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Judicial Independence in Rwanda

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Supreme Court of Rwanda

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I. INTRODUCTION

Judicial independence is a universally recognized principle in democratic societies. It is a prerequisite for a society to operate on the basis of the rule of law. It is essential for the purpose of maintaining public confidence in the judiciary. As once stated by the Chief Justice of Canada:

> Judicial independence is valued because it serves important societal goals. . . . One of the goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of

* Supreme Court of Rwanda. Paper presented at the Judicial Independence and Legal Infrastructure: Essential Partners for Economic Development conference, University of the Pacific, McGeorge School of Law, Sacramento, California, October 28, 2005.

> the court system. Independence contributes to the perception that justice will be done in individual cases. Another societal goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principal that the exercise of all public power must find its ultimate source in a legal rule.[1]

Various international instruments further stress the importance of judicial independence, including the Universal Declaration of Human Rights[2] and the International Covenant on Civil and Political Rights.[3] In particular, the United Nations Basic Principles on the Independence of the Judiciary states: "[i]ndependence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."[4]

What is involved in the concept of judicial independence? One approach to the independence of the judiciary is to divide it in two parts: (a) institutional independence; and (b) personal independence.

A. *Institutional Independence*

Institutional independence refers to independence of the judiciary from other branches of government—that is, the legislature and the executive. This aspect is further expressed through the principle of separation of powers. A branch of government should not place pressure on or influence another branch of government to act in certain ways. However, the independence of the judiciary, rather than the executive or the legislative branch, is frequently discussed because the judiciary is more vulnerable to pressure or influence.

The judiciary makes decisions that might negatively affect the executive or legislature. For instance, it may declare an act of a government official to be unconstitutional, unlawful, or outside the scope of the official's powers. It may also declare a law passed by the legislature to be unconstitutional and of no force or effect. The judiciary has no means of enforcing its decisions without the assistance of the other branches of government. On the other hand, the executive and the legislature may play a crucial role in the appointment of judges and in determining their remuneration and conditions of service in a way that, if not circumscribed by law, may jeopardize the judiciary's independence in doing its work. The other branches of government may also undermine the institutional independence of the judiciary through budgetary measures and through the

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1. Reference re Public Sector Pay Reduction Act [1997] 150 D.L.R. 577, 593 (Can.)

2. *See* Universal Declaration of Human Rights, G.A. Res. 217 A (III), art. 10, U.N. Doc. A/810 (1948).

3. *See* International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art 14, Dec. 19, 1999, 999 U.N.T.S. 17.

4. Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, U.N. Doc. A/CONF. 121/22Rev.1 at 59 (1985).

administration of courts. This is why many constitutions, in addition to providing for the separation of powers, establish the financial and administrative independence of the judiciary. This is intended to enable the courts to prepare and administer their budgets without undue pressure, especially from the executive. This sometimes requires that judges' salaries shall be determined by an independent body that is not aligned with the government and that reports to the head of state or the legislature, which in turn puts the proposals of the independent body into force.[5]

B. Personal Independence

Personal independence refers to the impartiality of a judge; that is, the judge's ability to make a decision without fear, favor, or prejudice with regard to the parties irrespective of their position in society—it means the absence of bias. The judge should be able to resist intimidation or influence, whether pressure stems from governmental power, politics, religion, money, friendship, prejudice, or other inducements. Decisions should only be based on the facts and the law.[6] It has been said that personal independence is protected by three things: (1) security of tenure, usually ensured by a constitutional provision that a judge may only be dismissed for good cause such as gross misconduct or gross incompetence; (2) decent remuneration and conditions of service (i.e., financial security); and (3) immunity from civil liability for loss caused by performance of judicial duties.[7] However, personal independence is also supported by the existence and enforcement of a code of ethics for judges and other court personnel.

