other justice institutions, as well as assisting litigants by reducing the cost and time involved in litigation, it was decided to extend its functionalities. First, integration with information systems of other institutions was effected permitting easy access to shared information directly through the IECMS. These institutions include the National Identification Agency for easy identification of suspects in criminal cases and confirmation of disputed personal data in civil cases, Rwanda Natural Resources Authority for access to land registration data in land disputes, and the Rwanda Law Reform Commission. IECMS is also integrated with *Irembo,* the one-stop portal for e-Government services, to enable litigants to make online payments for court services by bank transfer or with electronicbank cards. By end of 2019 an IECMS functionality had been developedto enable enforcement of civil judgments through IECMS and bailiffs had been trained to implement it. However, it was awaiting a Ministerial Order to operationalize it.[39] The Judiciary was also finalizing the Judiciary Performance Management System (JPMS) which will be used for planning of judicial activities, as well as for the monitoring and evaluation of judicialofficers to enhance accountability. The system will use the data provided byIECMS on judicial activities of judges and registrars without interfering with their independence in taking decisions.

The Sobanuzinkiko Platform

Sobanuzinkiko is an electronic platform developed by the judiciary in partnership with Transparency International Rwanda and with the financial support of the European Union. Launched in 2019, the platform was intended to enable members of the public, prosecutors, and advocates to communicate with the Judiciary through the Inspectorate General and provide information confidentially. In particular, they can report cases of

[39] Information from the Judiciary IT Department, 07/02/2020.

corruption or record complaints about poor service or conduct that may involve corruption in a particular case. Such information may be given on telephone, by sms or on the internet. A litigant may also use the platform to file an application for review where the appeal process has been exhausted but the litigant is convinced there was injustice in the process and determination of the case. A code is allocated to the person providing the information or filing for review to enable them to follow up. Although the platform has been operating only for a few months it is already yieldingresults with a substantial number of communications on the platform.[40] Transparency International Rwanda is also confident that the effective use of this tool will contribute to reduce corruption in the Judiciary.[41]

Virtual Courts and tele-presence

Although a lot has been achieved in terms of court infrastructure and accessto justice via electronic filing and case management, there is still a problem of litigants having to travel long distances for their court appearances or hearings. Cases have been postponed or delayed several hours while waitingfor detainees or prisoners to arrive at court for their court hearings due to ashortage of vehicles or because the vehicle broke down. Part of the solutionis in the use of technology to save parties or accused persons from having to travel to courts.

More and more courts around the world are using video conferencingtechnology to hear witnesses and victims from designated locations in far flung parts of the country or in other countries. For instance, in the United Kingdom video conferencing is available in several centers and is used to hear mostly ancillary applications in civil matters and in Child Care cases or other civil cases with consent of the parties.[42] Other countries including India, United States, Russia, Ukraine, and others are using video conferencingin their courts.[43] A few courts are experimenting with virtual courts with litigants appearing before a judge from within their homes or offices via skype, video or teleconferencing or other technologies.

A tech company advertisement captures some of the attractions of virtual courtrooms: "Police staff no longer have to spend half a day giving their

[40] Ibid. According to the IT Department, as of the end of January 2020 there were 1035 communications with 65 alleging misconduct in their cases the rest being applications forreview.
[41] Transparency International (Rwanda), *Rwanda Bribery Index* 2018 ibid. at 23.
[42] Ministry of Justice, 'Video conferencing in Courts' available at https://www.justice.gov.uk/newsite/courts/video-conferences accessed on 03/02/2020
[43] See the article, 'The importance of court room video conferencing' at https://www.whygo.net/the-grapevine/the-importance-of-court-room-video-conferencing accessed on 03/02/2020

witness statements, there are few changes to the clerk of court's diary, no delays in transporting the suspect, victims, and perpetrators no longer in the same space, foreign players don't need to be flown in for international cases, and interpreters can do their work remotely".[44] As the then Chief Justice of Western Australia Wayne Martin observed after participating ina distributed court mock trial in Brisbane, "Anything that reduces the needfor travel and makes it easy to participate in court processes has got to be animprovement in access to justice. There are also security opportunities. Youcan ensure people can participate safely from a secure place, whether they are a vulnerable witness, or an accused where there are legitimate securityconcerns…"[45] The point about security is also valid. Many courts do not havesufficient security to protect judges and other court staff as well as accusedpersons, witnesses and victims.

Rwanda has not advanced much in the direction of virtual courts. Video conferencing facilities are limited being only available at the Supreme Courtin Kigali and at one location in each of the four provinces. The facilitiesare used for hearing of witnesses and victims, but have not been used for hearing of a defendant in a criminal case, or a party in a civil case. Foreign jurisdictions investigating or hearing cases of persons suspected of crimes committed during the Genocide against the Tutsi have used the video- conferencing facilities to interview witnesses in Rwanda. The Judiciary hasalso used video conferencing for meetings of all judicial officers gathered atdifferent centres around the country.

Discussions have been held with stakeholders on the possibility of installing video conferencing equipment in prisons and police detention centres so that courts can hear cases remotely. There seems to be no objection tothe idea. On the contrary, many agree that it would eliminate the cost of transporting prisoners or detainees on remand to court and that it would ensure their and other people's security. The sticking point seems to be one of affordability. At this stage, it would be too expensive to install and maintain video conferencing equipment in all prisons and at courts aroundthe country given the many other priorities the country has. As the country'sfinancial capacity grows, it is hoped that more investment will be made in video conferencing facilities, which in turn would save the state money that is used in the transportation of various actors in the justice system.

