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Rwanda Decentralization of Judicial Administration and Financial Management

Final FY 2006

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**Funded under Indefinite Quantity Contract III,
Task Order No. DFD-I-01-04-00176-00**

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List of Acronyms

BTC	Belgian Technical Cooperation
DFID	Department for International Development
GOR	Government of Rwanda
IPSAS	International Public Sector Accounting Standards
MINALOC	Ministry of Local Government, Good Governance, Community Development and Social Affairs
MINECOFIN	Ministry of Finance and Economic Planning
MINIJUST	Ministry of Justice
MTEF	Medium Term Expenditure Framework
NCSC	National Center for State Courts
PAACTR	<i>Projet D'appui à l'administration des Cours et Tribunaux</i>
PWC	Price Waterhouse Coopers
SG	Secretary General
SJC	Superior Council of the Judiciary
TP	Tribunal du Province
USAID	United States Agency for International Development
USG	United States Government

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I. Executive Summary

Over the last five years, the Government of Rwanda (GOR) launched a series of major reforms to its legal and judicial systems, restructuring virtually all government institutions. The centerpiece of this reform was the new Constitution, adopted in 2003, which established three independent and administratively autonomous branches of government. Furthermore, the Constitution introduced a hybrid, civil-common law system, combining key features from both legal traditions. This reform program established an ambitious general structure which required significant changes in day-to-day operations.

In February 2005, the United States Agency for International Development (USAID) contracted the National Center for State Courts (NCSC) to implement a program to enhance the capacity of judicial structures and assist Rwanda's judiciary with the process of decentralizing judicial management—the Administration and Financial Training for Decentralized Courts program. The 7-month program—conducted from February 22, 2005 through September 30, 2005—was awarded to NCSC under USAID's Indefinite Quantity Contract (IQC) III and later extended through January 31, 2006.

NCSC commenced operations with a diagnostic study of the existing judicial administrative systems. The main purpose of the assessment was to determine the most effective programmatic interventions for the NCSC court assistance project. However, the diagnostic revealed technical assistance needs beyond the scope and means of the original program. Recommendations outlined in the diagnostic suggested a shift in program activities and new measures to consolidate an autonomous administrative structure within the judiciary.

In July 2005, NCSC submitted a revised Statement of Work that reflected an amendment from NCSC's original proposal supporting Rwanda's decentralized courts. This statement focused on four primary activities: 1) assistance in developing a comprehensive, and internally consultative, budget formulation process for the 2006 judicial budget; 2) the development of a legal analysis describing the legal and constitutional framework and potential impediments to implementing the decentralized budget process for the judicial branch; 3) support for decentralized budget formulation and execution as well as decentralized and reorganized judicial management through the development of a financial procedures manual; and 4) assistance to a longer-term continuing education program through the design and conduct of a "cascade-style" training.

NCSC later was granted a 4-month extension of the program. Through this extension, NCSC focused on two additional activities: 1) support in identifying the extent to which courts contribute to, and not simply expend, national revenue through the conduct of a survey in the country's largest jurisdictions; and 2) the development of an international

conference based on discussions during an intra-governmental workshop on the implications—both politically and financially—of judicial independence.

The National Center for State Courts wishes to acknowledge the Supreme Court and USAID Rwanda for their support and guidance over the course of the program. The Center also recognizes the contributions of Rwanda’s judiciary and government officials who, as principal stakeholders, continue to push forward and remain the key to successful implementation of this ambitious program to bring the justice system closer to the citizens.

II. Background

In February 2005, USAID/Rwanda contracted the National Center for State Courts (NCSC) to implement the Administrative and Financial Training for Decentralized Courts in Rwanda Project, a 7-month contract effective from February 22, 2005 through September 30, 2005. This contract was later extended through January 31, 2006. The purpose of the program was to strengthen the ongoing judicial reform process. The overall objective of the contract was to further the development of the rule of law in Rwanda through efficient and effective institutions within the judiciary.

This objective was achieved by providing members of the Rwandan Supreme Court a set of integrated deliverables, including:

1. A diagnostic of the administrative and financial aspects of the existing judicial system in the context of identified constraints and corrective, feasible interventions by NCSC; and
2. The design and implementation of hands-on training and practical advice and technical support for judicial personnel based on the diagnostic findings.

The intervention focused strictly on the “classic,” formal justice sector, as opposed to traditional forms of Rwandan justice, perhaps best exemplified by the *Gacaca* system that is presently in place to adjudicate certain levels of genocide-related cases. Total funding for this justice-related intervention was US\$700,000 over an eleven-month period.

This activity was managed under USAID/Rwanda’s Strategic Objective that calls for “Improved Governance through Increased Citizen Participation” under the Mission’s plan for FY 2004-2009. Under this objective, the activity fell under Intermediate Result 5.3, Enhanced Opportunities for Reconciliation and includes Intermediate Result 5.3.1, Improved Efficiency and Effectiveness of Selected Aspects of Justice Delivery and Intermediate Result 5.3.2, Positive Interaction among Diverse Groups of People Supported. These activities complemented other projects promoting decentralization and democratization.

The startup phase of the NCSC project consisted of a Diagnostic Study conducted from March 11 to April 1, 2005, exploring the current state of judicial financial and administrative management and proposing programmatic responses. (The full study is attached as Appendix A.) The assessment identified areas for potential technical assistance, a targeted training program and how NCSC might best contribute to Rwanda's overall judicial reform efforts in collaboration with local and international stakeholders. Data for the diagnostic was gathered from a variety of sources both in the capital of Kigali and the provinces of Butare, Gisenyi, Gitarama and Ruhengeri. During the assessment process, the team collected legislation, policies, forms, and statistics, as well as anecdotal information regarding actual practice. While the initial NCSC proposal suggested potential outcomes, as intended the diagnostic analysis was conducted without presupposing any particular programmatic responses. Consistent with this approach, the recommendations contained at the end of the diagnostic suggested a shift in the project activities and new measures to consolidate an autonomous administrative structure within the judiciary, which were not anticipated in the original proposal. These included: assistance with the 2006 judicial budget; the elaboration of strategic issues and suggestions for the reform of select legal and constitutional provisions; the development of a judicial budget and expense reporting manual; and training of core personnel and direct technical support to the judiciary for the development of the 2006 budget.

In July 2005, NCSC submitted a revised Statement of Work that reflected an amendment from NCSC's original proposal supporting Rwanda's decentralized courts. The original project proposal placed heavy emphasis on broad-based training in the areas of finance and administration. Based on the results of the diagnostic study, the gaps in the existing structures made broad, extensive training not practical. A full complement of administrative staff was not yet in place, and the pending legislation affecting the civil service was likely to affect the existing core staff.

In addition, while the NCSC project was originally conceived to cover both finance and general administration, the diagnostic and the Supreme Court suggested sharpening the scope of programmatic activities over the remainder of the contract period to target financial issues. This recommendation was not intended to imply that administrative issues are less significant. However, the diagnostic and the Supreme Court leadership identified significant programs, such as those managed by the Belgian Technical Cooperation (BTC) unit and the Canadian-funded *Projet D'appui à l'administration des Cours et Tribunaux (PAACTR)*, as already engaged in this area, while there was no formal programming in the financial area. The Netherlands assisted the judiciary with the preparation of their Medium Term Expenditure Framework (MTEF) budget and was sponsoring the training of judges on new laws. In addition, the project was providing equipment to the courts and in some cases doing some rehabilitation of courts around the country. NCSC and the Supreme Court determined that the only project with the capacity and the mandate to address financial issues was this USAID project.

III. Program Activities

The first major activity carried out under the Task Order was a comprehensive assessment of the decentralization of financial and administrative functions of the Rwandan judiciary. Following the diagnostic assessment, program activities and focus were adjusted, based on the findings. Despite the brevity of the project, a great deal was accomplished in a short period of time. The following chart provides a brief summary of major accomplishments and includes the baseline and the results. Following the summary, the activities are described in greater detail.

A. Summary of Major Achievements

	PLANNED ACTIVITY		BASELINE	RESULTS
	<ul style="list-style-type: none"> Assessment conducted of the current state of judicial financial and administrative management. 		<ul style="list-style-type: none"> No comprehensive assessment conducted on judicial financial and administrative management since start of reform. 	<ul style="list-style-type: none"> Diagnostic report outlines recommendations to improve judicial financial management.
	<ul style="list-style-type: none"> Meetings and workshops organized with representatives of Provincial and High Courts to solicit their input into 2006 judiciary budget. 		<ul style="list-style-type: none"> 2005 and past budgets for the judiciary. 	<ul style="list-style-type: none"> 100% percent of Provincial and High Courts participated in the elaboration of the 2006 budget. 2006 budget is developed based on a participatory approach.
	<ul style="list-style-type: none"> Supreme Court, with NCSC's assistance, drafts Strategic Issues Paper and develops and defends 2006 budget based on the information collected from lower courts. 		<ul style="list-style-type: none"> No decentralized input in budget formulation – Input limited to after the fact comment. Past Budgets submitted without strategic issues paper 	<ul style="list-style-type: none"> 2006 budget reflects needs expressed by District, Provincial and High courts. Supreme Court's 2006 budget increased by almost 19% compared to its 2005 budget.

	PLANNED ACTIVITY	BASELINE	RESULTS
	<ul style="list-style-type: none"> Conference on development of the 2006 judicial budget organized. 	<ul style="list-style-type: none"> Representatives of key judicial institutions engage in dialogue on new budget development process. 	<ul style="list-style-type: none"> Key judicial stakeholders participate in conference and identify key recommendations. Budget template created for use for future budgets.
	<ul style="list-style-type: none"> NCSC drafts legal memo suggesting amendments to some of the existing draft legislation and regulations to facilitate the decentralization process of the judiciary. NCSC assists the Supreme Court in defining policy for financial administration. 	<ul style="list-style-type: none"> Government institutions do not have a mutual understanding of the specific challenges involved in judicial decentralization. Supreme Court draws upon internal capacity and develops financial policy that addresses current needs to the extent possible. 	<ul style="list-style-type: none"> Supreme Court leadership engages in preliminary dialogue with MINALOC; however, more issues remain to be discussed on the impact of judicial decentralization.
	<ul style="list-style-type: none"> Draft financial procedure manual incorporates basic policies for judicial financial administration, using MINALOC's Manual as a reference. Workshops organized to review and revise the financial manual to ensure its consistency with the Ministry of Finance's and Supreme Court's procedures and policies. 	<ul style="list-style-type: none"> No Judicial Financial Procedure Manual exists. Limited financial authority is exercised within the lower courts. Expense reporting is a novel activity. 	<ul style="list-style-type: none"> Basic policies for judicial financial administration reflected in draft financial procedure manual. For the first time, the Supreme Court has its own financial procedure manual approved by the Office of the Auditor General.
	<ul style="list-style-type: none"> Core judicial staff trained as trainers on judicial financial management policies. 	<ul style="list-style-type: none"> No training program existed on judicial financial management policies. 	<ul style="list-style-type: none"> NCSC's financial procedure manual will be incorporated into the training program of the <i>Centre National de Formation et Developpement Judiciaires</i> in Nyanza. 40 senior-level Supreme Court staff, 150 clerks and 57 judges are able to train new judicial personnel.

	PLANNED ACTIVITY	BASELINE	RESULTS
	<ul style="list-style-type: none"> Pilot project on court-generated revenue survey conducted. 	<ul style="list-style-type: none"> Collection of court fees is not recorded in a systematic fashion. 	<ul style="list-style-type: none"> Survey findings presented in report to the Supreme Court. Supreme Court has initiated meetings with the Ministry of Finance and the Rwanda Revenue Authority to explore options to collect these fees and develop mechanisms to monitor their collection on a monthly and quarterly basis.
	<ul style="list-style-type: none"> International judicial conference organized. 		<ul style="list-style-type: none"> Supreme Court is following up on recommendation to work on regional judicial cooperation (Burundi, Kenya and Uganda). Recognition of need for improved collaboration among the judicial, executive and legislative branches of government.

B. Discussion of Program Activities

1. Assistance with Judicial Budget for 2006

The most urgent priority identified by NCSC and the Supreme Court was the need to assist the Supreme Court with a comprehensive and internally consultative budget formulation process for the 2006 Judicial Budget. The Supreme Court did not have sufficient information to develop a comprehensive proposal to reflect actual needs including adequate support documentation.

With recent reforms, judicial system budgets are now independent of the Ministry of Justice budget. However, the Ministry of Finance and Economic Planning (MINECOFIN) continues to play the central role in the adoption of the final judicial system budget. Historically, the Ministry of Justice (MINIJUST) has represented the judicial system vis-a-vis the MINECOFIN, which in turn represents the entire justice sector vis-a-vis the Council of Ministers.

Customarily, MINECOFIN produces the budget call circular (BCC). The circular provides official guidelines on budget preparation including preliminary expenditure ceilings based on the Medium Term Expenditure Framework (MTEF); guidance on preparation of the strategic issues paper; and the latest budget calendar for the period.

Government institutions have three weeks in which to draft strategic issues papers. These papers share how the institutions plan to use their funds. They provide information to facilitate discussion on the previous year's performance, strengthen use of the MTEF as a planning tool and serve as the basis for consultations at MINECOFIN. On the basis of these inputs, a final document, a "Budget Framework Paper," is assembled and sent to the Council of Ministers.

In 2004, the initial budget proposal for the judiciary totaled 11 billion Rwandan francs, but it was ultimately approved at only 2 billion. There was substantial consensus that this overall amount was insufficient to meet current needs. Judicial personnel posited that this dramatic reduction to be at least in significant part a function of the judiciary's prior lack of capacity to justify its proposals.

Activity 1: Collection of 2006 budget information

In April 2005, NCSC signed a Memorandum of Understanding (MOU) with the Supreme Court outlining NCSC's proposed technical support. One of the first activities proposed was the collection of financial data to assist in the development of the 2006 draft budget. NCSC assisted the Supreme Court in developing a questionnaire that was distributed to the presidents of the twelve Provincial Courts. This was the first time these courts participated in the budget development process.

In May, five teams, comprised of Supreme Court representatives from the General Inspector's Office, the Budget and Finance Department, and the Human Resources Department paired with NCSC staff and local consultants and traveled to the provinces to gather the 2006 budget projections.

Team one targeted the Provincial Courts of Kigali, Kigali Ngari, and Kibuye in addition to the High Court of Kigali. Team two targeted the Provincial Courts of Cyangugu and Gikongoro; Team three, the Provincial Courts of Gisenyi and Ruhengeri, and the High Court of Ruhengeri; Team four, the Provincial Courts of Butare and Gitarama, and the High Court of Nyanza; and Team five, the Provincial Courts of Kibungo, Umutara, and Byumba, and the High Court of Rwamagana.

NCSC then worked closely with the Supreme Court's Budget and Finance Department and analyzed these budget projections as well as the information collected during NCSC's diagnostic study in March and April 2005. A report outlining the methodology used for the collection of the 2006 budget projections in addition to NCSC's observations and recommendations was presented to the Supreme Court and USAID. One of the key observations from the report was that this exercise was challenging for local-level judicial personnel because this was the first time they had been involved in the process. Follow up visits to the courts were conducted after the initial survey to finalize the initial 2006 budget projections.

Activity 2: Strategic Issues Paper

Based on NCSC's analysis of the 2006 budget projections from the Provincial and High courts, the Supreme Court's guidance on the 2006 budget, NCSC's budget information, and the Ministry of Finance and Economic Planning's (MINECOFIN) budget guidelines, NCSC identified the major justifications for the development of the 2006 judicial budget and drafted a 5-page Strategic Issues Paper outlining these justifications in May 2005. (A copy of the paper is attached as Appendix C.) This paper was presented and discussed with the leadership of the Supreme Court and served as the topic for an Intra-Governmental Dialogue on the 2006 Judiciary Budget.

Based on the Supreme Court's MTEF, a task force met with the senior-level Supreme Court officials to discuss the Supreme Court's key policy objectives, major constraints facing the judiciary and identify the priorities of the Court. In addition, NCSC organized with the Supreme Court a workshop in Kibuye with the twelve presidents of the Provincial Courts and the four presidents of the Chamber of the High Courts during which they presented their final amended 2006 budget projections and discussed local-level judiciary needs with senior-level Supreme Court officials.

Activity 3: Intra-Governmental Dialogue on the Draft 2006 Judicial Budget

Following the completion of the Strategic Issues Paper, NCSC – in collaboration with the Supreme Court and other local partners – organized the first Intra-Governmental Dialogue on the Development of the 2006 Judiciary Budget.

Gathering over 65 participants including the president of the High Court, the vice president and secretary general of the Supreme Court, the presidents of the 12 Provincial Courts, the Director of the "*Centre National de Formation et Developpement Judiciaires*" and representatives from the prosecutor's office, the Ministry of Justice, the national police, the Ministry of Finance, the Office of the General Auditor and the Kigali Bar Association, the conference encouraged dialogue on judicial independence, financial management training for judges and clerks and policy issues relating to strengthening the Supreme Court's financial structure and key budget line items within the draft 2006 judicial budget.

International donors included representatives from the European Union, the Belgian Technical Cooperation, USAID, and the United Nations Development Programme in addition to representatives from the Norwegian People's Aid, RCN, and PRI. An evaluation report of the conference was presented to the Supreme Court and the USAID.

In June 2006, the Supreme Court presented its official 2006 budget of 4,378 billion Rwandan francs to the Ministry of Finance and Economic Planning (MINECOFIN). This was the first time the Supreme Court presented a comprehensive budget which reflected

the needs expressed by Rwanda's district, provincial and high courts. Even more significant, the budget met MINECOFIN's submission deadline—an achievement not previously accomplished. In support of this budget, NCSC worked with the Supreme Court to draft a briefing paper to present to MINECOFIN. The Supreme Court's vice president used this paper to explain the basis for the 2006 budget proposal to the Ministry of Finance and Economic Planning.

In August, the Council of Ministers approved a budget of 2,938 billion Rwandan francs for the Supreme Court from a budget request of 4,378 billion Rwandan francs. While the health, education and energy sectors took priority over the judiciary, nonetheless, the 2006 budget of 2,938 billion reflected a significant step forward compared to the 2005 budget of 2,475 billion. The difference of 463 million Rwandan francs reflected an increase from last year's budget of almost 19 percent.

In September, the Supreme Court requested that NCSC provide technical assistance to adjust the budget to reflect the final budget ceiling approved by the Council of Ministers in preparation for a hearing scheduled at the parliament. In response to this request, NCSC helped the Supreme Court's leadership prepare a technical briefing paper to defend its budget before parliament. As a result, parliament supported an increase of the Supreme Court's overall budget. This assistance was possible through a 1-month no-cost extension followed by a 3-month for-cost extension that allowed NCSC to remain engaged in Rwanda through the end of January 2006.