In many African and other developing countries, there has not always been respect for the rule of law and independence of the judiciary. Judges have been intimidated into giving rulings favorable to the government, forced to resign their positions, and in the worst cases, they have been killed. For instance, the first Ugandan Chief Justice, Benedicto Kiwanuka, was murdered by the Amin regime for not cooperating with the regime's illegal actions.[8] In 2005, the Ugandan government sent armed personnel to surround the High Court. In a statement, Chief Justice Odoki said that the judges considered the siege of the High Court as

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5. *See* PARLIAMENTARY SUPREMACY JUDICIAL INDEPENDENCE, LATIMER HOUSE GUIDELINES FOR THE COMMONWEALTH, ¶ 1 (June 19, 1998), *available at* http://www.cpahq.org/uploadstore/docs/latmrhse.pdf#search=%22the%20latimer%20house%20guidelines%20for%20the%20commonwealth%20 (stating that "[a]s a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained").

6. *See* Basic Principles on the Independence of the Judiciary, *supra* note 4, ¶ 2.

7. *See* IAN CURRIE & JOHAN DEWAAL, THE NEW CONSTITUTIONAL & ADMINISTRATIVE LAW 301-305 (Juta & Company Ltd. 2001).

8. *See* Monica Twesiime-Kirya, *The Independence and Accountability of the Judiciary in Uganda: Opportunities and Challenges*, *in* THE INDEPENDENCE OF THE JUDICIARY AND THE RULE OF LAW: STRENGTHENING CONSTITUTIONAL ACTIVISM IN EAST AFRICA 22 (Frederick W. Jjuuko ed., 2005) (giving a brief history of the struggle between the judiciary and the executive in Uganda).

an apparent attempt to intimidate the judiciary. Military personnel were deployed within the precincts of the court to re-arrest suspects that the High Court had lawfully released on bail. The Chief Justice said that the judges considered the November 16 siege of the High Court as threatening to undermine the independence of the judiciary and the rule of law.[9] Justice Ogola called the siege a "horrendous onslaught" and "a grotesque violation of the twin doctrines of the rule of law and the independence of the judiciary."[10]

In 2001, the Chief Justice and a number of senior judges from Zimbabwe were harassed and forced to resign for attempting to uphold the rule of law and citizens' rights with respect to the seizure of white farms by the Mugabe regime.[11] A recent report by *Amnesty International* indicates that the harassment of the judiciary continues, where "Zimbabwe's crisis over the rule of law, triggered by repeated flouting of court orders, harassment of judicial officers and politicization of police remains unresolved."[12]

In Swaziland, the High Court judges were harassed for the way they handled a case involving the King and his teenage fiancée, his soon-to-be tenth wife. The judges were issued instructions from the Royal Palace to drop the case or resign. The judges, however, defied the instruction.[13]

Thus, the executive has sometimes not taken kindly to the judiciary resisting undue influence. However, it is also true that a number of judges, once pressured, will succumb to the pressure, and a few, especially in the lower rungs of the judiciary, used their positions to enrich themselves through selling favors to litigants, which undermines the efficacy of the justice system.

II. THE RELATIONSHIP BETWEEN JUDICIAL INDEPENDENCE AND ECONOMIC DEVELOPMENT

It is now well-recognized that the rule of law and an independent judiciary promote stability in a country. When citizens feel that the courts can resolve their

9. *See* Herbert Ssempogo, *Odoki Condemns Military Presence at Court*, THE NEW VISION, Nov. 18 2005; *see also* Joel Ogwang, *Odoki Warns on State Intimidation*, THE MONITOR, Nov. 29, 2005.

10. Emma Mutaizibwa, *Government Accuses Judges of Supporting Dr Besigye*, THE MONITOR, December 24, 2005.

11. *See* David Bean, *Life, Death and Justice*, THE INDEPENDENT, Sept. 3, 2002, at 13 (quoting Chief Justice Gubby: "Most disturbing was the harassment of the High Court and Supreme Court judges by war veterans. They called on the judges to resign or face removal by force. The Minister of Information spearheaded the campaign by accusing the Supreme Court of being biased in favor of white farmers at the expense of the land less majority. The invasion of the Supreme Court building on the morning of 24 November 2000 by close to 200 war veterans and followers was disgraceful. It sent a clear message that the rule of law would not be respected. Not a word was heard from the President, the Minister of Justice or the Attorney General.").