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[44] Virtual Court Room-Visions Connected available at www.visionsconnected.com/branches/judiciallvirtual-court-room/

[45] Jeremy Story Carter, "Virtual Courtrooms: inevitable reality or potentially damaging for justice?" – **The Law Report** ABC Radio National (Australian Broadcasting Corporation) available at www.abc.net.au/radionational/programs/lawreport/virtualcourtrooms-an-inevitable-reality-or-dangerous-justice/6657496 Accessed on 1/08/2018

5. PROMOTING INTEGRITY AND FIGHTING CORRUPTION

The integrity of judicial officers is essential to the core function of deliveringjustice to all. In order for members of the public to have confidence inthe judicial system, judicial officers must be, and be seen to be honest and independent of outside influence whether from other branches of government of private entities or personalities. To this end, the United Nations in Article 11 of the United Nations Convention against Corruption, requires States parties, to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, bearing in mind the independence of the judiciary. According to the UnitedNations Office on Drugs and Crime (UNODC) "The term 'integrity' in Article11, in its application to members of the judiciary, may be defined as a holistic concept that refers to the ability of the judicial system or an individual member of the judiciary to resist corruption, while fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence."[46] In its pursuit of reforms, the judiciary focusedspecially on raising the level of integrity of its judicial officers through strengthening the legal framework including establishing a code of ethics and fighting

Besides the Constitutional requirement that the state must ensure that the duties in the Executive, the Legislature; and the Judiciary are entrustedto persons of integrity,[47] there are statutory provisions relating to the requirement of integrity in the judge. The Law on Statutes of Judges lists integrity as a requirement for recruitment as a judge.[48] The Law on Codeof Ethics for Judges[49] enacted in 2004 at the inception of judicial reforms reiterates the value of independence of judicial officers from external pressure and their impartiality in the performance of their duties. It prohibitsthem from engaging in business as this could compromise their impartiality.A judge may not be a director of a company or other commercial entity.The Code specifically highlights prohibition against corruption stating: "In particular, a judge shall refrain from acts of corruption and other related crimes and exemplarily shall fight against it."[50] The Code further obliges judges to disqualify themselves if there is a likelihood of bias because of a

[46] UNODC, 'Judicial Integrity' available at https://www.unodc.org/unodc/en/corruption/judicial-integrity.html. Accessed on 01/08/2018

[47] Article 60, *Constitution of the Republic of Rwanda, op.cit*. note 1.

[48] *Law governing the Statutes of Judges and other Judicial Personnel*, Article 12. [49] *Law relating to the Code of Ethics for the Judiciary* No.09/2004 of 29/4/2004 . [50] Ibid. Article 7.

personal interest or that of a relative or friend, and to handle all persons equally without discrimination whatsoever.[51]

In order to reinforce the prohibition of involvement of judges and other judicial personnel in business and corruption, judicial officers like other public officials at a certain rank, must declare their assets to the office of the Ombudsman every year before the end of June and when the officer leaves office.[52] The declaration shall, among other things, indicate the source of assets and how they change, assets of the spouse of the person declaring, and the assets of his or her children below eighteen (18) yearsof age and their source and how they change, donations the owners of the assets gave away *et cetera*.[53] Failure to declare may subject the official to disciplinary sanctions and will normally trigger investigation by the Office of the Ombudsman.

Specific measures taken in the fight against corruption

Although today Rwanda is recognized as the least corrupt East African country and is among the five least corrupt countries in Africa, it has come a long way in the fight against corruption thanks to its policy of zero toleranceof corruption over the last 20 years or so spearheaded by the leadership. As has been said, before the Genocide, Rwanda was "characterized by . . . nepotism, sectarianism and tribalism among other corrupt practices, all leading to the 1994 genocide."[54] The judiciary was no exception. It was one of the more corrupt institutions due to the services it was supposed to provide, the unwieldy court structure discussed earlier, the inefficiencies in the administration of courts, the large backlog of cases and the fact that the majority of judicial officers were not legally trained and lacked the ethics and integrity normally expected of a trained judicial officer. Yet as it has been emphasized by UNODC, "A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. An ethically compromised judiciary means that the legal and institutional mechanism designed to curbcorruption, however well-targeted, efficient or honest, remains crippled."[55]In the same vein, President Kagame called on judges to fight corruption

[51] Ibid. Articles 11 and 12.

[52] *Law n° 17/2005 of 18/08/2005 modifying and complementing law n°25/2003 of 15/08/ /2003 establishing the organisation and the functioning of the Office of the Ombudsman,* Articles 3 (4).

[53] Ibid. Article 4.

[54] Jean de Dieu Basabose, 'Anti-Corruption Education and Peace Building: The Ubupfura Project in Rwanda', 3, Springer (2019)

[55] UNODC, 'Strengthening the Integrity of the Judiciary', available at https://www.unodc.org/unodc/en/corruption/judiciary.html, accessed 28/01/2020

saying: “We must fight it. We should not let it be a culture because once it becomes a norm in the Justice Sector, it is normalized in the entire country.”[56]

Based on the law on the Code of Ethics, the Penal Code and the anti-corruption law, the Judiciary embarked on a number of strategies to combat corruption and other forms of misconduct among judicial officers including sensitization to desist from engaging in corruption and other practices that compromised their integrity and tarnished the image of the institution. Disciplinary proceedings were carried out against those accused of misconduct and sanctions meted out to those found at fault. In the 15 years from 2004 to 2019, 106 judicial officers were sanctioned by the High Council of the Judiciary including 60 who were dismissed.[57] Of those dismissed, 43 were dismissed for engaging in corrupt or other seriousmisconduct compromising the integrity of a judicial officer that could be related to corruption but with no evident link. In this group, 17 were judges[58], including 1 High Court judge, while 26 were registrars (or court clerks). The other 17 were dismissed for other conduct unacceptable for a judicial officer such as regular drunkenness in public or publicly consortingwith persons of dispute contrary to the Code of Ethics for Judges and otherjudicial officers.[59]

Besides disciplinary action and prosecution, another strategy of combatting corruption in the judiciary was sensitization of members of the public, especially litigants, and potential litigants to report judicial personnel who demand bribes or want to engage them in any other form of corruption. It is crucial to win the trust of the public and their willingness to collaborate in exposing and punishing those involved in corruption. Judiciary representatives regularly appear on talk shows on radio and television urging the public to resist any corrupt practices and to report to the judiciary or law enforcement agencies any judicial officer or other judicial personnel attempting to involve them in corruption. Sensitization takes place in a special way during the judiciary’s annual anti-corruption weekin the second week of February, with anti-corruption events organized at every court house and on the radio and other media every day of that week.

