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# Justice Sector Reform in Rwanda: A Space of Contention or Consensus?

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# **Justice Sector Reform in Rwanda: A Space of Contention or Consensus?**

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Fall 2010

## **Abstract**

Justice sector reform is an arena of competition, where international development partners and Rwandan government institutions introduce contending ideas of justice through different development projects. In this ensuing competition of influence, how do international players utilize their roles as development partners to affect the accepted standards within Rwandan courts through established systems of monitoring and evaluation? And moreover, how do individuals in the Rwandan government perceive these partners, projects, and indicators? This study aims to answer these questions through an in-depth literature review, an analysis of development projects in the justice sector, and finally semi-structured interviews with key individuals in justice sector institutions. Through these methods, this study found that as opposed to offering different judicial values, government institutions and international development partners hold differing prioritizations of the same values. Furthermore, another root cause of tension within the sector is the ongoing struggle between maintaining institutional independence and harmonizing with sector-wide strategies.

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## Introduction

In the aftermath of the 1994 Tutsi genocide, Rwanda was faced with the daunting process of rebuilding a country and reconciling its citizens. As with other post-conflict societies, the Rwandan process involved an ongoing dialogue between governments, NGOs, and citizens about transitional justice. For instance, this comprised a discussion of the ranking importance of the six major transitional justice themes: justice, reconciliation, healing, truth, forgiveness, and peace. Within a broader discussion of general thematic interplay were highly focused debates on the role each had to play in reconstruction and reconciliation. This research paper will pertain to the debates surrounding justice in post-genocide Rwanda.

An analysis of the functions of justice inevitably engenders an exceedingly rich discussion of the type, the purpose, and the outcome of the employed justice mechanism. There are conceivably three different types of justice, including retributive, deterrent, and restorative.<sup>1</sup> First, retributive justice seeks to bring perpetrators to account through a “supposedly deserved” punishment.<sup>2</sup> Similarly, deterrent justice maintains that punishment is essential, but not for the same reason.<sup>3</sup> Rather, the punishment is meant to discourage convicted or potential criminals from repeating violations.<sup>4</sup> Finally, restorative justice holds that punishment alone is an inadequate response and instead seeks to repair fractured relationships between perpetrators and victims.<sup>5</sup> From these broad categories of justice stem a wide variety of mechanisms with different purposes and different results.

In the case of Rwanda, these justice mechanisms included the Rwandan domestic courts, the *Gacaca* courts, and the United Nations’ International Criminal Tribunal for Rwanda (ICTR).

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<sup>1</sup> Clark, Philip and Zachary D. Kaufman. “Establishing a Conceptual Framework: Six Key Transitional Justice Themes.” *After Genocide: Transitional Justice, Post-conflict Reconstruction and Reconciliation in Rwanda and beyond*. New York: Columbia UP, 2009. 191-205. Print.

<sup>2</sup> Ibid. Clark and Kaufman.

<sup>3</sup> Clark and Kaufman.

<sup>4</sup> Ibid. Clark and Kaufman.

<sup>5</sup> Clark and Kaufman.

Each system pursued a unique type of justice, possessed an arguably different purpose, and yielded a vastly different outcome. While the domestic courts and the *Gacaca* courts presented a Rwandan solution to a Rwandan problem, the ICTR presented a markedly different international response. The ICTR, for instance, offered a retributive and deterrent form of justice largely centered on punishing masterminds of genocide and complying with international legal standards. On the other hand, the domestic and *Gacaca* courts conformed to Rwandan legal standards and incorporated an additional focus on reconciliation. However, discrepancies also existed between the domestic courts and the *Gacaca* courts in the dichotomy between formal, deterrent justice systems and informal, reconciliatory justice systems. Compared to the domestic courts, *Gacaca* was far more focused on rebuilding fractured relationships and involving local communities than allocating punishments to convicted perpetrators. In contrast, the Rwandan court system offered a classical vision of formal justice, with albeit disparate legal standards.

Because the ICTR was established by a UN Security Council resolution, it can be viewed as an instrument of international criminal justice. And because *Gacaca* is founded on traditional Rwandan methods, it can be viewed as an instrument of grassroots Rwandan criminal justice. As a result, the two are firmly rooted in separate spheres of judicial understanding. This became evident in what legal scholar, Victor Peskin, describes as “trials of cooperation,” between the Rwandan government and the tribunal.<sup>6</sup> In this power struggle, the Rwandan government successfully used counter-shaming tactics to win the support of international powers, while the tribunal floundered in criticisms of its insensitivity to Rwandan needs.<sup>7</sup> A series of isolated events including ICTR prosecutor Carla del Ponte’s “special investigations” into RPF war crimes, the Barayagwiza crisis, and also an incident involving judges laughing during the

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<sup>6</sup> Peskin, Victor. *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle For State Cooperation*. London: Cambridge, 2009. Print.

<sup>7</sup> Ibid. Peskin.

testimony of a rape victim culminated in a flood of international criticisms.<sup>8</sup> Despite the ensuing power play between the Rwandan government and the ICTR, moments of cooperation and at times intransigence marked the resulting “trials of cooperation.”<sup>9</sup> These trials represent one of the domains in which the Rwandan government and international community challenged its competing visions of justice.

The conceptual framework of this paper views the international community and Rwandan community as two separate spheres once holding different visions of justice in the debates surrounding Gacaca and the ICTR. Whether these visions of justice remain different is an important area of interest in this paper. Furthermore, this paper will analyze the debates surrounding justice systems in Rwanda in the context of justice sector reform, as yet another arena of competition, where international and Rwandan players introduce contending ideas of justice. In this ensuing competition of influence, international players utilize their roles as development partners to affect the accepted standards within Rwandan courts through established systems of monitoring and evaluation. This paper seeks to understand whether the Rwandan government and its development partners have different or similar judicial values. Furthermore, do the judicial values, which guide debates over the ICTR and Gacaca, similarly appear in the arena of justice sector reform? Overall, this paper will address the various perceptions of justice through an analysis of the collaborative or competitive relationship between international development partners and Rwandan institutions in justice sector reform.

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<sup>8</sup> Peskin.

<sup>9</sup> Ibid. Peskin.

## Justification

This paper is the product of an initial interest in international law and a resulting growing interest in local perceptions of justice in post-genocide Rwanda. Through the SIT Post-Conflict Transformation program, I was able to visit a number of organizations, which focused on varying elements of transitional justice. For instance, our visits to Travaux d'Intérêt Général (TIG) camps, the women's association in Butare, and the ICTR resource center sparked a curiosity in the diversity of debates surrounding the allocation of justice after genocide. Moreover, a large motivating factor in researching this topic involves my strong interest in a future career in international law. In this era of transformative international politics, the growing strength of current international institutions reflects the increasing relevance of international law in responding to global crises. As a result, the lessons learned from institutions like the ICTR and *Gacaca* lend valuable insight into the successes and failures of various mechanisms of allocating justice in post-conflict societies. These factors led to an analysis of scholarly literature examining *Gacaca* courts, the ICTR, and their perceived success or failure.

After this literature review, it became apparent that the resulting opinions were markedly different depending on the framework used to analyze success. For instance, when *Gacaca* is measured against Western standards, it appears to have failed completely. But, if a locally accepted standard is utilized, *Gacaca* has performed exceedingly well in rebuilding community relationships and fostering reconciliation. Therefore, the baseline indicators used to examine progress in a certain justice system significantly alter the concluding opinion.

Moreover, common themes emerged within the debates examining the success or failure of various justice mechanisms. Some scholars judged standards of justice on the basis of international legal standards, which could also be interpreted as largely Western-based. On the



other hand, some scholars attempted to analyze justice systems based on the institution's stated objectives. For instance, the severity of punishment, the length of trial, and the qualification of judges were all factors under consideration when determining adequate justice. However, each of these categories presents a variety of possibilities that usually fall into separate Western and local classifications. The severity of punishment, for instance, significantly varies when comparing *Gacaca* and the ICTR, where the former can allocate community service sentences and the latter exclusively focuses on imprisonment. Whether these differences reveal a trend in Western and local versions of justice pose another point of interest to develop in following sections.

This perceived tension between international and Rwandan justice institutions occurs in a variety of different settings. One of these settings includes the “trials of cooperation” between the Rwandan government and the ICTR.<sup>10</sup> Another setting is the Rwandan justice sector, where international donors provide funding for development projects with defined visions of justice and development. The justice sector, therefore, serves as another arena for the intersection of competing or converging judicial values from Western institutions and Rwandan institutions. As with scholarly articles analyzing *Gacaca* and the ICTR, it is once again important to understand the factors against which progress is measured. In this case, the development partners and the government of Rwanda have clearly established targets and indicators.

This research plays an important role in understanding one of the key themes of transitional justice. In post-conflict societies, debates over which theme and whose interests ought to be prioritized come to fore in establishing national policy. Furthermore, in the case of developing countries, like Rwanda, the relationship between donor countries and recipient countries is important in understanding international relations. In the specific context of post-

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<sup>10</sup> Ibid. Peskin.

genocide justice in Rwanda, these themes are especially significant in their ability to lend insight into the type of relationship the Rwandan government has with its development partners and how that affects project outcomes. In the context of international law, it is important to analyze these relationships for a deeper understanding of what “international” or “universal” truly means. Do universal rights and international law truly exist? And if so, how are these concepts decided upon? More specifically, in Rwandan justice sector reform, do Western development partners impose their own vision of justice or is there compromise between governments? Another important theme of this research involves the importance of analyzing competing ideas of justice. Without a common understanding of how to evaluate progress, involved parties will inevitably have disagreements over whether progress was actually made. This is especially true in the case of justice sector reform, where targets and indicators were deliberately chosen to promote a determined form of justice.

This paper will first address the academic debate surrounding *Gacaca* courts and the ICTR through an analysis of popular opinions surrounding the success and/or failure of each justice system. Then, this paper will describe the strategic plans, expected outcomes, and indicators used within the Rwandan justice sector, the Rwandan judiciary, and key international development partners. Then, it will provide an analysis of individuals’ perceptions of justice sector reform by comparing individual opinions with popular scholarly views. Finally, this paper will conclude with a summative evaluation of the relationship between the Rwandan government and its development partners. It will also include recommendations for future research initiatives to understand the progress of justice sector reform.

## **Objectives**

This research aims to provide a better understanding of intersecting Western and Rwandan judicial values through an analysis of perceptions surrounding justice sector reform. More specifically, this research will focus on the relationship between the government of Rwanda and its development partners, whether it is largely collaborative or competitive. Furthermore, this paper will address how individuals working in the justice sector reconcile differing perceptions of justice and implement reform in a system of possibly competing judicial values. Also, this paper will provide a deeper understanding of whether the Rwandan judiciary, in the broader context of justice sector reform, is a space of tension between international and local actors. Finally, this paper seeks to answer whether the general themes found in academic debates surrounding *Gacaca* and the ICTR in any way influence these perceptions of justice in the Rwandan judiciary.

## **Methodology**

The Rwandan justice sector, formally known as the Justice, Reconciliation, Law and Order (JRLO) Sector, has fourteen separate institutions. This research will concentrate on one of these institutions, the judiciary, and its corresponding international development partners, such as the United States Agency for International Development (USAID), the European Commission (EC), and one European NGO.

My approach to achieve the aforementioned research objectives included a thorough literature review, an analysis of development partner and government strategies in justice sector reform, and interviews with individuals involved in related projects. First, the literature review included academic literature surrounding perceptions of the success and/or failure of *Gacaca* courts, the ICTR, and Rwandan domestic courts. Second, the analysis of justice reform involved a study of the various strategies of international development partners and Rwandan government institutions involved in judiciary projects. Finally, interviews were conducted in a semi-structured format to provide insight into personal experiences in justice sector reform, perceptions of development partners and indicators, and whether these indicators are a fair assessment of institutional success.

A semi-structured format was chosen for its flexibility in allowing general questions to pave the way for more pointed questions and therefore more pointed answers. However, at times it was challenging to guide the interview in such a way that prompted direct answers to the given question. Instead, it was common for research participants to answer questions different from the one asked, in which case further and more detailed questioning was required. Research participants were chosen for their experience in justice sector reform, involvement with development partners or projects, fluency in English, and availability. Clearly, selecting

participants from such an educated and professional pool fails to address the wide spectrum of opinions among Rwanda's diverse population. However, this paper does not aim to address every individual opinion as such, but rather to highlight individual opinions of the donor relationships with government institutions in the justice sector. Furthermore, this research does not aim to address the variety of local opinion surrounding justice sector reform, but rather understanding the intricate relationship between individuals in Rwandan institutions and their relationship with individuals in international partner institutions.

My research participant pool included only one female professional. The absence of a representative female voice in my study, however, is not indicative of gender demographics in the justice sector. In fact, many of the high-ranking officials within the justice sector are women, including the JRLO Secretariat and the Netherlands development agency. However, due to participant availability, they were not included in the study. Another bias present within my research relates to my interviewer identity, which possibly influenced research participants' answers. For instance, my identity as an American student may have caused members of Rwandan institutions to be less critical of international development partners. In terms of interviewer bias, I made an active effort to pose neutrally phrased questions that allowed for either favorable or critical interpretation of Rwandan institutions and its development partners. However, in asking more probing questions, my personal biases in favor or in opposition to certain actors may have become apparent and thereby influenced participants' answers. According to limitations imposed by my university's Institutional Review Board, this study maintains the confidentiality of all research participants. Therefore, names have been changed and position titles have been withheld.

## Background

This section will provide key information on the *Gacaca* courts, the ICTR, justice sector reform, corresponding international development partners and the JRLO. First, an in-depth literature review will introduce popular scholarly opinions surrounding the *Gacaca* courts and the ICTR. The purpose of these sections is to illustrate major judicial values that guide international and local critiques of justice mechanisms. Further interpretation of these themes and its relation to current justice sector reform will appear in a later section. Next, a brief overview of justice sector reform will offer insight into major trends and developments in years since the genocide. And finally, a comparative analysis of the strategic plan of the Rwandan justice sector and its development partners will offer a closer look into various methods of measuring progress. Background information on justice sector reform is meant to provide a framework for understanding the multiple development projects and the corresponding strategies.