12. *See* Amnesty International, *Zimbabwe: An Assessment of Human Rights Violations in the Run-Up to the March 2005 Parliamentary Elections*, Mar. 15, 2005, at 1, *available at* http://web.amnesty.org/library/index/ENGAFR460032005?open&of=ENG-ZWE.

13. *See generally* Voice of America News, *Swazi Judge Defies King's Order to Drop Abduction Case*, FEDERAL INFORMATION NEWS DISPATCH, Nov. 1, 2002.

disputes impartially and fairly, and that the state will enforce the decisions of the courts, they are more inclined to obey the law. There is no incentive for those unhappy with government to take the law into their own hands and to disturb the peace. In turn, political stability encourages investment and hence development. As pointed out by the Asian Development Bank:

> The cornerstone of successful reform is the effective independence of the judiciary. That is a prerequisite for an impartial, efficient and reliable judicial system. Without judicial independence, there can be no rule of law, and without the rule of law the conditions are not in place for the efficient operation of an open economy, so as to ensure conditions of legal security and foreseeability.[14]

No one, whether local or foreign, wants to invest in a country that is politically unstable or where there is no confidence in the justice system, as investors would not be assured of a fair return on their investment. Respect for the law on the part of the state and the impartial enforcement of contracts and other transactions give investors the confidence to do business in the country. There is increased predictability of what the results of a legal dispute will be if one party does not perform their obligation. The rule of law and independence of the judiciary protect both personal safety and property, while enabling people to go about their normal business. As investment creates jobs, it reduces poverty and enhances standards of living and the well-being of the population, which development is all about.

After discussing the importance of judicial independence in the resolution of conflicts between contracting parties (e.g., between government and citizens) with respect to the protection of property rights, Feld and Voigt argue:

> Among the many functions of government, the reduction of uncertainty is of paramount importance. But the law will only reduce uncertainty if the citizens can expect the letter of the law to be followed by government representatives. An independent judiciary could thus also be interpreted as a device to turn promises—e.g. to respect property rights and abstain from expropriation—into credible commitments. If it functions like this, citizens will develop a longer time horizon which will lead to more investments in physical capital but also to a higher degree of specialization, i.e., to a different structure of human capital. All this means that [judicial independence] is expected to be conducive to economic growth.[15]

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14. OFFICE OF THE GENERAL COUNSEL ASIAN DEVELOPMENT BANK, LAW AND POLICY REFORM AT THE ASIAN DEVELOPMENT BANK 2 (2001), *available at* http://www.asiandevbank.org/Documents/Others/Law_ADB/lpr_2001.asp?p=lawdevt.

15. Lars .P. Feld & Stefan Voigt, Economic Growth and Judicial Independence: Cross Country Evidence

Of course, it may be argued that property may be protected even where the judiciary is not independent; for instance, through a government policy that encourages investment and is firmly against expropriation. Contractual disputes may be channeled to arbitration and mediation, thus bypassing a judiciary that is not independent, or contracts may be honored by parties to protect their reputations. However, even if one agrees that judicial independence is not a prerequisite for economic growth, in my view it is indisputably an important factor for economic growth. Since judicial independence is based on the law, it is the most reliable guarantor of protection of economic measures and their enforcement.[16]

Uganda is again a good example of how economic growth can be influenced by the rule of law and judicial independence. When Amin expelled the Asians in 1972 and distributed their property among his henchmen and supporters, the economy virtually collapsed. No investments were coming in, and Ugandans with property felt insecure, which forced many of them to leave the country. Amin introduced military courts and economic crime tribunals that took over many functions of the ordinary courts. There was no rule of law and judicial independence was at its lowest ebb, with a chief justice and many lawyers murdered by state agents. When, however, the National Resistance Movement restored order and the rule of law in the mid-1980s and 1990s, investors returned to Uganda and the economy quickly recovered. An independent judiciary substantially contributed to this recovery.