2. Elaboration and Reform of Select Legal Provisions

An important activity of the project was the development of a legal analysis, summarized in a ten page memorandum, describing the legal and constitutional framework and potential impediments to implementing the decentralized budget process for the judicial branch. The diagnostic study conducted by NCSC at the beginning of the project established the basis for this legal analysis.

The legal memorandum is attached as Appendix B. Briefly summarized, the general principles of judicial independence, including budgetary and financial independence have been adequately provided for in the Constitution and implementing legislation, but the issue of the decentralization of the judiciary is not specifically addressed in the Constitution. Article 167 of the Constitution does establish the principle of decentralization generally, and it could be construed to encompass the judiciary. Support for this interpretation can be found in various provisions of legislation that provide for decentralization of judicial operations. Nevertheless, further normative implementation would be useful to provide explicit guidance on how to apply the principle of decentralization to the special judicial context. Some of this guidance could originate with the development of court policies. However, potential amendments to the existing legal framework should also be considered.

Assistance with amendments to the existing legal framework could focus on certain legal provisions that appear inconsistent either *prima facie* or conceptually with a decentralized judicial management structure. One provision is in Article 167 of the Constitution itself, and several are in the law on state finances. Each could potentially hinder the development of a decentralized judicial management structure.

As noted in NCSC's diagnostic analysis, Article 167 of the Constitution requires all local organs of the public service to come under the authority of MINALOC. While this is generally consistent with the overall decentralization scheme, it overlooks the judicial administrative and financial autonomy which is otherwise provided for in the Constitution. All indications are that this wording is a mere oversight, but it may nevertheless require amendment of the Constitution.

The challenges and problems relating to these legal provisions could benefit from legal interventions. If these issues are resolved expeditiously, implementation could be more straightforward and more likely to realize the policy goal of decentralization. In August 2005, in support of the judicial financial decentralization effort, NCSC presented a 10-page legal memo to the Vice President of the Supreme Court, the President of the High Court and the Secretary General of the Ministry of Justice, all of whom expressed their appreciation. Due to the relative sensitivity of the document, NCSC initially only distributed the document to the above individuals.

However by late 2005/early 2006, discussions on amending the Constitution were taking place which included some of the suggestions identified in NCSC's legal memo. In support of this dialogue, NCSC decided to distribute the legal memo to a broader audience including Rwandan judges and its international partners. NCSC also met with the President of the Supreme Court to encourage action on the recommendations outlined in the memo.

3. Development of a Financial Procedure Manual

Decentralization of the courts represents a major reform and a significant shift from established practices. Introducing at the same time the concepts of decentralized budget formulation and budget execution as well as decentralized and reorganized judicial management will require a complete realignment of administrative functions and responsibilities. Recognizing the magnitude of the task, USAID and NCSC early on identified as one activity the development of a Financial Procedure Manual as a key element promoting sustainability. The manual would provide specific guidelines for how courts are to monitor and report on expenses and revenues, encourage use of this information to develop accurate budgets and guide decision making at the local level.

In May, under the leadership of the Supreme Court and with the direct support of the Director of Finance, NCSC began developing a draft financial procedure manual in coordination with the Ministry of Finance and the Office of the General Auditor. This

manual was designed for use by the court administrators identified by the Supreme Court for recruitment. In July and early August, several meetings were organized with the Supreme Court's Directorate of Finance and Budget, the Office of the General Auditor, representatives from the Ministry of Finance and NCSC to review the draft manual and ensure its conformity with the Ministry of Finance's and Supreme Court's overall vision, procedures and policies.

NCSC amended the draft financial procedure manual based on the feedback provided and, in partnership with the Supreme Court, began testing the draft manual in a select number of jurisdictions over a one-month period. In September NCSC officially presented a final version of the procedure manual to senior officials of Rwanda's Supreme Court that included the recommendations of the President of the Supreme Court, MINALOC, the Office of the Auditor General, and local experts. NCSC received in late October the Supreme Court's formal acceptance of the Financial Procedure Manual. Formal reproduction and distribution of the Manual to the provincial and district courts, the Supreme Court and the Legal Training Center was conducted in January 2006 due to the 2-month delay in receiving additional program funds, the conduct of the international conference on the judiciary and the absence of judicial staff in December.

4. Training of Core Personnel

In 2004, the legal reform measures led to the review of the entire staffing profile for the judicial sector. Judicial personnel were required to resign, re-apply for positions, and in many cases take certification exams. Even judges were required to take exams. From approximately 1,583 personnel in mid-2004, judicial staff was reduced to a total amount of approximately 512 as of the time of NCSC's diagnostic study.

With the completion of the draft financial procedure manual, preparations for the training of core personnel were initiated. Given the potential instability in the judicial administrative personnel noted in the diagnostic study, the training was designed to result in a sustainable training program that could be repeated as needed with an eye towards the new personnel anticipated in the Supreme Court's strategic plan. Linkages were also explored with the Judicial Training Center in Butare with a view to creating a permanent administrative training component within the curriculum.

In August and September, NCSC, in consultation with the Supreme Court, designed and conducted the first tier of a "cascade-style" training process under which NCSC trained a diverse group of 40 professionals working within the Supreme Court's Human Resources, Budget and Finance, General Inspection and Logistics Departments as well as the Supreme Court's training coordinator, clerks and representatives from its Internal Audit division. These initial trainings were designed to present the draft financial procedure manual and amend the manual based on feedback from the training participants.

After an initial training in Kigali, NCSC designed and conducted six regional trainings. The regional trainings—conducted in the local language Kinyarwanda—targeted clerks of the Districts and Provincial Courts of Cyangugu, Gikongoro, Gisenyi, Ruhengeri, Butare, Gitarama, Nyanza, Kibuye, Umutar, Rwangana and Kibungo and focused primarily on the draft financial procedure manual, Rwanda’s budget process and the financial decentralization of the courts. In total, 150 clerks and 40 senior-level judicial personnel were trained as part of this first tier of a “cascade-style” training process.

NCSC evaluated the impact of its trainings by having the clerks complete evaluation forms. Some of the comments and suggestions included were: requests for additional training on financial procedures; requests for additional written guidance from the Supreme Court; constraints due to the lack of adequate staffing at the courts; and requests that copies of the financial procedure be available to all clerks.

Following the regional trainings, NCSC presented a report on the trainings to the Supreme Court and USAID. After incorporating feedback from the individuals trained, NCSC shared the final version of the financial procedure manual with the Supreme Court. Following the 4-month program extension, NCSC conducted another workshop in Kibuye on financial management and decentralization issues. Approximately 70 clerks from the district courts participated in the 3-day workshop as well as representatives from the Ministry of Finance and the Office of the General Auditor.

Although the short duration of the program limited more extensive training, the training of core judicial staff is an important first step, as these staff could form the nucleus for a continuing education program to support the ongoing reforms of Rwanda’s justice system.

5. Pilot Project to Ascertain the Extent of Court-Generated Revenue

Following the Supreme Court’s presentation of its first on-time 2006 judicial budget to the Ministry of Finance, the Rwandan Parliament requested that the Supreme Court provide information on the extent to which courts contribute to, and not simply expend, on national revenue.

In response to this request, NCSC, in partnership with the Supreme Court, conducted a survey in the country’s largest jurisdictions where caseload volume is considered high and where districts routinely report settled cases. These included the city of Kigali, and the provinces of Butare and Ruhengeri. The survey included both courts of general jurisdiction and commercial courts and sought to provide information on revenue by district in order to estimate how much revenue the judiciary—apart from general revenue—collects on its own. Approximately 10-15 surveyors contracted by NCSC were dispatched to collect revenue data from each jurisdiction – 3 commercial chambers, 3 provincial courts and 29 lower-level district courts (approximately 8 justice of the peace courts in Kigali, 11 in Ruhengeri and 10 in Butare).

Data collected showed that 34,836,994 FRW estimated at \$63,000 has been collected from 35 out of 118 courts from January through September 2005. However, these collected fees rest at the bank and neither the judiciary nor the public treasurer has yet made a decision on how to use these fees. In addition, information collected from Kigali's provincial court showed that 92,819,616 FRW estimated at \$167,243 was deposited at the Rwanda Revenues Authority during the same period.

A report on the survey was submitted to the Supreme Court in October 2005. Following receipt of the report, the Supreme Court initiated a series of meetings with the Ministry of Finance and the Rwanda Revenue Authority to explore options to collect these fees and develop mechanisms to monitor their collection on a monthly and quarterly basis. This survey provided important information on the revenue-generating potential of the judiciary – an element of the budgetary equation that had received little previous attention.

6. International Conference on the Judiciary

In August 2005, NCSC began developing a proposal to extend its program to include an international conference on judicial independence. This idea originated during the previous intra-governmental workshop where most of the discussions focused on the implications – both politically and financially – of judicial independence. Several judges met informally after the conference with the purpose of creating an association of judges to discuss the key challenges facing the judiciary as it moves toward political and financial independence. The discussions underscored that Rwandan judges do not understand why, if judicial independence is recognized by constitution and secondary law, the budget for the judiciary continues to be presented by the Minister of Justice rather than the President of the Supreme Court. Such problems indicated that in order to become a meaningful concept, judicial independence should proceed in tandem with the obligations and responsibilities accorded to judges in a new political system.

Originally, NCSC proposed a 2-day workshop on topics connected to judicial independence more specifically relevant for judges and courts. The conference was to bring together judges, advocates, prosecutors, lecturers and other eminent jurists from around the world to discuss and exchange perspectives and experiences on a wide range of issues – judicial ethics, responsibilities and roles in a mixed system of government with divisions of labor and power among three branches, as well as a judge's responsibility as judicial advocate, and role in the community, as a public servant – a new concept for most Rwandans.

This would provide an opportunity for Rwandan officials, judges, members of parliament, the media and civil society, along with international experts, to meet openly and discuss the past, present and future directions of Rwanda's legal reform efforts. Among those issues, the most important concerns appeared to be: the extent and nature

of corruption; an absence of professional ethics for newly-organized judges; delays in adjudication; and the inapplicability of legal codes and secondary legislation inappropriate to the Rwandan Constitution of 2002.

In September and October, preparations for the conference continued but the proposed agenda was broadened by the Supreme Court from the initial focus on judicial independence. The final agenda addressed the following themes: a judiciary that serves the people; experiences of the ethics, responsibilities and social status of a judge; experiences using a mixed system of government; the importance of the prosecution in the administration of justice; legal assistance; and regional judicial cooperation. The conference, which drew over a hundred participants concluded with a series of recommendations. Key recommendations included: 1) continued regional judicial cooperation to strengthen the respective judicial system of individual countries; b) the provision of assistance by the executive branch to the judiciary to ensure it has adequate resources to fulfill its mandate; c) strengthening of alternative dispute resolution mechanisms (i.e., mediation committees called *Abunzi*); and d) support for funding for legal assistance.

By mid-October, NCSC had not yet received the necessary funds for a for-cost extension to finalize preparations for the conference. This late disbursement resulted in the conference being held in the latter part of November, shifting the timeline for remaining project activities.

IV. Recommendations

Rwanda is in the process of implementing a series of far-reaching reforms to its legal and judicial systems beginning with an ambitious goal of decentralization. The National Center for State Courts was privileged to be afforded the opportunity to work with USAID in support of its long-range assistance strategy to promote the rule of law by strengthening the ongoing judicial reform process. NCSC understands that meaningful institutional change requires a long-term commitment and can be assisted in numerous ways by various international donors. While the work of NCSC was important, it should be viewed as but one of many steps. As a basis for subsequent assistance work in this area, NCSC is pleased to offer to USAID, to the larger development community, and to our Rwandan counterparts the following recommendations based on our brief but significant project.

A. *Re-examining the Legal and Regulatory Framework*

The Government of Rwanda should carefully examine the legal, constitutional and regulatory framework as it relates to the larger reforms of decentralization of financial management and court administration, and make changes where necessary.

Decentralization

This program was made possible through funding from the United States Agency for International Development. Any person or organization is welcome to quote information from this report if it is attributed to NCSC.

There is no provision of the 2003 Constitution which deals specifically with the decentralization of the judiciary. However, the Constitution generally supports the decentralization policy of 2001 mentioned above but only very briefly. Article 167 is the article dealing with this subject, and it states:

Public administration shall be decentralized in accordance with the provisions of the law. *Decentralized organs shall fall under the Ministry having local government in its functions* (emphasis supplied).

Districts, Municipalities, Towns and the City of Kigali are decentralized entities with the legal status and administrative and financial autonomy and are the foundation of community development.

They shall be entitled to become members of national and international organizations which promote development through decentralization.

The italicized provision is potentially problematic for reasons of judicial independence. Without clarification, this provision could be interpreted in a way that blurs the necessary separation between judicial and executive authority.

Another clarification may be needed on the Organic Law No. 07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts and Presidential Order No. 21 of 12/7/2003. The former is the only law which offers a minimum of administrative and financial decentralization within the courts. Articles 53 through 55 address administrative decentralization and Articles 59 and 60 address budgetary decentralization. The latter is one of the key elements of the relevant legal and regulatory framework governing the general accounting system and institutes a manual of procedures for financial management of the central administration. This manual provides a comprehensive procedure for the budgetary decentralization of all of the ministries. MINALOC has created its own procedural manual based on this order which provides precisely for that kind of decentralization. Thus, by referring to this order, this law contemplates that the judiciary should be practicing budgetary decentralization and the Presidential Order offers considerable detail on how that might be done.

However, there are a few problems with applying the MINALOC manual, supported by the Presidential Order, to the judiciary. The main problem in this regard is that under the decentralization scheme provided in the manual, local administrations outside of the judiciary are given authority over the local budgets of all organs of government. The budget of the judiciary could not be subjected to review by other local authorities without a violation of the judicial independence, including financial independence, which is guaranteed under Article 140 of the Constitution. Consequently, the MINALOC manual would need to be adapted to make it applicable to the judiciary. This type of alteration is contemplated in the MINALOC manual itself and it could easily be argued that amendments specific to the judiciary are required by this law since it is an organic law

adopted after the Presidential Order, which is a mere regulatory measure which occupies a lower position in the hierarchy of norms.

Lastly, certain provisions of Law No. 41/2004 of 1/12/2004 determining the State of Finances for the 2005 Year are inconsistent with all of the provisions relating to judicial independence, financial autonomy and decentralization and the law contains provisions within its text which conflict with each other in this respect. Article 11 of this law states,

Expected current expenditure in a certain provision in the ordinary budget may be subject to credit transfer from one provision to another which alter the nature of the expenditure. Such credit transfers can only take place within the same category of expenditure and budget of the same ministry and public entities and *must be authorized by the Minister in Charge of Finance* (emphasis supplied). However, no credit transfer or change may be authorized between salaries and other expenditures.

This provision results in the current practice whereby even the minutest transfer of funds from one line item to another results in inordinate delays (reportedly often months) entailed in obtaining the required authorization from the Ministry of Finance in Kigali. This aspect of this provision and the language in Article 6 of this law are totally inconsistent with the law and policy relating to decentralization and are also inconsistent with the authority of the President of the Supreme Court and the Secretary General of the Supreme Court which is implicitly recognized in Article 6 of this same law. The inconsistent terms of this law should be amended so as to remove all obstacles to the decentralization law and policy. In light of the significant impact Rwanda's decentralization process is having on its judiciary, NCSC strongly encourages international partners to initiate a dialogue with the Supreme Court's leadership to analyze and monitor the impact of this process on judicial independence.

B. Information Dissemination on the Decentralization Process

Throughout the project, NCSC noted the critical role of communication between Kigali and its outlying provinces. In support of the Government of Rwanda's judicial reform process, NCSC recommends that international actors working in the justice sector support an initiative to build confidence and encourage coordination between Rwanda's judiciary and civil society. This initiative could begin with a joint media and justice sector initiative to inform Rwandans about the ongoing decentralization of the judiciary. In some countries, civil society has played a key role in promoting justice reforms and contributing to the implementation process.

C. Sustained Training on Financial Judicial Decentralization

With the passage of the final judicial budget, the Supreme Court is supposed to assume primary authority for the administration of a significant portion of the funds other than labor, which is handled through the Ministry of Public Service. However, the courts do not as yet play a significant role in the management of the funds. Local courts may submit budget suggestions, but the incorporation of these suggestions is not yet widespread. This fact is evident in that most courts of the same level possess identical budgets. Once these budgets are established, courts perceive that they have no authority to switch funds between line items under any circumstances.

Starting in 2004, there were some budget consultations after the fact with the lower courts and a meeting of court presidents was convened where open dialogue was encouraged. In 2005, NCSC, in partnership with the Supreme Court, facilitated budget consultations with the lower courts as part of a comprehensive, and internally consultative, budget formulation process for the 2006 judicial budget. In 2006, the lower courts will be responsible for preparing their budgets. To support these efforts, NCSC recommends continued assistance to a longer-term continuing education program on financial judicial decentralization for court administrators and other judicial staff. Bi-monthly trainings for judges and court staff would reinforce the information provided during NCSC's training program on the Supreme Court's Financial Procedure Manual, the budget process and the decentralization process. These trainings could be conducted at the *Centre National de Formation et Developpement Judiciaires* in Nyanza.

D. Recommendations to the Supreme Court

The new legal framework empowers the Supreme Court to assume general responsibility for court management, and the prior role of other ministries, MINIJUST in particular, has correspondingly declined. Furthermore, the Supreme Court now administers the Inspectorate with jurisdiction to investigate allegations of misconduct, and the ultimate decisions regarding judicial discipline rests with the Supreme Judicial Council, which is composed chiefly of judicial officers. To handle the day-to-day financial and administrative operations, the Supreme Court has authority to recruit and manage its support staff.

To manage the new financial and administrative responsibilities, the Supreme Court has established several administrative departments: the General Directorate of Planning Technology for Computerization and Communication; the General Directorate of Finance and Budget; and the General Directorate of Human Resources and Logistics. The Supreme Court is in the process of staffing the requisite positions. However, the process has not been smooth or expeditious, and the logistics of recruitment and payment will likely continue to be still routed through the Ministry of Public Service for the foreseeable future.

1) Support to the General Directorate of Finance and Budget

In 2004, the legal reform measures led to the review of the entire staffing profile for the judicial sector. Judicial personnel were required to resign, re-apply for positions, and in many cases take certification exams. Even judges were required to take exams. From approximately 1,583 personnel in mid-2004, judicial staff was reduced to a total of around 512 as of NCSC's April 2005 diagnostic study report. It is not clear that this dramatic reduction in staffing was linked even to an estimate of workload changes.