### *Gacaca Courts*

Proposed between May 1998 and March 1999 in consultative meetings with the president, the *Gacaca* court system slowly came to fruition.<sup>11</sup> Because the Rwandan domestic courts were unable to prosecute the hundreds of thousands of perpetrators in a timely manner, a new innovative solution was required. This solution was found in the transformation of a traditional community-based conflict resolution method known as *Gacaca* (grass) into a justice system meant to prosecute perpetrators of genocide and crimes against humanity within Rwanda. In February 2001, Rwanda's parliament adopted the Organic Law for the Creation of *Gacaca*

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<sup>11</sup> Uvin, Peter, and Charles Mironko. "Western and Local Approaches to Justice in Rwanda." *Global Governance* 9 (2003): 219-31. Print.

Jurisdiction. Although there are notable differences between the traditional *Gacaca* and the modified version, similarities also exist. For instance, the judges, known as *inyangamugayo* (meaning people of integrity) are traditionally community elders who have been elected based on their personal integrity and moral reputation.<sup>12</sup> Moreover, the modified *Gacaca* committed to the traditional idea of community involvement in which public hearings and community participation foster reconciliation. Finally, *Gacaca* is similar to its traditional counterpart due to its focus on restorative justice by which punishment is not the sole objective.

The Organic Law provided for the creation of around 10,000 *Gacaca* courts, including one in every cell, sector, district, and province in the country.<sup>13</sup> Each *Gacaca* court is comprised of three functioning parts: a general assembly, a seat, and a coordinating committee. First, the general assembly consists of the entire population in the cell, sector, district or province level. Second, the seat includes nine elected judges, with seven sitting judges and two substitutes. And finally, the coordinating committee includes five of the nineteen elected judges who manage the administrative duties of the court. The *Gacaca* process begins when the seat creates a comprehensive list of every criminal act that falls under its subject and local jurisdiction. Then, each case is debated given information from general assembly testimonies and case file information. Based on the outcome of these debates, the seat issues a verdict, which can be appealed in a higher-level *Gacaca* court.

Each *Gacaca* level has different scopes of jurisdiction. For instance, at the sector and appeal level, *Gacaca* has jurisdiction in some category one and category two cases. There are currently 1,545 *Gacaca* courts of appeal at the sector level.<sup>14</sup> The majority of category one cases

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<sup>12</sup> Uvin and Mironko.

<sup>13</sup> Ibid. Uvin and Mironko.

<sup>14</sup> Clark, Philip, Zachary D. Kaufman, and Phil Clark. "The Rules (and Politics) of Engagement: The *Gacaca* Courts and Post-Genocide Justice, Healing, and Reconciliation in Rwanda." *After Genocide*. New York: Columbia UP, 2009. Print.

fall under the jurisdiction of Rwandan domestic courts and the ICTR. Cell level *Gacaca* courts have primary jurisdiction in category three cases. Currently, there are 9,013 *Gacaca* courts at the cell level.<sup>15</sup> Finally, all *Gacaca* appeal courts have jurisdiction to appeal cases from lower level courts.<sup>16</sup> Within a discussion of criminal jurisdiction, it is also important to consider its punitive jurisdiction. For instance, the maximum punishment that *Gacaca* can sentence is 25 to 30 years' imprisonment.<sup>17</sup> If the accused perpetrator confesses before the trial, then the sentence is reduced to seven to twelve years' imprisonment. For those who confess before the trial begins, there is an option to reduce the sentence to half prison term and half community service.

The *Gacaca* courts have five main objectives as established by the Rwandan government.<sup>18</sup> The first goal is to reveal the truth about genocidal activities in 1994 through the collection of victim, witness, and perpetrator testimony. Next, the *Gacaca* courts aim to expedite the trial process by transferring genocide cases from the thirteen specialized Rwandan domestic courts to the 10,000 *Gacaca* courts. The third goal is to eradicate a culture of impunity in Rwanda by conducting public trials of genocide perpetrators so that such crimes do not go unpunished. Unlike most Western classical justice systems, *Gacaca* also strives to reconcile and strengthen unity among Rwandans. Finally, *Gacaca* aims to demonstrate that Rwanda is capable of solving its own problems. Overall, *Gacaca*'s principle goals are to reduce the backlog of cases in the Rwandan domestic court system and to also involve entire communities in the reconciliation and justice process.<sup>19</sup> According to transitional justice expert Phil Clark, "The primary aim of *Gacaca* was not punishment alone but also reconciliation, seeking to restore a sense of social cohesion by facilitating a face to face resolution between victims and

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<sup>15</sup> "Gacaca Courts Process: Implementation and Achievements." Kigali, Rwanda. 27 October 2010. Class presentation.

<sup>16</sup> Ibid. Clark and Kaufman.

<sup>17</sup> Clark and Kaufman.

<sup>18</sup> Ibid. Clark and Kaufman.

<sup>19</sup> Clark and Kaufman.



perpetrators.”<sup>20</sup> The success and failure of the *Gacaca* court system ought to be measured against these established goals, as opposed to Western legal goals.

Many critiques of *Gacaca* frame their arguments around arbitrarily chosen goals that are not centered on these established mission statements. Instead, observers have criticized *Gacaca* from the assumption that it aims to embody formal, deterrent, and retributive methods of justice as found in Western classical justice systems. According to a 2002 Amnesty International report, for instance, “*Gacaca* trials need to conform to international standards of fairness so that the government’s efforts to end impunity...are effective.”<sup>21</sup> Moreover, Human Rights Watch published a 2002 report highly critical of the *Gacaca* merits noting the failure to comply with international legal standards and instead rely heavily on a ‘therapeutic’ and reconciliatory paradigm of justice.<sup>22</sup> Although these critiques merit consideration in the debate of *Gacaca*’s role in rebuilding Rwanda, they fail to capture the true driving purposes behind *Gacaca*. As opposed to acknowledging *Gacaca* as a force of restorative justice in which perpetrators can publicly confess, ask for forgiveness, and reenter communities, critics choose to center their arguments on the assumption that *Gacaca* ought to comply with international standards of justice.<sup>23</sup>

Many points of contention and controversy center on the latter assumption that *Gacaca* ought to adhere to international legal standards. For instance, one popular critique of the *Gacaca* courts is that the elected judges, *inyangamugayo*, are not impartial judges.<sup>24</sup> During a group discussion with exiled Rwandans in Ugandan refugee camps, one Rwandan refugee cited this very argument, asking how justice can be fairly allocated if perpetrator guilt is presumed and the judges have been at times victims themselves. Although the Organic Law states that these judges

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<sup>20</sup> Ibid. Clark and Kaufman.

<sup>21</sup> Clark and Kaufman.

<sup>22</sup> Ibid. Clark and Kaufman.

<sup>23</sup> Clark and Kaufman.

<sup>24</sup> Ibid. Uvin and Mironko.

ought to be of high moral character and reputation within a given community, a discussion with Claude, a *Gacaca* evaluator revealed that these terms are not sufficiently defined.<sup>25</sup> When asked what specific characteristics constitute integrity and morality, Claude argued that these terms were up to interpretation to the community population responsible for electing judges.<sup>26</sup> Because the impartiality of popularly elected judges are in question, then it logically follows that the verdicts and sentences they issue are equally suspect. In a separate interview with Claude, he argued that appeals courts are able to effectively counter possible bias in *Gacaca* trials.<sup>27</sup> But because the appeals courts also consist of popularly elected judges who are not technically legal professionals, the judgments may once again become subject to the same criticism.

Furthermore, another criticism of the *Gacaca* court system is that each trial could possibly regress to a method of mob justice in which victim communities overpower a possibly innocent defendant presumed to be guilty.<sup>28</sup> According to some international legal critics, the popular involvement of entire communities may result in the sacrifice of individual rights for the sake of majority objectives.<sup>29</sup> Moreover, the idea of a public forum does not always foster a sense of security or openness. For instance, in trials of rape or sexual violence, victims may not testify against perpetrators for fear of reprisal violence. In addition, speaking publicly about such crimes is not generally practiced in Rwandan society. For these reasons, crimes of a sexual nature are generally tried within the Rwandan domestic court system. But that is not to say that a similar argument could be made for surviving family members of other crimes. For instance, witnesses to a certain crime may fear similar retaliation by accused perpetrators. Both *Gacaca* courts and the ICTR have failed to adequately address the matter of sufficient witness protection.

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<sup>25</sup> Claude. Personal interview. 10 Nov. 2010.

<sup>26</sup> Ibid. Claude.

<sup>27</sup> Claude.

<sup>28</sup> Ibid. Clark and Kaufman.

<sup>29</sup> Clark and Kaufman.

On the other hand, legal scholars have identified that the real problem within the *Gacaca* system is the lack of community participation.<sup>30</sup> In a system that is based on popular involvement for popular legitimacy, *Gacaca* should require not discourage community involvement. As Clark argued, “the main challenge currently facing *Gacaca* is not too much engagement (in the form of mob justice)...but rather too little engagement in the daily operation of hearings.”<sup>31</sup> In some rural areas, trials have been postponed or altogether cancelled due to a lack of community participation and attendance.<sup>32</sup>

Lastly, many argue that *Gacaca* fails to adequately serve justice due to the lenient punishments, where sentences cannot exceed 30 years’ imprisonment, and can be reduced to half with pre-trial confession and community service. However, punishment is not the sole focus of *Gacaca* courts. Instead, it aims to reconcile perpetrators with victims and their families through public discourse centered on truth telling, understanding, and reintegration. For instance, Clark argues, “Punishing the guilty may contribute partially to fulfilling some of the populations’ needs, but overall it is, on its own, an insufficient response.”<sup>33</sup>

Despite this deluge of criticisms, *Gacaca* has many notable merits, which lie in opposition to a number of these complaints. For instance, *Gacaca* courts are centered on popular participation to foster a community dialogue for greater efforts of reconciliation and justice. An interesting outcome of this spirit of community involvement has been the creation of a public forum for women’s empowerment. In traditional *Gacaca*, women were forbidden from serving

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<sup>30</sup> Ibid. Clark and Kaufman.

<sup>31</sup> Clark and Kaufman.

<sup>32</sup> Ibid. Clark and Kaufman.

<sup>33</sup> Clark and Kaufman.

as judges or providing testimonies. But in today's *Gacaca*, women have found a strong voice in their communities by offering testimony and issuing verdicts.<sup>34</sup>

Moreover, although a punitive focus may comply with international legal standards, they do not sufficiently address the greater issues at hand of rebuilding a fractured society and mending broken relationships. Clark argues, "The ethos of *Gacaca* holds that there can be no reconciliation without genuine engagement between parties previously in conflict."<sup>35</sup> In response to the challenges and criticisms *Gacaca* faces, Claude cited that their primary focus was to complete "good work."<sup>36</sup> He said, "For me I am happy we have really done very good work...we are not taking any side. Be it on the side of the victims or the side of the defendants...we are supposed to be impartial and we think this is when we can show what is supposed to be seen."<sup>37</sup> In Claude's view, it is clear that "good work" consists of impartiality, an issue that appears to be in contention through different interpretations.<sup>38</sup>

But, perhaps the most significant success of the *Gacaca* courts has been its ability to dramatically reduce the case backlog in the formal Rwandan judiciary. According to Peter Uvin of the Fletcher School at Tufts University and Charles Mironko, of the Watson Institute for International Studies at Brown University, "the strongest element in favor of *Gacaca* is the lack of an alternative. Neither the ICTR nor the formal justice system seems capable of providing the basis for justice or reconciliation in Rwanda."<sup>39</sup> Despite initial opposition, the international community soon came to the same conclusion that "if done well, *Gacaca* could produce results superior to the formal justice system."<sup>40</sup>

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<sup>34</sup> Ibid. Clark and Kaufman.

<sup>35</sup> Clark and Kaufman

<sup>36</sup> Ibid. Claude.

<sup>37</sup> Claude.

<sup>38</sup> Ibid. Claude.

<sup>39</sup> Ibid. Uvin and Mironko.

<sup>40</sup> Uvin and Mironko

It is evident that major points of contention within these academic debates center on aspects of the trial process, final judgment, and punishments. In *Gacaca* courts, Western critics cite judge partiality, lack of counsel, potential mob justice, and lenient punishments as evidence of inadequate justice. Implied within these arguments are specific judicial values, which reappear in the project objectives and indicators of international development partners and the Rwandan government. For instance, indicators of both development partners and government institutions place high value on the legal competence of judges, measured by the amount and quality of training. Accordingly, the Millennium Challenge Corporation (MCC) through the United States Agency for International Development (USAID) funds a number of projects on training Rwandan judges and prosecutors. The role of these judicial values in the interaction between development partners and government institutions will be discussed in greater detail in the Analysis and Findings section.

Overall, the *Gacaca* courts have shown that Rwanda is capable of solving its own problems through an innovative new system of justice. In this hybrid model that draws from elements of a war crime tribunal, truth commission and traditional system, *Gacaca* has expanded the objective focus from justice to reconciliation. According to Claude, “All of these objectives have been attained to a certain degree.”<sup>41</sup> Once the remaining cases are completed, *Gacaca* will transfer any remaining unheard cases back to the Rwandan domestic courts. If one judges *Gacaca*’s success from a Western-specific standpoint, then *Gacaca* fails to meet acceptable legal standards of impartiality and proper punishment. But, if one judges its success based on its own goals, then *Gacaca* has undoubtedly played a major role in rebuilding Rwandan society by mending broken relationships and actively involving communities in the process.

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<sup>41</sup> Ibid. Claude.

### *The International Criminal Tribunal for Rwanda*

Established on November 8, 1994 through United Nations (UN) Security Council Resolution 955, the ICTR has played a significant role in the development of international law.<sup>42</sup> The tribunal was established to address the genocide and other crimes against humanity in Rwanda and surrounding provinces between January 1, 1994 and December 31, 1994.<sup>43</sup> This limiting jurisdiction became a source of tension among Rwandans and outside observers. The ICTR comprises four chambers, three of which hear trials and another hears appeals.<sup>44</sup> There are sixteen total judges in the four chambers, and an additional nine *ad litem* judges.<sup>45</sup> The ICTR also consists of the Office of the Prosecutor, which is divided into the Investigation Section and the Prosecution Section.<sup>46</sup> The former is responsible for evidence and information gathering, whereas the latter section is responsible for prosecuting the cases that appear before the Tribunal.<sup>47</sup>

Originally, the Rwandan government was in full support of an international tribunal citing four major reasons.<sup>48</sup> The first of which included the belief in upholding universal human rights by punishing genocide.<sup>49</sup> Secondly, the Rwandan government thought it would be better able to avoid vengeful justice with relatively impartial international assistance.<sup>50</sup> Next, the

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<sup>42</sup> Clark, Philip, Hassan Bubacar Jallow, and Zachary D. Kaufman. "The Contributions of the United Nations International Criminal Tribunal for Rwanda to the Development of International Criminal Law." *After Genocide*. New York: Columbia UP, 2009. 261-79. Print.