III. THE CONSTITUTIONAL AND LEGAL FRAMEWORK FOR JUDICIAL INDEPENDENCE IN RWANDA

The Constitution of Rwanda of 2003 guarantees the independence of the judiciary. Article 140 enshrines institutional independence as follows:

> The Judiciary is independent and separate from the Legislative and the Executive branches of government. It enjoys financial and administrative autonomy.[17]
>
> Judicial decisions are binding on all parties concerned be they public authorities or individuals. They shall not be challenged except through ways and procedures determined by law.[18]

Using a New Set of Indicators, 4 (CESifo Working Paper No. 906 2003), *available at* http://ssrn.com/abstract=395403.

16. Daniel Klerman, *Legal Infrastructure, Judicial Independence, and Economic Development*, 19 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 427 (2007).

17. RWANDA CONST. OF 2003 ch. V, sect. 1, art. 140, ¶ 2.

18. *Id.* ¶ 5.

Article 142, on the other hand, guarantees personal independence. It requires impartiality on the part of judges and deals with their security of tenure and their terms and conditions of service. It states: "[i]n the exercise of their functions, judges follow the law and only the law."[19] It further states that unless the law provides otherwise, judges confirmed in office shall hold life tenure. They cannot be suspended or transferred, even for the purposes of promotion, retired prematurely, or otherwise removal from office. For instance, the provision refers to a situation where the law provides procedures for suspension or dismissal in case of serious misconduct. The Chief Justice and Deputy Chief Justice may only be removed from office on account of undignified behavior, incompetence, or serious professional misconduct upon petition of three-fifths of either the Chamber of Deputies or Senate and a two-thirds majority vote of each Chamber.[20] Thus, they enjoy considerable protection. According to the Law on the Status of Judges and Other Court Personnel, judges may only be dismissed due to the following reasons: serious misconduct; serious incompetence; or an inability to perform judicial duties for reasons other than illness if, after disciplinary proceedings, such is found to be the case by the Superior Council of the Judiciary.[21]

The appointment process of judges has a bearing on their independence. The Constitution only discusses the appointment of the Chief Justice, Deputy Chief Justice, and the judges of the Supreme Court. Although the ordinary judges of the Supreme Court are appointed for life, subject to a retirement age, the Chief Justice and Deputy Chief Justice are appointed for a nonrenewable term of eight years. They are appointed by the President after consultation with the cabinet, the Superior Council of the Judiciary, and an election by the Senate. The judges of all other courts are appointed by the Superior Council of the Judiciary after competition through tests and interviews organized by the Council.[22] Thus, for all judges, except those of the Supreme Court, the executive has no role in their appointment, which is an important indicator of independence. For the leadership of the judiciary and judges of the Supreme Court, it is understandable that the executive and the Senate should be involved as the Supreme Court sets the direction and policy of the judiciary.

Another important element is that the Constitution provides for the composition of the Superior Council of the Judiciary, which is responsible for the appointment, promotion, and discipline of judicial personnel. The Council is chaired by the Chief Justice and is dominated by judges representing the different levels of courts. Only four out of thirty-two members are appointed from outside

19. RWANDA CONST. OF 2003 ch. V, sect. 1, art. 142.

20. *Id.* at art. 147.

21. Law on the Statutes for Judges and Other Judicial Personnel, Law No. 6bis/2004, art. 78. This is in accordance with international standards. For instance, the UN Basic Principles on the Independence of the Judiciary state: "[j]udges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties." *Supra* note 4.

22. RWANDA CONST. OF 2003 ch. V, sect. 1, art. 15.

the judiciary: the President of the National Human Rights Commission, the Ombudsman, and two Deans of Law elected by law faculties. The Council is therefore rightly seen as independent. However, there has been criticism that the Council is not sufficiently representative of the broader society, as a public institution should be. Neither the parliament nor the Bar Association are represented. It is argued that there is a risk of judges protecting each other and not being sufficiently objective in matters affecting them. On the other hand, the current composition of the Council is probably preferable to the South African Judicial Service Commission ("JSC"), which includes ten members of parliament, the Minister of Justice, and four nominees of the President. The majority on the JSC comprises persons from other branches of government.[23] This has been criticized as likely to unduly influence the appointment of judges. However, in the case of post-apartheid South Africa, this composition of the JSC is necessary to bring about the transformation of a judiciary dominated by white conservative males.[24] A midway position may be preferable for Rwanda.