The Supreme Court has developed a Recruitment Plan for 2004-6. For the 2005 year, the majority of the new positions are district court clerks (106) and district judges (106). In terms of administrative recruitment, the Supreme Court plans to add 12 financial officers, one in each province, and 24 secretaries, two in each province.

Even with these additions, the judicial system has very limited administrative support capacity. Currently, the judicial system has to employ court clerks at the district court level to handle financial matters, and plans to extend financial staffing below that to the district courts are not feasible at this time due to financial limitations.

To bolster the capacity of the Supreme Court's General Directorate of Finance and Budget, NCSC encourages the identification and recruitment of 3 to 4 qualified local accountants. These individuals would be knowledgeable about the issues facing the provincial and district courts in their region, act as a point of contact for any questions these courts may have and be available to spend substantive time with the lower courts in the development of their budgets.

In addition and to further strengthen communication and coordination between the lower courts and the Supreme Court, NCSC recommends the identification and recruitment of a liaison officer. This individual could be responsible for providing regular updates to the courts on initiatives to modernize the judiciary's financial and budgetary system. Given the new roles envisioned for the provincial and districts courts as part of the decentralization process, the liaison officer could share information with regional judicial personnel about other key changes planned by the Supreme Court leadership so the courts may be better prepared to respond to these challenges.

2) The Budget Process and Collection and Reporting of Court Fees

MINECOFIN transfers portions of judicial funding periodically to the courts. Technically, these funds should be routed to the Supreme Court for pass-through to the various lower courts, but the management system is not yet in place. So, MINECOFIN continues to make transfers directly to the lower courts.

The flow of state funds is not consistent, and there are gaps in the ability of courts to make their payments locally. These funds are not intermingled with court revenues,

which are deposited into a separate account. The separate account is not available for local court expenses. According to Law No. 17/2002 of 10/05/2002 “Establishing the Source of Revenue for Districts and Towns and Its Management,” they are deposits to local government coffers.

The revenues collected locally consist of filing fees; penalties; company registration fees; and percentages of the sale of seized property and damage awards. Ministerial Orders No. 1 & 2, of 06/01/2005, set fees ranging from 50 to 8,000 Francs, and Law No. 18/2004 of 20/6/2004 Relating to the Civil, Commercial, Labor, and Administrative Procedure, Arts. 311 & 355, set 6 and % fees on the sale of property or damage awards, respectively. Currently, the collection of these fees is not recorded in a systematic fashion, and there is no regular reconciliation of their deposits into local accounts with bank statements

NCSC recommends continued support to the Supreme Court, the Ministry of Finance and the Rwanda Revenue Authority as they explore options to collect these fees and develop mechanisms to monitor their collection on a monthly and quarterly basis. Information on these fees will help the Supreme Court, and the judiciary more broadly, to increase its bargaining power with the Ministry of Finance to cover costs of needed operations in future budgets.

V. Conclusions

Over the past several years the Government of Rwanda has been engaged in an aggressive program of reform of its legal and judicial systems guided by principles found in the newly adopted 2003 Constitution. Through these judicial and constitutional reform efforts, the judiciary has been entirely restructured and all of the ministries of government have taken action to implement the decentralization policy. The relevant provisions of the Constitution and laws have largely succeeded in providing the legislative framework necessary for the implementation of these policies though some inconsistencies remain. The challenge lies in the implementation of these policies as demonstrated through the actual practice of the judiciary.

In order to build upon the accomplishments achieved through this program, NCSC has included below several lessons learned through the design and conduct of the program. Chief among these were the importance of the program’s flexible and adaptive nature, NCSC’s partnership with the Rwandan Supreme Court and the timing of the program.

Flexible program design

Critical to the implementation of the program was its flexibility and capacity to adapt to the priorities expressed by the Supreme Court and Rwanda’s larger judiciary. The technical needs identified during the diagnostic study resulted in the program focusing assistance on a longer-term continuing education program through the design and

conduct of the first tier of a “cascade-style” training for Rwanda’s decentralized courts while simultaneously providing assistance in developing a comprehensive, and internally consultative, budget formulation process for the 2006 judicial budget. As the program’s scope of work broadened to include this support, the timeframe for program activities shifted to accommodate this assistance.

This adaptive nature also became visible in late August/early September 2005 following NCSC’s request for a 4-month program extension. A series of activities had been scheduled over this time period. Nonetheless, as preparations moved forward, a 2-month delay in funding coupled with the unexpected absence of judicial staff in December forced the majority of program activities planned over the 4-month period to take place in just one month. This accelerated schedule necessitated prioritizing which activities could best be accomplished within this narrower timeframe.

Partnership with the Supreme Court

One of the most challenging aspects of the program was the ambitious schedule of program activities. Every month the program proposed to conduct a number of key activities. Implementing this program in Rwanda’s complex environment required NCSC to not only earn the trust and support of the Rwandan Supreme Court but also to maintain a healthy relationship with the Supreme Court’s leadership and mid-level management staff. Initial exchanges to encourage trust between the two institutions formed the basis for regular and open communications with mid- and senior-level Supreme Court personnel. Throughout the program, NCSC welcomed the Supreme Court’s involvement and joint ownership of program activities. This involvement was key to the successful conduct of the program.

Program timing

A factor which impacted program implementation was the Government of Rwanda’s larger decentralization strategy, with which Rwanda’s judiciary was complying. It became clear during the course of the project that there was limited information available on the decentralization process and judicial staff expressed a heightened sense of anxiety regarding their job security in light of the recent reduction of over 1,000 judicial staff. Due to this ongoing process, court administrators—the target audience for NCSC’s continuing education efforts—were not nominated in time for the training and trainings had to be adjusted to target Rwanda’s court clerks and judges. While these individuals were very receptive to the training, in retrospect, it may have been preferable to delay program initiation until after the court administrators were officially engaged.

Nonetheless, the Government of Rwanda’s decentralization program has made significant progress in developing the necessary infrastructure for the local administration of judicial and executive branch responsibilities. The Ministry of Finance and Economic Planning (MINECOFIN), through the Medium Term Expenditure Framework (MTEF) and related budget and financial procedures, provides an overall structure for the budget and

planning process which is sufficiently flexible to incorporate a wide variety of decentralized input. Furthermore, the formal authority to exercise autonomous management at the local level is in place, and the Ministry of Local Government, Good Governance, Community Development and Social Affairs (MINALOC) is fully engaged in the task of building the necessary capacity at the local level to exercise this authority effectively. Complementing these efforts, the Office of the Auditor General supports all government agencies through its independent audit function. Even so, there are still challenges to the effective implementation of the new decentralized system, including critical financial problems. The political will of the GOR will be crucial particularly in providing sufficient financial resources to ensure the implementation of this reform program.

It will be important to continue providing support to the judiciary during the decentralization process. Much is expected of the lower courts, as they take on new responsibilities for developing their own budgets. It became clear during the collection of budget information from the lower courts that they are unfamiliar with the process of developing budgets and spending priorities. They will need additional support from the Supreme Court if they are to carry out their expanded functions. Finally, the tools and the processes developed by NCSC, USAID/Rwanda, and the Supreme Court are important first steps. However, they will only be useful if they serve as a foundation for continued judicial reform efforts.

VI. Appendices

Appendix A: Diagnostic Assessment of Rwandan Decentralization of Judicial Administration and Financial Management

Appendix B: Memorandum on Existing Legal Issues Relating to the Independence and Decentralization of the Judiciary in Rwanda

Appendix A: Diagnostic Assessment of Rwandan Decentralization of Judicial Administration and Financial Management



**Diagnostic Assessment of
Rwandan Decentralization of
Judicial Administration and Financial
Management**

April 8, 2005

Task Order No. DFD-I-01-04-00176-00

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List of Acronyms

BTC	Belgian Technical Cooperation
DFID	Department for International Development
GOR	Government of Rwanda
IPSAS	International Public Sector Accounting Standards
MINALOC	Ministry of Local Government, Good Governance, Community Development and Social Affairs
MINECOFIN	Ministry of Finance and Economic Planning
MINIJUST	Ministry of Justice
MTEF	Medium Term Expenditure Framework
NCSC	National Center for State Courts
PAACTR	<i>Projet D'appui à l'administration des Cours et Tribunaux</i>
PWC	Price Waterhouse Coopers
SG	Secretary General
SJC	Superior Council of the Judiciary
TP	Tribunal du Province
USAID	United States Agency for International Development
USG	United States Government

I. Executive Summary

Over the last five years, the Government of Rwanda (GOR) has embarked on a series of major reforms to its legal and judicial system. Starting in 2001 with its adoption of the decentralization and *Gacaca* programs, the GOR commenced a restructuring of virtually all government institutions. The centerpiece of this reform is the new Constitution, adopted in 2003, which establishes three independent and administratively autonomous branches of government. Furthermore, the Constitution introduced a hybrid, civil-common law system, combining key features from both legal traditions.

The first phase of this reform program established a general structure, which was ambitious and required significant changes in day-to-day operations. To meet the challenges inherent in implementing this structure, the current capacity of judicial structures and administration will need to be enhanced substantially. The U.S. Agency for International Development (USAID) anticipated this need and developed a program to assist the judiciary with the process of decentralizing judicial management.

The National Center for State Courts (NCSC) was awarded this program, and NCSC commenced operations with this diagnostic study of the existing judicial administrative systems. In collaboration with the GOR and USAID, NCSC met with a broad array of stakeholders both in the capital Kigali, as well as in the provinces. The main purpose of this assessment was to determine the most effective programmatic interventions for the NCSC court assistance project. However, the diagnostic revealed technical assistance needs beyond the scope and means of the current project, and these needs are also identified and discussed in the concluding section of this report.

Ultimately, the diagnostic team decided that NCSC's programming should focus on four specific activities relating to financial management. While there are significant administrative challenges as well, the diagnostic team considers the needs in the financial management area to be at the center of many of these problems as well, and therefore, these should be given priority treatment. These four areas of activity are discussed in order of their proposed sequencing:

A. Assistance with Judicial Budget for 2006

The most urgent priority is the need to assist the Supreme Court with a comprehensive, and internally consultative, budget formulation process for the 2006 Judicial Budget. The Supreme Court does not currently have sufficient information to develop a comprehensive proposal that reflects actual needs and presents adequate supporting documentation to justify the proposal. Given the pending influx of *Gacaca* and non-genocide cases into the ordinary court system, the failure of the Supreme Court to secure sufficient funding represents a looming potential crisis.

B. Elaboration and Reform of Select Legal Provisions

The legal framework empowers the Supreme Court to develop internal policy, which is subject to Parliamentary approval. To realize their financial autonomy, the Supreme Court needs to develop a formal policy that specifies guidelines for how courts are to monitor and report on expenses and use this information to develop accurate budgets. The Supreme Court also needs to form a task force to monitor and consult on relevant financial legislation.

C. Development of Judicial Budget and Expense Reporting Manual

Once a judicial financial management policy is approved, the principles and guidelines included in the policy will need to be translated into specific notices, forms, and reporting schedules. Before a training program can be designed, the Supreme Court will need to define these uniform standards for policy implementation. Ideally, the forms and materials will be suitable for implementation both in hardcopy and electronic formats.

D. Training of Core Personnel

With a policy manual in place, preparations for the training of core personnel should be completed. Given the potential changes in judicial staffing, the development of this training should be conducted in a manner that is most likely to result in a sustainable training program that can be repeated as needed with the recruitment and deployment of the new personnel.

The NCSC diagnostic study confirms the urgent need for targeted support for Rwanda's formal judicial sector. NCSC extends its sincere appreciation to the GOR, USAID, and the donor community for the assistance it received to start this program of assistance. NCSC hopes that the needs it has identified that lay beyond the scope of this project will be embraced by the donor community, and NCSC looks forward to collaborating with all interested parties in this endeavor.

II. Introduction

In 2002, the United States Agency for International Development (USAID) commissioned two studies in the area of democracy and governance, *Rwanda Democracy and Governance Assessment* and the *Assessment of the Judicial Sector in Rwanda*. The former highlighted the need to "increase citizen confidence in the Rule of Law," and the study cautioned that the failure of the government's decentralization plan could lead to inappropriate central government intervention against local authorities. The second report outlined challenges facing the judiciary, including among them generally, the need for "better administrative control" and "improve[ment of] their professional capacity." Both reports provide important context for the design and execution of this project on the decentralization of judicial management.

Of particular relevance to this project, the second report highlighted deficiencies in financial resources, planning, and management. From the budget information collected and analyzed in that report, it is clear that the justice sector has historically received a very modest allocation, averaging less than 5%. Furthermore, the bulk of this allocation in recent years has been devoted to the *Gacaca* process. Routinely, *Gacaca* represents between 75-80% of the justice sector budget. Given these resource constraints, a premium is placed on efficiency within the judiciary to fulfill its normal duties. A survey conducted for the second report gathered suggestions for how to improve judicial operations, and these included a, "[p]lan for a sufficient budget"; "[i]ncrease[d] staffing"; and "[e]nsure financial autonomy of the judicial power."

In 2003, the United Kingdom Department for International Development (DFID) contracted for a study of justice sector policies in Rwanda. During the period of the study, the Rwandan Law Reform Commission's work was well underway, and the final report accurately predicted that reforms under consideration could lead to a "significant transformation of the justice sector." However, the report was also careful to emphasize that this transformation indicated a need "to assess the financial and administrative requirements not only to put the reforms in place but also to manage them over the longterm." The DFID assessment team concluded that implementation has been historically problematic sometimes rising even to the level of a threat to "judicial independence."

In 2003-4, the Republic of Rwanda overhauled its legal system extensively, starting with the Constitution and including a significant number of organic laws. While the new system does carry over some of the features of the previous system, it also introduces a number of new features that are only just beginning to be implemented. In terms of the judiciary, the new framework establishes structures and powers that can substantially increase judicial independence with proper implementation. However, some new aspects, such as the introduction of the common law concept of binding precedent and the policy of decentralizing government authority, represent

such wholly-new concepts that full implementation will require considerable additional resources, both human and financial.

Anticipating these types of needs, USAID issued a request for proposal to assist the Government of Rwanda (GOR) with implementation of the new financial and administrative features in the judicial sector. Following an evaluation of the various proposals, USAID selected the National Center for State Courts (NCSC) proposal, and immediately following the execution of the contract in February 2005, NCSC deployed its team to Rwanda, consisting of Prof. Louis Aucoin, Scott Carlson, Karl Jean Louis, Pierre St. Hilaire, and Benjamin Ntaganira.

The startup phase of the NCSC project consists of this diagnostic study, exploring the current state of judicial financial and administrative management and proposing programmatic responses. Data for the diagnostic was gathered from a variety of sources both in the capital of Kigali and select districts (See Appendices I & II for a list of contacts and documents consulted). During the assessment process, the team collected legislation, policies, forms, and statistics, as well as anecdotal information regarding actual practice. While the initial NCSC proposal suggested potential outcomes, the diagnostic analysis was conducted without presupposing the absolute necessity for any particular programmatic responses. Consistent with this approach, the recommendations contained at the end of this diagnostic suggest some new measures to consolidate an autonomous administrative structure within the judiciary, which were not anticipated in the original proposal.

During the remainder of this project, NCSC will consult with the judicial leadership, select appropriate programmatic activities, and implement them. Given the limited funds available under this project, it is understood that a number of needs identified will require assistance from other sources. The analysis and conclusions of this study will hopefully provide the donor community with a menu of assistance needs to facilitate the deployment of additional resources at this critical juncture. To the extent feasible, NCSC intends to facilitate a coordinated dialogue amongst interested parties to pursue these mutually supportive goals.

III. Legal and Regulatory Framework—Identification & Analysis

For the past several years, the GOR has been engaged in an aggressive program of reform of its legal and judicial systems. The basic principles that have guided these reform efforts are found in its newly adopted Constitution which came into effect in 2003. These principles reflect a number of judicial reform activities which predated the Constitution and incorporate the major elements of the Government's decentralization policy which it adopted in May 2001.

The judicial and constitutional reform efforts to date have been substantially supported by the United States Government (USG), and they were each the subject of major international conferences which were organized in Rwanda with significant USG support. As a result of these reform efforts, the judiciary has been entirely restructured, and all of the ministries of government have taken action to implement the decentralization policy. This report is the first of its kind to report on the post-reform judiciary.

In addition to the revision of the organic structure and vetting of judges (leading to a reduction in numbers), the judicial reform focused on decentralization and independence. The move toward judicial independence has included financial and budgetary independence, and both of these concepts are enshrined in the Constitution as discussed below. However, the implementing legislation relating to the financial independence and decentralization of the judiciary has only very recently been adopted in the course of last year; and as this report will show, this legislative implementation process is not complete.

These policies are reflected for the very first time in the 2005 national budget which was adopted on December 30, 2004. It is therefore perhaps not surprising that a number of difficulties and gaps relating to the implementation of these policies are just emerging. The purpose of this project, as noted above, is to identify these problems and to take steps to correct them through a series of interventions, including recommendations for legislative reform, training, and technical assistance.

This part of the report summarizes the relevant provisions of the Constitution and the laws implementing the reforms that relate to the financial independence of the judiciary and its decentralization. The good news in this regard is that the laws which have been established in the last year have largely succeeded in providing the legislative framework necessary for the implementation of these policies even though some problems and inconsistencies exist. The bad news is that the findings of this assessment team have revealed that the actual practice of the judiciary demonstrates that the implementation of these policies is lacking in large part. In addition, failure to properly implement these provisions now has a special note of urgency because the judiciary is about to be inundated by cases flowing from the *Gacaca* process which will serve to compound the existing backlog of non-genocide cases pending in the *parquets* (prosecutors' offices). According to the Office of the Prosecutor General of the Republic, their backlog of cases could number between 40-50,000 cases and date back as far as 1994. (See below Section II.4)

A. The Rwandan Constitution of 2003

Chapter V of the Constitution deals with the Judiciary in general, and Section 2 of that chapter deals with the structure and jurisdiction of the courts in particular. Article 43 provides for ordinary and special courts. The ordinary courts are the Supreme Court, the High Court of the Republic, the Provincial Courts, and the Court of the City of Kigali, the District Courts and the Municipality and Town Courts. The specialized courts are the *Gacaca* and military courts, although other specialized courts may be established by law.

1) Supreme Court

Under Article 145, the Supreme Court has appellate jurisdiction over decisions of the High Court and Military High Court. In addition, it exercises jurisdiction which has come to be typically associated with constitutional courts around the world. Pursuant to this jurisdiction, the Supreme Court exercises the power of judicial review over laws and decree laws when petitioned by any interested party. (See Article 90 of the organic law governing the organization, functioning, and jurisdiction of the Supreme Court, referenced below). In addition, it must rule on the constitutionality of all organic laws (those which are required by the Constitution) and internal rules of the Parliament. It also rules on the constitutionality of international agreements when so requested by the President, the President and Speaker of either house of Parliament, or of one fifth of the members thereof. The law on the Supreme Court also provides for interlocutory appeals from the lower courts when constitutional questions are raised, and it may also rule on the constitutionality of laws in any case before it where the constitutionality of a law is raised for the first time. (See Article 97 of the organic law). Thus, it exercises both abstract and concrete judicial review.