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[56] Remarks made while launching the Judicial Year, 2019-2020. Found at https://www.ktpress.rw/2019/12/rib-arrests-two-judges-court-officials-over-corruption/ Accessed on 27/01/2020 [57] Article 3 of the Law governing the statutes of Judges of 2015 amending the one of 2013 listsa number of sanctions that can be imposed by the High Council of the Judiciary, including suspension for a period of 3 to 6 months without pay, delay in promotion, withdrawal of leadership responsibility and the most serious being dismissal.

[58] It should be remembered that the title ‘judge’ refers both to junior judicial officers known asmagistrates in many countries and to more senior judicial officers.

[59] Information obtained from the Office of the High Council of the Judiciary, 20/01/2020.

Members of the public are informed of their rights and the right to get justice without paying bribes or other inducements. They are made aware of the risk that the person who demands a bribe from one litigant may demandit also from the opposite party and be unable to deliver what is promised. More importantly, they are made aware of the wider negative effects on the country's economy and hence on their own development and well-being.

Similarly, judicial personnel are regularly urged to report litigants or their agents who seek to corrupt them so that they may be prosecuted. Judges and other judicial officers are reminded that those who engage in corrupt practices project a bad image of the whole judiciary and tarnish the good name of those who are honest and dedicated to their work and profession. They are reminded that corruption slows down economic and social development. Corruption reduces market efficiency, distorts prices, and enlarges inequity. Ethically, corruption generates injustices by creating a society where the poor and the vulnerable do not have equal access to public services, do not enjoy equal protection of their rights, and are deprived of the opportunities to change their circumstances. As UNDOC reminds us "Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossibleto overcome the "start-up costs" required because of corruption."[60]

Today Africa has woken up from the slumber of dependence on rich countries and complaining about the looting of Africa by colonial powers and neo-colonialists. Africa must harness its resources for its own development. There is a responsibility to use all available resources to forge ahead with economic and social development and everybody's role, including judges, in protecting whatever material resources is important. They are equally reminded that dignity, self-respect, responsibility and justice for all are centuries-old Rwandan values while corruption is antithetical to these values.

Sensitization has yielded results; a number of people have been prosecuted and imprisoned for attempting to corrupt judicial officers, while some judicial officers were dismissed and some successfully prosecuted and jailed for soliciting or receiving bribes. A possible consequence of the anti-corruption sensitization campaign and action is that there is mutual suspicion amongst some judicial officers and litigants contemplating corruptactions, each fearing that the other cannot be trusted not to report. It can safely be said that the prevalence of corruption has been declining over the years both in the country as a whole and in the judiciary in particular. For

[60] UNODC's Action against Crime, available at https://www.unodc.org/unodc/en/corruption/index.html accessed on 21/01/2020.

instance, according to Transparency International Rwanda, the prevalence of corruption in 2019 declined to 4.03% from 8.42 % in 2018.[61] Nevertheless,the war on corruption in the judiciary is not won and must continue. What isclear is that there is a commitment to use every means to fight it.[62]

Institutional structure for monitoring and promoting integrity.

Without the necessary institutional structures, it would be difficult to keeptrack and deal with integrity issues. The Inspectorate of Courts is one of two main structures responsible for monitoring the quality of work and conduct of judicial officers in all courts except the Supreme Court and Courtof Appeal.[63] The other is the High Council of the Judiciary. The Inspectorate of Courts is staffed by the Inspector General and 5 inspectors, all of whom are judges of the High Court assigned to the Inspectorate, as well as legal researchers to assist them. They are appointed by the High Council of the Judiciary on recommendation of the Chief Justice. During their appointmentas inspectors they do not perform judicial duties.

The Inspectorate established a program of investigation that specifically targets court staff that have been fingered by members of the public as being involved in corruption. They receive complaints, interview the complainantand the accused judicial officer, examine court records for signs and work hand-in-hand with other justice institutions in such investigations. If there is strong indication of misconduct a report is compiled and sent to the ChiefJustice who may pass it on to the High Council of the Judiciary for disciplinaryproceedings to commence after examining it and considering the written response to the allegations submitted by the concerned judicial officer on the allegations. The judicial officer may then be summoned to appear and defend himself/herself before the Discipline Committee accompanied bya lawyer if so preferred. The Committee after hearing the accused officer, deliberates and submits a report to the full Council which also hears the officer and the lawyer, if any, before taking a final decision. The process ensures that the complaints are thoroughly investigated and those against whom they are made have adequate opportunity to provide explanations.

[61] Transparency International Rwanda, Rwanda Bribery Index 2019 dated 2/12/2019

[62] Transparency International Rwanda acknowledged this commitment in its Bribery Index Report, 2018 saying: "It is also worth noting that high political will in the fight against corruption in the Judiciary is evident." Transparency International (Rwanda), *Rwanda Bribery Index* 2018 p.22 available at https://www.tirwanda.org/IMG/pdf/rwanda_bribery_index_2018.pdf accessed on 2/02/2020

[63] Article 32 of *Law N°012/2018 of 04/04/2018 Determining the Organization and Functioning of the Judiciary* spells out the functions of the Inspectorate General of Courts including: "2° monitor and make follow-up on the discipline of judges and registrars with the exception ofthose of the Supreme Court and the Court of Appeal".