IV. MEASURES TO PROMOTE INDEPENDENCE OF THE JUDICIARY AND ITS ROLE IN DEVELOPMENT

A. *The Fight Against Corruption*

A judiciary that is not impartial is susceptible to corruption, and where the judiciary is known to be corrupt, there is no predictability of the results of disputes. This leads to a lack of confidence in the legal system and potential investors are discouraged. Thus, an independent judiciary that is free from corruption is crucial for economic development.

At the same time, an independent judiciary is one which has the courage to fight corruption, which must be severely punished, irrespective of the political or social status of the culprit. Severe punishments for corruption are bound to dissuade potential bribe-givers and takers from continuing to distort the economy.[25] Effective justice will, in turn, lead to confidence in the system and encourage developmental investments.

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23. SOUTH AFRICA CONST. art. 178, ¶ 1.

24. CURRIE & DEWALL, *supra* note 7, at 301-05.

25. In a recent South Africa case, *State v. Yengeni*, the judges demonstrated the need for severe punishment for corruption. The accused, a Member of Parliament, received nearly a 50% discount on a Mercedes Benz 4x4 arranged by a representative of a bidder in a government-arms procurement process. He was convicted and sentenced to four years of imprisonment. On appeal, the public prosecutor sought to have the sentence reduced to an 18-month suspended jail term. The presiding judge said that "[t]his is not only an economic crime, but undermines the faith the public has in the government." Referring to this and other cases where members of parliament had been given noncustodial sentences for fraud, the judge asked the prosecutor, "So you honestly think these kinds of sentences send out a message that the administration of justice serves to deter elected officials caught with their fingers in the till?" *See* Mariette Le Roux, *State Grilled on Sentences for Corrupt Officials*, MAIL & GUARDIAN ONLINE, Oct. 3, 2005, *available at* http://www.mg.co.za/articlePage.aspx?articleid=252641&area=/breaking_news/breaking_news_national/.

In the past, many developing countries have been notoriously corrupt in all sectors of society and government. This is partly because of the lack of political will to fight corruption, but also because of a lack of institutional mechanisms to investigate and punish corruption. Today, however, a number of countries, including Rwanda, are doing their best to fight against and punish corruption. Laws have been passed and institutional mechanisms have been put in place for the enforcement of the law. In Rwanda, an anticorruption law was passed.[26] The Office of Ombudsman, created by the Constitution, was also created in 2003. The responsibilities of the Ombudsman include:

- preventing and fighting injustice, corruption, and other related offenses in public and private administration;
- receiving and examining, in the aforementioned context, complaints from individuals and independent associations against public officials or organs, and private institutions in order to find solutions to such complaints if they are well founded.[27]

Although the Office of Ombudsman is prohibited from involving itself in matters before the courts, it may submit complaints it has received to the courts or the prosecution. In such cases, those organs are required to respond to the office.[28] In this way, the Supreme Court has occasionally received correspondence from the Office of Ombudsman with complaints about the behavior of some judicial officers, but more often it is regarding delays in the hearing of cases.

As it is often said, corruption is a two-way street, involving a giver and a taker. Those who give bribes, to get favors or influence judgments in their favor, must be discouraged and punished. There has been a sustained campaign by all levels of government and the Office of Ombudsman to sensitize the population to the evils of corruption and not shelter people involved in corruption and other misconduct from justice. In 2005, the African Parliamentarians Network against Corruption ("APNAC") launched its branch in Rwanda,[29] although Rwanda is not on the APNAC's list of corrupt countries.

There is also considerable international support for efforts to fight corruption in developing countries. In Rwanda, these efforts include support from the World Bank, the European Union, and U.S. Agency for International Development (USAID), among others.

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26. Law Aimed at Preventing, Suppressing, and Punishing Corruption and Related Offences, Law No.24/2003 of 14/08/2003.