<sup>43</sup> *Ibid.* Clark, Jallow, and Kaufman.

<sup>44</sup> *Ibid.* Peskin.

<sup>45</sup> Peskin.

<sup>46</sup> *Ibid.* Peskin.

<sup>47</sup> Peskin.

<sup>48</sup> Akhavan, Payam. "The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment." *The American Society of International Law 90* (1996): 503-510. Print.

<sup>49</sup> *Ibid.* Akhavan.

<sup>50</sup> Akhavan.

Rwandan government believed a tribunal would end a culture of impunity.<sup>51</sup> Finally, an international tribunal would assist Rwanda in capturing exiled perpetrators.<sup>52</sup>

Despite this initial support, Rwanda was the only UN member state to vote against the establishment of the ICTR. It voted against the resolution for seven specific reasons, which to some extent remain relevant in popular opinions of the ICTR today. First, the Rwandan government believed that the temporal jurisdiction of the tribunal from January 1, 1994 to December 31, 1994 was too limiting in that it failed to consider the planning stages of genocide.<sup>53</sup> Moreover, it argued that the jurisdiction ignored the root causes of the genocide.<sup>54</sup> A Rwandan representative, for instance, argued that a tribunal “which refuses to consider the causes of the genocide in Rwanda and its planning...cannot be of any use...because it will not contribute to eradicating the culture of impunity or creating a climate conducive to national reconciliation.”<sup>55</sup> Furthermore, the Rwandan government argued that the composition and structure of the proposed tribunal was inadequate and ill prepared to manage such a large caseload.<sup>56</sup> It argued to increase the number of Trial Chamber judges and provide its own Appeals Chamber and prosecutor.<sup>57</sup>

The third reason of dissent was concern over the differing levels of indictments and a skewed focus on killers versus planners. However, in response the first prosecutor Richard Goldstone stated his primary objective was to “bring to justice those most responsible both at a national and local level.”<sup>58</sup> Next, the Rwandan government opposed the involvement of certain

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<sup>51</sup> Ibid. Akhavan.

<sup>52</sup> Akhavan.

<sup>53</sup> Ibid. Akhavan.

<sup>54</sup> Akhavan.

<sup>55</sup> Ibid. Akhavan.

<sup>56</sup> Akhavan.

<sup>57</sup> Ibid. Akhavan.

<sup>58</sup> Akhavan.

countries in tribunal matters given their active role in the Rwandan civil war.<sup>59</sup> There was also disagreement over the levels of punishment whereby the death penalty could not be issued through the tribunal and concerns over imprisoning convicted Rwandans outside of Rwanda.<sup>60</sup> Finally, the Rwandan government opposed not accommodating the tribunal on Rwandan soil, but instead in Arusha, Tanzania.<sup>61</sup>

During an interview with Claude, many of these concerns were highlighted as areas of disagreement with the ICTR. For instance, he cited the numerous difficulties that arise from not basing a court in the location of the crime. Therefore, according to Claude, the fact that the ICTR is outside Rwanda remains to be a contentious element that works in opposition to “reconciliation objectives.”<sup>62</sup> As an evaluator of the *Gacaca* system, he said,

“Because the [*Gacaca*] courts are deeply rooted in the grassroots...that is the main point that makes it different from ICTR. The judges in Arusha have not even met judges here. There is more evidence when on site. All these are important to get a fair trial and get people reconciled.”<sup>63</sup>

Another area of disagreement he voiced, that is shared by many other Rwandans and international observers, is the excessive amount of time and money spent on individual ICTR cases. For instance, Claude argued, “At least for us in *Gacaca* courts, we have been cost effective.”<sup>64</sup> Unlike *Gacaca*, however, the ICTR has spent millions of dollars in prosecuting less than one hundred perpetrators.<sup>65</sup> Vincent, an individual working in the Rwandan Supreme Court, asked, “How can you weigh the costs that have been spent on those cases?”<sup>66</sup> Uvin and Mironko, for instance, argue, “the tribunal has produced

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<sup>59</sup> Ibid. Akhavan.

<sup>60</sup> Akhavan.

<sup>61</sup> Ibid. Akhavan.

<sup>62</sup> Ibid. Claude.

<sup>63</sup> Claude.

<sup>64</sup> Ibid. Claude.

<sup>65</sup> Ibid. Peskin.

<sup>66</sup> Vincent. Personal Interview. 4 November 2010.



remarkably little: by early 2002, with 800 employees and after having spent approximately U.S. \$540 million, it had handed down eight convictions and one acquittal, with seven trials for seventeen accused in progress, two appeals pending, and fifty-five suspects in the tribunal's custody."<sup>67</sup>

The ICTR is clearly unable to achieve all the transitional justice needs of Rwanda. Although its statute states that the tribunal is meant to promote peace and reconciliation through the trial process, it is not an adequate or sufficient method of reconciliation in Rwanda. This is largely due to its remoteness from the Rwandan population, overwhelmingly negative local perceptions of the tribunal, and its inherent inability to foster meaningful dialogue through an adversarial trial process. According to former ICTR prosecutor Hassan Bubacar Jallow, the tribunal is by no means a "panacea for post-genocide Rwanda."<sup>68</sup>

Overall, critics of the ICTR share a general mistrust of international involvement in post-genocide Rwanda when that same community ignored the genocide as it occurred. According to one scholarly interpretation, the establishment of the ICTR is therefore indicative of a projection of collective international guilt, in which the international community seeks consolation through active post-conflict involvement.<sup>69</sup> According to Uvin and Mironko, the ICTR serves as, "reaffirmation of the international community's own morality."<sup>70</sup> Instead of having a genuine focus on reconciliation and justice, the ICTR

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<sup>67</sup> Ibid. Uvin and Mironko.

<sup>68</sup> Ibid. Clark, Jallow, and Kaufman.

<sup>69</sup> Ibid. Uvin and Mironko.

<sup>70</sup> Uvin and Mironko.

“is about symbolic politics: we, the international community, *do care* about Rwanda, *are* outraged by it, and solemnly pledge to show our disapproval.”<sup>71</sup>

In the face of overwhelming criticism, ICTR officials have projected extremely sanguine interpretations of the institution’s success. According to Jallow, the ICTR played a major role in promoting international cooperation, which in turn bolstered the success of the ICTR.<sup>72</sup> He argues that the establishment of the tribunal sent a message that “the international community was not only aware of the violence committed in Rwanda and neighboring states, but willing to take action and hold those responsible to account.”<sup>73</sup> Moreover, he argues that the trials act as a form of reconciliation through the truth-telling process inherent in formal trials. In Resolution 955, the stated objectives of the tribunal include “[contributing] to the process of national reconciliation and to the restoration and maintenance of peace.”<sup>74</sup> Furthermore, Jallow praises the ICTR as a successful mechanism of retributive justice that serves as a deterrent.<sup>75</sup> While he acknowledges that retributive justice is not enough, he admits that alternatives are not within ICTR jurisdiction.<sup>76</sup>

This largely optimistic view of the ICTR is undoubtedly due to his role as the ICTR prosecutor. But it nevertheless lends valuable insight into some of the perceived achievements and advantages of the tribunal. For instance, he praises the ICTR for having established a clear definition of genocide, recognizing print and media sources as

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<sup>71</sup> Ibid. Uvin and Mironko.

<sup>72</sup> Ibid. Clark and Kaufman.

<sup>73</sup> Clark and Kaufman.

<sup>74</sup> Ibid. Uvin and Mironko.

<sup>75</sup> Ibid. Clark and Kaufman.

<sup>76</sup> Clark and Kaufman.

culpable in inciting genocide, clarifying details of the Geneva Convention and finally debunking the myth of sovereign immunity from crimes against humanity.<sup>77</sup>

Some argue that the establishment of the ICTR has been a major milestone in the advancement of international law in terms of “replacing a culture of impunity with one of accountability.”<sup>78</sup> By convicting key masterminds, such as Georges Rutaganda and Laurent Semanza, the ICTR “has once again blazed a trail in international criminal law,” according to Jallow.<sup>79</sup> However, these achievements may be merely ostensible, considering the overwhelming inefficiencies, drawbacks, and controversies. Unlike certain criticisms of *Gacaca*, the aforementioned assessments of the ICTR are legitimate since they are founded in international legal standards. The fact that the ICTR fails to adhere to these legal standards through sufficient witness protection, cost efficiency, and expedient proceedings, the largely negative evaluation of ICTR success is a fair assessment. Established as a formal system of deterrent justice, the ICTR fails to present a serious threat to potential violators of international criminal law. As Uvin and Mironko argue, “it will take a lot more than nine persons convicted in eight years to deter future bloodshed in the region.”<sup>80</sup>

Once again, key judicial values emerge from these arguments for and against the ICTR. First, it is apparent from the stance of the Rwandan government, that physical proximity and general civilian awareness of court proceedings are important to establishing legitimacy. This judicial value is evident in Rwandan justice sector reform, where one of the major targets is providing universal access to justice. Moreover, cost

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<sup>77</sup> Ibid. Clark and Kaufman.

<sup>78</sup> Clark and Kaufman.

<sup>79</sup> Ibid. Clark, Jallow, and Kaufman.

<sup>80</sup> Ibid. Uvin and Mironko.

efficiency is another important value guiding one of the major critiques of the ICTR. The ability of *Gacaca* courts and Rwandan domestic courts to process cases significantly faster than the ICTR, is perhaps reflective of budget restraints on a developing nation. Lastly, criticisms of bureaucratic infighting and inefficiency demonstrate the importance of speedy trials, which are also reflected in justice sector reform indicators. The judicial values stemming from arguments surrounding the ICTR yield valuable insight into key themes guiding the monitoring and evaluation of progress in justice sector reform.

### *Justice Sector Reform*

Western judicial ideals and Rwandan judicial ideals intersect in the space of justice sector reform. Through the involvement of international development partners and Rwandan governmental institutions, these values sometimes overlap and sometimes diverge. Before delving into a thorough analysis of this process, this section aims to provide a factual backdrop to the forthcoming arguments. The Rwandan justice sector, formally known as the Justice, Reconciliation, Law and Order (JRLO) sector, comprises fourteen government institutions and other partner organizations. This includes the Ministry of Justice, Ministry of Internal Affairs, the judiciary, Institute of Legal Practice and Development, Military Courts, Military Prosecution Service, National Commission for Human Rights, National Police Service, National Prison Services, National Public Prosecution Authority, National Service of *Gacaca* Courts, National Unity and Reconciliation Commission, Ombudsman, and TIG.<sup>81</sup>

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<sup>81</sup> Republic of Rwanda. Justice, Reconciliation, Law and Order Sector. *JRLO Sector Strategy 2009 to 2012*. Kigali. *JRLO Sector*. 25 November 2008. Web. 15 Nov. 2010. <[www.jrlos.gov.rw](http://www.jrlos.gov.rw)>.

The JRLO Sector Strategy of 2009 to 2012 is a key component of the Rwandan government's Economic Development and Poverty Reduction Strategy (EDPRS) Governance Flagship Program. The goal of the EDPRS is to promote "sustainable economic growth and social development," with the stated purpose of "[strengthening] the rule of law to promote good governance and a culture of peace."<sup>82</sup> The JRLO Sector Strategy fits within these government objectives.

In the years since 1994, the Rwandan justice sector has drastically improved. Immediately after the genocide, many believed that without a functioning judiciary, adequate justice could never be achieved. For instance, Ian Martin, former secretary-general of Amnesty International and the chief of the UN Human Rights Field Operation in Rwanda spoke of "the impossibility of justice" in post-genocide Rwanda.<sup>83</sup> According to Uvin and Mironko, "what was being attempted was not the reconstruction, but rather the first-time construction of a fair, efficient, and human rights-based justice system that combats impunity."<sup>84</sup>

Despite these pessimistic views, the justice sector nevertheless developed as a result of active international involvement and strong government leadership. According to the JRLO Sector Strategy, for instance, "Security and peace have been restored; mechanisms have been put in place to build reconciliation and national unity; the rule of law has been strengthened; and huge strides have been made in modernizing the country's justice system."<sup>85</sup> The results of a recent EDPRS survey indicated the favorable view many Rwandans held of the justice sector.<sup>86</sup> For example, 72 percent of respondents considered that the justice situation was acceptable in

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<sup>82</sup> Republic of Rwanda. Ministry of Finance and Economic Planning. *Economic Development and Poverty Reduction Strategy 2008--2010*. By James Musoni. Print.

<sup>83</sup> Ibid. Uvin and Mironko.

<sup>84</sup> Uvin and Mironko.

<sup>85</sup> Ibid. *JRLO Sector Strategy 2009 to 2012*.

<sup>86</sup> Ibid. *Economic Development and Poverty Reduction Strategy 2008--2010*.

their cell.<sup>87</sup> Similarly, 80 percent of respondents rated the performance of courts as good or very good.<sup>88</sup> Lastly, 67 percent of business owners believed that the court system is “fair/impartial and uncorrupted.”<sup>89</sup> These achievements are especially significant when considering recent conditions. In 1994, Rwanda only had 32 judges and 18 prosecutors with law degrees.<sup>90</sup> At the recent Policy Dialogue on Legislative Reform, the Minister of Justice, Tharcisse Karugarama, said, “We have made remarkable progress, but we still have much farther to go.”<sup>91</sup>

Currently, the JRLO faces a number of challenges in promoting justice, peace and reconciliation at community levels. According to the JRLO Sector Strategy, the process of reconciliation continues in the face of recurring genocide ideology. Moreover, the justice process remains unaffordable and inaccessible to the average Rwandan. According to a study conducted by the Legal Aid Forum, the average cost of judgment for litigants is approximately six times the average monthly income, which inevitably results in significant debt and further impoverishment.<sup>92</sup> Overall, the issue of equitable and affordable access to justice remains a major issue for the average Rwandan.