Challenges to fighting corruption in the judiciary

Like any other institution the judiciary has met a number of challenges in fighting corruption. Among them are the following:

(i) Detection of corruption. Corruption is a crime that is difficultto detect and investigate due to its clandestine nature. New and sophisticated ways of engaging in corruption are being utilized.

(ii) Inadequate Investigative skills. Like many other developing, under-resourced countries, I believe, Rwanda is still lacking in adequate, modern investigative skills and equipment to keep up with the various new and sophisticated corrupt practices and ways of concealing the proceeds and fruits of crime. Equally, our civil society is still weak in terms of investigative skills. Investigative journalism can be very effective in exposing corruption in the judiciary or elsewhere. A good example of investigative journalism is the 2015 the *Tiger Eye Private Investigation Agency* investigation in Ghana led by multiple award-winning undercoverreporter, Anas Aremeyaw Anas, which uncovered corruption by catching on camera several judges and magistrates of the Ghana judiciary taking bribes, which included cash and livestock. The judicial officers were subsequently dismissed.[64] Journalists inRwanda need to be encouraged to develop such skills. It is hopedthat the fairly new Rwanda Investigation Bureau will continue togrow in skills and resources to handle sophisticated corruption cases. This view is consistent with the recommendation of Transparency International (Rwanda) in its 2019 *Rwanda Bribery Index* where it says: "The criminal justice chain should be strengthened in terms of capacity building in investigating corruption".[65]

(iii) Reluctance to report. The silence of those asked for bribes or other corrupt inducements hampers the war on corruption among judicial officers. Low level of reporting corruption is a national problem as the TI (R) survey shows. In 2018 only 18.6% of those who claim to have encountered a demand fora bribe reported the matter to the authorities.[66] It is often said

[64] Morgan Bright Gordon, 'Bribery and corruption in Public Service Delivery: Experience fromGhana Judicial Service' 23 Feb 2017. SSRN: http://ssrn.com/abtract=2922519

[65] Transparency International (Rwanda), *Rwanda Bribery Index* 2019 launched on 02/12/2019on file with author.

[66] Transparency International (Rwanda), *Rwanda Bribery Index* 2018 op.cit. at p.30 available at https://www.tirwanda.org/IMG/pdf/rwanda_bribery_index_2018.pdf

rightly, that those involved in corruption report only when the deal does not come through; for instance, where the person has paid a bribe but loses the case. Although reporting of corruption has increased, some judicial officers remain reluctant to report instances due to concerns for their safety. Members of the publicare also reluctant to report fearing that they may be prejudiced in their cases by the judicial officers reported or their colleaguesor that they may be prosecuted. However, the law exempts from prosecution people who report corruption, so they should not fear.[67] The law also protects whistle blowers, but the public in general is yet to embrace whistle-blowing.[68]

(iv) The role of corrupt lawyers. Some corrupt lawyers exploit their apparent proximity or acquaintance with judicial officers to corrupt judges or court clerks willing to be corrupted, tosecure favourable but undeserved decisions for their clients. A number of litigants have complained that their lawyers asked forpayments above what they had agreed as fees claiming that the extra was for the judge.[69] At least one advocate was convicted of corruption in such a case.[70] It will be that much more difficult to rid the judiciary of corruption unless corruption is fought equallyvigorously in the legal profession.

6. IMPROVING ACCESS TO JUSTICE

Access to justice is a pillar of the rule of law and efficiency in administrationof justice is of no value to the citizens if they do not have reasonable access tojustice. According to the United Nations, "Access to justice is a basic principleof the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable."[71] It is in this context that part of the vision and mission of the Rwanda Judiciary has been to make justice more accessible to the citizens and others seeking justice.

[67] Law on fighting corruption No. 54/2018 of 13/08/2018, Article 19.

[68] Law relating to the Protection of Whistleblowers No.44bis of 6/06/2017, Articles 9-12.

[69] Transparency International (R) has received similar complaints: "As a matter of fact, TI-RW'sALAC centres in Musanze and Kigali have received this year three complainants who claimedto offer bribe to their advocate with the purpose of influencing the decision of judges and a prosecutor. It was noted that advocates took the money from the clients but this money was never offered to the judge or the prosecutor which put the clients in an unfavourable outcome."Op. cit. note 65, at p.23.

[70] *State v Nyiramikenke Claudine*, RPA 00086; 00118/HC/KIG (unreported) delivered11/05/2018.

[71] 'United Nations and the Rule of Law', available at https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ accessed on 20/01/2020

When people talk about access to justice, what immediately comes to mind is open courts and proximity to courts. This is basic access to justice. However, there is more to access to justice; it should mean that justice is affordable for all, but more especially to vulnerable groups, having legal advice centers where they can discuss their legal problems and that they have enough information about judicial processes to be comfortable enough to approach the system for justice when they have been wronged or have problems with the law. In its broader conception, access to justice should include the use of simplified court procedures, alternative dispute resolution and other preventative measures in an effort to solve legal problems without having to resort to litigation.

All these facets of access to justice have been addressed in one way or another in Rwanda. Court proceedings are open to all and any person or entity mayfile a claim in court. However, courts are probably not as close to the peopleas they should be given that there are 41 primary courts scattered around the country and that many rural people have to travel long distances to getto the nearest court. The higher you go in the hierarchy of the courts, the further you need to travel, which may not be affordable for the very poor. The problem of the lack of proximity to courts for judicial services has beenameliorated to some extent by the use of technology. As earlier observed, most court services can be accessed online; cases can be filed, service of process done, documents submitted and exchanged online, and progress inthe case can be tracked. This saves the litigant much of the expense related to the case. However, appearance is still done in person. Hopefully, in the notso distant future it may be possible to have proceedings conducted remotelyvia video link or other media.