27. RWANDA CONST. OF 2003 ch. VIII, art. 182.

28. Law Establishing the Organization and Functioning of the Office of the Ombudsman, Law No.25/2003 of 15/08/2003, art. 14.

29. *See* Rwanda News Agency, *Anti-Corruption Parliament Body Launched in Rwanda*, Jan. 10, 2005, *available at* http://www.rwandagateway.org.article.php3?id_article=42.

Before the 2003-2004 judicial reform in Rwanda, there was substantial corruption among judges, court clerks, and other judicial officers. As a result of these reforms, a number of measures were taken and institutional mechanisms were put in place to combat corruption in the judiciary. First, there was a vetting exercise. The employment of all judges and other court personnel was terminated, and a recruitment exercise took place based on certain criteria. First, all potential judges have to be legally qualified—they must have a minimum of a Bachelor of Laws degree. Part of the problem causing corruption was that judges were not legally qualified, and the temptation to make judicial decisions based on considerations other than law was much higher. Second, they have to be persons of integrity. Those who had a record of corruption or misconduct were excluded. Finally, in addition to the rigorous selection process, there is now a Code of Ethics[30] for judges that, among other things, requires impartiality, integrity, and diligence. Article 7 states that "[i]n particular a judge shall refrain from acts of corruption and other related offences and fight against it in an exemplary manner."

Judges and court personnel with a record of corruption are dismissed. The Superior Council of the Judiciary has a committee on discipline which investigates allegations of corruption and other forms of misconduct against judges and other court personnel. Before a final decision is taken by the Council, the accused official is given an opportunity to be heard.[31]

B. A Code of Ethics

In order to enhance the impartiality of judges in Rwanda, the Code of Ethics requires judges to abstain from engaging in business and other activities that may compromise their independence. Article 18 of the Code states: "[t]he functions of a career judge shall be incompatible with political mandate, any management and any other public or personal service, whether directly or by employing other people." This provision is understandably not popular with judges. They argue that since the state cannot afford to pay them well, they should be allowed to supplement their income through other income-generating activities like other, working people in the public sector. However, it seems necessary to maintain this restriction on judges to minimize the temptation of corruption.

C. Other Aspects of the Justice System that Have a Bearing on Development

1. Gacaca Courts

The Gacaca courts are adapted traditional courts involving local communities that hear and decide genocide cases in Rwanda. Gacaca courts were introduced

30. Law Relating to the Code of Ethics for the Judiciary, Law No 09/2004 of 29/4/2004.

31. Law on the Statutes for Judges and Other Judicial Personnel, Law No. 6bis/2004 chap. IV.

as specialized courts to deal specifically with genocide cases because there were far too many genocide suspects for the regular courts to handle within a reasonable time—hundreds of thousands of people were involved in crimes of genocide, killing about a million people. It has been estimated that prosecuting them through the regular courts would take about 200 years.

Gacaca courts have many advantages over regular courts, especially in the context of the large number of suspects. These include:

(1) *They are speedy.* The procedure is simplified to make cases move faster. There are no lawyers to raise objections on minor issues of procedure. Judgments must be delivered on the day of completion of the hearing or the day after. It is interesting to note that only twenty cases were finalized by International Criminal Tribunal for Rwanda ("ICTR") in ten years. During 2000, ICTR rendered only four judgments on the merits, but it made more than 200 interlocutory decisions, including many rulings of the Appeals Chamber on diverse procedural issues.[32] The 2500 pages of law reports taken up by these decisions show that a lot of work was indeed done by the ICTR in 2000. However, in terms of dealing with the problem of the number of genocide suspects awaiting trial or that still need to be arrested, the work would never end following the ICTR process.

(2) *They are less formal and not intimidating to witnesses.* Anyone in the community who can assist the tribunal to reach the truth is allowed to speak. Thus there is a relaxed atmosphere that encourages people to say what they know and what they saw. Consequently, the truth is more likely to be told than in a cold, intimidating courtroom with robed judges and attorneys who are determined to destroy the credibility of witnesses through cross-examination.