To target these issues, the JRLO established a Sector Strategy from 2009 to 2012 that includes four main expected outputs, twelve main targets, and twenty indicators.<sup>93</sup> The first expected output is achieving universal access to quality justice. This output incorporates five main targets including access to legal advice and representation, satisfaction with Abunzi justice, eliminating case backlog, reducing case processing time, and decreasing costs for enforcing commercial contracts. Almost half of the total indicators fall under this first output, thereby

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<sup>87</sup> *Economic Development and Poverty Reduction Strategy 2008--2010.*

<sup>88</sup> *Ibid. Economic Development and Poverty Reduction Strategy 2008--2010.*

<sup>89</sup> *Economic Development and Poverty Reduction Strategy 2008--2010.*

<sup>90</sup> “Policy Dialogue on Legislative Reform Brings Together Government and Civil Society Actors.” *A Just Rwanda 2* (June 2010): 1. Print.

<sup>91</sup> *Ibid.* “Policy Dialogue on Legislative Reform Brings Together Government and Civil Society Actors.”

<sup>92</sup> Abijuru, Emmanuel, Amedee Kamota, and Teddy Kaberuka. *Monitoring of the EDPRS Indicators in the Justice Sector.* Legal Aid Forum, Aug. 2009. Web. 15 Nov. 2010.

<sup>93</sup> *Ibid. JRLO Sector Strategy 2009 to 2012.*

demonstrating the diversity of assessment and the level of importance of achieving universal access to justice. The second output is eradicating genocide ideology and reinforcing reconciliation mechanisms. Falling under this output are targets to complete TIG work camps, achieve high levels of trust and reconciliation among Rwandans, and finalize *Gacaca* genocide cases.

The third output is promoting the rule of law, accountability and human rights. This includes achieving high levels of public confidence in JRLO institutions and the rule of law, ratifying all international human rights instruments, and operating prisons within their planned capacity. The final output is maintaining and enhancing safety, law, and order, which includes the sole target of reducing the reported and perceived crime levels. Each of the outputs includes at least one measure of public perception of government progress. Another important trend within the indicators is the high value placed on reconciliation as another goal along the route to justice. Finally, the strategy acknowledges the importance of upholding international human rights instruments, revealing the accepted influence of international actors in domestic policy.

The JRLO Sector Strategy places a strong emphasis on collaboration within the sector through an objective known as the Sector Wide Approach (SWAp).<sup>94</sup> Therefore, the JRLO provides a strategic framework for all fourteen institutions within the justice sector. However, this paper specifically focuses on one of those institutions, the judiciary. The judiciary includes the Supreme Court, the High Court of the Republic, the Commercial High Court, Higher Instance Courts, Commercial Courts, and Lower Instance Courts.<sup>95</sup> Encompassed within the sector wide JRLO, these courts share a separate but overlapping strategy that also includes four

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<sup>94</sup> Republic of Rwanda. Justice, Reconciliation, Law and Order Sector. *Roadmap for a Sector Wide Approach (SWAp)*. Kigali. JRLO Sector. 25 Nov. 2008. Web. 15 Nov. 2010. <[www.jrlos.gov.rw](http://www.jrlos.gov.rw)>.

<sup>95</sup> Republic of Rwanda. *Strategic Plan of the Judiciary 2008-2012*. Kigali. Supreme Court. July 2008. Web. 15 Nov. 2010. <[www.minijust.gov.rw](http://www.minijust.gov.rw)>.

key objectives. The first strategic objective of the judiciary is to ensure that justice is fully accessible to the people of Rwanda. Secondly, the judiciary aims to ensure that justice is administered fairly, effectively, and efficiently. The third objective is to strengthen the independence of the judiciary to boost confidence in the adjudication process. Lastly, the fourth objective is to engage in effective collaboration with justice partners in accordance with SWAp.

Overall, there are twelve international development partners involved with the justice sector.<sup>96</sup> This research will focus on USAID, EC, and a European NGO. First, USAID through the MCC Threshold Program has five projects working toward political rights, civil liberties, and voice and accountability.<sup>97</sup> These indicators fall under the MCC framework for ruling justly that includes judiciary capacity building and legislative reform. Next, the EC operates under a sector wide budget support approach, in which funding is allocated to all fourteen government institutions.<sup>98</sup> It aims to strengthen the law enforcement system and reinforce the legal system. For instance, its targets include a reduction in case backlog by 50% from the 2006 baseline, circulation of information on existing laws, and continued training of legal authorities.<sup>99</sup> Finally, the European NGO carries out projects in reducing case backlog in the judiciary, training Abunzi, and measuring baselines through an Abunzi monitoring project.<sup>100</sup>

These development partners are critical to the progress of the Rwandan justice sector. This paper seeks to answer whether the same judicial values that guided debates between the Rwandan government and international actors over *Gacaca* and the ICTR similarly guide interactions between Rwandan government institutions and the international development partners.

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<sup>96</sup> Ibid. *JRLO Sector Strategy 2009 to 2012*.

<sup>97</sup> Mark. Personal Interview. 1 December 2010.

<sup>98</sup> Alfred. Personal Interview. 1 December 2010.

<sup>99</sup> Republic of Rwanda and the European Commission. Rwandan Ministry of State and Commission in charge of Development and Humanitarian Aid. *Country Strategy Paper and National Indicative Programme for the Period 2008—2013*. 9 Dec. 2007. Web. 15 Nov. 2010.

<sup>100</sup> Philip. Personal Interview. 3 December 2010.



## Analysis and Findings

Justice sector reform is indeed a space of contention. But, it is not the result of differing judicial values. Instead, a variety of factors come into play involving all the development partners, civil society, and government institutions. For instance, the political whims of the Rwandan government and the donor countries' governments impose specific constraints that may work in counter to certain objectives of the other parties. The institutions involved in justice sector reform also face a number of technical challenges including limited staff and resources as well as gathering and receiving data in a timely fashion. Overall, each institution shares the same guiding judicial values. Individuals working for Rwandan government institutions reportedly value international legal standards in high regard. Véronique, an individual working for the Ministry of Finance, stated that there are certainly some elements "that should be at international respectable norms."<sup>101</sup> Likewise, individuals in development partner agencies claim to take Rwanda's unique circumstances into consideration when evaluating progress.<sup>102</sup> While the guiding judicial values may be the same, the order in which each actor values them varies significantly. As a result, the different prioritizations of judicial values within justice sector reform are a key source of tension. Unlike the debates between the Rwandan government and the international community over *Gacaca* and the ICTR, debates within justice sector reform center around different challenges.

Foreign critics of *Gacaca* and Rwandan critics of the ICTR had notably different visions of what justice should be in each system. Their visions, however, clashed with the ultimate objectives of each institution. For instance, the goals of *Gacaca* included not only justice, but also reconciliation, a major source of misunderstanding among its foreign critics. On the other

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<sup>101</sup> Véronique. Personal Interview. 2 December 2010.

<sup>102</sup> Ibid. Mark and Philip.

hand, the ICTR was an instrument of formal international justice that did not aim to reconcile Rwandans or compensate victims. Most Rwandan critics of the ICTR, however, evaluated the success of the tribunal on this basis. Therefore, if critics use evaluative baselines that are different from the key objectives of each institution, critics will inevitably form negative perceptions of that institution. In this case, the use of different evaluative baselines was the upshot of different judicial values. In the Rwandan justice sector, however, this is not the case. The Rwandan government and its international development partners share a willingness to reform the justice sector to internationally accepted standards.

In the article, “Western and Local Approaches to Justice,” Uvin and Mironko describe the unique relationship between donors and the Rwandan government in the justice sector.

“For donors, similarly, administrative success is often measured in outputs. Have the promised number of judges been trained? Have the laws been written in conformity with international standards? Have the computers been installed and personnel trained? To recipients, substantive outcomes matter, and these only begin where administrative outputs end. At best, the formal markers of success for donors are only the building blocks for the recipients. At worst, they are largely irrelevant, mattering only insofar as they create tangible benefits for those people who actually get the salaries, computers, and per diems”<sup>103</sup>

While many indicators used by development partners certainly include the numbers of computers installed or personnel trained, individuals working for development partner institutions expressed another concern. For example, Alfred and Philip both argued in favor of more qualitative indicators to gauge popular perceptions of their work.<sup>104</sup> In fact, Philip criticized the Rwandan government its exclusive reliance on quantitative data in its monitoring and evaluation

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<sup>103</sup> Ibid. Uvin and Mironko.

<sup>104</sup> Ibid. Alfred and Philip.

framework.<sup>105</sup> According to Rwandan government officials, the “building blocks” of trainings, workshops, and basic materials are certainly crucial components of sector capacity building. For instance, Veronique emphasized the importance of substantive training for legal professionals to eventually achieve greater judiciary independence. Unlike the rigid dichotomy that Uvin and Mironko present, the reality is much less defined with development partners and government officials working toward the same goals.

Tension within the justice sector, therefore, does not arise from separate judicial values. Instead, it arises from the different ranking order of judicial values in each institution. For instance, the Rwandan government claims that the independence of the judiciary is a key strategic objective.<sup>106</sup> However, according to critical development partners, the government is not working hard enough to achieve this goal.<sup>107</sup> On the surface, each actor claims to share the same visions of reform. The actions of each actor below the surface are another matter entirely.

### *Development Partners*

The development partners involved with the Rwandan judiciary include the UNDP, USAID, ICF, EC, the Netherlands, Belgium, and around thirty NGOs. Each organization has its own listed goals and priorities. USAID, for instance, has its own interpretation of the justice sector that includes the Parliament, although it is not included in the formal JRLO. Moreover, UNDP, USAID, and the ICF fund specific projects, whereas the EC, Belgium, and the Netherlands use a budget sector approach. This means that funds go to the entire justice sector and are then divided amongst the different government institutions. According to Alfred, an

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<sup>105</sup> Ibid. Philip.

<sup>106</sup> Republic of Rwanda. *Strategic Plan of the Judiciary 2008-2012*. Kigali. *Supreme Court*. July 2008. Web. 15 Nov. 2010. <[www.minijust.gov.rw](http://www.minijust.gov.rw)>

<sup>107</sup> Ibid. Philip.

individual representing the EC, this approach is “far more holistic,” in considering the multitude of different projects and institutions involved in the sector.<sup>108</sup> Despite its different strategies, the development partners have similar overlapping goals including training professionals, institutional capacity building, and increasing universal access to justice. Most development partner representatives argued that it is not their goal to influence government policies or drive a specific political agenda.<sup>109</sup> But rather, their goal is to help government institutions achieve the defined objectives.

According to Matthew, a representative of USAID, the Kigali team is limited by the constraints imposed by their headquarters in Washington D.C.<sup>110</sup> Matthew highlighted the limitations of using donor funds that have “strings attached to American taxpayers’ dollars.”<sup>111</sup> Therefore, outside criticism of the limited scope of USAID projects fail to consider the domestic restrictions imposed on project leaders. Moreover, several individuals working for different international development institutions claimed to have harmonized and aligned considerably with government objectives.<sup>112</sup> For instance, Philip, an individual working for an NGO involved in projects in the judiciary, stated that, “what we do happens to align almost a hundred percent with a number of the Ministry’s objectives.”<sup>113</sup> While development partners claim to have fully aligned themselves with government goals, individuals working for government institutions disagree.<sup>114</sup>

While some government officials hold negative views of certain development partners, individuals within these international organizations similarly hold negative views of other

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<sup>108</sup> Ibid. Alfred.

<sup>109</sup> Mark and Matthew. Personal Interviews. 1 December 2010 and 2 December 2010.

<sup>110</sup> Matthew. Personal Interview. 2 December 2010.

<sup>111</sup> Ibid. Matthew.

<sup>112</sup> Ibid. Alfred and Philip.

<sup>113</sup> Ibid. Philip.

<sup>114</sup> Jean-Paul and Véronique. Personal Interviews. 2 December 2010.

development partners. For instance, Philip was highly critical of USAID projects, in that they failed to align themselves in anyway with government initiatives.<sup>115</sup> The structure of USAID and MCC projects use the same three indicators worldwide and form projects through a contract with the host government.<sup>116</sup> However, in many cases, the projects are not specifically tailored to align with the governmental infrastructure or objectives. Moreover, other individuals were critical of their own institutions, arguing that development partners in general were not effectively advocating their own goals.<sup>117</sup> For instance, one NGO official argued, “If anything, the development partners are too uncritical and they’re not pushing [the Rwandan government] hard enough.”<sup>118</sup>

With regard to foreign opinions of Rwandan government institutions, most research participants emphasized the government’s willingness to reform. However, a few individuals also highlighted that this willingness only existed provided that there were no political repercussions.<sup>119</sup> Mark, a USAID representative, argued that the Rwandan government was generally eager to reform its judiciary, but only to the extent that the reforms were aligned with its political agenda.<sup>120</sup> According to Mark, “[The government is] not going to risk the possibility of creating hate speech or doubt about the genocide, or both. And if that costs [them] these goals, that otherwise [they] were willing to achieve, so be it.”<sup>121</sup> On the whole, individuals working for development partners had positive opinions about the Rwandan government, asserting that government officials are “hard-working,” “goal oriented,” and “extremely driven.”<sup>122</sup>

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<sup>115</sup> Ibid. Philip.

<sup>116</sup> Millennium Challenge Corporation. *MCC and Africa: A Growing Partnership for Success*. Washington DC. 16 April 2010. Web. 15 Nov. 2010. <[www.mcc.gov](http://www.mcc.gov)>.

<sup>117</sup> Ibid. Philip.

<sup>118</sup> Philip.

<sup>119</sup> Ibid. Mark.

<sup>120</sup> Mark.

<sup>121</sup> Ibid. Mark.

<sup>122</sup> Ibid. Mark and Matthew.

Mark also argued that their relationship with some government institutions is “stellar,” but highlighted their strained relations with others.<sup>123</sup> Perceptions surrounding the Rwandan government largely portray it as a strong negotiator, able to “get exactly what it wants.”<sup>124</sup> In terms of establishing project objectives, monitoring and evaluation frameworks, and development strategy, the government is seen as a resolute body, certain of its own goals. According to Matthew of USAID, “The JRLO is a sector that knows what it wants.”<sup>125</sup> This certainty of its objectives is perhaps one underlying reason behind perceptions that the government is also uncooperative.