Regarding affordability, it should be said that court fees are quite low in Rwanda. According to the Ministerial order on court fees, the deposit of court fees which may be refunded to the winning party, by the losing partyin the cause is as follows: Primary Court- ten thousand Rwandan Francs (about US $10.60); Intermediate Court and Commercial Court - twenty thousand Rwandan Francs (about US$21); High Court and CommercialHigh Court- forty thousand Rwandan Francs and fifty thousand francs in the Court of Appeal. Indigent persons are exempted from paying court fees.[72] However, the problem arises with lawyers' fees, which can be quite

[72] Ministerial Order on court fees in civil, commercial, social and administrative matters N° 133/MOJ/AG/18 of 04/06/2018, Articles 2 and 3. The fees were brought down after 4 years since they had been raised in 2014 due to complaints from the public that they were unaffordable. During that period, they ranged from 25,000 RWF in the Primary Court to 100,000 in the Supreme Court. Court fees in the Supreme Court were abolished due to the revised jurisdictionin 2018.

expensive for the poor, as the minimum for representation in court in mostother services provided by an advocate, is RWF500,000[73] (about US$532) and can be much higher depending on the nature of the case. This is why the majority of litigants conduct their cases without counsel, except in the Courtof Appeal and Supreme Court where litigants are not allowed to appear without counsel.

The level of legal fees and the financial means of most Rwandans call for a robust system of legal aid, legal advice and alternative means of resolving disputes outside of the judicial system. As far as legal aid is concerned, thereis no single body administering a legal aid scheme like a legal aid board. Instead there are several legal assistance providers operating independentlybut with some coordination by the Ministry of Justice.[74] However the main ones are the Bar Association, over 30 Non-Governmental Organizations, mainly members of the Legal Aid Forum, 4 University Clinics and the Ministry of Justice's *Maisons d'Access Judiciare* (MAJ) or Access to Justice Bureaus. The Law governing the Bar in Article 59 provides for pro bono services by the Bar Association in the following words: "The Bar Association shall provide legal and judicial aid to those indigents and needy people who cannot afford to pay for the Advocate's services." However, in Article 60 it goes on to state "The Minister in charge of justice shall prepare and incorporate in the budget of the Ministry an amount of money to contributeto the legal and judicial aid to the indigents and needy people."[75] Thus the service is not completely free but subsidized by the state. Much of the pro- bono work of the Bar Association relates to providing representation in cases involving minors as the law requires that all minors in such cases musthave legal representation.[76] The assistance to minors appears to be workingeffectively as indicated by the Bar Association. In 2018-2019, the Bar provided legal assistance to 2,450 minors in partnership with the Ministry of Justice. In addition, 600 indigent persons were assisted in the Court of Appeal and Supreme Court as well as 70 victims of gender based violence which brings the total number assisted that year to 3,720.[77] Although thisis commendable, it is hardly adequate given the number of litigants and accused persons who appear in court self-represented. There is still a big

[73] Rwanda Bar Association Regulation No. 01/2014 fixing the scale of fees for advocates, OfficialGazette No. 32 of 11/08/2014.

[74] Republic of Rwanda Ministry of Justice, 'National Legal Aid Policy' October, 2014 p.13.

[75] LAW N°83/2013 OF 11/09/2013 Establishing the Bar Association in Rwanda and determiningits Organization and Functioning.

[76] Law No. 27/2019 of 19/09/2019 relating to Criminal Procedure, Articles 151 and 153 coveringminors in criminal matters as well as those against whom claims for damages are brought.

[77] Speech by the President of the Rwanda Bar Association, Julien Kavaruganda, at the launchingof the 2019-2020 Judicial Year, 6 November 2019.

gap in equality before the law.[78] Moreover there seems to be a view based on interviews of beneficiaries that the pro-bono service given is inferior to that given to paying clients.[79]

Access to Justice Bureaus

Access to Justice Bureaus (*Maison d'Acces a La Justice*) were established to provide legal advice to indigent Rwandans in 2007. The bureaus coordinate legal assistance initiatives throughout the country and serve as points of access for legal advice.[80] Bureau staff are also empowered to advise, represent, and plead on behalf of indigent litigants before all courts as wellas train mediation committee staff.[81] The law empowers staff to mediate disputes outside of formal courts if needed.[82]

The bureaus have handled a substantial number of cases as the program expanded to all 30 districts. Three staff members in each bureau are assigned to respond to the needs of vulnerable citizens.[83] One specifically works on gender-based violence and another represents indigent people incourts of law.[84]

Legal Aid Forum

The Legal Aid Forum (LAF) is a membership-based network of legal aid providers with the mission to advance access to justice. Its members engage in different legal assistance programmes including legal education and information, legal advice, mediation, legal advocacy, legal representation, drafting of documents and coaching for self-representation. LAF has a Legal Aid Department that provides legal aid including legal assistance andlegal representation before courts of law and other institutions. Between 2015, when the department was established and 2019, LAF provided legal assistance/representation to 3,526 needy persons with the highest numberin one year being 1,366 in 2017.[85] As would be expected, the number of those requesting legal assistance is much greater than the number LAF canassist given limited funding.

[78] According to the Annual Report of the Judiciary for 2018-2019 judicial year, over 70,000 cases went through the courts in that year alone although there are no statistics to show how many of those who appeared in the cases were legally represented or not.

[79] Transparency International Rwanda, 'Analysis on the effectiveness of legal representation forminors in Rwanda: A case study of children in Nyagatare Rehabilitation Centre." (2017).

[80] *Promoting Access to Justice, Human and Peace Consolidation in Rwanda, 2013-2018*. JointProgramme Document. Government of Rwanda & United Nations – Rwanda. p.3.

[81] Rwanda Ministry of Justice, National Legal Aid Policy, Oct. 2014, p. 13.

[82] Id.

[83] Rwanda Ministry of Justice,. The National Human Rights Action Plan of Rwanda: 2017-2020. p15.

[84] Id.

[85] Information obtained from the Legal Aid Forum office in Kigali by email on 27 January, 2020.