The Supreme Court also has jurisdiction to resolve disputes between different organs of government (obviously adopting the famous *organstreit* jurisdiction of the German Constitutional Court.) Consistent with this authority, the Supreme Court has jurisdiction over electoral disputes. Under this article, it has first instance jurisdiction over disputes involving referenda, presidential and legislative elections. In addition, it acts as a court of first instance in impeachment proceedings initiated by a two thirds majority vote of both houses of Parliament accusing the President of high treason or grave and deliberate violation of the Constitution.

Article 146 provides for 14 members of the Supreme Court, but it allows its composition to be changed by law. Regarding judicial legislation, Article 145 provides that the Supreme Court may “on matters relating to the organization of the judiciary...propose to the Government a bill of any nature amending existing law in the public interest.” This power could prove to be relevant as a strategy for the pursuit of legislative reform which we recommend in Section IV below.

2) Lower Courts

Articles 149 through 151 determine the geographical jurisdiction of the lower courts. The High Court has jurisdiction over the entire country, the Provincial Courts each have first instance jurisdiction in each of the 12 provinces, and the Court of the City of Kigali has the equivalent first instance jurisdiction. Article 149 provides that the High Court has subject matter jurisdiction in the first instance over cases involving administrative law, political organizations, and elections. Apparently, this electoral jurisdiction is for local elections since the Supreme Court has first instance jurisdiction over referenda and presidential/legislative elections. The High Court’s first instance jurisdiction may be increased by law, and it also acts as a court of appeals for all the lower courts. The subject matter jurisdiction of the other lower courts is set out in the law on the functioning of the judiciary, and the subject matter jurisdiction of the *Gacaca* and military courts is determined by organic laws relating to them.

3) Judicial Independence

There are several provisions of the Constitution which serve to assure the independence of the Judiciary. Article 140 sets out the basic principle and states:

The Judiciary is independent and separate from the legislative and executive branches of government.

It enjoys financial and administrative autonomy.

Other articles go further in making that general principle a reality. For example, Article 142 states:

Unless the law otherwise provides, judges confirmed in office shall hold tenure for life; they shall not be suspended, transferred, even if it is for the purposes of promotion, retired prematurely or otherwise removed from office.

This provision evokes the famous French concept of *inamovabilité*. This concept simply means that judges cannot be removed from office except for good cause. This article does not in fact provide for the principle in its entirety since it leaves the circumstances under which judges can be removed to be determined by the legislature. In fact, the principle of *inamovabilité* is provided for in The Law on the Superior Council of the Judiciary which empowers that institution to remove judges from office on the basis of incompetence, incapacity, or serious professional misconduct. These are the typical elements required to establish good cause for removal in most countries. In addition, Article 147 of this Constitution provides for an exception in the case of the President or Vice-President of the Supreme Court who, under the terms of that Article, are removed by a 2/3 vote of both houses of Parliament instead of by the SCJ. Nevertheless, the grounds for removal are the same: incompetence, incapacity, or serious professional misconduct.

Consequently, when the law on the SCJ and both of these Articles of the Constitution are read together, it is clear that the concept of *inamovabilité* is implemented in Rwanda. However, it is important to note that the general language of the first phrase of Article 142 (“unless the law otherwise provides”) leaves open the possibility that the legislature can establish grounds for removal or transfer of judges (except for the President and Vice President of the Supreme Court) for other reasons which might be at odds with what most countries consider to be good cause and which may therefore be considered to be a violation of the general guarantee of judicial independence contained in Article 140. This is in fact what has occurred in the law on the status of judges which allows for transfer of judges “in the interest of duty only.” The trouble with that

language is that it is so vague that it could result in abuses whereby judges could be transferred for political reasons or because their decisions are unpopular. In that case, there would be a real threat to judicial independence.

In addition, the next provision of this article provides that the salaries and benefits of judges are to be established in the law on the status of judges, and this provision gives rise to a concern about the constitutionality of that law as it currently exists, since the law provides that judges salaries are to be determined by a presidential order or decree. This feature could provide an opportunity for the executive to punish the judiciary for unpopular decisions by limiting their salaries. This practice would also constitute a violation of the general guarantee of judicial independence.

However, these concerns should not prevent judges in Rwanda from being removed from office on the basis of incompetence, incapacity, or serious professional misconduct. The provision of Article 142 does allow for qualifications of these provisions by law, and in fact, the law on The Superior Council of the Judiciary does provide that body with the power to remove judges, with the exception of the President or Vice-President of the Supreme Court who, under the terms of Article 147, are removed by a 2/3 vote of both houses of Parliament.

The Superior Council of the Judiciary (SJC), like judicial councils in other civil law countries, also contributes to judicial independence by acting as a kind of buffer between the executive and the judiciary in matters of appointment, promotion, or removal from office of judges. Article 157 of the Constitution grants it authority:

1. to examine and, either on its own initiative, or upon request by another organ, to give advice on matters relating to the functioning of the justice system;
2. to take decisions relating to the appointment, promotion, or removal from office of judges and management of the career in general and discipline of judges with the exception of judges of the military courts and President and Vice-President of the Supreme Court;
3. to advise on all proposals relating to the establishment of a new court or bill governing the status of judges and other judicial personnel for whom it is responsible.

For the purposes of this diagnostic, it is important to note that the SJC has a role in the management of the courts. This aspect of its role is discussed below in connection with Article 52 on the law governing the organization, functioning and jurisdiction of the courts. That article requires the President of the Supreme Court to obtain the approval of the SJC when he or she issues rules relating to the governance of the courts.

The composition of the SJC serves to reinforce the independence of the judiciary because it does not include any members of the executive branch. At the same time, its composition is more representative than judicial councils in some countries since it includes key figures outside the judiciary. Article 158 provides:

The Supreme Council of the Judiciary is composed of:

1. The President of the Supreme Court, who is the chairperson;
2. The Vice-President of the Supreme Court
3. A judges of the Supreme Court elected by his or her peers
4. The President of the High Court of the Republic;
5. One Judge from each Provincial Court and the City of Kigali court elected by his or her peers;
6. One judge of a District, Municipality or Town Court elected by his or her peers from the territorial jurisdiction of each Provincial Court and the Kigali City Court;
7. Two deans of the Faculties of law or recognized universities elected by their peers;
8. The President of the National Commission of Human Rights;
9. The Ombudsman.

Finally, in terms of judicial independence, we must take note of a recent Constitutional amendment (2004) to Article 148 which generally deals with the qualifications for appointment to the Supreme Court. That amendment requires candidates for the Presidency of the Supreme Court to have proven managerial capacity. It serves to bolster judicial capacity and derivatively

judicial independence, and it has direct relevance to this project. Clearly, the amendment contemplates the total administrative and financial autonomy required under Article 140.

4) Judicial Budget

Only Article 140 deals with the budgetary independence of the courts. As noted above, there are several provisions of the Constitution that relate to the budget process generally and are therefore relevant to this study. Articles 79 and 80 deal directly with the budget process. According to Article 79, every year the Cabinet must present a draft budget bill to the Chamber of Deputies. The article also provides that the finance bill must be submitted to the Chamber before the session devoted to consideration of the budget.

However, Articles 79 and 80 taken together provide for the scenario where the budget for the following year is not established before the end of the current fiscal year. In such a case, under Article 80, the Prime Minister may order monthly expenditures on the basis of one twelfth of the previous year's budget. However, according to Article 79, the Cabinet has to present the budget for the following year no later than June 30 of that year along with a report on the implementation of the previous year's budget, which has been certified by the Auditor General.

In order to give the Auditor General the time to certify the implementation report, the Cabinet must submit it to him or her by March 31. Article 79 provides that the opinion of the Senate must be sought before the lower chamber votes on the bill. Thus, the Senate never has the opportunity to formally vote on the budget, and the final decisions on this subject are made exclusively by the lower house.

In addition, Articles 183 and 184 elaborate the role of the Auditor General. Article 183 provides that he or she is responsible for:

1. auditing objectively whether revenues and expenditures of the state as well as local government organs, public enterprises and parastatal organizations, privatized state enterprises, joint enterprises in which the State is participating and government projects were in accordance with the laws and regulations in force and in conformity with the prescribed justifications;
2. auditing the finances of the institution referred to above and particularly verifying whether the expenditures were in conformity with the law and sound management and whether they were necessary;
3. carrying out all audits of accounts, management, portfolio and strategies which were applied in institutions mentioned above.

Article 184 sets out the detail of the Auditor General's report required under Article 79 as described in the previous paragraph. It says: "This report must indicate the manner in which the budget was utilized, unnecessary expenses which were incurred or expenses which were contrary to the law and whether there was misappropriation or general squandering of public funds."

5) Decentralization

There is no provision of the 2003 Constitution which deals specifically with the decentralization of the judiciary. However, the Constitution generally enshrines the decentralization policy of 2001 mentioned above but only very briefly. Article 167 is the article dealing with this subject, and it states:

Public administration shall be decentralized in accordance with the provisions of the law. *Decentralized organs shall fall under the Ministry having local government in its functions.*(emphasis supplied).

Districts, Municipalities, Towns, and the City of Kigali are decentralized entities with the legal status and administrative and financial autonomy and are the foundation of community development.

They shall be entitled to become members of national and international organizations which promote development through decentralization.

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A law determines the establishment, boundaries, functioning of, and collaboration between, these organs and various other organs which have a role in the administration and development of the country. A law shall also determine the manner in which the Government transfers power, property, and other resources to decentralized entities. The italicized provision is potentially problematic for reasons of judicial independence. Without clarification, the assessment team has concerns that this provision could be interpreted in a way that blurs the necessary separation between judicial and executive authority. The assessment team does not consider it advisable for there to be executive authority intertwined with the exercise of local judicial administration.

B. Relevant Legislation

1) The Organic law No. 01/2004 Of 29/01/2004, Establishing the Organization, Functioning, and Jurisdiction of the Supreme Court

This law provides for the financial independence of the Supreme Court and the subordinate courts, and it implements the terms of Article 140 of the Constitution, mentioned above. Article 36 states: "The judiciary shall have administrative and financial autonomy. The budget of the Supreme Court and other ordinary courts is prepared by the relevant department of the Supreme Court and submitted to the Cabinet for consultation." This article also provides that "The President of the Supreme Court is the general paymaster of the Supreme Court." This last provision, taken together with the general supervision of the courts assigned in Articles 23 and 24, as discussed in the next paragraph, along with the relevant provisions of other organic laws, appear to set up the President of the Supreme Court as responsible for the salaries of all of the members of the judiciary throughout the country.

Thus, it is clear that this law does not provide for the decentralization of the judiciary. In fact, it sets up the Supreme Court and the various organs within it as responsible generally for the functioning of the courts throughout the country. The responsibility for the functioning of the courts throughout the country is assigned under this law to the President of the Supreme Court in Article 23, which states: "He or she issues instructions and takes decisions concerning the functioning of the courts in the country." In addition, Article 24 states: "The President of the Supreme Court publishes each year an activity report on the general functioning of the Supreme Court and all other courts in the country."

However, the President shares all of his or her power, presumably including this one, with a few other key organs of the Court. They are: the Secretary General of the Court, the General Assembly, the Registrar, and the Inspector General. The duties and responsibilities of these organs are provided in the law.

The Secretary General

The relevant provisions of this law are:

Article 20:

The staff of the General Secretariat of the Supreme Court is appointed, after competition, by the President of the Supreme Court after consultation with the Superior Council of the Judiciary. They are governed by the law governing the status of judges and personnel of the courts (See below.)

...

Article 34:

The Secretary General of the Supreme Court is responsible for co-ordination of all administrative and technical activities of the organs of the court. He or she is in charge of implementation of the policies of the Court and its strategies and plans relating to administrative and technical matters.

He or she may be authorized to sign certain documents and decisions relating to the smooth running of the Court.

Article 35:

The Secretary General of the Supreme Court directs the administrative organs and may make all decisions necessary for their proper functioning.

The office of the Secretary General is composed of at least:

1. The Directorate General for Finance and Budget;
2. The Directorate General for Human Resource Development and Logistics;
3. The Directorate General for Planning and Technology.

The details of the organizational structure and functions of these departments are determined by the President of the Supreme Court upon approval of the Council of the Judiciary.

Article 36:

[The first paragraph relates to the financial autonomy of the Supreme Court and is quoted in the section above. This is the provision which requires the Supreme Court to present its budget to the Cabinet.]

.....

The Secretary General of the Supreme Court is the accounting officer of the Supreme Court. In carrying out his or her duties, the Secretary General is subject to the direction of the President of the Supreme Court and submits to the President a report on the discharge of his or her duties.

When these sections are read together with the other sections of the law, it is clear that the Secretary General (SG) of the Supreme Court is responsible for finances and budget at the Court, and since the Court is responsible for the functioning of the courts throughout the country, then presumably the SG would be responsible for the finances of the entire judiciary. Also, under the second paragraph of Article 34, she could be authorized to sign off on any expenditures or budget transfers. Consequently, if the Rwandan judiciary establishes a system whereby the Supreme Court is asked to sign off on major expenditures or budget transfers in the provinces, it seems logical that this responsibility be assigned to the SG under the authority of this provision.

The General Assembly

The relevant articles are:

Article 26

The President of the Supreme Court convenes at least once every three months and whenever necessary a General Assembly of the Supreme Court to discuss issues relating to justice.

He or she presides over the meeting and ensures the implementation of the decisions taken by it. The quorum required for the General Assembly is 2/3 of its members. Decisions are taken on the basis of an absolute majority.

Article 27

Before signing the internal rules and regulations of the Supreme Court, The President of the Supreme Court submits a draft to the General Assembly for approval.

These procedures appear to refer to standard internal Supreme Court administrative functions. The larger administrative rules for the Rwandan judiciary appear to be covered under the provisions described previously, according broad administrative authority to the SG. However, the assessment team recommends that these broader policies be synchronized with Supreme Court internal policy. This additional step will ensure that all parties are fully apprised of new developments.

The Registrar

The Registry of the Supreme Court is governed by Articles 17, 18, and 33 of this law. It is not necessary to set out these articles here since it is clear under their terms that the personnel (there is the Chief Registrar and other registrars under him or her) of this office are only responsible for the functioning of the Supreme Court itself and do not apparently have any authority of over the functioning of the courts throughout the country.

The Inspector General

The relevant articles are:

Article 21

There is hereby established the Inspectorate General of Courts in the Supreme Court headed by the Inspector General of Courts.

The details of the organizational structure and functions of the Inspectorate General of Courts are determined by an order of the President of the Supreme Court upon approval by the Superior Council of the Judiciary. The Inspector General of Courts is appointed, after competition, by an order of the President of the Supreme Court after consultation with the Superior Council of the Judiciary. Candidates for the post must have served as judges.

The Inspector General of Courts is governed by the law governing the status of judges and other judicial personnel.

Article 22

In his or her functions, the Inspector General of Courts is assisted by court inspectors who are appointed, after competition, by the President of the Supreme Court after consultation with the Superior Council of the Judiciary. They must also have served as judges. Court Inspectors are governed by the law governing the status of judges and other personnel of the courts.

These sections are indeed relevant since, if the Supreme Court were to set up a system of decentralized financial management, delegating financial authority to the provinces, certainly these inspectors would be responsible for oversight of that authority along with the Auditor General.

2) Law No. 06 bis/2004 of 14/04/2004 on the Statutes for Judges and Other Judicial Personnel

Perhaps the most important point that needs to be made in connection with the analysis of this law is the relationship that it establishes between the judiciary and other organs of government. Under this law, the Supreme Court, acting in conjunction with the Superior Council of the Judiciary, exercises authority relating to appointment, discipline, evaluation, promotion, transfer, and retirement of judges and other judicial personnel. At the same time, it provides that in all aspects of employment, where this law is silent, judicial personnel are governed by the law on public service as all other public employees. In various sections governing the activities mentioned in the previous sentences, it expressly states that further detail governing these activities is to be found in the latter law.

Consequently, it is fitting to begin our analysis of this law by citing Article 113 which states:

Without prejudice to the provisions of this law, the law establishing the Rwanda Public Service shall be applicable to judges and other judicial personnel.

Thus, by identifying who and what are covered by this law, we can identify those provisions which are specific to the judiciary and those which the judiciary shares with other organs of the public service. However, it should be noted that, even though some of rules found in the law on the public service apply to the judiciary, the judiciary is exclusively responsible for administration of its own personnel. The significance of Article 113 and some of the other articles which establish the

same principle is that sometimes in the course of its administration of its own staff, the judiciary applies some of the rules of the public service law.

Some of the articles found in Title One of the law make it clear that the law governs judicial personnel throughout the country. For example, Article 2 states that the law covers career judges, registrars, and administrative staff. Article 3 then sets out all of the career judges throughout the country in the order of their rank beginning with the President of the Supreme Court and ending with the Judge of a District or Town Court. Article 5 does the same with registrars, starting with the Chief Registrar of the Supreme Court and ending with the Deputy Registrar of a District or Town Court. Article 6 defines administrative staff as follows:

The Court administrative support staff are the following:

1. The Secretary General of the Supreme Court.;
2. The Inspector General of Courts;
3. Court Inspectors;
4. Directors General;
5. Directors;
6. Head of Department;
7. other required staff.

Article 100 makes it clear that this section includes the administrative staff of all of the courts because it states: "The administration of courts includes support staff mentioned in article 6 of this law."

Having thus identified who is covered by the law, it is important to explore those subject areas of this law which are relevant to this project. Although, as noted, the law covers appointment, salaries, discipline, evaluation, promotion, transfer, and retirement of these judicial personnel, this analysis is limited to the provisions relating to appointment, salaries, and transfer, which are most relevant to this project.

Appointment

Articles 8-15 govern the appointment of judges. Appointment occurs in coordination with the Superior Council of the Judiciary as provided in the Constitution. The appointment of Registrars is governed by Articles 90-93, and the appointment of administrative staff is governed by Articles 100-105. Specific requirements for appointment of categories 1-4 of Article 6 are set out in these sections, and Article 105 provides that the President of the Supreme Court shall issue an order establishing the required qualifications for the appointment of all other administrative personnel. Apparently, an amendment under consideration may limit this power and transfer this responsibility to the Ministry of Public Service, but the specifics of this change are uncertain at this time.