According to Mark, the government is extremely unhelpful once it comes to changing government policies to achieve better justice sector outcomes.<sup>126</sup> For instance, one of the key targets of the MCC Justice Strengthening Project is to train legal professionals in proper legal drafting that makes laws easier to understand. The guiding principle behind this objective is that clearly defined law allows for clearly applied law. However, Rwandan legal drafters hesitate to clearly define terms, such as “genocide ideology,” or “hate speech.”<sup>127</sup> Mark perceived this to be a sign of intransigence, in which the Rwandan government refuses to fully reform its systems once it strikes political chords.<sup>128</sup> He also perceived a certain resistance toward foreigners, who “simply don’t understand Rwandan problems.”<sup>129</sup> However, individuals working for other development partners did not perceive a general mistrust of foreigners to be the reason for the lack of cooperation.<sup>130</sup>

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<sup>123</sup> Mark.

<sup>124</sup> Ibid. Matthew.

<sup>125</sup> Matthew.

<sup>126</sup> Ibid. Mark.

<sup>127</sup> Mark.

<sup>128</sup> Ibid. Mark.

<sup>129</sup> Mark.

<sup>130</sup> Ibid. Alfred.

Instead, Philip claimed that the majority of middle-ranking government officials “didn’t know how the sector works.”<sup>131</sup> Moreover, others claimed that a culturally rooted “fear of being a decision maker,” prevents most government officials from taking decisive steps in reform projects.<sup>132</sup> While this is only one individual’s opinion, it was echoed in other sentiments highlighting the common government problem in referring political issues to higher-ranking officials. This sidestepping of responsibility in politically charged cases speaks to the limits of the Rwandan government in exercising reform in the justice sector. As Philip stated, “Who is the government of Rwanda? The government is closely linked with justice, it’s the President, it’s the Supreme Court, and different institutions that don’t necessarily have the same interests...”<sup>133</sup> Mark argued that the government of Rwanda should not have the ability to decide which reforms to undertake and which to forgo, since they are not providing the funding.<sup>134</sup> So, while the government might not explicitly state that it doesn’t support clearly defining genocide ideology, it will simply make the process more difficult thereby revealing its different priorities.

Individuals in development partner organizations revealed strong opinions surrounding the strategy and the indicators used to measure progress. For instance, Philip argued that the important issues of the justice sector are not present in the current JRLO Sector Strategy.<sup>135</sup> For instance, he argued that the current sector strategy did not include objectives measuring the independence of the judiciary or the treatment of prisoners.<sup>136</sup> While these are major concerns of development partners and NGOs with a human rights focus, they are not necessarily the primary objectives of the government. In fact, one government representative within the JRLO Secretariat

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<sup>131</sup> Ibid. Philip.

<sup>132</sup> Ibid. Mark.

<sup>133</sup> Ibid. Philip.

<sup>134</sup> Ibid. Mark.

<sup>135</sup> Ibid. Philip.

<sup>136</sup> Philip.

mentioned that development partners are coming up with new, politicized indicators that should not belong in the sector.<sup>137</sup>

However, according to Philip, government officials will not explicitly state that it is not in favor of such goals.<sup>138</sup> For instance, he stated, “The government will never say to you, that no we don’t want political rights. They will say to you that yes we are very much in favor of them, but they have different ideas about them and how to implement them.”<sup>139</sup> Some development partners clearly sense tension with the government in this area of establishing sector strategies. The objectives and indicators of the JRLO were established in consultation with all development partners and NGOs. Yet, individuals working for development partner organizations do not believe that their governments have pushed their own agenda and priorities hard enough.<sup>140</sup>

For instance, Philip argued that international NGOs were required to align completely with government objectives in order to set up an office in Rwanda.<sup>141</sup> Without complete harmonization, prospective NGOs would not be able to find a place for themselves. This pressure to perfectly align with government initiatives is perceived to be a negative consequence of donor alignment strategies set out by donor frameworks like the Paris Declaration of 2005, which prioritizes alignment and harmonization as two of the five guiding principles.<sup>142</sup> Despite its conventional backing, this perceived pressure is regarded as a hindrance to goals that may not appear in the final strategy. For this reason, the NGO’s focus on human rights conditions within the justice sector are largely ignored in the government’s eyes since they do not appear in the sector strategy.<sup>143</sup>

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<sup>137</sup> Ibid. Jean-Paul.

<sup>138</sup> Ibid. Philip.

<sup>139</sup> Philip.

<sup>140</sup> Ibid. Philip.

<sup>141</sup> Philip.

<sup>142</sup> Ibid. *Country Strategy Paper and National Indicative Programme for the Period 2008—2013*.

<sup>143</sup> Ibid. Jean-Paul.



Regarding the indicators used within JRLO assessments, Matthew of USAID believed that its monitoring and evaluation framework is purposely designed to strictly present the JRLO in a positive light.<sup>144</sup> Because the government received largely negative assessments by the standards of international indicators such as Freedom House or the World Bank, the JRLO purportedly established its own evaluation framework through the sector strategy to combat these negative reviews.<sup>145</sup> On the other hand, Philip stated that such a view failed to consider the minimal experience and education of most Rwandan government officials forming the strategy.<sup>146</sup> He stated, “So, to think that they...somehow purposely created this system to only make it give nice impressions about Rwanda, seems to me that you’re giving them a lot of credit.”<sup>147</sup>

Another commonly held view among the interviewed development partner representatives was that the JRLO indicators were heavily quantitative. According to a highly critical official, “Quantitative is too big a word to use for counting the number of prisons built. You can do that on one hand.”<sup>148</sup> The JRLO indicators are heavily dependent upon statistical quantifications of progress within the sector.<sup>149</sup> For instance, fourteen of the twenty indicators rely upon numerical assessments of progress, including number of ratified human rights instruments, the number of prisoners awaiting trial, and the number of prisoners as a percentage of planned jail capacity.<sup>150</sup> Alfred of the EC stated, “It’s very difficult to assess with this kind of

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<sup>144</sup> Ibid. Matthew.

<sup>145</sup> Matthew.

<sup>146</sup> Ibid. Philip.

<sup>147</sup> Philip.

<sup>148</sup> Ibid. Philip.

<sup>149</sup> Ibid. *JRLO Sector Strategy 2009 to 2012*.

<sup>150</sup> *JRLO Sector Strategy 2009 to 2012*.

sector. With infrastructure, there's the number of kilometers of roads. It's easy. But with justice, [the indicators] are something that still need to be improved."<sup>151</sup>

While the quantitative evaluations may be necessary indicators of progress, they should also be paired equally with perception-based studies. Currently, the Ministry of Local Government, Community Development, and Social Affairs (MINALOC) published the only perception-based study available on popular opinions of the Rwandan judiciary.<sup>152</sup> Moreover, there is now a JRLO Secretariat initiative to release a perception-based study of JRLO government institutions by the end of next year.<sup>153</sup> Although this is an important initiative, some individuals believed this should have been completed before establishing indicators in order to create a proper baseline.<sup>154</sup>

Another criticism of the sector is the difficulty in gathering and transmitting data in a timely fashion. It is difficult, according to a number of development partner representatives, to promptly receive information from government institutions. For instance, Mark claimed that this was the result of a certain cultural reticence to share information easily.<sup>155</sup> While this is perhaps founded in nothing more than personal observation, this was a commonly cited reason for the restricted flow of information within the justice sector. Another individual, for instance, claimed, "communication is not really a trait that is Rwandese."<sup>156</sup> These comments of course, while objectively unfounded, are nevertheless centered on a perception that it is difficult to extract information from the Rwandan government. Alfred, for example, was quick to point out that this

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<sup>151</sup> Ibid. Alfred.

<sup>152</sup> Ibid. Jean-Paul.

<sup>153</sup> Jean-Paul.

<sup>154</sup> Ibid. Philip and Mark.

<sup>155</sup> Ibid. Mark.

<sup>156</sup> Ibid. Jean-Paul.

problem also exists on the development partners' side, with reports released months after their expected date.<sup>157</sup>

Overall, the interviewed representatives of international development partner organizations largely agreed that the government is willing to reform.<sup>158</sup> They also shared the view that government institutions were generally easy to work alongside. However, several individuals pointed out the difficulty in advancing projects with government stalemates regarding certain political issues.<sup>159</sup> Some of these issues included legal drafting of laws concerning genocide ideology and issues concerning the independence of the judiciary. Clearly, these political issues are underlying causes of tension within the justice sector. Despite these shortcomings, most agreed that all stakeholders needed to work collaboratively to have a functioning sector. Moreover, most development partners did not believe that challenges in the justice sector arose from differing visions of justice.

Instead, most individuals attributed challenges to some other cause. For instance, Philip argued, "We have not had the same experiences as they have...so, we're bound to have different views in these things."<sup>160</sup> Moreover, Alfred stated, "We don't always give the same priorities to different values...and obviously our assessment is not always the same, but with the sector, the bottom line is that we have to work together."<sup>161</sup> While there is agreement that government institutions and development partners share willingness to reform, the exact approach of reform is a matter of contention among the different parties. This does not, however, indicate radically different judicial values on either side. Rather, it demonstrates the diversity of opinions and priorities among the different actors involved.

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<sup>157</sup> Ibid. Alfred.

<sup>158</sup> Ibid. Alfred, Mark, Matthew and Philip.

<sup>159</sup> Ibid. Mark and Philip.

<sup>160</sup> Ibid. Philip.

<sup>161</sup> Ibid. Alfred.

## *Government Institutions*

The JRLO is a thriving sector that has made a number of improvements over the years. Through a variety of projects with its development partners, the sector has built capacity in almost all of its institutions. In the judiciary, training judges and reducing case backlog are key targets.<sup>162</sup> According to Oliver, an official in the Supreme Court, the main priority of the Supreme Court is to “do the right thing at the right time,” thereby placing an emphasis on case backlog reduction.<sup>163</sup> Another important objective of the judiciary is capacity building among the judges and prosecutors. MCC, for instance, has led training workshops on judgment writing for Rwandan judges. According to another Rwandan government official, Véronique, the key to an independent judiciary is “independence of the mind.”<sup>164</sup> In other words, before achieving a strong independent judiciary, the judges need to have a strong educational background. Another aim of training judges is to develop a common understanding of the law across the country. Overall, the priorities of the judiciary involve improving the basic training of judges to handle the existing case backlog and prepare for incoming cases.<sup>165</sup>

According to Jean-Paul, a representative of the JRLO Secretariat, the justice sector in Rwanda is the most advanced justice sector in East Africa.<sup>166</sup> With the *Gacaca* courts, Rwanda proved that it was able to solve its own unique problems.<sup>167</sup> Therefore, in the arena of justice sector reform, development partners realized Rwanda was “in a better position to cure [its] own illness.”<sup>168</sup> As a result, JRLO government institutions have a strong influence with development partners in project management. For instance, Oliver stated, “The development partners don’t

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<sup>162</sup> Ibid. *JRLO Sector Strategy 2009 to 2012*.

<sup>163</sup> Oliver. Personal Interview. 29 November 2010.

<sup>164</sup> Ibid. Véronique.

<sup>165</sup> Ibid. *Strategic Plan of the Judiciary 2008-2012*

<sup>166</sup> Ibid. Jean-Paul.

<sup>167</sup> Ibid. Oliver.

<sup>168</sup> Ibid. Véronique.

come with activities to impose on the Supreme Court. It's what the Supreme Court plans."<sup>169</sup>

Individuals in both development partner organizations and government institutions perceive a high level of government control in justice sector reform.

The judiciary faces a number of challenges in implementing its reforms. First, by taking judges and prosecutors out of court to undergo training, courts are unable to run at full capacity.<sup>170</sup> Limited staff in the judiciary is a significant issue in reducing case backlog and finding replacements during trainings. Furthermore, the judiciary also faces difficulties in finding Rwandan locals with adequate skills to provide training to local judges and prosecutors.<sup>171</sup> Although, international development partners willingly provide foreign trainers for workshops, several Rwandan individuals expressed the importance of having trainers who understand Rwanda's unique political and historical context.<sup>172</sup> For instance, Véronique stated, "We try as much as possible to get someone from the region who... understands the context of the region."<sup>173</sup>

According to government officials, the goals and priorities of the development partners vary slightly. For instance, according to Jean-Paul, development partners regard their projects as a political showcase, where partners strive to become a co-chair or silent co-chair of a sector.<sup>174</sup> "It's on that level, where they try to align and harmonize," he said.<sup>175</sup> Moreover, while development partners are required to present their project size and funding information to the JRLO Secretariat for budgeting purposes, many do not or delay the process. Jean-Paul interprets this hesitancy to disclose budgeting information as a fear of losing one's place in the sector.

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<sup>169</sup> Ibid. Oliver.

<sup>170</sup> Ibid. Véronique.

<sup>171</sup> Véronique.

<sup>172</sup> Ibid. Oliver and Véronique..

<sup>173</sup> Ibid. Véronique.

<sup>174</sup> Ibid. Jean-Paul.

<sup>175</sup> Jean-Paul.

Because many development partners aim to reduce project size through alignment, a growing budget would indicate failure to reach those goals. As a result, headquarters might reduce the budgets of offices operating on the ground. The majority of Rwandan government officials agreed that most development partners are willing to reform, but show resistance in certain situations.

Likewise, the Rwandan government shows resistance in certain areas as well. As Véronique stated, conforming to international legal standards is an important goal, but cannot always be achieved in Rwanda's unique post-genocide context.<sup>176</sup> She said, "In circumstances, like post-conflict situations, and more specifically genocide circumstances, you probably need to apply certain things that may not necessarily be written in the books."<sup>177</sup> However, she did not elaborate when pressed further about what specific issues required unconventional methods. Foreign officials, on the other hand, were quick to identify these specific issues as politically charged court cases, like that of opposition leader, Victoire Ingabire.<sup>178</sup>

Certain government officials expressed positive perceptions of their relationship with international development partners. For instance, Oliver in the Supreme Court was very satisfied with the trainings he received from Avocats Sans Frontières and MCC.<sup>179</sup> He believed that the trainings were tailored to meet Rwandans needs since they were translated into Kinyarwanda and addressed their areas of weakness.<sup>180</sup> Moreover, he argued that the development partners did not impose its own views on Rwandan professionals, but allowed Rwandans to define what they need.<sup>181</sup> Véronique expressed a similar sentiment in describing her work with the MCC.<sup>182</sup>

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<sup>176</sup> Ibid. Véronique.

<sup>177</sup> Véronique.

<sup>178</sup> Ibid. Mark.