It is clear from the above that legal representation for all those who cannotafford to pay for lawyers is not viable. The state makes an effort to provide legal aid for minors and other vulnerable groups through MAJ and other means. There are still accessibility issues due to MAJ only existing at the District Level.[86] The distance between the bureaus and indigent people prevents them from reaching the citizens who need them most.[87] It has been suggested that MAJ offices should be located at the more localized Sector Level to expand their reach. The Bar Association is doing its bit withpro-bono services which also cannot go far unless there is a compulsory requirement for all members of the Bar to sacrifice time to participate in thepro-bono project, which is not currently the case. Moreover, if we considerlawyers per capita we find there is one lawyer to approximately 10,483[88] people. Civil Society organizations also contribute to the legal aid effort butare also limited by resources and focus more on educating the public about their rights and giving advice as well as training of Justice Sector actors.[89] These activities are of course very important but are only a part of access tojustice. It is therefore necessary to supplement these efforts with alternativedispute resolution mechanisms in order to reduce the necessity for costly litigation. It is in this respect that the Abunzi or Mediation Committee mechanism, with their roots in traditional dispute resolution culture, is central to Rwanda's justice system.

Abunzi committees are similar to the Gacaca courts in having their origin in Rwandan culture and governance systems. Gacaca were specifically revived in 2001 to take care of the difficult justice problem of handling cases of thosewho had participated in crimes committed during the Genocide against theTutsi. A lot has been written about Gacaca, such that it does not need muchdiscussion. Suffice it to say that with the extreme shortage of human and material resources available to the post-genocide judiciary, the 'homegrown solution' of neo-traditional courts to handle genocide cases, except those

[86] *Alternative Report to the Second Review of Rwanda by the UPR Working Group of the Human Rights Council*. Rwanda Civil Society Coalition on Universal Periodic Review, Feb. 2015,. p. 6. [87] Human Rights Council. Rwanda Civil Society Coalition on Universal Periodic Review.. Feb. 2015, p 6.

[88] The current population of Rwanda is estimated at 12,946,746 based on data from the United Nations Department of Economic and Social Affairs: Population Division. www.countrymeters.info/en/Rwanda . The number of lawyers in the Rwanda Bar Association stood at 1,235 in 2019 (President RBA op.cit. note 61.

[89] Ministry of Justice, 'Access to Justice for All in Rwanda: current situation, challenges, strategiesand way forward', presented at the Access to Justice Retreat, Nyagatare 17th January 2019.

involving planners, organizers, and high-ranking officials and military leaders, was most appropriate. It was able to decide 1.9 million cases in8 years without the use of lawyers. Gacaca sought to fight the culture of impunity that had prevailed before the Genocide against the Tutsi, but coupled that with an attempt at reconciliation, mending the social fabric and rebuilding trust among communities, working towards unity and socialand economic development. Its procedure was based on the principle of participatory justice where members of the community were encouraged to speak out and say what they saw during genocide with a minimum of formality and a good chance of getting at the truth. The 'judges' were elected from among members of the community on the basis of their reputation as persons of integrity who could be trusted to make decisions on the guilt or innocence of those accused based on the evidence before them.

Reintroduced into the Rwanda justice system in 2004, the Abunzi mediation committees are based on the same principle of the community electing from among themselves persons of integrity to resolve disputes of their neighbours, without lawyers and without legal complexities, and trying to arrive at a solution acceptable to both parties. The process is not strictly speaking mediation in the conventional sense as the Mediation Committee takes a decision irrespective of whether both parties agree to the result. However, it is termed mediation or conciliation as the panel of mediators attempt to reconcile the parties and to get them to agree on a solution to their dispute. The process is free and avoids the cost and possible trauma involved with litigation while at the same time promoting reconciliation and good neighbourliness. Abunzi mediation is thus an extension of access to justice for the population, resolving their disputes, protecting their rights and providing remedies where they have been wronged as well as reducingthe burden on conventional justice by preventing potential court cases from clogging the court system. Use of Abunzi Committees is mandatory for thosewho have civil disputes. Disputes are filed at the Cell-level committee and may be appealed to the Sector-level committee by a party dissatisfied with the decision. It is only when a party is not satisfied with the outcome of mediation at the Sector level that he or she can file a claim in the Primary Court (first instance court).[90] According to available statistics, in 2018 the Committees received 49,525 disputes and successfully resolved 97% leaving only 3% to proceed to litigation in the courts.[91] The mechanismis appreciated by communities in which they operate across the country. According to the Rwanda Governance, satisfaction with the service provided

[90] Law No37/2016 Of 08/09/2016 Determining Organisation, Jurisdiction, Competence and Functioning of an Abunzi Committee, Article 28.

[91] Ministry of Justice, 'Access to Justice for All in Rwanda' op.cit. note 73.

by Abunzi is generally high with an average of 76.4% determined on the basis of a public perception survey on five variables; that is integrity, ability, knowledge, efficacy of decisions and public trust. Public trust was at 78.6%,integrity at 77% and satisfaction with the process was at 77.76%.[92]

Court Annexed Mediation

Recognizing the success of Abunzi mediation mechanism for improving access to justice, the Judiciary since 2017 sought to extend Alternative Dispute Resolution (ADR) beyond Abunzi Committees in order to have cases already filed in courts resolved through mediation where possible andappropriate. This may be before or after commencement of proceedings. A litigant involved in litigation may request a referral to mediation or the court may enquire into the possibility of mediation and accord all parties the opportunity to refer the matter. The purpose is to save litigants the expense and time of continuing with litigation and where possible mend broken relationships and promote peaceful co-existence whether personal or business. From the point of view of the judiciary, mediation would reduce the number of cases in the court system.

