



THE LEGAL AID FORUM

FORUM D'AIDE JURIDIQUE

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Monitoring of EDPRS (2008-2012) Indicators in the Justice Sector

Enforcement of Court Judgments and its
Impct on Access to Justice in Rwanda

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On the cover

A group of Claimants whose judgments have not been enforced in Musha Sector of Rwamagana District in Eastern Province of Rwanda.

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ACRONYMS

ADL	Association Rwandaise pour la défense des Droits de la personne et des Libertés publiques
ARPCDH	Association Rwandaise pour la Promotion de la Connaissance des Droits de l'Homme
CDJ	Corps des Défenseurs Judiciaires
CESTRAR	Centrale des Syndicats des Travailleurs du Rwanda
EDPRS	Economic Development and Poverty Reduction Strategy
ILPD	Institute for Legal Practice and Development
JRLOS	Justice, Reconciliation, Law & Order Sector
JRLOSS	Justice, Reconciliation, Law & Order Sector Strategy
INALAS	INARA Legal Aid Service
LAF	The Legal Aid Forum
MAJ	Maison d'Accès à la Justice
MINALOC	Ministry of Local Governments
MINIJUST	Ministry of justice
MO	Ministerial Order
MPEDH	Mouvement des Peuples pour l'Education aux Droits Humains au Rwanda
OG	Official Gazette
ULK	Université Libre de Kigali
UNR	National University of Rwanda



EXECUTIVE SUMMARY

In accordance with the Justice, Reconciliation, Law & Order Sector Strategy: July 2009 – June 2012, The Legal Aid Forum carried out a research project to monitor and evaluate the enforcement of court judgments in Rwanda. The research focused on the enforcement of civil judgments, excluding commercial and criminal judgments. The enforcement of a final court judgment is the last step in obtaining justice for a claimant. It is, therefore, central to the issue of access to justice.

The research project was conducted in 10 districts across Rwanda's five provinces. Primarily quantitative research methods were used in the form of questionnaires targeting those trying to enforce or having enforced their court judgment (claimants), and those persons responsible for enforcement (enforcement agents). Data collected from the various target groups can be broken down as follows: 2,794 claimant questionnaires, 231 executive secretary questionnaires, 24 professional bailiff questionnaires, 45 persons in charge of legal affairs/notary questionnaires, and 10 Maisond'Accès à la Justice (MAJ) questionnaires. Key findings, as set out in the report, were extrapolated from responses to questionnaires as well as focus group discussions.

I. KEY FINDINGS

The key findings can be split into the following broad indicators:

1. **length** of enforcing court judgments, looking at how long claimants wait or have been waiting for the enforcement of their judgment;
2. **cost** of enforcing court judgments, focusing on the loss of earnings, travel costs, and fees of professional bailiffs incurred by claimants;
3. **competence** of enforcement agents, focusing on their trainings;
4. **availability** of enforcement agents, looking at their time constraints and other factors influencing their availability;
5. **enforcement mechanism and procedures**, comparing voluntary and forced

enforcement; and

6. effectiveness and public perception of the enforcement process.

1. Length of enforcing court judgments

A. General findings

We interviewed 2,794 citizens of Rwanda who had a final non appealable court judgment. 40% of those claimants had their judgments fully enforced. 15% of claimants achieved partial enforcement, while 45% of claimants had not yet had their judgment fully enforced. Of those claimants who have not had their judgment fully enforced 64.4% have been waiting more than three months for enforcement since they contacted their enforcement agent. Of the 40% who had their judgment fully enforced 45.5% waited for over 3 months for full enforcement. These findings are in sharp contrast with Article 200 of the Civil Procedure Code that obliges enforcement agents to enforce judgments within three months of receiving a request to enforce a final court judgment affixed with the executory formula.

B. Findings per enforcement agent

These findings compared the time taken for enforcement of a court judgment by each type of enforcement agent. Professional bailiffs are able to enforce court judgments in the timeliest manner of all enforcement agents: of all judgments fully enforced by a professional bailiff, 68.3% were enforced within the legal delay of 3 months. On the other hand, executive secretaries take longer to enforce court judgments: of all judgments fully enforced by an executive secretary of the cell, 62.5% were enforced within the legal delay of 3 months. Of claimants utilizing an executive secretary of a cell and still waiting for enforcement, 76.5% have been waiting for more than three months for the enforcement of their judgment. This means that if 4 claimants take their judgment to an executive secretary of the cell for enforcement 3 of the 4 will have to wait for over 3 months for enforcement. The poor and vulnerable are most likely to use an executive secretary of the cell (100% of indigent claimants interviewed) rather than a professional bailiff, they are therefore disadvantaged in relation to the time it takes for their judgments to be enforced.

C. Findings per type of case

Cases relating to genocide matters are the hardest to enforce in a timely manner. 92.0% of all genocide related judgments yet to be enforced have exceeded the three-month time limit prescribed by law with some claimants having waited up to 15 years. 39.8% of interviewed claimants who had their gacaca judgment enforced had this enforcement within the three-month period. This clearly demonstrates that genocide related judgments cause the most problems in relation to enforcement.

For land related cases 3 out of 4 claimants, who have not yet had their judgment enforced, have been waiting for over 3 months. For claimants with money related judgments, only 40.4% waited longer than 3 months for the full enforcement of their judgment.

D. Conclusion

Enforcement agents, in particular executive secretaries, struggle to enforce cases within the 3 month time limit prescribed by law. This is particularly the case for judgments emanating from the gacaca courts. Claimants therefore often experience long delays in the enforcement of their judgment.

2. Cost of enforcement

Enforcement is the last step in what can be often a costly legal process. Enforcement should be the natural next step where the ruling of the judge is executed. Therefore it is startling how many claimants incurred further costs solely trying to enforce their judgment.