<sup>179</sup> Ibid. Oliver.

<sup>180</sup> Oliver.

<sup>181</sup> Ibid. Oliver.

<sup>182</sup> Ibid. Véronique.

Although the current threshold program is nowhere near its project goals, she remained optimistic that the MCC will understand Rwanda's unique circumstances.<sup>183</sup> She stated,

“I think that from all the meetings I've attended with the judiciary, there's a willingness to have these international norms respected: impartiality, fairness, some of these standards. But of course, you can't be one hundred percent perfect because our circumstances are different. We are dealing with unusual stuff. So, therefore, where you have these imperfections, we want our partners to know where we are coming from. And we are ready to move forward, try our best and work better, but the system is not that perfect as our partners may wish.”<sup>184</sup>

On the other hand, she also offered another view in stark contrast, arguing that the trainers provided by most development partner agencies in the judiciary, like USAID, often employ foreign trainers rather than local trainers.<sup>185</sup> “The type of technical transfer of knowledge you are bringing from a professional from these stable democracies and stable judiciaries, is it really relevant?” she asked.<sup>186</sup> Even with translations to Kinyarwanda, she argued that because certain words are extremely difficult to translate accurately, considerable meaning is lost during trainings.<sup>187</sup>

In reference to MCC projects specifically, Véronique argued, “copying and pasting programs doesn't work.”<sup>188</sup> Although, the MCC tailors certain elements of its development projects to suit host country needs, the MCC uses the same indicators in every country.<sup>189</sup> This seems to be another source of tension among some government officials, who believe that the indicators fail to consider Rwanda's history of genocide. USAID, for instance, uses independently gauged indicators from Freedom House and the World Bank to evaluate progress.

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<sup>183</sup> Véronique.

<sup>184</sup> Ibid. Véronique.

<sup>185</sup> Véronique.

<sup>186</sup> Ibid. Véronique.

<sup>187</sup> Véronique.

<sup>188</sup> Ibid. Véronique.

<sup>189</sup> Ibid. *MCC and Africa: A Growing Partnership for Success*.

However, in the eyes of one government official this is “very unfair,” considering that Rwanda is judged by the same standards as other countries that have never experienced war, let alone genocide.<sup>190</sup>

Furthermore, Jean-Paul of the JRLO Secretariat argued that the development partners are not making any effort to harmonize or align their projects with the sector.<sup>191</sup> He said that there is a discrepancy between the actions of the Kigali offices and the directions given by their headquarters.<sup>192</sup> Normally, the Kigali offices are cooperative and willing to align with government projects. But once the project takes a direction different from headquarter priorities, Kigali offices are limited in their alignment with the sector.<sup>193</sup>

In reference to the sector strategy, the JRLO Secretariat stated its role is to facilitate the flow of information between development partners and government institutions.<sup>194</sup> Like individuals working for development partner agencies, government officials also stated that data transfer and information gathering is a difficult challenge within the sector. In addition, the JRLO Secretariat actively avoids political discussions with its development partners because “that is not [their] business.”<sup>195</sup> Jean-Paul argued that the new indicators introduced by the Dutch measuring the independence of the judiciary are politically charged and are therefore irrelevant to its objectives.<sup>196</sup> According to him, most development partners “have no idea what is in the sector strategy.”<sup>197</sup> Furthermore, MCC fails to attend regular sector meetings, thereby straining relations with government institutions and other development partners.<sup>198</sup> Despite these difficulties with MCC, the JRLO Secretariat is largely unable to argue against its policies.

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<sup>190</sup> Ibid. Véronique.

<sup>191</sup> Ibid. Jean-Paul.

<sup>192</sup> Jean-Paul.

<sup>193</sup> Ibid. Jean-Paul.

<sup>194</sup> Jean-Paul.

<sup>195</sup> Ibid. Jean-Paul.

<sup>196</sup> Jean-Paul.

<sup>197</sup> Ibid. Jean-Paul.

<sup>198</sup> Ibid. Jean-Paul and Philip.



Because USAID receives directives from its Washington headquarters, individuals on the ground are typically unable to change course.<sup>199</sup> Rwandan government officials perceive this as insensitive to Rwandan needs and circumstances.<sup>200</sup>

Overall, Rwandan government officials argue that the justice sector is improving gradually and has already overcome many obstacles. While there is willingness to reform, government officials urge development partners to align more with government initiatives and tailor programs to Rwanda's unique circumstances. For several government officials, this meant granting leniency on certain indicators in difficult areas, like case backlog reduction and court cases involving genocide ideology.<sup>201</sup> Without contextualized indicators and projects, development partners purportedly have misleading interpretations of Rwanda's current situation.<sup>202</sup>

Both sides of the justice sector, government officials and development partners are willing to reform in some ways. But, both sides are also restricted in the way and the extent to which it is able to reform. The policies and directives of its headquarters restrict development partners. On the other hand, Rwandan government institutions cannot move forward unless more development partners are more closely aligned with their development agenda. On the whole, research participants did not believe that differing judicial values engendered conflicting visions in the justice sector, but rather different historical experiences. These different experiences yield a diverging prioritization of values and objectives.

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<sup>199</sup> Ibid. Matthew.

<sup>200</sup> Ibid. Jean-Paul and Véronique.

<sup>201</sup> Ibid. Oliver and Véronique.

<sup>202</sup> Ibid. Véronique.

## **Recommendations**

Throughout the ISP period, I encountered several challenges due to research restrictions as well as time limitations. As a result of restrictions imposed by my university's Institutional Review Board, I was required to only take handwritten notes, only interview research participants fluent in English, and not record any identifying information about respondents to preserve confidentiality. While interviewing participants, it was challenging to record every answer. But, with practice I gradually developed a more efficient note taking system that allowed for more accurately transcribed interviews. Another research challenge was only being able to interview people fluent in English. This restriction undoubtedly skewed my findings, in that I was only able to interview highly educated English-speaking professionals in the justice sector, thereby excluding those who only spoke Kinyarwanda and/or French. Finally, my research restrictions in preserving interviewee confidentiality was limiting in being able to analyze individuals' opinions in the personal context of their job, nationality, and background.

Other challenges arose due to the time limitations of the ISP research period. For instance, the amount of interviews I could conduct was mainly dependent on participants' availability. Given the time, I would have interviewed several other key individuals who are currently abroad. Moreover, I would interview more individuals in each justice sector institution if given more time for research. This would include, for example, several key officials in each of the fourteen government institutions and the twelve development partner agencies. But due to time constraints, I was only able to interview individuals in three government institutions and three development partner agencies. Finally, if I were to conduct this study again, I would include more women in my research participant pool. Due to participant availability, I only interviewed one female professional in the justice sector. This is not, however, indicative of the

gender demographics of the Rwandan justice sector. In fact, a number of the high-ranking officials in development partner institutions and government institutions are women, but were unavailable for interviews.

My recommendations for future research in this area are three fold. First, further research should address the unique role of NGOs within the justice sector and their interplay with larger development partner agencies and government institutions. Second, future research should analyze progress over time in the variety of institutions involved. This would include an in-depth analysis of each of the ongoing development projects and its relation to the JRLO Sector Strategy. Another interesting focus area would be the planning dialogue surrounding the formation of a new sector strategy for 2012 to 2015. Finally, future research ought to include more interviews with multiple individuals in each sector organization to obtain more varied perspectives from each institution.

## Conclusion

Rwandan and foreign intellectuals highlighted their own different judicial values through academic debates surrounding *Gacaca* and the ICTR. The trials of cooperation between the Rwandan government and the ICTR also presented another arena of contention over competing visions of justice. While *Gacaca* represented a justice system firmly rooted in Rwandan cultural values, the ICTR represented a justice system rooted in Western classical judicial values. The main objective of this research addressed the question of whether these competing judicial values continue to appear in the space of justice sector reform.

After interviews with key individuals in three government institutions and three development partner institutions, it became evident that considerable friction existed among the different justice sector actors. Government officials were unhappy with the failure of development partners to report their budget and project details to the JRLO. On the other hand, individuals at development partner agencies expressed frustration over government intransigence in politically charged cases. Through a number of interviews, it became evident that the root causes of contention are not founded in differing judicial values. In fact, most participants emphasized their shared values with other institutions. Rather, the main cause of tension is the different prioritization of these values in the variety of institutions involved in the justice sector. Each of the fourteen government institutions undoubtedly has its own individual targets and methods. Likewise, each of the development partner agencies also has its own objectives and projects. The contentious nature of the justice sector, therefore, lies in the ongoing struggle between maintaining institutional independence and harmonizing with the sector at large.

This is especially true in the case of certain development partner agencies. For instance, the MCC Justice Strengthening Project is not aligned with the JRLO and does not aim to be.

Through restrictions imposed by USAID directives from Washington, individuals working for the MCC have little freedom to align with Rwandan government objectives. Moreover, some individuals at certain European agencies feel that reporting project budget size to the Rwandan government will indicate their failure to align more with government objectives. As a result, the JRLO has difficulty in calculating the true size of the sector. This struggle between maintaining independence and harmonizing is also evident at the Rwandan government level. Certain government officials described their efforts to push development partners to only hire local Rwandans for development projects so they “understand our context.”<sup>203</sup>

These opinions highlight the different prioritization of values. Individuals in development partner institutions highlighted the importance of achieving international legal standards with a human rights focus on issues like independence of the judiciary and treatment of prisoners. On the other hand, government officials believed that failure to achieve these goals were not indicative of government unwillingness to reform. Rather, failure to comply with all international legal standards demonstrated the unavoidable consequences of a post-conflict society. Most government officials argued that understanding the political and historical context of Rwanda was key to improving the justice sector.

In understanding the unique relationships between development partners and government institutions, it is important to note the individual relationships that allow the justice sector to function. As Matthew of USAID stated, people often forget about “the warm bodies in the room.”<sup>204</sup> Interviews with these key individuals highlighted the personal relationships each had with other individuals across the sector. As a result, the justice sector functions through personal relationships formed across different institutions. Overall, government institutions and

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<sup>203</sup> Ibid. Véronique.

<sup>204</sup> Ibid. Matthew.

development partners share many of the same judicial values as outlined in their overlapping objectives.

The main source of tension between actors is rooted in the different prioritization of these values. Each individual interviewed belonging to either government institutions or development partner agencies believed in the importance of reform and their organizations willingness to carry out that reform. As a result, the justice sector has made tremendous strides in building institutional capacity with the guidance of development partners and NGOs. Nevertheless, there remains room for improvement. The ongoing struggle for institutional independence versus sector alignment will undoubtedly continue in the upcoming discussions of the next JRLO Sector Strategy. Actors involved in justice sector reform in Rwanda play a unique role in re-shaping the judicial fabric of a post-conflict society. The fashioning of a system moving toward full compliance with international legal standards is undoubtedly the product of effective collaboration with international development partners and the guidance of Rwandan government institutions.

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Veronique. Personal Interview. 2 December 2010.

Vincent. Personal Interview. 4 November 2010.



## Appendix A

### JRLO Sector Donor Projects<sup>205</sup>

Table 6.2: JRLO Sector Donor Projects 6 months to June 2009 + 3 years 2009/10-2011/12 (Frw million)

Donor	Project	Supreme Court	MININTER	Police	Prisons	NPPA	TIG	Gacaca	ILPD	MINJUST	NURC	Military Justice	Ombudsman	TOTAL
Netherlands	PACTII - training judges (ends Dec 09)	770												770
GTZ	Programme on Good Governance - component 2					963								963
	Support to RNP Project			570										413
EC	Support to Rule of Law 9 ACP RW11(ends Sept 10)	685					154				151			990
UNDP	Justice Sector Support Programme 2008-2012	483		290						1,060				1,833
Sida	Programme for Democratic Policing			2,888										2,888
Belgium	Support to TIG						332							332
	Support to Crime Investigation			2,695										2,695
	Support to Justice Sector Secretariat (ends 2009)									499				499
ICF	Investment Climate Project - Component 1	1,191												1,191
Global Fund	Scaling up Access to HIV/AIDS Services in Prisons				55									55
USAID	MCC Threshold Program (legal sector capacity building & training);			770		50			(tbc)	(tbc)				820
UNDEF	Capacity building support for Ombudsman												(tbc)	
UNIFEM	Programme to address Gender Based Violence			(tbc)										
World Bank	Competitiveness & Enterprise Development Project								(tbc)					
<b>Total</b>		<b>3,129</b>	<b>-</b>	<b>7,213</b>	<b>55</b>	<b>1,013</b>	<b>486</b>	<b>-</b>	<b>-</b>	<b>1,559</b>	<b>450</b>	<b>-</b>	<b>745</b>	<b>14,650</b>

<sup>205</sup> Republic of Rwanda. Justice, Reconciliation, Law and Order Sector. *JRLO Sector Strategy 2009 to 2012*. Kigali. *JRLO Sector*. 25 November 2008. Web. 15 Nov. 2010. <www.jrlos.gov.rw>.

## **Appendix B**

### *List of Research Participants\**

1. Alfred, European Commission
2. Claude, National Service of Gacaca Courts
3. Jean-Paul, JRLO Secretariat Office
4. Mark, MCC
5. Matthew, USAID
6. Oliver, Supreme Court
7. Philip, European NGO
8. Veronique, Ministry of Finance
9. Vincent, Supreme Court

*\*Names have been changed to preserve participant confidentiality.*

## Appendix C

### *Interview Questions*

Objectives: The purpose of this study is to develop a deeper understanding of:

- Perceptions surrounding justice sector reform and the relationship between Rwandan government institutions and its development partners
  - Government of Rwanda:
    - What are important judicial values and current priorities for individuals in this field?
    - How do individuals perceive the work of international development partners in justice sector reform?
    - What do individuals think of their development partners' indicators used to measure progress?
    - Are these indicators a fair assessment of progress?
  - International development partners:
    - What are important judicial values and current priorities for individuals in this field?
    - How do individuals perceive the work of the Rwandan government in justice sector reform?
    - What do individuals think of Rwandan indicators used to measure progress?
    - Are these indicators a fair assessment of progress?
- How do these individuals reconcile differing perceptions of justice
  - Government of Rwanda:
    - What challenges or opportunities do individuals face in light of differing targets or indicators?
    - How do Rwandan professionals implement reform if certain projects are not in line with their own visions of justice?
  - International development partners:
    - What challenges or opportunities do individuals face in light of differing targets or indicators?
    - How do international development partners implement reform if there are disagreements with the Rwandan government?