Salaries

As noted above, Article 142 of the Constitution requires judges' salaries to be decided by this law. According to the terms of this law, all salaries of all judicial personnel are to be established either by a presidential decree or a presidential order (*arrêté*). In applying the terms of Article 113, above, this means that the salary grid which is set out in the public service law (described below) does not apply to judicial personnel. Instead, the salary range for judicial personnel will be established by decree or ministerial regulation. This general rule applies specifically to judges under Article 25, which requires a presidential decree, and to other administrative staff, apart from registrars, under Article 109, which requires a presidential order (*arrêté*).

There is a particular rule which applies to registrars under Article 92 which states: "The duties and their corresponding grades are given in accordance with the available posts." Since Article 91 and the second paragraph of Article 92 deal with appointment of registrars by the President of the

Supreme Court in consultation with the SCJ, it would appear that it is he or she who establishes those salary grades. Nevertheless, Article 98 provides that “the salary and other benefits payable to registrars shall be determined by a Presidential Order,” which is in fact consistent with the rule that applies to other judicial personnel.

As noted previously, these provisions clearly purport to empower the executive with salary authority, but this allocation of authority is difficult to reconcile with Article 142 of the Constitution because that article provides that the salaries of judges should be established through a law. Thus, this law’s delegation of the responsibility to the executive through the mechanism of a presidential decree or order could be viewed as an *ultra vires* delegation. The plain language of the Constitution allocates this authority to the legislature. The Constitution does not provide broad legislative authority to decide who may establish salaries.

There are a few other provisions which that apply to the salaries of the judges . Article 26 for example, provides, subject to the availability of public funds for annual salary increases of 5%, 4%, and 3% depending on whether the judge’s performance was evaluated respectively as “Excellent,” “Very Good,” or “Good.” It also states “ except under disciplinary sanction, the initial salary of a judge shall not be the subject of a reduction.”

Article 27 However, qualifies this provision in a way that may pose significant problems for judicial independence. It states:

Where they cease to discharge their duties as a result of the expiry of their term of office and without incurring any penalty due to professional misconduct, the President and Vice-President of the Supreme Court shall confirm (sic) [it is continue in French] to be paid their allowances and fringe benefits for 12 and 6 months respectively.....

Where they are convicted of *treason, divisionism* (emphasis supplied) or other serious crimes provided under the penal code or with indecent behavior, the benefits provided for by this article shall be cancelled.

Also of note in this connection is Article 35 which states:

In case of urgency, the President of the Supreme Court may, after seeking opinion from the President of the court to which the judge belongs, temporarily interdict a judge from his or her duties in the interest of duty, until when a final decision shall be made on a serious disciplinary fault.

Transfer

As noted above, Chapter II of this law generally provides for the “*inamovabilité*” of judges in a manner which is generally consistent with the provisions of the Constitution relating to judicial independence described above. However, Article 24 of this law provides for transfer of judges in a manner which, on its face, has the potential to violate Article 140 of the Constitution which forbids transfer of judges. It states in pertinent part:

[T]hey may be transferred by the Superior Council of the Judiciary in the interest of duty only. Likewise, the President of the High Court of the Republic may, by way of a directive, in case of impediment of one or several judges or when it is deemed necessary, make temporary and immediate reinforcement of the lower courts in order to assist disposal of cases, temporarily commission Provincial and the Kigali City Court judges as well as District and Town Court judges in courts of the same level as those to which they were appointed.

Apart from being potentially unconstitutional, this provision could result in a situation where judges may be transferred in wholesale fashion in response to a crisis (such as when certain courts are inundated with Category I *Gacaca* or ordinary criminal cases). They may pursue this course of action rather than squarely face the underlying lack of resources which could very well be the real problem. Finally, it should be mentioned in this connection that Article 58 provides

that judges can be seconded to other posts in the administration. This provision is potentially unconstitutional for the same reasons.

3) Organic Law No. 07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts

This law implements those articles of the Constitution discussed above which establish the courts. It provides more detail on their jurisdiction and functioning. In addition, it tracks some of the features on the law on the status of judges described in the previous section. The provisions governing the personnel covered are almost identical to the corresponding articles of that law, and this law also generally provides for a judiciary which is centrally administered. For example, Article 52 provides:

The President of the Supreme Court shall be responsible for the functioning of all ordinary courts. In that regard, he or she shall issue instructions relating to the functioning of ordinary courts, after approval by the Superior Council of the Judiciary.

This article differs slightly from Article 23 of the law governing the Supreme Court in that it makes it clear that when the President of the Court issues instructions relating to the functioning of the courts, he or she is required to obtain the approval of the SCJ.

It goes a bit further and provides some detail for the judicial budget on the national level in Article 58, which states:

The annual budget for all ordinary courts shall be deposited on the account number of the Supreme Court in the National Bank of Rwanda.

However, it is very important to note that this is the only law which does offer a minimum of administrative and financial decentralization within the courts. The administrative decentralization is provided for in Article 53 through 55 which state:

Article 53

The President of each court shall be responsible for administration, functioning, and internal discipline of the court.

...

He or she shall give instructions and take decisions concerning the functioning of the Court he or she heads.

Article 54

In every three months and whenever deemed necessary, the President of the court shall convene and preside over a general staff meeting of the Court to evaluate the functioning of the Court.

Article 55

Each President of any Court shall have the right to control and supervise lower courts immediately under his or her jurisdiction.

In that regard, he or she shall issue instructions regarding better performance of duties. However, such rights shall not guarantee him or her the powers to issue instructions to courts on how to decide cases.

However, it is Article 59 which is perhaps the most important for the purposes of our project since it provides:

Every semester, the President of the Supreme Court shall transmit to the President of the High Court, the President of the Provincial and the City of Kigali Courts and the Presidents of District Town and Municipality Courts, funds meant for their respective Courts to be deposited on the account number of each Court.

The President of the High Court, ...[etc.] shall supervise how their respective Courts utilize the budget allocated to them.

This concept of budgetary independence is further reinforced by the next article, Article 60, which states:

The expenditure and use of Court budgets should conform to provisions and regulations governing the government accounting system.

The terms of this article support the budgetary decentralization of the courts contemplated in Article 59 since they refer to the law relating to the accounting system.

One of the key elements of the relevant legal and regulatory framework governing the general accounting system is Presidential Order No. 21 of 12/7/2003 instituting a manual of procedures for financial management of the central administration. That manual provides a comprehensive procedure for the budgetary decentralization of all of the ministries. In fact, the MINALOC has created its own procedural manual based on this order which provides precisely for that kind of decentralization. Thus, by referring to this order, Article 60 of this law, which was adopted the following year clearly contemplates that the judiciary should be practicing budgetary decentralization as indicated by Article 59, and the Presidential Order offers considerable detail on how that might be done.

However, there are a few problems with applying the MINALOC manual, supported by the Presidential Order, to the judiciary. The main problem in this regard is that under the decentralization scheme provided in the manual, local administrations outside of the judiciary are given authority over the local budgets of all organs of government. The budget of the judiciary could not be subjected to review by other local authorities without a violation of the judicial independence, including financial independence, which is guaranteed under Article 140 of the Constitution.

Consequently, the MINALOC manual would need to be adapted to make it applicable to the judiciary. This type of alteration is even contemplated in the MINALOC manual itself since Section I. 1.3 of the manual states: "This manual could be reviewed, amended, or modified in order to take into consideration possible changes which will occur in the course of time...." In fact, it could easily be argued that amendments specific to the judiciary are required by this law since it is an organic law adopted after the Presidential Order, which is a mere regulatory measure which occupies a lower position in the hierarchy of norms. On the other hand, the current budget law, which was adopted after the enactment of this law is problematic for the reasons described below.

4) Law No. 41/2004 of 1/12/2004 Determining the State of Finances for the 2005 Year

Not only are certain provisions of this law inconsistent with all of the provisions relating to judicial independence, financial autonomy and decentralization, but it contains provisions within its text which conflict with each other in this respect. For example, in a manner consistent with all that has come before, Article 5 of the law sets up the President of the Supreme Court as one of the paymasters for the entire system of state budget. The other 13 authorities mentioned in the list are the heads of various organs of government. This, of course, is consistent with the managerial and supervisory powers that the Supreme Court in general, and President of that Court in particular, have been granted under the law. Similarly, Article 6 sets up the Secretary General of the Supreme Court as the officer within the judicial branch who is "responsible for the follow up of government revenues and expenditures." At the same time, an additional provision within Article 6 states: "The Minister having finance in his or her attributions is designated paymaster for overall expenditures in all states services."

Moreover, Article 11 of this law states:

Expected current expenditure in a certain provision in the ordinary budget may be subject to credit transfer from one provision to another which alter the nature of the expenditure. Such credit transfers can only take place within the same category of expenditure and budget of the same ministry and public entities and *must be authorized by the Minister in Charge of Finance*. (emphasis supplied.) However, no credit transfer or change may be authorized between salaries and other expenditures.

This is undoubtedly the provision which results in the current practice whereby even the minutest transfer of funds from one line item to another results in inordinate delays (reportedly often months) entailed in obtaining the required authorization from the Ministry of Finance in Kigali. This aspect of this provision and the language cited in Article 6 of this law are totally inconsistent with the law and policy relating to decentralization and are also inconsistent with the authority of the President of the Supreme Court and the Secretary General of the Supreme Court which is implicitly recognized in Article 6 of this same law as noted above.

It appears that some vestiges of the old centralized system have, perhaps inadvertently, survived in this language of this law. Ministries of government outside of the judiciary, and MINALOC in particular, have gotten around this law by applying the terms of the decentralization law and the Presidential Order of 12/07/2003 discussed in the previous section. While that practice makes sense in terms of the clear intention of the legislature and all of the other organs of government to fully implement a comprehensive program of decentralization, it is apparent that the inconsistent terms of this law will need to be amended so as to remove all obstacles to the decentralization law and policy. Interviewees acknowledged this issue, indicating that amendments are in process.

5) Law No. 22/2002 on General Statutes for Rwanda Public Service

Not much needs to be said about this law apart from what has already been said in the previous section. Suffice it to note for the purposes of this project that Article 11 of this law states: "Statutes governing political appointees and judicial staff are determined by specific laws." In addition, Article 16 states:

Areas of competence, functioning modalities of both national and local authorities of the Public Service are determined by Presidential Decree.

Other management organs may be instituted by autonomous statutes for the management of particular aspects relating to persons concerned in Article 3 [thus applying to the judiciary].

It is therefore very clear from the terms of this law that the legislature was clearly contemplating in the adoption of this law that the judiciary should have its own system and its own management organs for implementation of the decentralization policy.

However, although this law comes after the decentralization policy of 2001 and implements it, Article 167 of the Constitution is problematic in this respect since it comes after this law and obviously supersedes it as a result. It appears that in adopting that Article of the Constitution which requires *all* decentralized organs of government to come under MINALOC, the drafters of the Constitution forgot to accord to the judiciary the independent and autonomous status which was granted to it by the other pertinent articles of the Constitution, discussed above and by legislation which pre-dated (as in this law) and post dated (as in the other laws described) the adoption of the Constitution. Perhaps this observation might serve as a good argument in favor of a constitutional amendment to correct the problem.

6) Law No. 05/98 Establishing the Office of the Auditor General of the State Finances

This law deserves brief mention, since it goes a bit beyond the terms of Articles 183 and 184 of the Constitution, discussed above, in a few respects that are relevant to this project. Specifically,

This program was made possible through funding from the United States Agency for International Development. Any person or organization is welcome to quote information from this report if it is attributed to NCSC.

Article 9 of the law requires the Auditor General to submit reports “every three months, annually or whenever necessary”...“to the President of the Republic with copies to the President of the National Assembly, the Prime Minister, the President of the Supreme Court and the Minister having jurisdiction over finance.” In addition, Article 12 (4) provides that the Auditor General “may station in any public service or establishment or any project subject to his or her audit any person employed in his or her office.

Taken together and with the previously mentioned articles of the Constitution, the Auditor General has broad powers that include the power to audit the revenues and expenditures of the judiciary and may also deploy personnel on the local level in pursuit of those powers. The point to be made for the purposes of this project is that, given the audit and supervising powers that the hierarchy of the judiciary has over itself as described in the previous sections, taken together with the powers of the Auditor General’s office described here, there is no justification for any other centralized ministry, such as the Ministry of Finance or the Ministry of Public Service, to retain any authority over the judiciary. This is true, not only because judicial independence requires it, but also because any concern over misuse of revenues or expenditures is thus adequately covered and cannot therefore be used as a justification for retention of centralized authority outside of the judiciary.

C. Conclusion

The general principles of judicial independence, including budgetary and financial independence have been adequately provided for in the Constitution and implementing legislation, but the issue of the decentralization of the judiciary is not specifically addressed in the Constitution. Article 167 of the Constitution does establish the principle of decentralization generally, and it could be construed to encompass the judiciary. Support for this interpretation can be found in various provisions of legislation that provide for decentralization of judicial operations. Nevertheless, further normative implementation would be useful to provide explicit guidance on how to apply the principle of decentralization to the special judicial context. This guidance should originate with the development of court policies and procedures pursuant to the rulemaking authority of the Supreme Court, and it should also address potential amendments to existing legal framework.

For the purposes of this project, assistance with amendments to the existing legal framework should focus on certain legal provisions that appear inconsistent either facially or conceptually with a decentralized judicial management structure. One provision is in Article 167 of the Constitution itself, and several are in the law on state finances. Each could potentially hinder the development of a decentralized judicial management structure.

As noted in the analysis, Article 167 of the Constitution requires all local organs of the public service to come under the authority of MINALOC. While this is generally consistent with the overall decentralization scheme, it overlooks the judicial administrative and financial autonomy which is otherwise provided for in the Constitution. All indications are that this wording is a mere oversight, but it may nevertheless require amendment of the Constitution. Fortunately, the amendment process may not be as problematic politically as one might initially assume. The only amendment of the Constitution that has occurred to date involved the recognition of the managerial authority of the President of the Supreme Court and the Prosecutor General. This recognition is directly supportive of financial autonomy for the judiciary. Thus, in light of this constitutional history, it would be reasonable to suggest a further amendment of the Constitution to realize judicial implementation of the decentralization policy.

In the law on state finances, Article 5 establishes the President of the Supreme Court as the paymaster of the judiciary, but Article 6 establishes the Minister of Finance as paymaster for overall expenditures in entire country. Presumably, Article 6 is intended to serve a catch all function in case the President does not exercise her authority, but this issue might benefit from clarification. More concerning is that Article 11 of the law on state finances prevents budget

transfers from one line item to another on the local level without the authorization of the Ministry of Finance. Not only is this inconsistent with decentralization within the judiciary, but also it is inconsistent with MINALOC guidance. While there were suggestions that an amendment was in process to address this issue, this feature of centralized budget control will remain a significant obstacle to decentralization until it is altered.

The challenges and problems relating to these legal provisions could benefit from legal interventions. As draft legislation and regulations develop on these issues, the diagnostic team recommends close monitoring and technical consultation. If these issues are resolved expeditiously, implementation could be more straightforward and more likely to realize the policy goal of decentralization.

IV. GOR Institutional Stakeholders--Identification & Analysis

In Rwanda, as in most cases, government reforms involve more than one institution or department, and in terms of judicial administration, a number of GOR actors have been involved in the past. Therefore, during this period of transition, it is particularly important to understand their new roles and how policy mandates interrelate. This analysis must be viewed through the lens of decentralization, for this central GOR policy affects all aspects of reform. The reallocation of tasks and workload is a crucial variable in the reform process, and the successful implementation of the new judicial administrative structure requires that these variables are incorporated into the planning and implementation.

A. GOR Institutional Actors

1) Ministry of Local Government, Good Governance, Community Development and Social Affairs (MINALOC)

MINALOC is the lead institution in matters of decentralization. MINALOC has developed a coherent program for the delegation of financial and administrative authority to the local institutions of government. This program is documented in the *Financial Management and Accounting Procedures Manual for Local Administration in Rwanda* mentioned in the previous section. This manual follows the prescriptions of Presidential Order No. 21/01 of 12 July 2003, and it describes the rules and procedures to be employed in the decentralization of executive branch functions in considerable detail, and it provides sample forms for the documentation and processing of key financial management functions.

According to this manual, management and budget authority at the local level resides with the District of Urban Council. The Executive Committee and the Executive Secretary are subordinate organs that handle the bulk of day-to-day operations, and they are charged with supporting the efficient exercise of the Council's overall responsibilities. For example, the Executive Secretary "[i]s a final signatory to the payment authorizations and cheques for the Administration." In addition, the Executive Secretary works with the Internal Auditor to make sure that the budget is administered in accordance with applicable law and policy. Together these subunits have authority and responsibility for administering funds from the central government and taxes collected locally.

The MINALOC *Procedures Manual* specifies budget categories and procedures for assembling budgets suitable to local needs. This format supports the Medium Term Expenditure Framework (MTEF) standard established for the overall government budget planning. In circumstances where budget allocations are insufficient to meet local needs during the course of the year, the *Procedures Manual* explicitly provides that local authorities may seek budget modifications to

address these needs. Budget modifications may consist of re-allocation within line items for that particular unit, or the unit may request re-allocation from other units with surplus.

2) Ministry of Finance and Economic Planning (MINECOFIN)

MINECOFIN is in charge of overall financial management for GOR. A central responsibility is the assembly of a comprehensive budget for all the financial needs of government. MINECOFIN has established and manages the Medium Term Expenditure Framework (MTEF), which is a multi-year budget planning tool. MINECOFIN assembles inputs on an ongoing basis from all the various government institutions for incorporation into this multi-year budget framework. Based on this plan, a budget is developed each year and presented to the GOR for its approval and transmittal to the legislature.

Consistent with the change in the legal framework, MINECOFIN responsibilities are changing, and it is in the process of relinquishing centralized control of expenditures and budget planning. In its most recent *Poverty Reduction Strategy Annual Progress Report*, the GOR acknowledged that, with this shift, there is a need for “additional capacity at the budget agency level for public accounting and internal audit.” Furthermore, to continue providing oversight once the duties have devolved, MINECOFIN is in the process of developing an integrated financial management information system. When it is fully operational, MINECOFIN should be able to incorporate data from the various government agencies and donors into a comprehensive database.

Currently, decentralization of MINECOFIN duties has not been completed. Pending full delegation of payment authority to local institutions, individuals continue to turn to MINECOFIN to process payments on many, if not most, items based upon invoices issuing from government agencies. Also, MINECOFIN anticipates an ongoing role in the linkage of strategic plans with budgets. Facilitating this process has been the establishment of a common program budget nomenclature, and reallocation of judicial budget items during the year continue to be routed through MINECOFIN for approval.