(3) *It is inexpensive for the state, victims, and witnesses.* The trial takes place in the local area where the offense was committed and where the witnesses are likely to reside. Travel and other logistical expenses incurred by state or individuals are minimal.

(4) *Truth, forgiveness, and healing.* In the Gacaca court, the perpetrator is given the opportunity to acknowledge wrongdoing, tell the truth of how the crime was committed, and ask for forgiveness. If this happens, the convicted person is given a lesser sentence than he or she would have otherwise received. If the victim or a relative is present, they are able to confront the perpetrator. If forgiveness is pled for, it may be given, creating a great chance for forgiveness,

32. UNITED NATIONS INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, REPORTS OF ORDERS, DECISIONS AND JUDGMENTS (2000).

> healing, and reconciliation. If healing takes place, the victim is more likely to be reintegrated into society and live a psychologically- and economically-fit life.

The adjudication process is moving much faster than Western-style courts. This means that suspects are getting out of prison in a much shorter period of time and being reintegrated into society much faster. On the other hand, those who lost their loved ones get back into "normal" life faster. Both sides are reintegrated into useful economic activities that contribute to development.

2. *Community Work*

Laws implementing a program of community work as a part of the punishment for genocide offenders have also been instrumental in creating stability and a climate conducive to economic growth. The law provides that persons convicted of crimes of genocide in the second and third categories—that is, those who killed or damaged property but were not in leadership positions at the time—get lesser sentences, and more importantly, serve half of their sentences in community service activities if they confess to their crimes and plead for forgiveness.[33]

The types of community work include: building and repairing rural roads; repairing and maintaining public buildings; growing food for prisoners, orphans, and indigents cared for by the state; and protecting the environment (e.g., planting forests and clearing rivers and lakes). Thus, perpetrators of genocide are able to participate in the reconstruction of the country.

In carrying out community service, convicted perpetrators may even gain valuable skills that can be applied after they are released. In general, the punishment of community service is intended to ease the perpetrator back into society, and therefore, to promote reconciliation, peaceful coexistence, and avoidance of conflict, which leads to social and political stability. In turn, the majority of people participate in productive and development-enhancing economic activities.

D. Reform of Business Laws and Resolution of Commercial Disputes

A business law reform is currently underway in Rwanda to improve the legal framework for economic development. A commission has been set up to study the business law environment in Rwanda, to reform the laws, and to improve the adjudication of commercial disputes in the courts as well as the use of alternative dispute resolution (ADR)—both mediation and arbitration. Rwanda has very old

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33. *See* Organic Law Establishing the Organization, Competence, and Functioning of Gacaca Courts, art. 73 (charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990, and December 31, 1994).

commercial laws, some dating back to nineteenth century Belgian laws or King's decrees, which must be replaced to bring Rwandan commercial transactions and regulation into the twenty-first century.

The adjudicatory institutional set-up of commercial disputes is also under review. Currently, commercial disputes are handled by specialized chambers of provincial courts. This has not worked well due to congestion in provincial courts and lack of expertise among judges. Consequently, there is a lack of confidence in the courts within the business community, and if the situation continues, it may become an impediment to investment and growth.

A new proposal for a stand-alone commercial court is being considered. Such a court would be staffed by judges who have specialized training in modern commercial law, who would ensure that commercial disputes are settled quickly and efficiently. Judgments would be of a high standard and would form a body of precedents that could be relied on by future courts. Rwanda will need the support of developed countries; in particular, their expertise in training commercial court judges to deliver judgments of an international standard.