Efforts to include court-annexed mediation into the administration of justice started in earnest when the Justice Sector Peer Review retreat held on 30 March - 1 April 2016 recommended the introduction of compulsory mediation in civil matters. This was followed by a mediation seminar organized from 25-27 January 2017 by the Judiciary in partnership with Kigali International Arbitration Centre, and the African Peace Partners andfacilitated by Judge (Retired) Daniel Weinstein and Bruce Edwards, pioneersof mediation in USA, and Emily Gould of the African Peace Partners. In addition, the JAMS Foundation and the Weinstein International Foundation supported a Technical Assistance Project under which mediation training was conducted for judges and lawyers and mediation tools developed. A pilot project was initiated in the Commercial courts in 2018 and has since been extended to all courts. A legal framework was established, and trainingof lawyers in mediation and mediation advocacy as well as the training of judges on how to initiate and, where appropriate, to conduct mediations is on-going using the Edwards Mediation Academy Online Mediation Skills Course.[93] In addition, Chief Justice's Instructions on Mediation have been

[92] Rwanda Governance Board 'Citizen Report Card', 2019 p.109, available in Kinyarwanda at http://rgb.rw/fileadmin/Citizen_Report_Card-all/CRC_2019_Kinyarwanda.pdf accessed 28/01/2020

[93] In January 2020 the second intake of 51 judges and lawyers to complete the course received their certificates from Bruce Edwards who was also in Rwanda for another session of training inmediation and mediation advocacy.

issued to guide the process of court annexed mediation.[94] A policy on ADR which was commissioned by the Ministry of Justice is under consideration.It is expected that it will be the basis for a comprehensive law on ADRin Rwanda and a comprehensive awareness and capacity building plan necessary to create behavior change towards mediation and negotiated outcomes.

In the meantime, the 2018 Law on Civil, Commercial, Labour and Administrative Procedure now provides for the registrar of the court in which a case has been filed to attempt mediation of the litigants towards a settlement of the dispute during the pre-trial conference. The registrar may also refer them to private mediators or ask the president of the court to designate a judge to mediate between them if they so wish.[95] If a settlementis reached, the registrar prepares an order which is submitted to the president of the court. Once it is signed by the President of the court and theregistrar, it is duly stamped for execution. The order is not appealable, and thus provides certainty. If the parties fail to agree on all or any of the issuesin dispute, the claim is scheduled for hearing. Even after the case is beforea judge, mediation is possible. Article 9 of the same law states that a judge may encourage parties to use mediation if he/she believes that conciliationis the most appropriate way to resolve the dispute. He/she may him/herself mediate between the parties or help them find a mediator of their choice. Inthat event, the hearing is adjourned for the duration of mediation.[96]

If this procedure is regularly used, the case load of the courts will be considerably reduced, resolution of disputes will be much faster and money tied in litigation will be released back into the economy to the benefit of allas evidenced by experiences from other countries. In Kenya for instance, it is estimated that within a year since the Court Annexed Mediation Project (CAMP) was introduced in April 2016, 770 million Kenya shillings (US$7.7 million) has been released back into the economy through mediation and time a case takes before resolution reduced from 2 years to 2 months.[97] Mediation seems to be the future of access to justice as in many countries,

[94] Instructions of the President of the Supreme Court governing court mediation in civil, commercial, labour and administrative cases No.001/2019 of 05//12/2019.

[95] Law No 22/2018 Of 29/04/2018 Relating to the Civil, Commercial, Labour and AdministrativeProcedure, Article 28

[96] Article 9 para. 3. See also Article 72 5° which states: "for issues the judge believes that they may be amicably settled, the judge asks parties if he/she can be of help in conciliating them and,if they so agree, the judge adjourns the hearing, helping first in conciliating them and, if not agreed upon, the hearing continues".

[97] World Bank: 'Court Annexed Mediation Offers Alternative to Delayed Justice for Kenyans' October, 2017; available at https://www.worldbank.org/en/news/feature/2017/10/05/court-annexed-mediation-offers-alternative-to-delayed-justice-for-kenyans, Accessed on….

of those disputes which are referred to a court only a very small portion are resolved by adjudication. For instance, in the Supreme Court of WesternAustralia, less than 2% of the cases initiated in the court are resolved by adjudication and that is said to be fairly typical of Australian courts.[98] In England and Wales in 1999-2000 adjudicated cases in the Queen's Bench Division of the High Court were around 0.5%[99] while in the United States the percentage of civil disputes commenced that are actually decided by adjudication by a court is estimated at less than 2%.[100] If Rwanda embracesmediation, case backlogs will be a thing of the past.

Plea bargaining

A recent important additional mechanism impacting access to justice is the introduction of plea bargaining in Rwandan law. The common understanding of a plea bargain is that it is an agreement between the prosecution andthe defense whereby the accused pleads guilty to the offence or to a lesser charge in exchange for a more lenient sentence, and a full trial is avoided. Itcuts the number of cases going on appeal reduces overcrowding in prison as convicted prisoners stay shorter periods in prison. The idea of plea- bargaining was unknown in Rwanda's criminal justice history and was initially resisted by legal professionals until its introduction in the 2019 Criminal Procedure Code (CPC).[101] This is no surprise as the practice is rare in civil law jurisdictions which allow confessions as evidence but not toavoid a trial at all as it is argued that the decision on the guilt or innocence of the accused is for the judge not for the prosecutor and the accused.[102] Debates have also revolved around the arguments that plea bargaining maylead to criminals likely to be convicted and given heavy sentences getting away with light sentences while innocent persons unsure of the fairness of the legal system may choose to plead guilty to crimes they did not commit so they can get lighter sentences and avoid staying in jail for a long time.[103] Some civil law countries have restricted versions of plea bargaining. For

[98] Wayne Martin AC, 'Australian Disputes Centre ADR Address 2018: Alternative Dispute Resolution - A Misnomer?' relying on Supreme Court of Western Australia, Annual Review 2016. Available at https://www.supremecourt.wa.gov.au/_files/Speeches/2018/Australian%20Disputes%20Centre%20ADR%20Address%202018%20-%20Alternative%20Dispute%20Resolution%20-%20A%20Misnomer.pdf. Accessed on 02/08/2018

[99] Dame Professor Hazel Genn QC in her Hamlyn Lectures 2008 quoted in Wayne Martin AC, Ibid.[100] Murray, PL, The Privatisation of Civil Justice (2011) 85(8) ALJ 490, 494, quoted in Martin ACibid.