3) Office of the Auditor General

The Office of the Auditor General was formed in 1999, and it began conducting the first audits of government institutions in 2000. Price Waterhouse Coopers (PWC) and Ernst & Young provided considerable assistance to its formation and initial operation. PWC has completed their work, but Ernst & Young continues to provide some assistance. Since 2001, the office has completed dozens of audits each year, and it is adding to its audit staff at the rate of over 10 per year. They currently have over 70 full-time auditors on staff based in Kigali.

The operations of the Office of the Auditor General are governed by the 1998 foundation law, as well as Articles 183 and 184 of the new constitution. Currently, there is a draft law on the functioning and organization of the Office of the Auditor General, but it is unclear when this may be finalized and adopted. This draft has been designed to conform with the International Public Sector Accounting Standards (IPSAS). Following its passage, there will need to be a new set of “financial instructions” to clarify and implement this law. Presumably, this manual will be complementary to the MINALOC manual.

Auditors are trained in-house, and they are organized into teams. These teams conduct two types of review. For reports of serious problems, such as embezzlement, the teams investigate reported circumstances on site. For other standard audits, they conduct a review of the relevant documents and report their findings. In both cases, findings are reviewed by the Director of Audit and then the Auditor General. In serious cases, the Auditor General refers the case to the prosecutor's office where audit staff continues in an advisory role.

The first audits of judicial bodies began in 2002 with the courts of first instance and appeal in Kigali. In 2003, the audit of these courts was repeated. In addition, the Ministry of Justice, the Supreme Court, and the *Gacaca* System were audited. In 2004, *Gacaca* was audited again. *Gacaca* represented 78% of the overall judicial system budget. These audit reports have been supplied to parliament, and they are currently available at the website, www.oag.rw. Interviewees suggested that financial recordkeeping appears to be improving with many institutions beginning to properly maintain supporting documentation. However, the results of the judicial audits raise a number of significant concerns about the quality of the financial statements and recordkeeping, which have yet to be adequately resolved.

In the *Supreme Court Audit Report for the Year Ended 31 December 2003*, the Auditor General called upon the Supreme Court “to address the irregularities noted in the report and improve on the management of its operations.” Referencing Presidential Order No. 21/01 of 12 July 2003, the Auditor General cited a need to implement certain basic accounting records and collect information about these records through regular financial reporting. Given the absence of these structures, the Auditor General concluded that the Supreme Court: 1) “did not maintain proper books of account”; 2) “did not always comply with the procedures governing the execution of public expenditures”; and 3) “did not set up an adequate internal control system to safeguard the receipt, custody, and proper use of public funds.”

4) *Gacaca*

The Rwandan Constitution has institutionalized communal courts known as *Gacaca* to accelerate the prosecution of prisoners who participated in the 1994 genocide. In the years immediately following the enactment of the Genocide Law of 1996, the GOR managed to try approximately 8,000 genocide cases in the ordinary court system. In 2001, when the *Gacaca* implementing legislation was passed, there were approximately 125,000 suspects in Rwanda’s prisons awaiting trial for crimes related to the 1994 Rwandan genocide. With the ongoing investigations, the number of suspects has continued to increase. At the close of the investigations in calendar year 2005, the Executive Secretary of *Gacaca* estimates that the number of new genocide suspects could exceed 761,448.

To alleviate the strain on the ordinary courts and prosecutors, a massive transfer of cases was effected in 2001. Based on figures provided by the prosecutors, 81,470 dossiers containing 567,853 suspects were transferred to *Gacaca* jurisdictions. Upon receipt of these dossiers, the first task of the *Gacaca* tribunals was to categorize the cases according to the nature of the alleged crimes. Pursuant to an amendment to the *Gacaca* law in 2004, the number of categories was reduced from four to three: 1) Category I: the alleged planners of the genocide, prominent killers and those suspected of rape; 2) Category II: those suspected of murder, attempted murder, and causing bodily injury; and 3) Category III: those suspected of committing crimes against property.

However, the amendment has no effect on the potentially large number of Category I cases that will be transferred to the ordinary courts for trial. To be sure, it does not even affect the number of cases generated in the *Gacaca* process. This amendment simply groups prior Categories II and III. The core concept is to avoid having *Gacaca* cells make the sometimes complicated distinction between murder and attempted murder.

Based on figures provided by National Service for *Gacaca* jurisdictions, it is estimated that 10% of all genocide suspects will fall in Category I, 70% in Category II, and the rest in Category III. Those who fall under Category I will be transferred to the ordinary courts where they will be tried and could face a maximum sentence of death. Those who fall under Category II and III will be tried by the *Gacaca* tribunals. Those found guilty by the *Gacaca* tribunals face a maximum sentence of 30 years, the highest sentence a *Gacaca* tribunal can impose.

5) Ministry of Justice (MINIJUST)

MINIJUST is in the process of a dramatic reorganization based on the 2003-4 legal reforms. The most significant change is the removal of administrative responsibilities for the judiciary and prosecutorial functions. While MINIJUST continues to set overall policy for the prosecutorial function, the Minister of Justice and MINIJUST staff do not dictate the handling of specific cases. In the judicial realm, MINIJUST's ongoing role is even more limited. For instance, the Supreme Court establishes policy, and the inspection and control of judicial conduct has been wholly vested with judicial inspectors answering to the Supreme Court and Judicial Council.

However, the full transfer of MINIJUST functions is in transition. MINIJUST has continued to play a role in the presentation of the judicial budget and judicial needs. For example, in 2004, MINIJUST presented the overall judicial sector budget, and when a staff increase of 212 judges was requested mid-year, they facilitated the dialogue with MINECOFIN. In 2005, MINIJUST appears prepared to willingly relinquish this responsibility to the Supreme Court, but as discussed below, the Supreme Court has limited resources, and realization of this role will likely require assistance.

6) Office of the Prosecutor General of the Republic

The work of the judiciary does not exist in isolation. In the field of criminal justice, the court's tasks, especially its caseload and concomitant budget requirements, is in part a function of the prosecution service, and there does not currently exist an effective means of coordination between the two institutions. During the diagnostic, the assessment team learned that, in addition to the potentially overwhelming number of *Gacaca* Category I cases, there may be thousands of non-genocide cases pending as well. Suffice it to say, these cases will have a significant added impact of the work of the ordinary courts with significant administrative and budgetary consequences.

B. Stakeholder Analysis

The GOR decentralization program has made significant progress in developing the necessary infrastructure for the local administration of executive branch responsibilities. MINECOFIN, through the MTEF and related budget and financial procedures, provides an overall structure for the budget and planning process, which is sufficiently flexible to incorporate a wide variety of decentralized input. Furthermore, the formal authority to exercise autonomous management at the local level is in place, and MINALOC is fully engaged in the task of building the necessary capacity at the local level to exercise this authority effectively. The *Financial Management and Accounting Procedures Manual* (incorporating Presidential Order No. 21/01 of 12 July 2003) provides broad basic guidance in financial planning and management, including sample forms. Complementing these efforts, the Office of the Auditor General supports all government agencies through its independent audit function.

Assuming that the Supreme Court develops its own internal policies and procedures consistent with the MINALOC *Manual* and MTEF, the current portfolios and policies of these other executive branch agencies need not conflict with the autonomous exercise of judicial management authority. In fact, in certain cases, such as the Auditor General, the functions of another agency may significantly facilitate the Supreme Court's efforts to implement a robust decentralized administration. Until the judicial inspectorate is fully staffed, it is unlikely that the internal audit function will be sufficient to meet current needs, and the inspections of the Auditor General will serve a particularly important control function in the interim.

While the judiciary has distinct needs from the executive branch and should not be bound to the MINALOC procedures literally, a substantial portion of the policies and procedures may be

applicable to judicial circumstances. These MINALOC policies and procedures are designed to effectuate generally applicable rules of public finance law, and as such, they could serve as an excellent starting point for the development of analogous judicial procedures. However, the limits as to how far they should apply in the judicial context are manifest. For example, the MINALOC procedures contemplate local authority residing with a council composed chiefly of executive branch representatives. This organ would not be suitable for judicial oversight because it would impermissibly infringe upon judicial independence as noted in the prior legal analysis.

During 2004, the reforms in the justice sector led to a dramatic reduction in judicial personnel. As discussed in the section below, there was a 50% reduction in judicial personnel, and the budget is routinely approved at levels far below the level requested, limiting requests for additional staff. While *Gacaca* was anticipated to carry a substantial portion of the criminal justice load, the transfer of Category I cases to the ordinary courts will have an enormous impact on the judicial infrastructure. Various stakeholders agreed that the transfer of Category I cases, which will commence in the near future, represents a full blown crisis of resources that could destabilize the judiciary efforts to develop internal financial and administrative policies.

To illustrate the dimensions of this crisis, the assessment team assembled statistical data according to province. As the table below illustrates, even this initial transfer of Category I cases represents a very substantial workload increase for the ordinary courts—60% on average. In the case of Kibungo and Umutara provinces, the workload increase is extraordinary.

Provincial Court	<i>Gacaca</i> Load	Tribunal Load	Established <i>Gacaca</i> Shift	Workload Increase
Butare	3,945	922	247	27%
Byumba	1,535	1,279	57	4%
Cyangugu	3,268	1,162	504	43%
Gikongoro	3,653	1,193	390	33%
Gisenyi	4,013	1,828	408	22%
Gitarama	7,859	1,332	596	45%
Kigali Ngali	8,645	1,281	615	48%
Kigali	4,631	5,566	1,172	21%
Kibuye	4,365	1,030	531	51%
Kibungo	7,502	582	825	142%
Ruhengeri	1,519	2,668	151	5%
Umutara	7,502	301	825	274%

The GOR stakeholders all acknowledged that this shift of workload represents a very significant increase for the ordinary court system, but as of yet, there exists no emergency plans to respond to this issue. Even if the judicial system had all the necessary procedures in place, this type of dramatic workload increase would place great strains on the system. However, as discussed below, such procedures are not in place, and it is apparent that without substantial assistance from all quarters, this shift will cause problems immediately, and as more cases are transferred, the difficulties of the situation will be compounded. The assessment team considers it crucial that the judiciary assert itself in this upcoming budget cycle to make a clear and convincing case for additional funding.

V. Administrative and Financial Management of Core Judicial Functions

The new legal framework empowers the Supreme Court to assume general responsibility for court management, and the prior role of other ministries, MINIJUST in particular, has correspondingly declined. Furthermore, the Supreme Court now administers the Inspectorate with jurisdiction to investigate allegations of misconduct, and the ultimate decisions regarding judicial discipline rests with the Supreme Judicial Council, which is composed chiefly of judicial officers. To handle the day-to-day financial and administrative operations, the Supreme Court has authority to recruit and manage its support staff.

To manage the new financial and administrative responsibilities, the Supreme Court has established several administrative departments: the General Directorate of Planning Technology for Computerization and Communication; the General Directorate of Finance and Budget; and the General Directorate of Human Resources and Logistics. The Supreme Court is in the process of staffing the requisite positions. However, as discussed below, the process has not been smooth or expeditious, and the logistics of recruitment and payment will likely continue to be still routed through the Ministry of Public Service for the foreseeable future.

A. Collection and Dissemination of Legal Information

1) *Judicial Decisions*

The current practice is that the presiding judge at the provincial level assigns the drafting of the opinion. Dissents are allowed. Written opinions are required by law within 30 days of the date the proceedings conclude. The procedural codes specify that these decisions must contain an array of basic information, including a description of the investigation, the submission of the parties and the legal reasoning applied to arrive at the judgment.

The new hybrid civil-common law legal system is in its earliest stage of implementation. Key common law features have not yet been implemented. The most significant of these features concerns the use of judicial decisions as precedent. Judicial decisions are not customarily published, nor are decisions collected, organized, and distributed internally. Interviews reveal that parties to a decision may obtain copies with the payment of a small fee for copying. Also, citizens with significant interests, such as academic or business interests may petition, and receive, a copy of the decision for the cost of copying.

The Belgian Technical Cooperation (BTC) unit, in collaboration with *Avocats Sans Frontieres*, has a project to begin assembling key decisions and distributing them in bound volumes several times per year. However, the Supreme Court has not yet specified the criteria for selecting these decisions, nor has it expressed an opinion on whether courts should be bound by decisions predating the reforms. The implementation strategy for this project is scheduled for development in 2005. Consequently, it appears unlikely that precedent will be incorporated into court practice prior to 2006.

Related to this issue is the structure of the decisions themselves. Precedential decisions are generally structured in a more expansive manner than their civil law counterparts, and most Rwandan judges have had little or no training in how to write decisions. Some training has been provided from a judge from Burkina Faso to the Supreme Court. However, given that Burkina Faso is from the civil law tradition, it is unclear that this initial training adequately addresses the larger issue of how to properly write decisions that are to serve as binding precedent.

2) *Court Proceedings*

Consistent with widespread civil law practice, transcripts of proceedings are not used. The record of court proceedings consist of summaries of the arguments, facts, and testimony. In most respects, judges continue to control all aspects of the court proceedings, and it is not uncommon

for litigants to be un-represented during criminal proceedings. The one exception regards genocide cases where all defendants within the ordinary courts have a right to counsel and are generally represented.

The respective procedural codes specify basic information that must be included in the record, and these provisions explicitly grant the parties and witnesses authority to review the record before signing and submitting their authenticating fingerprint. However, only the civil procedure code allows a party to note objections to the record without the consent of the other party. To what extent litigants exercise the right to note objections to these summaries of the proceedings is unclear.

3) Identification and Distribution of Current Laws

All laws are published in three languages, English, French, and Kinyarwanda, in the Official Gazette. Each court receives a single copy of the Official Gazette within a month or two of its publication. This distribution of legal materials is organized centrally, and it is not a cost reflected in the local budget. There has been some work on an index to track changes in the Rwandan laws, but the index has not achieved widespread distribution and is not effectively maintained. Furthermore, it is not available in electronic format. The BTC has a plan to update this index and distribute this nationwide via CD-ROM.

Several interviewees expressed concern that the translation of laws into all three languages was not subject to sufficient quality control, resulting in significant differences amongst the official texts. The *Avocat Sans Frontieres* training manual points out that these discrepancies may be particularly problematic in the human rights context where international organizations and other development partners rely on French or English texts and locals look to the Kinyarwandan version. Suggestions to remedy the situation included the notion of setting up a legislative secretariat at the parliament to bolster existing translation capacity.

Currently, there is a Translation Department at the Rwandan Parliament, which is a part of the Translation, Documentation and Press Unit. This Department is supposed to have 4 translators as per the Parliament's Organic Framework (*Cadre Organique*), but so far only one position has been filled. The only translator in the Department speaks English and Kinyarwandan, but no French. He is in charge of all the English translations, and for the French he gets help from 2 other colleagues from different departments, who speak French, Kinyarwandan, and some English. Apparently, staff have been selected for these open positions, but as has been noted in other contexts, the actual hiring depends on the Ministry of Public Service. In the near future, the Parliament is planning to initiate a coordination committee between people from the Ministries who prepare the bills (more than 90% of the bills are initiated by the Executive) and translators from the Parliament so they can work together on the translation of bills. However, it remains unclear whether any of these measures will provide the capacity necessary to effectively manage translation and indexing of the growing body of legislation.

B. Case Files, Management, and Disposition

1) Case Files

The Rwandan court system employs a civil law dossier file system, which was designed to incorporate all documents for a particular case into a single file as it proceeds through the system. Previously, standardized dossier folders were pre-printed, but in recent years, the dossiers appear to be prepared in long hand. Paper files have been kept in storage rooms without climate control, but in a significant number of instances, the files appear to remain intact. The courts have not yet implemented a corresponding electronic filing system for court documents.

2) Case Tracking

Historically, overall tracking of caseloads and dispositions was conducted manually, and it was limited to the most basic of information, such as types of cases filed, pending, and decided. The prior filing system did not efficiently index and identify the location of dossiers. However, parties apparently were able to access the files if they possessed copies of identifying documents.

With funding from the Canadian government, the *Projet D'appui à l'administration des Cours et Tribunaux* (PAACTR) program is installing a computerized case tracking system with a French language interface. This project is nearing completion, and equipment and facilities permitting, it is being used to significantly upgrade case tracking. The system allows the courts to capture all the basic information needed to identify and describe a case and its status in the judicial system.

Some key features are that the system allows court clerks to associate multiple defendants with a single case and insert comments in Kinyarwanda. It also has the functionality to track appeals. A current limiting factor is that the system is modular, and it is not linked internally within the judicial system. Thus, a Provincial Court has its installation and the corresponding High Court has a separate one. Furthermore, the current system has not been designed for network connectivity, nor does it have the capacity to export reports to Excel and other formats. Either modification would require additional software development.

Many courts now possess adequate training and equipment, they are able to employ the computer case tracking system to generate reports on cases by general topics, such as civil, penal, and administrative, but from that point, manual compilation is still required to formulate the monthly reports in the format required by the Supreme Court. For the moment, the system's reporting functions are being employed to increase the speed and accuracy with which each court is able to submit these hardcopy monthly reports to the Supreme Court. Once these reports from the lower courts are all in, the Supreme Court manually compiles an overall status report. (See Appendix III).

3) Case Load and Distribution

Case assignment does not appear subject to a formal, written policy. Rather, it appears to be left to the discretion of Chief Judges. At least some Chief Judges have developed internal policies. For example, one interviewee indicated that a court calendar is assembled where each judge is randomly assigned cases that arrive on their duty days. In the case of junior judges, they are teamed with corresponding senior judges on serious cases for an apprenticeship period. Whether these sorts of local policies are widespread is not clear.

At the Provincial Courts, a caseload of approximately 1-2,000 cases is not unusual. (See Appendices IV and V). Civil cases make up the vast majority of these cases and include property

disputes, administrative matters, and social benefits claims. As noted above, the transfer of *Gacaca* Category I cases could potentially double this load, and the Provincial Courts do not yet have a clear indication of how many additional cases to expect *in toto*.

The caseloads of particular judges do not appear to be monitored in any standardized manner, but the small size of the court units probably allowed the Chief Judges to keep at least a general sense of their work distribution in the past. Depending on the outcome of the *Gacaca* transfer, this approach may need to be replaced with a more formal structure.

4) Case Management Forms

There are several basic forms that are employed in administration. The Supreme Court specifies the standard statistical reporting form for caseloads, which are due monthly from the lower courts. However, the case tracking system also generates component reports broken down by categories, e.g., penal, civil, etc. In addition, some courts capture their own statistics in different formats. Dossiers appear to be assembled in the same manner that they have been for the last several decades, and one judge said the format is controlled by the Supreme Court.

The centralized control of forms does ensure uniformity of basic forms. However, it is not clear that the forms are adequate for the tasks involved in court administration. As explained below, there has recently been an attempt to solicit input on the forms, but it is not clear that this process will be formalized and used in the future. Again, with the influx of *Gacaca* Category I cases, there may be additional administrative demands, which will require new forms to capture information about them.