## Appendix D

### *Transcribed Interviews*

*Alfred of the European Commission on 29 November 2010*

**Alfred (A):** I arrived last mid July. That's four months. So probably don't grasp every aspect but the problem or the issue or whatever, the domain. It's my first position for the EU. I used to work for the ICTR before. For the defense team. The media case.

**Maria Sebastian (MS):** Could you speak a bit more about your experience with the ICTR? How did you find the transition in working for the ICTR and later working for the EU?

**A:** I had a break in between. There was certainly some kind of connection between my previous work and this one. But there is no direct link between the two. As far as my experience with the ICTR is concerned, I have mixed feelings. But, it was very interesting. I was very lucky to work with this case. It was a very interesting case. The people I worked with were great. But my appreciation of the tribunal or the tribunal's work is rather mixed. Mitigated, I would say. Our problem with the ICTR is the quality of the work, which was done there. Sometimes it was very frustrating.

**MS:** What in particular did you find frustrating?

**A:** Political dimension is far too present in every case. The fact that we are trying individual cases and not some kind of cause, that I think is a big issue when you're dealing with criminal cases. We are supposed to try to assess the responsibility, the criminal responsibility of an individual. Yea, it's too much of a political showcase, I think.

**MS:** Did you find that the government of Rwanda was receptive to your work while you were in the ICTR? Or cooperative?

**A:** Working for the defense, I mean we've been to Rwanda, maybe five or 6 times for criminal investigation. And we did not have much problem with the authority. They were generally speaking, quite cooperative. Sometimes, it was the ICTR Prosecutor that was not that cooperative, in terms of circulating documents, exculpatory evidence, and all these kind of stuff. If we want to take a broader picture, one of the problems with the cases is evidence. How to access evidence and the quality of evidence. To an extent, there were some big problems, yes. I would say that too many witnesses came from the conduit of the NGO Ibuka which is a Rwandese one, but very linked to the government. They were not always reliable people. That's one of the issues. My humble opinion.

**MS:** And this was in what year?

**A:** The case itself started in September or October 2000 and the first decision came in December 2003. And then the appeal in 2006 or 2007.

**MS:** Could you speak about your work with the EU?

**A:** Sure, so I'm in charge of the justice and governance corporation. You are more interested in the justice sector? So, since this year we have the budget support program. Before, it was more of a program-based approach. So you have a program with various institutions within the justice sector. Plus we have a program with the NGOs, that's a different kind of institution. So, with the government institutions we used to have this kind of program based approach with the judiciary, with the NPPA, the police, and since this year we have started what we call budget support approach. So, in this instance it's sector budget support. So we give money directly to the budget, to the Rwandan budget and the part obviously of the justice sector. Our way to have some kind of input and also get some information and feedback from the Rwandan government. That's how it works, which I think with sector budget support approach is quite interesting. It's far more holistic. It's an improvement. There were some conditions, obviously. But, to put this in place. For instance, you didn't have this kind of sector, JRLO sector, which I think is interesting to have that in Rwanda because you can see all the institutions have to work together, all the stakeholders have to work together. Government institutions, DPs, also non-state actors, there are some NGOs present in the sector.

**A:** I believe we should give them a bigger role in the sector. To acknowledge their role, and give them a bigger place. But, yea I think it's quite interesting, because it's a good forum to share experiences, share assessment, and that was an interesting way forward. The justice sector in Rwanda is obviously had many problems. It goes without saying.

**MS:** So, with the budget approach. You said it's more holistic? Are your objectives more aligned with the Rwandan government's that way? Or do you give complete leeway to the government?

**A:** No we don't. It's one of our principle action to try to align our action with the government approach. And obviously with the sector budget approach, we are aligned because we are discussing what kind of policy we should put in place and then it is implemented by the sector, by giving money directly to the sector.

**MS:** So, there is policy dialogue?

**A:** There is policy dialogue. There is policy dialogue within the sector and you also have more political level dialogue, through Article 8. If there is a big issue, the Minister and the ambassadors, they can talk on every topic, including obviously governance, justice, could be anything. We have a different conduit for this kind of dialogue.

**MS:** And are your measuring systems mostly? Did you work with the Rwandan Governance Advisory Council?

**A:** Their input in the justice sector is not big. They did one of the studies. I worked with the Joint Governance Assessment Process, which is a different matter. But, with the sector, what we have is a set of indicators that was agreed upon by the sector and a specific set for our sector budget support, I think three donors which give the money with this kind of sector budget support: the EU, the Netherlands, and Belgium. We have got a set of indicators, because the sector itself has what we call a monitoring and evaluation framework. So that is a tool to assess shortcomings,

progresses, everything, but we also have a specific set, some are obviously to assess whether or not we are going to disperse the money. That's how it works. And last October it was I think, we got a common review of the sector, one in September/October, we call it the backward looking review, so we look at the progress in the last fiscal year. And roughly we assess whether there were some improvements, and whether there were some shortcomings.

**MS:** Could you speak more about the indicators that are used in the monitoring and evaluation process?

**A:** One of my criticisms would be that there are far more quantitative rather than qualitative indicators. To have a real assessment of what happened and understand the shape of the sector, only looking at these indicators, doesn't give you the best picture, I mean the more accurate picture of the sector. It's very difficult to assess with this kind of sector, with infrastructure, there's the number of kilometers of roads; it's easy. But with justice that's something I think that still needs to be improved, the indicators. There have been some improvements already, but still there's still room for more improvement.

**MS:** And so the indicators that are more quantitative rather than qualitative belong to the Rwandan government or its development partners?

**A:** They were agreed upon by all the government institutions and the development partners, one of the problems with reporting is quite difficult still to sometime to have in a timely fashion, data. Some institution, I know that the sector itself has its own permanent secretary. And they work quite well. Our rule is to call him about the sector and convene our meetings, monthly meetings. So, there's lots and lots of discussion going on. But it's always a problem to have proper data, and getting back through the permanent secretary. So we can have this kind of informed discussion. There have been some improvements. But, problems don't always come from the government institutions; they also come from the development partners. We are also late to give the permanent secretary what we have done with various institutions, we haven't given to them. There have been some improvements. Still, it's been a problem I think, reporting for which there are obvious reasons. If we don't have the data, it's even more difficult.

**A:** Getting data is quite difficult. The sector itself is quite new for all the institutions and all its stakeholders. It takes time. In a sense, it imposes some kind of change of mindset because as a sector, especially for the institutions which get the money at the end of the day, they need to cooperate between themselves and understand that if one doesn't do it's job properly, there will be consequences for the whole sector. Because, we are giving money to the sector, and not just to the judiciary, or to the NPPA, or to the prison. If the prisons have some problem, then it has some consequences for the whole sector. Because if one of the indicators is in the red, it's a problem. We had this problem this year. One of the indicators with regard to prison overpopulation is in the red. They haven't achieved the set targets, maybe because it was too high. Maybe it was not possible for them. But still, we have this target, and we have to deal with it. And that's a problem for the whole sector and that has a lot of difficulty to get more information to try to argue the case to see if whether or not we can disperse at least part of the money that is supposed to be dispersed and all these sectors will lose half a million Euro. Which is huge, for Rwanda. It's huge.

**MS:** How do you assess whether or not the money actually gets to the government? Is it proportional to the amount of targets they achieve?

**A:** We've got this program of 12 million Euros for four years. So that's three million every year. And the two first years, it has already been dispersed even though it was started this year, it has already been dispersed. The first tranche. What we call fixed tranche. There was a global assessment of a set of fourteen indicators. And we are ok to disperse the first one because it was pre-financing. And the second one we were ok because there were enough improvements we agreed to disperse 3 million again. And the next one will be in July 2011 and it will be 3 million again. One that we call the fixed tranche, so that's still the global assessment of the entire sector, improvement within the whole sector. One that we call the viable tranche and it is assessed on a set of four indicators only. And out of these four indicators, we've got one in the red. So we will probably have to reduce it by half a million because the viable tranche is 2 million, so if we have a program with one in the red, then it's a quarter of this 2 million, that's 500,000 Euro less. So, we will probably only disperse 2.5 million Euros next year. There's still a possibility of the sector to give us more information or if there's some real improvement in the next six months, maybe we'll be able to revise our position. But, the current situation, the current position is that we've got one indicator in the red. So, that could be a problem next year for the dispersement [sic] of viable tranche. And it's going to be the same for the following year, the last year of the program.

**MS:** Do you think the Rwandan government and its development partners have different sets of judicial values that influence its monitoring and evaluation systems?

**A:** It's a tricky question, I think. First, I mean you are talking about the government on one side and the development partners on the other one. The development partners, maybe we have the same values but we have different results or different approaches. I mean you are also talking about individuals. And it's the same with Rwandan institutions. There are 14 institutions within the sector and it can vary from one person to the other, from one institution to the other. And obviously, we've got some. I would rather say that we don't always give the same priorities to different values. I would more put it this way. And obviously our assessment is not always the same, but with the sector, the bottom line is that we have to work together. And it's a forum for discussion in the sector. And sometimes it's also a forum to overcome our... To that extent, the sector is a forum for discussion to overcome some of our differences, or differences within government institutions, which is interesting. To improve collaboration between the various stakeholders, which doesn't mean that we always agree, obviously. I mean, I told you earlier on that I think that there are some problems with the indicators that are far more quantitative based rather than qualitative. That might be one of our differences between some of the development partners and the government. There might be some cultural thing too. Figures are ok, but we've got more, for instance, the sector has put in place what we call Maison d'Access a Justice (MAJ), so that's very nice, it works well, it's ok. We have achieved this policy action and now there are 30 MAJ in Rwanda, one per sector. But, the legal aid provided by these MAJ are provided by lawyers, I don't even know if they're lawyers, jurists employed by the government and that's another obvious problem of independence of justice and most of the funds allocated to legal aid has gone through this particular venue or conduit, so there's no more money for the Bar

Association to provide legal aid. Is it always confrontational? No. I would not say that. It's more gray than black and white. Always.

**MS:** When these differences arise, how do you communicate with the government or the Permanent Secretary on how to fix these problems?

**A:** We've got regular, what we call technical working group, so it's changing or it's also a forum for various stakeholders to report what has been done. It is chaired by an institutions and co-chaired by one of the development partners. So, this is where we discuss the main issues of the sector, there's one on budgeting and planning, one on monitoring and evaluation, one on ICT, I'm less involved in that technical working group, but it's a big, big project of harmonizing and announcing ICT between all the governmental institutions. And one more on content. This is where we discuss problems of the whole sector.

**MS:** What sorts of problems did the sector encounter this year? What were some of the main discussions in these meetings since you signed on in July?

**A:** The main discussion, I think most of the time since I came was devoted to the last joint sector review, it was a big assessment for the sector, for this year, for the last fiscal year, which will be the base for the title of dispersement [sic]. And as I told you, one of the big issues was getting data in time. That's less on content, but that's really where we spent a lot of time. In terms of more content issue, we have one of the big issue of the sector is backlog cases, either in the judiciary but also in the NPPA. And we put in place a taskforce to deal with that. I think we will do some interesting work. That I think is a good example of what the sector can achieve. Because it's been a problem in Rwanda for years, the backlog of cases and we sent to the sector I think we will be in a position to have new, alternative solution and to try new solution because so far it has been only trying to hire contractor judges and contractor prosecutors, which I mean is a program financed by the EU, which is good to get rid of the existing backlog, but it's no solution for the future. So, with this taskforce, we will be in a position to try some new solution and to follow up next year what can be done, what has been done.

**MS:** What are the primary objectives of the taskforce?

**A:** The taskforce will launch some studies, a pilot project by I think it will be financed by the German corporation and it will be financed by one of the best and most active in the justice sector in Rwanda, which is RCN. It's a Belgium organization, Justice and Democracy. They are very active in the justice sector. For instance, they are one of the two international organizations, which take part in our working group. So, yea they will try to assess what can be done. And especially will try to find systems so less cases enter the system. So, there's some kind of selection before getting into the poorly substantiated cases that then goes to the prosecutor and goes to the court and which are dismissed at the end of the day. So, there is no point in spending our very limited resources and the very limited resources of the sector and the judiciary on cases, which are not substantiated. At the very beginning of the process by the police. That I think is very positive.



*Veronique of the Ministry of Finance on 2 December 2010*

**V:** I don't have a deep understanding of the justice sector reform as such. My portion of my work goes with the justice sector along with the Millennium Challenge's Corporation project. So, the kind of information that I may have may be related to that kind of section, simply because I don't work with the sector as such. I deal with different ministries in other capacities, and therefore, the knowledge is not that much. However, I of course have some personal understandings. But, that's just my personal perspective. I don't have a deeper understanding of the justice sector per se because I don't really work directly so much engaged with them as such.

**MS:** So you worked with the MCC Justice Strengthening project?

**V:** Yes. I am the coordinator on behalf of the government on the MCC projects and that includes all five projects. So one of them is the Justice Strengthening project with the justice sector, that's my only connection with the justice sector per se.

**MS:** What exactly is your role with the MCC?

**V:** MCC project is very different from any other project because this is a project from the government. It's not from the development partners, or it's not from the implementing partners. It's purely the government. What it means is that the MCC which is the Millennium Challenge Corporation, comes up with these indicators every year and these indicators they show that you are short on ABCD. For Rwanda's case, it was voice and accountability indicator, ruling justly indicators, and political rights. So, there were three areas that the government determined were in the red in terms of indicators, and the Rwandan government came up with proposal of their own where they think they can address some of the issues that they have within the indicators. So, I was hired by the government to work together with USAID to come up with certain key activities in areas they think can really improve some of these indicators, which is voice and accountability, civil liberties and political rights. So, among other things, all these are really in governance, so we came up different programs that we thought would really help in terms of improving our indicators in governance. This, for example, included training the judges in professionalism in the judicial sector.