[101] Law relating to the Criminal Procedure, No.27/2019 of 19/09/2019, Articles 26-27.

[102] See Yehonatan Givati, 'The Comparative Law and Economics of Plea Bargaining: Theory andEvidence', available at http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/ Givati_39.pdf.

[103] Ibid.

instance, in France plea bargaining is limited to crimes punishable withno more than five years in prison, and allows the prosecutor to propose a sentence not exceeding one year in prison.

In the Rwanda version of plea bargaining the CPC provides that at the end of interrogation, a prosecutor may: "propose a plea bargaining agreement whereby the suspect helps the prosecutor to obtain all the necessary information in the prosecution of the offence and to know other persons involved in the commission of the crime and in return of (sic) some benefits without hindering good administration of justice."[104] The prosecutor is permitted to make concessions with regard to charges and penalties. The court may admit or reject the agreement but may not modify it. If the agreement is admitted, the court must take it into consideration in coming to a decision.[105] Although there have been misgivings about plea bargaining based on fears that criminals will get away lightly and that it may be abusedby corrupt officers, it is consistent with the practice of lighter sentences forthose who confessed, assisted in tracing remains of those who were killed and expressed remorse for their crimes during the Gacaca trials. It is also fits in with the practice of handing down a sentence of community service (Travaux d'Intérêt Général) as a substitute for the whole or portion of a prison term which started with Gacaca courts but has been retained in the criminal justice system.[106] It is believed that the plea bargaining will have a generally beneficial effect.[107]

Outreach

Keeping the general public informed about the work of the courts and that of other justice institutions, is an element of access to justice. Members of the public, especially the poorer, less educated ones should not feel intimidated approaching the courts about their rights and to seek justice. As Bookman has said, "the justice system cannot operate effectively unless the public understands how it works". He holds that this understanding promotes and enhances confidence in the judiciary and in the judicial system.[108] The Judiciary, over the years, has had programmes to inform the citizens of their legal rights, of court procedures and how to seek more information regarding any litigation they may be involved in or contemplating. There is a talk show

[104] Law relating to Criminal Procedure, No.027/2019 of 19/09/2019, Article 26

[105] Ibid. Article 27.

[106] Law determining offences and penalties in general Nº68/2018 of 30/08/2018, Article 35.

[107] Plea bargaining has been successfully tried in Uganda under Prison Project ran jointly by the Uganda Judiciary and Pepperdine Caruso School of Law over the past several years.

[108] S. Bookman, 'Judges and Community Engagement: An Institutional Obligation' (2016) 26 J*ournal of Judicial Administration* p.3 at p.9, quoted in John Lowndes, 'Judicial Accountability asan evolving and fluid concept' *Journal of the Commonwealth Magistrates and Judges Association* (2018) Vol.23 No.3 p.15 at p.22.

every Sunday evening on different topics on Radio ISANGO STAR and once amonth a talk show is organized on selected radio and T.V stations that have a wider coverage on selected topics of interest to the public facilitated by selected speakers with expertise in the specific field.

The Judiciary uses popular print and online media, especially the *New Times*, *Imvaho*, *Igihe* and *Umuseke*, to publish articles on legal/judicial topics of interest to the public. It also has not been left behind in engaging social media to reach its audience as appropriate. It has *facebook* and *tweeter* accounts as well as *WhatsApp* groups such as the Media WhatsApp group, to be able to disseminate information easily to the public. Since 2018, there is the Judicial Week during which the Judiciary and other Justice Sector institutions interact with the communities and brief them on the functioning of these institutions, emphasizing peaceful coexistence and resolution of disputes. It is also a forum in which the Judiciary discusses with key partners, including civil society organizations, important issues relating to the delivery of justice. [109] The Judicial Week has proved very popular with the public.

7. CONCLUSION

Rwanda passed through a difficult period of rebuilding and reconstruction of institutions after the devastating destruction that accompanied the Genocide against Tutsi and by all accounts it has recovered and transformedinto a modern state governed by the rule of law. The Judiciary is one of thoseinstitutions that suffered physical and human losses and which has risen toa respectable level of efficiency in the delivery of quality, accessible justice.This article has attempted to give an overview of some of the reformsthat helped in achieving that recovery and transformation resulting in a high level of public confidence in the judiciary (at 89.5% in 2019).[110] This confidence is a result of improvements in professionalism through trainingand continuing legal education, insistence on a high level of integrity, and accountability of judicial officers and other staff, which raised the qualityof justice rendered. It is also based on efficient management that ensures timely delivery of court services especially through the use of modern court technologies. Various mechanisms were employed to continuously improve access to equitable justice through increasing the availability of legal aid for the poor and vulnerable,use of community/neo-traditional justice, as well as mediation. Public trust in

[109] In 2018 sessions included discussions on land disputes, divorce, disputes with banks overmortgages and those with insurance companies.

[110] Rwanda Governance Board, Citizen Report Card 2019, p.117 available in Kinyarwanda at http://rgb.rw/fileadmin/Citizen_Report_Card-all/CRC_2019_Kinyarwanda.pdf accessed 09/02/2020.

the justice system is essential for peace and development, especially in a post conflict society where social and economic development are greatly influenced by the level of reconciliation and unity of the people which themselves are impacted by the quality of justice and respect for the rule of law. Although thereis a lot to be done in ensuring accessible quality justice, it can safely be said thatjudicial reforms played an important part in raising public confidence not only inthe justice system but in the whole state system and hence contributed to peace,unity, and development.