C. Budgeting, Expensing, and Reporting the Use of Judicial Funds

1) Judicial Budgeting

With recent reforms, judicial system budgets are now independent of the Ministry of Justice budget. However, MINECOFIN continues to play the central role in the adoption of the final judicial system budget. Historically, MINIJUST has represented the judicial system vis a vis the MINECOFIN, which in turn represents the entire justice sector vis a vis the Council of Ministers. Currently, there is no legal prohibition on the Supreme Court participating in the dialogue vis a vis MINECOFIN, and the Supreme Court anticipates a more significant role going forward.

MINECOFIN produces budget guidelines in April, and these guidelines propose ceilings based on the MTEF. Government institutions have three weeks in which to respond with their needs and a justification for the request. These responses are general and do not possess full detail. They are referred to as "Strategic Issues Papers," and they are typically no more than five pages in length. MINECOFIN then assembles these into an overall budget with various scenarios. These scenarios are designed to present a range of options from conservative to liberal. These proposals go to the Secretary General of MINECOFIN. The Secretary General then invites comments from the relevant institutions, including the Supreme Court.

On the basis of these inputs, a final document, a "Budget Framework Paper," is assembled and sent to the Council of Ministers. Unresolved issues are flagged in this paper. The common understanding is that the most important stage of the budget development process is internal to MINECOFIN. The budget that they present to the Council of Ministers is usually forwarded intact to the Parliament where it is rarely altered to any significant degree. Supreme Court personnel may participate in Parliamentary Committee, but they are not permitted to address plenary sessions.

Last year, the initial budget proposal for the judiciary totaled 11 billion Rwandan francs, but it was ultimately approved at only 2 billion. There is substantial consensus that this overall amount is insufficient to meet current needs. Judicial personnel posit that this dramatic reduction to be at least in significant part a function of the judiciary's current lack of capacity to justify its proposals. Furthermore, once the overall budget has been approved, requests for additional funding are extraordinary and rarely granted.

With the passage of the final judicial budget, the Supreme Court is supposed to assume primary authority for the administration of a significant portion of the funds other than labor, which is handled through the Ministry of Public Service. However, the courts do not as yet play a significant role in the management of the funds. Local courts may submit budget suggestions, but the incorporation of these suggestions is not yet widespread. This fact is evident in that most courts of the same level possess identical budgets. Once these budgets are established, courts perceive that they have no authority to switch funds between line items under any circumstances. The Budget Law was cited as a ban to such actions. The new organic budget law under consideration may remedy this with a delegation of authority to re-allocate up to 20% of the line item total.

However, the judiciary has attempted to pursue reallocations through requests to central authorities. A court may submit a request to the Supreme Court for communication to the MINECOFIN. The Supreme Court's Director of Planning and Finance then submits the request to MINECOFIN for final authorization, which apparently takes months to process for even common occurrences such as vehicle maintenance. An example of a reallocation request is attached at Appendix VI.

Starting in 2004, there were some budget consultations after the fact with the lower courts. A meeting of court presidents was convened where open dialogue was encouraged. Apparently, in 2005, each court will have a chance to submit budget information, and in 2006, the responsibility for preparing budgets will start with the lower courts. The law provides that inputs should be received in MINECOFIN in the early summer, and the practice noted above is to assemble info in May.

At least one Provincial Court President explicitly linked the lack of financial and administrative autonomy to deficiencies in access to justice. This President explained that it is impossible to follow constitutional and procedural requirements: "If money is not present, people suffer." She went on to cite at least 20 files that were stalled in violation of the law. She found this fact particularly disconcerting, "This period we must show that reform is in the hands of the local population."

2) Payment, Monitoring, and Reporting of Expenses

Commencing this spring, the Supreme Court plans for the 123 lower courts to begin monthly reporting on basic expenses under their control. As the Auditor General's 2003 Report noted, this type of data collection and reporting is legally required, and this measure is an important step forward. However, as yet, there is no specified format for these reports, and the reporting will likely be a summary of cash on hand at the beginning of the month, amounts dispensed, and the amount remaining. It is questionable whether this level of detail will satisfy the Auditor General. Moreover, the collection and submission of expense receipts to a central authority is not currently feasible, and it is not clear that local judicial institutions are sufficiently equipped and trained to catalogue and store this information.

Operational funds are made available to the courts through a special bank account for the payment of operational expenses. Currently, only a small fraction of expenses are classified as these types of expenses, e.g., gasoline. (See Appendix VII) Most expenses, such as the purchase of equipment, must be conducted through an invoicing system whereby the vendor

ultimately must seek payment through presentation of a bill to the government. Apparently, most vendors still must present their bills to MINECOFIN, but under the new system, payments should be possible through the courts. The submission of bills to MINECOFIN constitutes an onerous holdover from the past centralized practice.

3) State Funds and Court Fees

MINECOFIN transfers tranches of judicial funding periodically to the courts. Technically, these funds should be routed to the Supreme Court for pass-through to the various lower courts, but the management system is not yet in place. So, MINECOFIN continues to make transfers to the lower courts.

The flow of state funds is not consistent, and there are gaps in the ability of courts to make their payments locally. These funds are not intermingled with court revenues, which are deposited into a separate account. The separate account is not available for local court expenses. According to Law No. 17/2002 of 10/05/2002 Establishing the Source of Revenue for Districts and Towns and Its Management, they are deposits to local government coffers.

The revenues collected locally consist of filing fees; penalties; company registration fees; and percentages of the sale of seized property and damage awards. Ministerial Orders No. 1 & 2, of 06/01/2005, set fees ranging from 50 to 8,000 Francs, and Law No. 18/2004 of 20/6/2004 Relating to the Civil, Commercial, Labour, and Administrative Procedure, Arts. 311 & 355, set 6 and % fees on the sale of property or damage awards, respectively. Currently, the collection of these fees is not recorded in a systematic fashion, and there is no regular reconciliation of their deposits into local accounts with bank statements

Pursuant to the *Fiscal and Financial Decentralization Policy* approved by the GOR in 2001, local government units are encouraged to link service delivery and user fees. The policy foresees that "Central government will assist in this process by developing standard methodologies for calculating service costs and providing comparative information on service costs and fees across Districts including those of Kigali City as a way of identifying appropriate fee levels. Service fee schedules will be legislated in local government by-laws." The policy does not explicitly reference judicial fees.

D. Human Resources

1) Existing Staff Profile

In 2004, the legal reform measures led to the review of the entire staffing profile for the judicial sector. Judicial personnel were required to resign, re-apply for positions, and in many cases take certification exams. Even judges were required to take exams. From approximately 1,583 personnel in mid-2004, judicial staff was reduced to a total of around 512 as of this report. It is not clear that this dramatic reduction in staffing was linked even to an estimate of workload changes.

2) Staff Recruitment Plan

The Supreme Court has developed a Recruitment Plan for 2004-6. For the 2005 year, the majority of the new positions are district *greffiers* (court clerks)(106) and district judges (106). In terms of administrative recruitment, the Supreme Court plans to add 12 financial officers, one in each province, and 24 secretaries, two in each province.

Even with these additions, the judicial system has very limited administrative support capacity. Currently, the judicial system has to employ *greffiers* at the district court level to handle financial

matters, and plans to extend financial staffing below that to the district courts are not feasible at this time due to financial limitations.

3) Management of Human Resources

While the judiciary legally has authority to hire administrative staff, the process of adding additional support staff is stalled, pending final resolution of a bill pending before the Parliament. This bill would return the recruitment and hiring process to the Ministry of Public Service. The passage of this bill will likely require existing administrative staff to re-apply and perhaps pass a civil service test. In light of this potential change, the Supreme Court's ability to recruit additional staff and retain existing staff is fragile at best. Administrative staff are currently pushed—in some cases working from “7-7.”

Moreover, while the Supreme Council of the Judiciary has the authority to appoint magistrates generally, appointment of new positions pre-supposes adequate funds. For instance, given the minimalist budget approved for 2005, it is not clear that the 212 magistrates contemplated in the recruitment plan can be hired. Besides the appointment of magistrates, the only other option available to the Supreme Council would be the transfer of judges to overloaded districts.

Salaries range from a district driver making approximately 30,000 francs (52 USD per month) to the President of the Supreme Court making 1,400,000 francs per month (approximately 2500 USD). Proposals from the Legal Reform Commission outlined a secure benefits package, which included a variety of provisions such as survivor benefits. While the package was not originally opposed, these benefits were eventually excised from the Law on the Status of Judges.

E. Court Infrastructure

The court facilities visited during the diagnostic all possessed basic infrastructure, including office space, furniture, computers, and copiers. However, internet connectivity has not yet been established, and the prospects for installation are not clear. A more immediate, and pressing concern, is the maintenance of existing infrastructure. Some courts have equipment that is not being used because it has not been adequately maintained—perhaps most notably the Kigali City Court, which is the largest. Authority to address these maintenance issues does not reside locally at this time, and local judicial personnel noted that the described an opaque, lengthy, central process required to address these issues is unworkable. In most cases, adequate electricity presents an ongoing challenge. Backup generators are not widely employed to secure continuous use of equipment, but UPS backups are common providing a degree of protection.

BTC has a program to provide generators, a library, and computer to each of the 12 provincial courts and select equipment packages to the lower courts. The implementation of this equipment upgrade is being coordinated by the Supreme Court. While the Supreme Court customarily exercises this central role for all courts, it is significant to note that the *Gacaca* is administered through an entirely separate administrative structure. Currently, the more significant donor contributions are directed towards the implementation of the *Gacaca* program.

F. Stakeholder Buy-In

The leadership of all the relevant judicial institutions has indicated support for this program to bolster court administration. At the time of the finalization of this diagnostic, the major findings of this report were relayed to the executive personnel of the Supreme Court, who expressed their willingness and commitment to work together to effect the necessary changes. Most of the recommendations of the diagnostic assessment team relate to significant issues that the relevant stakeholders understand warrant close attention. Given the limited resources available, the

stakeholders have had relatively little opportunity to concentrate on these issues, but they have concrete plans to bolster needed staff, and they have expressly committed to collaborating with the NCSC team to institute the programmatic goals recommended in this report.

There are still challenges to the effective implementation of the new decentralized system, including critical financial problems. The GOR's political will is crucial particularly in providing sufficient financial resources to ensure the implementation of this reform program. Some of these resources may need to come from reallocating existing budget projections, and the assessment team considers it important for NCSC to devote project resources to the budgetary process, assisting the judiciary with its ability to make an effective case for its current needs. It should be noted that the assessment team found the stakeholders and donors very open to collaboration on these issues.

VI. Program Recommendations

The original project proposal placed heavy emphasis on broad-based training in the areas of finance and administration. Based on the results of the diagnostic, the gaps in the existing structures make extensive training not feasible at this time. A full complement of administrative staff is not yet in place, and the pending legislation concerning the Ministry of Public Service could affect the existing core staff. To commit to a full training program at this juncture would likely be of limited utility and an ill-advised use of resources. There are several clear and present needs of the Supreme Court that should be given priority over a broad-based training program. In the subsections that follow, the diagnostic team offers suggestions for more tailored, achievable, programmatic goals. In addition, the diagnostic team has identified other interventions that, while beyond the scope of this project, are significant technical assistance needs of the Rwandan judicial system to achieve full financial and administrative autonomy.

While the NCSC project was originally conceived to cover both finance and general administration, the exigencies of time and limited resources have led the Assessment Team to conclude that the scope of programmatic activities over the remainder of the contract period should be narrowed to target financial issues. This recommendation is not intended to imply that administrative issues are less significant. However, significant programs, such as those managed by BTC and PAACTR, are engaged in this area, and they do not have formal programming in the financial area. The Netherlands assisted the judiciary with the preparation of their MTEF budget projections last year, but they do not have an active, current program. The only project with the capacity and the mandate to address these issues is the NCSC project. Given the urgency of the financial issues, the Assessment Team recommends the project focus on the activities described in the four subsections that follow.

A. Assistance with Judicial Budget for 2006

The most urgent priority is the need to assist the Supreme Court with a comprehensive, and internally consultative, budget formulation process for the 2006 Judicial Budget. The Supreme Court does not currently have sufficient information to develop a comprehensive proposal that reflects actual needs and presents adequate supporting documentation to justify the proposal. Given the pending influx of *Gacaca* cases and non-genocide cases, the failure of the Supreme Court to secure sufficient funding represents a looming potential crisis.

B. Elaboration and Reform of Select Legal Provisions

The legal framework empowers the Supreme Court to develop internal ordinary court policy, which is subject to SJC approval. To realize their financial autonomy, the Supreme Court needs

to develop a formal policy that specifies guidelines for how courts are to monitor and report on expenses and revenues and use this information to develop accurate budgets. The Supreme Court also needs to form a task force to monitor, consult on and propose relevant financial legislation.

C. Development of Judicial Budget and Expense Reporting Manual

Once a judicial financial management policy is approved, the principles and guidelines included in the policy will need to be translated into specific notices, forms, and reporting schedules. Before a training program can be designed, the Supreme Court will need to define these uniform standards for policy implementation. Ideally, the forms and materials will be suitable for implementation both in hardcopy and electronic formats.

D. Training of Core Personnel

With a policy manual in place, preparations for the training of core personnel should be completed. Given the potential instability in the judicial administrative personnel, the development of this training should be conducted in a manner that is most likely to result in a sustainable training program that can be repeated as needed with the recruitment and deployment of the new personnel anticipated in Supreme Court's strategic plan. Given the substantial infrastructure available at the Judicial Training Centre in Butare, linkages should be explored with a view to creating a permanent administrative training component within the curriculum.

E. Additional Programmatic Interventions

1) Legislative Secretariat

The GOR and donor community should consider an immediate program to bolster the translation capacity at the Parliament. The formulation of a properly equipped legislative secretariat is essential for the government to operate simultaneously in three languages. Of particular concern is the potential for discrepancies in translation of new legal terms. As the Rwandan legal system grows in complexity, the potential dimensions of this problem could grow exponentially.

2) Common Law Precedent

Rwanda's recent judicial reforms set forth a hybrid civil-common law system. However, as the assessment team witnessed in practice, the system continues to follow the inquisitorial, civil law model. The Supreme Court and the donor community should consider an immediate program to educate judges in the drafting of precedential decisions and work with the court personnel on a system for indexing cases according to subject matter. Proper management of a common law system of precedent requires a publicly available indexing system, which gives all parties access to relevant case law. The development of this system should be coordinated with the BTC project on the indexing of the laws.

3) Court Administration

The Supreme Court and the donor community should consider a court administration development program. While there is a functional system in place, a number of improvements could be made that would bolster the security, sophistication, and efficiency. Files could be stored in secure, electronic format. Important paper archives could be scanned in before they decay to the point of becoming unusable. Paper and electronic forms could be developed to facilitate all aspects of court processes.

4) Association of Judges

The Rwandan judiciary contains a cadre of talented and motivated professionals, but these individuals rarely convene as a group to exchange lessons-learned. There exists a pressing need to organize the professional ranks of the judiciary to discuss and strategize on issues of common concern, and many judicial personnel interviewed expressed support for the formation of a judges' association, which should be contrasted with a judges' union. Given the challenges remaining before the Rwandan judiciary, assistance should be provided to assist judges to work together to find practical, working solutions.

5) Office of the Prosecutor (*Parquet Générale de la République*)

While it is beyond the scope of this diagnostic, information gathered indicates that many of the financial decentralization challenges facing the judiciary are also found in the *Parquet Générale de la République* which now has responsibility for managing the administrative affairs of all the local parquets. Before the recent reforms, that responsibility was vested in the Ministry of Justice. The transfer of Category I *Gacaca* cases will have an analogous impact on the Parquet, and very little has been done to prepare for this eventuality. Furthermore, the *Parquet* is also struggling with the decentralization of financial procedures. Donors should consider a companion to this program directed towards the prosecutors, for the judicial system will only be as effective as its weakest component in grappling with the challenges that lay ahead.

6) National Training Center

The National Training Center in Butare is poised to become an *École Nationale de la Magistrature*. The assessment team endorses this role and recommends that the donor community continue to contribute to the realization of this goal. The assessment team would emphasize that this goal should be construed broadly to include administrative staff within the judicial branch.

7) Clinical Legal Education

The assessment team found that there is a significant deficit in legal representation in the ordinary courts. The assessment team recommends that the GOR pursue the formulation of legal clinics associated with law schools, providing for indigent representation. While this form of representation is not a substitute for legal services or public defenders, it can significantly ameliorate existing conditions.

Appendix B: Memorandum on Existing Legal Issues Relating to the Independence and Decentralization of the Judiciary in Rwanda

MEMORANDUM ON EXISTING LEGAL ISSUES RELATING TO THE INDEPENDENCE AND DECENTRALIZATION OF THE JUDICIARY IN RWANDA

INTRODUCTION

The team's Diagnostic Assessment of Rwandan Decentralization of Judicial Administration and Financial Management (the team's report) already contains a section dealing with the legal framework in Rwanda as it relates to these issues. The purpose of this memo is to isolate the problems identified in that section, offer further analysis of them, and suggest solutions where appropriate.

At the outset of this memo, it must be emphasized that the potential abuses associated with the problems and inconsistencies identified in the existing law are not in any way intended as criticisms of any past or current government of Rwanda. They are intended simply to flag abuses which could potentially occur in the future as a result of the loopholes and inconsistencies discussed. Moreover, an important caveat concerning potential amendments of the Constitution must be asserted as well. Although some potential problems with the text of the Constitution are identified, the team realizes full well that the amendment of the Constitution is not a matter to be taken lightly. In addition, it may be that some of the constitutional problems identified could be dealt with through interpretation of the relevant provisions by the Rwandan courts. Therefore, the problems are flagged so that all three branches of government in Rwanda may consider the appropriate course to be taken to address them.

The analysis of the problems relating to judicial independence and those relating to decentralization are set out as follows:

I. Law Reform Issues Pertaining to Judicial Independence

A. Issues and Inconsistencies in Existing Legislation Relating to Judicial Independence.

Law No. 06/bis2004 of 14/04/2004 on the Statutes for Judges and other Judicial Personnel.

There is a potential problem with this law in those sections which deal with the salaries of judicial personnel. Under Article 25 of that law, judges' salaries are to be determined by a Presidential Decree and under Articles 98 and 109, the salaries of other judicial personnel are to be determined by a "Presidential Order." This feature of the law poses a

potential problem of judicial independence since it allows for the possibility of punishment of judges by the executive by limiting their salaries. In this sense, it could be seen as violating Article 140 of the Constitution which guarantees judicial independence. In addition, it is inconsistent with Article 142 of the Constitution, which provides that the *law* (emphasis supplied) on the status of judges and other judicial personnel (this law) shall establish the salaries of judges. It seems clear that that particular constitutional provision required that the salaries of judges are to be determined by the legislature. However, in adopting this law, the legislature has, in effect, delegated the responsibility to establish the salaries of judges and other judicial personnel to the President.