**V:** Of course we realized that there were questions about whether the judiciary was independent. Whether they were competent. But we thought, you cannot be independent unless you have the professional know how. Independence comes with the mind. Nobody can give you any independence unless you know what you are doing and you do it rightly and you can easily manipulate the executive in terms of the back up in terms of knowledge, in terms of trying to know what you are doing. So, we realized that needed to do some things to help the law reform commission process that the government was setting up. There was confusion within the laws because people don't know exactly which laws have been replaced, whether there's no proper mechanisms on how the judges or how the prosecutors or whoever in the law was in the judiciary understood these changes. There should be some equipment to assist people on how to understand that these ones have replaced these laws. We thought maybe that the drafting needed to be empowered in terms of professionalism. We understood that there should be some trainings. Even to the advocates and the bar association. There was however much you train the

judges, however much you capacitate the prosecutors, but if the bar is not that really equipped, and then it won't really help much in knowledge and skills. So, that also goes with the parliament in terms of drafting laws, in terms of the parliament, sometimes to give input and maybe there should also be a procedure on how the parliament should work with different civil society in getting their input. So, we developed this proposal in that way with the government. We were contacting different ministries of the government, ministry of justice, ministry of local government that has local officials, the ministry of internal affairs, which has the police, which is one of the beneficiaries of these projects. We also worked with the ministry of information, in training journalists and improving their capacities, which ties into the voice and accountability. The ministry of local government that has the civil society and local government officials. So, we developed some of these indicators ourselves within the government, but of course with the USAID staff and especially the governance unit. So, we came up with what we made sure we could somewhere improve our judiciary.

**MS:** So, what sorts of improvements or challenges have you experienced since beginning the project last year?

**V:** Like all these projects, you have increments. USAID is the leading implementer in terms of the procurement rules that is covered by U.S. government relations. So, the benefits are there in terms of when you go to the judicial part, you have training a lot of judiciary staff, a lot have been trained by the projects. We think it's very crucial that the capacity is increased. People are told constantly on the changing circumstances, on how the laws can be interpreted, judgment writing skills, drafting skills. And there's a lot that has been done especially in terms of the MCC project. It has trained even more than anticipated. And it has used very good trainers. So, that was really very good.

**V:** Apart from that, we have also among the projects, which we thought was lacking, was the equipments, the portals, the drafting systems that were supposed to be within the ministries' concerns. So they can be done so quickly and later on can have a say in terms of giving input. For example, the civil society from the initiating ministry and any other person I think. So, the laws can be brought back to the people, and the people can have a say. Some of this equipment is already rendered and installed in place. They are not yet in practical use. However, I feel that everyone is very excited about them. And I think they should be signs for what has been achieved.

**V:** Challenges, of course, they are there. For example, if you are trying to train the prosecutors and judges and everyone and you are training. These people have to be trained, but at the same time they have to work. So, you face a challenge in terms of whether these institutions still have people available. But, you have low capacity, you have low staff, you have few people in the ministries, in this judicial sector. And at the same time, we want them to be trained. So, one or the other will have a shortfall. When we are dealing with the training of some of the prosecutors or judges, some of the cases will have to wait for some time to have this training in terms we don't have enough staff for some of them to undergo training and the others to continue to work because of a shortfall of staff in the sector. So, this is the number one challenge we have.

**V:** Probably, another challenge that we have when we look at the professionals, we would wish to have the technical people to come from the region. Who would come from the circumstances of Rwanda? Because Rwanda is in unique circumstances. You are judging post-genocide cases; you are dealing with a lot of perpetrators, sometimes with no evidence. So, what does it mean? If you are training these people to deal with certain unusual circumstances, you have to train professionals in how to deal with these unusual areas. Give them new tips on how to deal with such cases. And you get them easily. So you get these professional trainers from the U.S., from Canada, from elsewhere who have never been in some of these circumstances and therefore the skills don't always match with the reality. And that's a challenge that we anticipate.

**MS:** And what kind of skills are you talking about? Like gathering evidence...

**V:** Gathering evidence, judgment tips. For sure, there are things that should be at international respectable norms. But, in circumstances, for example, where you may have a dead witness, and you don't have any eyewitnesses alive, and you have this person in jail for the last ten years, and people are telling you that everyone in this area, in this district are dead. How do you deal with these kinds of circumstances? What kind of issues would you apply? So in circumstances, like post-conflict situations, and more specifically genocide circumstances, probably you need to apply certain things that may not necessarily be written in the books or not necessarily don't need to have professors or whoever is lecturing giving you tips on how to handle these circumstances. And this is a person that should have this kind of experience in these kinds of post-conflict situations. But if you have someone who is from a stable judiciary, where everything has to be ordered a certain way, you have challenges.

**MS:** And so what sorts of tips do the American or Canadian lecturers say in those kinds of situations when there is that difference between a stable judiciary and a post-conflict judiciary? What are the sorts of things they teach that may be in opposition to what Rwanda needs?

**V:** I can't give an example per se. But, I have seen it in other contexts, not necessarily the judiciary, whereby you bring for example, a trainer from a stable judiciary, a stable country, with different rules being fought. And what does it mean, when someone comes in here, is that there is a lack of context. So the context is very different. And therefore, even if whatever you are transferring as knowledge does not really fit to these circumstances. This is a very common problem we have with all the different areas, not only the judiciary. This is in the media sector, especially. So, we tend to ask our partners to bring trainers from the region. But the challenge is do we have people from the region with those skills? So, it's a very complicated circumstance sometimes. You want someone who is very qualified, but who does not fit the circumstances. So, it is a very common phenomenon in most post-conflict, or some of these countries where you have unusual things coming in. For example, you have the media sector in Rwanda, you have the international indicators, for example. And these international indicators, say that the free media should have ABCD, and you have a country, where in the 1994 genocide, because of this free media, and that is what is actually surprising, is where Rwanda was scored the highest in terms of having media freedom. So you have a circumstance where, everyone talks about whatever you want to talk about. And everyone says ok, they conduct in those circumstances. But, you don't want to repeat the same problem. But when you bring a trainer who is supposed to teach journalists to make sure there is some sort of media freedom, and this person comes from stable

democracies, stable countries. Definitely, in this country, journalism is very professional. There are areas you cannot go. Even if you want to say something, there are certain things that you cannot talk about. Like this is hate media, or this is very dangerous for whatever reason. So, in circumstances like this one, you need to deal with the context, the cultural context, which is sometimes very different. So, when I say something, it's something very different to someone else. So, the challenges comes the same. The type of technical transfer of knowledge you are bringing from a professional from these stable democracies and countries, is it really relevant? Maybe at some level, yea it is relevant. But, when it comes to the context, at the end of the day, it doesn't give much. I may know all these norms, internationally acceptably norms, but if they don't really fit within my people's understanding, then the knowledge transfer doesn't really happen.

**V:** So, this goes with the judiciary as well. The judiciary is very difficult in this country as well. It has its own tremendous challenges in terms of all these capacity building issues, in terms of language, the language of instruction; some of these professors only speak in English or French. But people in the courts, they speak in Kinyarwanda. They don't know the local language. So, certain words are very hard to translate in this so. These are enormous issues that we have with some of these trainers, but there's nothing we can do. But, I can't be specific and say it's this in ABCD. But, I know it's a challenge that comes back. And we try as much as possible to cope with it and ask the partners to please try and get someone from the region who knows and has a similar background and understands the context of the region. So, if you are dealing with raped women. Women, who are raped in these circumstances, you don't have to mention them for example. You have to deal with them in a certain way, which was a challenge for the ICTR. When they come looking for an individual, by asking, "Were you raped?" And they couldn't get an answer because there were also cultural issues. Maybe in the U.S. and Europe, there' "Were you raped?" "Oh yea, I was raped." Maybe that's ok. But here, you can't ask someone. There's that stigmatization. People will run away from you. You may not be talking to anyone. So it's vey good for a trainer to ask these questions within the context. And preferably we can get good trainers from the region or from within this context, which would be much easier for us. It would really help us more in terms of understanding the context.

**MS:** Do you think that should apply to the indicators that are used as well? They use World Bank and Freedom House indicators.

**V:** That's what I think. I honestly think that Freedom House and World Bank measures Rwanda the same as it measures Tanzania, which has never had a war. You understand? It has these measurements, which is perfect. I think that's good. But, if you tend to measure Rwanda and Tanzania, a country that has never had war. I think it's very unfair. The context is very different in different countries. And therefore, the indicators should be contextualized. Otherwise, it doesn't really give us much. This also goes with MCC findings, for example, they tend to measure countries in terms of like, when you look at some of the other countries they measure, these are countries that have been stable for many years. Others have just come out of war immediately. So, how do you have the same kind of indicators? That's a completely wrong methodology. So, I think that the indicators should also be contextualized. Otherwise, you know hate media played a very big role in this country and then they should put measures to make sure that Freedom House knows what the media should look like. So, if you want media freedom?

Then, ok that's perfect. I really think it's very important that everyone has a right to speak, but it in a responsible way. Just be responsible and know whatever you talk doesn't have any negative repercussions. If it is positive, then why not? If it is negative and you can be a watchdog to the government, that's fantastic. If your interventions can help people improve their livelihoods, that's perfect. But, if you're saying Betty, you should kill Maria. Is that the freedom, we are looking for? So, I think it's always very good that some of these indicators should be contextualized.

**MS:** And so is there any move on the part of the Rwandan government to make them more contextualized?

**V:** I think we didn't want any duplication because the Rwandan government has what we call the Joint Governance Assessment on its own. And it's trying to set up its own indicators. And, I think it should be in the final phases of that. But, what we discussed with the MCC in the beginning is "Look, we want flexibility. We want some of these changes in terms of getting supervisors or trainers from the region. We want people to understand our context." And there was that move from the MCC. They totally understood. So, they ask you to design your own proposal. Because you are in a better position to get a cure for your sickness, more than they are. And I think it's a good start. Of course, it's not perfect, but it's a good start. But, the joint governance assessment, the Rwandan Governance Advisory Council (RGAC) is doing exactly that. And the government is using some of these indicators.

**MS:** They are for the most part different from the Freedom House and World Bank indicators that are used with the MCC?

**V:** Most of them are quite similar. The differences are just very minor. I think even the Rwandan government are taken from these different international institutions, they borrowed, they have the ruling justly indicators, the economic freedom indicators, etc. And they are 90 percent are almost similar. But, maybe the methodology is different in terms of collecting data. But, they are really not very much different. They are still continuing of course to look at these ones. Because you can't just say I'm going to use my own. You have to work comparatively with these other credible international institutions.

**MS:** So, with the MCC if they don't meet the indicators, they don't make compact?

**V:** Actually, that's the rule. That's what they say. They say that you have to improve ABCD, but of course MCC now is trying to change its ways in terms of understanding different indicators. Of course you cannot if you change the law today, don't expect to see results in a few months. So, generally when they are giving you compact now. They are looking at the willingness of the government in making some institutions to work. Their willingness to change. The willingness of the government to listen and not only to complete certain things, but also how lives are improving. Because indicators are indicators. You can even put certain things on paper. You can have very good laws in place, but when they are not put in place does that have anything to do? So, I think MCC is trying to...before it used to look at those indicators and see how you are trying to make sure that the indicators are becoming more green and green. But now they are changing somehow in terms of trying to say, "Look, if the government is willing to give a lot of

change in eradicating poverty, I think it's in line with what we're trying to do." So if the government is trying to make sure that everyone gets food and clean water, even if it's not necessarily within the indicators they're looking for, so there's the possibility of affirming the compact. So, it's trying to shift from its original way of giving countries compact. And I think that's a good start. For example, if you were trying to say when I was coming up with the information bill, soon in two or three weeks it will be out. Everyone and every government official is supposed to give information to any and all journalists freely. So, that indicator it's a very good policy. But, we don't expect that everyone...because the government has to train its officials of the importance of giving this information. You don't just put a bill and voila everything is as perfect as you wish. So, there are these processes that you have to go through and these will take time. So, I think MCC is correct in looking at some...even if there is some doubt, there are certain good policies that are put in place, regardless of the outcome yet, I think they will be considering that.

**MS:** Do you think with the justice sector in particular, that there are different judicial values that the government may have that are different from its international development partners?

**V:** Not really. I think that from all the meetings I've attended with the judiciary, there's a willingness to have these international norms respected: impartiality, fairness, some of these standards. But of course, always they insist, you can't be one hundred percent perfect because our circumstances are different. We are dealing with unusual stuff. So, therefore, where you have these imperfections, we want our partners where we are coming from. And we are ready to move forward, try our best and work better, but the system is not that perfect as people may wish so. Whether, they like it or not, trial will work longer than you may think, because there's a very limited staff. The capacity of the judges is not really at the level of taking judgments quickly. At the professional level, the judges are very young, in other countries; they may have 50 years of experience. Here, you have people who finished a few years ago judges. So, don't expect to have the good judgments, which would be fit internationally. But, when you are a country in transition, all these challenges are on the way. So, I think on the part of the government there is very much a willingness to make certain things up to international standards to be a part of the judiciary. But, of course not for immediate change, because of issues that make it sometimes imperfect.

**MS:** Did you work with the Rwandan Governance Advisory Council for the Joint Governance Assessment?

**V:** No, because personally, I'm not very much involved. Because MCC takes much of my time. But, I work on the projects where MCC is trying to address issues of governance. I work with the RGAC, I work with Professor Shyaka, who is the executive secretary. So we work together. And, in terms of measuring the MCC indicators and looking at what joint governance has in place. We work together, but I'm not directly involved with the joint governance assessment or advisory council.

**MS:** How do you continue to work on these projects when you have such a strong view on what reform should look like that is so different from the international development partners?

**V:** I don't keep quiet. I keep on telling them, because I am the liaison between the MCC and the government, I make sure that my government understands this. The ministries I work with. I tell the ministers, these are things we need to work with, and these are things that need to be in place. And when I go to the implementers, I say look, these are different circumstances and let's go with the things that you really think can help poor people to fit into our circumstances. But don't impose your view, and copy and paste and think it will work. It can't work. It might on paper, but in reality it's going to be very different. So, it's not an easy process. But you try to make sure that people reach somewhere in a compromise.

**MS:** So, they are receptive to your criticisms...

**V:** Definitely. And it's one thing I've realized since working with this department. Before I thought the government was very rigid and the government didn't want some things. But, it was a very different story, when I talked to the ministers. They share some of these views. It's this structure, that's sometimes created, and you have layers where penetration is sometimes not that easy. Bureaucratic inefficiencies, which is like everywhere all over the world. But originally, they understand. They need that change. Everyone wants that change. But reaching there is a problem. And the way, people sometimes want to make it easy for everyone, the advocates, they won't like it because there's good money for them. So there are all these challenges that you go through. But, you know. You keep on. Change starts with you. And you know you can make it.