V. THE CURRENT SITUATION IN RWANDA

In terms of de jure judicial independence, as already indicated, Rwanda has sufficient constitutional and legal provisions providing for such independence. However, it is always more difficult to assess the degree of de facto judicial independence, especially in a country that has undergone constitutional and judicial reforms in the past few years. Nevertheless, one can attempt to assess the independence enjoyed by the Rwandan courts. As far as institutional independence is concerned, Rwanda has a government that respects the principle of the rule of law and that does not interfere in the judicial tasks of the courts. All judges, including those at the lowest levels of the judiciary, have been sensitized to their right, duty, and obligation to make their judicial decisions without interference from other branches of government. It is important to stress this because in the previous era, especially at the provincial and district levels, authorities in the executive branch demanded and received reports of a judge's activities, and there were occasional attempts to influence the judge's decisions. Today, any such attempts by local authorities who may be unfamiliar with the new approach are readily referred to the independence of the judiciary as enshrined in the Constitution. In the higher courts, judges have not hesitated to award substantial damages to citizens, where they have found that the government caused harm by abuse of authority or negligence.[34] The judiciary also enjoys administrative and limited financial autonomy, as explained below.

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34. *See, e.g.*, Felly Kimeni, *Milimo Payment for June*, THE NEW TIMES, May 30, 2006, *available at* http://www. newtimes.co.rw/index.php?option=_con_content&task+view&id=5096&Itemid=1. (on file with the *Pacific McGeorge Global Business & Development Law Journal*).

It is more difficult to gauge personal independence. What may be said is that the judges know that they are free to decide cases before them impartially, in accordance with the law and their consciences, and that they do not have to take instructions from any person, not even the Chief Justice. They enjoy security of tenure until retirement unless they are found guilty of serious misconduct or inability, and are protected by the requirement of due process of law in case of disciplinary action being taken against them. Thus, judges have every reason to exercise their independence.

Before the genocide of 1994, Rwanda experienced economic decline. According to experts, gross domestic product (GDP) per capita declined 1.5% annually between 1982 and 1992. However, after the stability that followed the end of the war and genocide, the economy started bouncing back—growth averaged 8.1% annually between 1995 and 2000, and income poverty levels were reduced by 18%.[35] Rwanda continues to enjoy political stability and increasing economic growth. This is a considerable achievement for a poor country that has emerged from almost total social, economic, and moral collapse following the 1994 genocide. The stability and economic growth has, among other factors, been due to confidence in the country fostered by good governance, commitment to the rule of law, and judicial independence on the part of the post-genocide government of national unity.

VI. CHALLENGES TO THE INDEPENDENCE OF THE JUDICIARY

There is still a problem with financial autonomy of the judiciary and the financial security of judges. This is not because the government would not like to make the constitutional promise of financial independence a reality. The problem is that the "national cake" is too small compared to the real needs of the country. The judiciary receives less than 1% of the budget. The bulk of the budget goes to arguably more urgent social needs, with education at 17% and health at 8%. A bigger budget would bring justice closer to the people and make its delivery faster and more efficient, but there is not enough money to go around. The country would like its judges to be paid a decent salary that is competitive with earnings of lawyers in private practice and in other employment so that they can live comfortably without the temptation of corruption or the need to do other work on the side. Judges, especially in the lower courts, struggle to divide their pay to accommodate the basic necessities of life: food for their families; shelter; transportation; and education for their children. Only their sense of dignity and commitment to justice helps them resist the temptation of corruption. They know that they are in the same boat as other hard-working Rwandan public servants working for a good cause. At the same time, it is hoped that whenever it becomes

35. ALISON EVANS ET AL., INDEPENDENT EVALUATION OF RWANDA'S POVERTY REDUCTION STRATEGY 2002-2005 (2006), *available at* http://poverty.worldbank.org/files/Rwanda_PRSP.pdf.

possible for the government to save money, it will remember the judiciary as being crucial to stability and prosperity, and will improve the conditions of judges. It is sometimes felt that the judiciary is forgotten or regarded as not being a priority when allocating scarce resources because it cannot show the tangible benefits as compared to other services.

VII. CONCLUSION

It is apparent that judicial independence is a crucial factor in stabilizing society and in promoting investment and economic growth. It is necessary that legal infrastructure be put in place to ensure that judicial independence is maintained, and to reassure investors and others involved in economic activities that their property and investments will be safe. Developing countries have a short history of democracy, respect for the rule of law, and independence of the judiciary. These countries, however, are making strides in that direction. This should create a climate where the rule of law and judicial independence thrive, and economic confidence exists so that development can be achieved and sustained for the benefit of the people.

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