In order to avoid both of these problems of constitutionality, the law could be amended so as to set out the salary grid of judges and other judicial personnel directly in the law.

There is also a problem in the law in that Article 24 provides for the transfer of judges by the Superior Council of the Judiciary “in the interest of duty only...when it is deemed necessary.” This provision is inconsistent with Article 140 of the Constitution which states:

The judiciary is independent and separate from the legislative and executive branches of government.

However, the constitutionality of Article 24 of this law is nevertheless ambiguous in light of the terms of Article 142, which are inconsistent with the terms of Article 140, thus raising a problem relating to judicial independence which arises in the text of the Constitution itself. Article 142 states:

Unless the law otherwise provides, judges confirmed in office shall hold tenure for life: they shall not be suspended, transferred, even if it is for the purposes of promotion, retired prematurely or otherwise removed from office.

This constitutional provision recognizes that transfer of judges can sometimes be used as a method of punishment or retaliation for an unpopular judicial decision. Some countries afford protection against this potential abuse by providing that judges cannot be transferred against their will. It is true that in this case, Article 24 may be seen as consistent with Article 142 of the Constitution, since Article 142 provides that the law can remove any of the protections that the Article otherwise provides. This is a problem with the constitutional provision itself, which is discussed below. Nevertheless, the spirit of the constitutional provision as written is clear in attempting to avoid abuses impinging on judicial independence which might arise in connection with transfer of judges. It is also true that the law attempts to address that concern by allowing for transfer “in the interest of duty only” and only when ordered by the Superior Council of the Judiciary. However, that feature is open to abuse by a Superior Council which might fall prey to

political influences and which could very broadly interpret the language “in the interest of duty.” If the constitutional provision is to stand, perhaps the law could be amended to adopt the feature which requires a judge’s consent before a transfer could be allowed. This would be a more effective measure for the protection of judicial independence than the one which currently appears in the law. Be that as it may, the constitutional provision itself as it stands, opens many possibilities for the abuse of judicial independence as discussed below.

Before leaving the discussion of this law’s potential impact on judicial independence, a concern arising from an amendment which may be under consideration needs to be raised. Article 105 of this law provides that the President of the Supreme Court establishes the required qualifications for judicial personnel. It was reported to the team while they were in Rwanda that there is an amendment of this law currently under consideration which would transfer that authority to the Ministry of Public Service. In effect, such an amendment would grant at least indirect control of judicial appointments to an executive authority thus violating the separation of powers set out generally in the Constitution and the concept of judicial independence in particular. Although the team was unable to obtain the specific text of this proposed amendment, it is necessary to underscore its potential harm in this connection.

President Order No. 21 of 12/7/2003 instituting a manual of procedures for financial management of the central administration.

Essentially, what this manual does is to create a comprehensive procedure for the budgetary decentralization of all of the ministries. In implementing this law, the executive agency responsible for decentralization, MINALOC, has developed its own procedural manual implementing the presidential order. It is that manual that poses a problem with respect to the budgetary independence of the judiciary. It provides that all local administrations shall be given authority over the local budgets of all organs of local government. Presumably, that provision would cover the local judiciary. In this way, local executive authorities would have authority over the budget of the local judiciary. This feature of the manual would violate the budgetary independence of the judiciary which is granted in Article 140 of the Constitution.

It seems quite clear, however, that this apparent assertion of authority in violation of judicial independence was merely an oversight since when the team met with MINALOC officials in Kigali, it was clear that that ministry has no intention of encouraging that kind of exercise of authority over the judiciary. Thus, there should be no problem in amending the manual to correct the problem. The specific provision contained in the manual could simply be amended to include an exception for the local judiciary. In further support of such an amendment, it is important to note that Section I.1.3 of the manual states: “This manual could be reviewed, amended, or modified in order to take into consideration possible changes which will occur in the course of time.” Since Articles 59 and 60 of the Organic Law No. 07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts, which was adopted the following year, clearly establishes the

authority of the judiciary to supervise its own budgets, (See the discussion, below) the amendment of the MINOLAC manual should be seen as being required at this time, especially since an organic law is clearly superior in the hierarchy of laws to both the Presidential Order and the MINOLAC procedural manual.

Law No. 41/2004 Determining the State of Finances for the 2005 year.

Articles 6 and 11 of this law present problems in terms of judicial independence. In addition, Article 6 is inconsistent with the previous Article 5 of this same law. Article 5 lists all of the paymasters of the various organs of government covered in the state budget. In a manner which is consistent with the financial independence of the judiciary, it lists the President of the Supreme Court as one of those paymasters, indicating that the President of the Supreme Court should be responsible for the salaries of public employees within the judiciary. In the same vein, Article 6 sets up the Secretary General of the Supreme Court as the officer in the judicial branch “responsible for the follow up of government revenues and expenditures.” This clause is likewise consistent with the idea that the judiciary will be managing and supervising its own financial affairs. Yet in the same Article, a separate clause states: “The Minister having finance in his or her attributions is designated paymaster for overall expenditures in all states services.” This clause is potentially inconsistent with the clause in Article 5 which sets up the President of the Supreme Court as the paymaster for the judiciary. This potential inconsistency could easily be resolved by adding the following phrase at the end of the clause: “except for those expenditures which come under the authority of the President of the Supreme Court.”

Article 11 of the law is problematic in a similar way. It potentially violates judicial independence and is also inconsistent with the general decentralization scheme which is currently being implemented (See the discussion in the next section.) It states:

Expected current expenditure in a certain provision in the ordinary budget may be subject to credit transfer from one provision to another which alter the nature of the expenditure. Such credit transfers can only take place within the same category of expenditure and budget of the same ministry and public entities and must be authorized by the Minister in Charge of Finance. However, no credit transfer or change may be authorized between salaries and other expenditures.

This provision is obviously the source of the problematic practice which many of our interviewees complained of. They complained that Ministry of Finance approval had to be sought for the minutest transfer of funds from one account to another on the local level. This practice, as noted, not only violates judicial independence by giving the Finance Ministry budgetary authority over the judiciary, it also is a problem in terms of decentralization since it removes important budgetary authority from the local authorities.

It is important to note that the team was told in interviews that the problem with this section vis à vis decentralization was common to all the organs of government and that

amendments addressing that issue were currently being proposed. However, those amendments will need also to take account of the need for judicial independence as well. For example, if an amendment were to propose that all but the largest transfers of funds should be left to the local authorities while requiring major transfers to be approved by the Ministry of Finance, such an amendment could be consistent with the decentralization policy but inconsistent with judicial independence. In order to address both of these concerns as they relate to the judiciary, a solution to this problem as posed in connection with this Article of this statute is proposed in the next section dealing with law reform issues relating to decentralization.

B. Constitutional Issues Relating to Judicial Independence.

Since the discussion which follows considers the potential amendment of the Constitution in several areas, it is perhaps fitting to begin this section with a review of those provisions of the Constitution which set out the procedure for its amendment. Article 193 of the Constitution establishes the procedure. It provides that the process of amendment may be initiated by the President after deliberation in the Council of Ministers or by either house of Parliament with a 2/3 majority vote. Regardless of who initiates the amendment, it does not pass until it has been approved by three quarters of the members of both houses of parliament. If the amendment concerns the term of office of the President, multiparty democracy, or the nature of the constitutional regime, and the republican form of government in particular or the territorial integrity, it must also be approved by popular referendum. This section also provides that the procedure for amending the Constitution set out in this Article cannot be amended.

Moreover, the general caveat relating to constitutional amendment raised in the introduction to this memo must be recalled here. Bearing in mind that constitutional amendments are not to be taken lightly and are the exclusive prerogative of the parties who may initiate them under Article 193, this memo nevertheless points out that there are several provisions of the Rwandan Constitution of 2002 which pose potential problems with respect to judicial independence.

Two of the problematic provisions in this respect are problematic precisely because they leave important constitutional questions to be decided by the legislature rather than enshrine them as constitutional principles which could only be changed through constitutional amendment. One of these provisions is contained in Article 146 of the Constitution which sets the composition of the Supreme Court at 14 members but allows that number to be increased or reduced by an organic law passed by the legislature. This latter feature is certainly problematic when one takes into consideration the appointment procedure which is contained in Articles 147 and 148. Those Articles provide that the President proposes two candidates for all the seats on the Supreme Court after a non-binding consultation with the Council of Ministers and the Superior Council of the Magistracy, and the Senate must elect each justice by an absolute majority. Consequently, in the event that the President and the majority of the Senate are of the same political party, the President could propose ordinary legislation to increase the

number of seats on the Supreme Court. If the legislation passes, then the President would be able to “stack” the Court with justices from that political party or who have political leanings which align them with the party. This is, of course, what our US President Roosevelt tried unsuccessfully to do in with the US Supreme Court. This kind of politicization of the Court could certainly do much to detract from its independence. An amendment which simply removes the third provision of Article 146 (which states that an organic law can increase or reduce the number of judges on the Supreme Court) could therefore be considered in the interest of judicial independence.

The same kind of problem is found in analyzing Article 142 of the Constitution, which is discussed above. It states:

Unless the law otherwise provides (emphasis supplied), judges confirmed in office shall hold tenure for life; they shall not be suspended, transferred, even if it is for the purposes of promotion, retired prematurely or otherwise removed from office.

In effect this provision allows the legislature to adopt a law which would allow judges to be suspended or transferred for any reason whatsoever. Thus, by according this kind of discretion to the legislature, the Constitution fails to guarantee protection of judicial independence because a legislature, hostile to the decisions of some of the judges, could adopt a law which would allow for their suspension or transfer for essentially political reasons. It is also interesting to note that the Constitution is much clearer and firmer in its guarantee of judicial independence for justices of the Supreme Court. Article 147 provides that they cannot be removed except for “lack of dignity, incompetence, or for serious professional misconduct.” This is the kind of guarantee of judicial independence which is found in many other legal systems, and it is the kind of guarantee associated with the French concept of *inamovabilité*. (See the discussion of this concept in the section of the team’s report dealing with the legal and regulatory framework.) However, under the terms of Article 142, quoted here, the same guarantee is not extended to other members of the judiciary since the legislature can adopt a law which allows for their suspension or transfer under any circumstances.

Consequently, to correct this problem, a constitutional amendment could be considered which adopts the language of Article 147, amending Article 142 to provide that judges cannot be removed except in cases of “lack of dignity, incompetence, or for serious professional misconduct.” The amendment should also provide that they cannot be transferred without their consent. This latter feature would protect them against abusive transfer as discussed above in the section dealing with Article 24 of the Law on the Statutes of Judges and Other Judicial Personnel.

Finally, Article 167 of the Constitution provides that all decentralized organs of government shall come under the authority of MINALOC. Since this would place the administration of the judiciary directly under the authority of the executive branch of government, it would obviously violate the judicial independence which is otherwise conferred by the Constitution in Article 140. It really appears that this anomaly is the result of an oversight on the part of the drafters of the Constitution. The main purpose of

Article 167 was to provide for the decentralization of power to local authorities and to place the government's decentralization policy under the authority of MINALOC, all of which makes sense. However, what the drafters forgot is that in the interest of judicial independence the judiciary will have to supervise its own decentralization, and this problem is discussed in the next section.

It is important to note, as indicated in the previous section, that the MINALOC authorities are aware of this oversight. When the team met with them and discussed the implications of the Presidential Order No. 21 of 12/7/2003 instituting a manual of procedures for financial management of the central administration, which, in effect, implements the terms of Article 167, they indicated that they had no intention of exercising authority over the judiciary because they recognize that such an assertion of authority would violate judicial independence.

Thus, Article 167 could be amended to provide an exception for the judiciary. The current text states:

The powers of the State are decentralized in favor of local administrative entities in conformity with the law. These powers come under the Ministry having local administration among its attributions.

The second sentence of this provision could be amended to state: These powers, *except for those relating to the judiciary*, (emphasis to indicate proposed amending language) shall come under the authority....That language would open the way for the judiciary to exercise its own supervision of the decentralization of those powers of the judicial powers of the State. (See the discussion in the next section.)

It is worth noting in this connection that the Constitution has already been amended once so as to implement the concept of the judiciary's financial independence. Amendment No.1 of 02/12/2003 of the Constitution of the Republic of Rwanda of June 4, 2003 amended Article 148 of the Constitution, adding, *inter alia*, the following language:

The qualifications and experience required to (sic) the President and Vice-President also apply to the other judges of the Supreme Court in addition to having shown managerial skills in higher administrative institutions.

This provision was amended to insure that candidates for the Supreme Court, and the President and Vice-President, in particular, would have the managerial skills required for the Supreme Court to manage the budget of the judiciary as required by the guarantee of the financial independence of the judiciary appearing in Article 140 of the Constitution.

Presumably, if there was the political will to institute this amendment for this reason, it shouldn't prove that politically difficult to bring about another amendment to the Constitution, also in order to implement the concept of judicial independence, and its financial independence, in particular. This, of course, would be the very purpose of introducing the proposed amending language cited in the previous paragraph.

II. Law Reform Issues relating to decentralization.

It should also be noted, as the team has described in its report that the decentralization of the judiciary has essentially been implemented by the Organic Law No. 07/2004 of 25/04/2004 Determining the Organization, Functioning and Jurisdiction of Courts. The key provisions of that law which provide for decentralization are Articles 53, 54, 55, and 59. The provisions of those articles which relate to decentralization are as follows:

Article 53

The President of each court shall be responsible for administration, functioning, and internal discipline of the court.

.....

He or she shall give instructions and take decisions concerning the functioning of the Court he or she heads.

Article 54

In every three months and whenever deemed necessary, the President of the court shall convene and preside over a general staff meeting of the Court to evaluate the functioning of the Court.

Article 55

Each President of any Court shall have the right to control and supervise lower courts immediately under his or her jurisdiction.

In that regard, he or she shall issue instructions regarding better performance of duties. However, such rights shall not guarantee him or her the powers to issue instructions to courts on how to decide cases.

Every semester, the President of the Supreme Court shall transmit to the President of the High Court, the President of the Provincial and the City of Kigali Courts and the Presidents of District Town and Municipality Courts, funds meant for their respective Courts to be deposited on the account number of each Court.

The President of the High Court, ...[etc.] shall supervise how their respective Courts utilize the budget allocated to them.

From the terms of these provisions, it is clear that this law implements the concept of the decentralization of the judiciary by devolving authority to the local courts and providing for them to receive the necessary funds to exercise that authority. Nevertheless, there is one provision in existing legislation, already discussed in connection with the issue of judicial independence in the previous section, which is also problematic from the point of view of decentralization as well. That provision is Article 11 of the Finance Law for the year 2005. This Article poses a problem not only for the decentralization of the judiciary but for all decentralized authorities in the country. This is the Article which requires

authorization from the Ministry of Finance for transfer of even the most minute sums of money from one account to the other on the local level. This essentially means that if this provision were to be observed, almost all budgetary authority will be exercised centrally by the Ministry of Finance.

As noted in its report, the team was informed that amendments of this provision are currently under consideration. That is encouraging news, and perhaps this memo can simply stand as a reminder that the amendment of the Article should recognize the decentralization of the judiciary must be treated separately from other organs of government. For example, the amendments may consider some control of some budgetary transfers by some centralized authorities in a manner which is not generally inconsistent with the overall policy of decentralization. It might include a feature whereby the approval of either MINALOC or the Ministry of Finance may be required for the transfer of very large sums. If that kind of system were established as a kind of compromise which would avoid the micromanagement implied in the current Article 11, while allowing for some centralized oversight at the same time, then a parallel system would need to be established separately for the judiciary.

For example, it could provide that transfers of very large amounts of money by local judicial authorities would have to be approved by the Secretary General or by the President of the Supreme Court. This would provide for the same kind of exceptional centralized oversight which would not violate the concept of judicial independence, whereas it would if the oversight of the judiciary were administered by an executive agency such as the Ministry of Finance or MINALOC. In fact, as noted in the team's report, the Organic Law Establishing the Organization, Functioning, and Jurisdiction of the Supreme Court already grants precisely this kind of authorization to the President of the Court and to the Secretary General. Article 36 provides: "The Secretary General of the Supreme Court is the accounting officer of the Supreme Court. In carrying out his or her duties, the secretary General is subject to the direction of the Supreme court and submits to the President a report on the discharge of his or her duties." The team's report also demonstrates that the President and Secretary General are also granted the authority to exercise supervision over the entire court system, and Articles 34 and 35 provide that the President may delegate his or her authority to the SG. In addition, as noted above, Article 6 of the 2005 finance law recognizes the authority of the SG to supervise the revenues and expenditures of the judiciary. From these provisions it is clear that a system could be set up whereby the SG could sign off on transfers or exceptional expenditures where so requested by any other of the decentralized local organs of the judiciary.

This latter example raises a general concern which should be addressed directly in this memo. That concern is that there are some who are of the view that some executive department, such as the Ministry of Finance should have oversight of all organs of government including the judiciary so as to guard against, waste, corruption, abuse, etc. This concern can be addressed directly by pointing out that the law as it currently stands provides ample opportunity for oversight of the judiciary by the judiciary itself and by the Office of the Auditor General.

Article 21 of the Organic Law Establishing the Organization, functioning, and Jurisdiction of the Supreme Court provides for an office of court inspectors to be established within the Supreme Court. This means that the Supreme Court has at its disposal officers whose role is to conduct inspections of judicial performance throughout the country. These inspectors are certainly very well placed to guard against instances of waste, corruption, etc. that could occur within the judiciary. Moreover, as the team also noted in its report, Articles 183 and 184 of the Constitution and Law No. 05/98 Establishing the Office of the Auditor General of States Finances empowers the Auditor General to audit the revenues and expenditures of the judiciary and may even deploy personnel on the local level in pursuit of those powers. Certainly, these measures provide for adequate budgetary oversight of the judiciary, and they clearly obviate the necessity of a centralized review by the Ministry of Finance, particularly when such oversight would violate both the decentralization policy and the independence of the judiciary.

CONCLUSION

As this memo and the team's report has amply noted, much has been done in both the Constitution and the laws established since its adoption to establish a judiciary in Rwanda which is both independent and decentralized. The team's report generally described the relevant provisions of the Constitution and the implementing legislation and identified some problems and inconsistencies. This memo contains a separate discussion of the problems and inconsistencies, providing further clarification, and offering potential solutions where necessary. Hopefully, the information provided herein will be useful in allowing the GOR the opportunity to perfect its very impressive efforts over the last few years to implement these very important policies.