A. Lost earnings

Due to the personal efforts of claimants trying to enforce their judgments, they are unable to earn money: 78.2% of interviewed claimants lost earnings trying to enforce their court judgment. These lost earnings are attributable to time spent visiting enforcement agents to attempt to enforce their judgment or returning to court. The majority of claimants interviewed, 79%, visited their enforcement agent between 1 and 10 times, with 18% visiting between 10 and 50 times. This amounted to 33.4% of claimants incurring between 10,000 and 50,000 RWF in lost earnings in trying to enforce their judgment.

B. Travel costs

On top of lost earnings many claimants pay significant travel costs visiting their enforcement agents. 19.1% of the claimants interviewed spent more than 5,000 RWF returning to visit their enforcement agent throughout the enforcement process. These costs may cause further delays in the enforcement process as a lack of funds impedes claimants' ability to pursue their enforcement.

C. Fees payable to enforcement agents

i. Professional bailiffs

Professional bailiffs exercise a liberal and independent profession, albeit carrying out a public service. Despite legal provisions to the contrary, professional bailiff fees are not fixed. Nonetheless, there does appear to be an industry standard. Among interviewed bailiffs, 24 of a total of 54 in Rwanda, the standard fee is 1/10th of the judgment value.

ii. Nonprofessional bailiffs

A few claimants paid large fees to executive secretaries for the enforcement of their judgment. This is very surprising given that the services rendered by executive secretaries should be free of charge. This highlights the pressures on executive secretaries to carry out enforcement without any financial or logistical resources.

D. Conclusion

The costs incurred by claimants in trying to enforce their judgments contrast sharply with the fact that enforcement should be the last and purely instrumental step in obtaining what is legally due to them. These costs impede access to justice.

3. Competence of enforcement agents

The competence of enforcement agents is a key indicator when evaluating the enforcement process. If enforcement agents themselves are not competent, forced enforcement cannot function properly. The number of times that enforcement agents have attended training is a way to measure this indicator as well as the number of fines received.

A. Training

i. Executive secretaries

In order to become an executive secretary one does not need a legal background. Executive secretaries enter their profession without any prior knowledge of enforcement. Therefore additional training for executive secretaries is essential, however, 32% of interviewed executive secretaries had only received training on enforcement once; 8% had received no training. Of those executive secretaries that had received no training, 69% had been executive secretaries for 3 years or above. Given the fact that executive secretaries have not attended sufficient training sessions, it is unsurprising that 40% of interviewed executive secretaries said that their lack of adequate training is the main obstacle to effective enforcement. Executive secretaries enforce the bulk of final court judgments and should therefore attend the highest number of trainings.

ii. Notaries

Notaries generally have a legal background. Despite the fact that notaries are entitled to enforce by law, most notaries currently do not enforce court judgments. Only 40% of interviewed notaries enforce court judgments. This is, in the majority of cases, due to the fact that they have not yet sworn the oath enabling them to do so. Of those notaries that do enforce judgments, 33% had not attended any training on enforcement.

iii. Professional bailiffs

Professional bailiffs are required by law to have a legal background. In contrast to the figures relating to nonprofessional bailiffs, all of the interviewed professional bailiffs had attended training at least once. None of them considered a lack of adequate training as an obstacle to enforcement.

B. Fines received by enforcement agents

Despite the fact that the professional bailiffs interviewed attended a greater number of trainings and enforce judgments faster, they are also far more likely to receive fines for poor enforcement. In fact 58.3% of professional bailiffs interviewed admitted to receiving fines for poor enforcement. This could be due in part to the fact that professional bailiffs render paid services and therefore face a higher standard from their clients. However, this could also indicate that professional bailiffs are more careless with the enforcements that they carry out, as a reason for the fines received included simply not following the correct procedures.

The notaries and executive secretaries interviewed did not report receiving many fines either for delayed or poor enforcement. 84% of claimants did not know that they could sue an enforcement agent for delays of over 3 months.

C. Conclusion

Nonprofessional bailiffs have not received the requisite numbers of trainings to equip them with their role of enforcement. Although professional bailiffs have a legal background and have attended more trainings overall, they receive a surprising number of fines for poor enforcement. These two issues should be addressed in order to improve the enforcement process.

4. Availability of enforcement agents

The availability of enforcement agents is hindered by a number of obstacles. The main obstacles are their heavy workload, lack of resources, risk of incurring personal liability, and territorial restrictions, although these vary in importance between the enforcement agents.

A. Heavy workload

Heavy workload is identified by 45% of executive secretaries as their main obstacle in trying to enforce court judgments. This is due to the fact that executive secretaries are local leaders in charge of all administrative duties in their local area. Similarly, for 65% of notaries, the main obstacle to enforcement is their heavy workload. This is underscored by the fact that 82.4% of interviewed notaries who enforce court judgments and 47% of executive secretaries always feel overworked. In particular, in Nyarugenge district, 80% of executive secretaries always feel overworked. In contrast to the findings relating to nonprofessional bailiffs, only 4.2% of professional bailiffs always feel overworked. This supports the analysis that executive secretaries and notaries are too busy with their day-to-day, non-enforcement duties to be able to dedicate adequate time or attention to enforcing court judgments. This thereby makes them less effective enforcers and less available to claimants.

B. Conflict of interest

The dual role of executive secretaries as local leaders and at the same time enforcement agents also creates conflict of interest problems. A poignant example of this conflict of interest can be seen in cases where the executive secretary has to force someone to sell their home yet is then responsible for the welfare of that person. Professional bailiffs do not have this conflict of interest as enforcement is integral to their role of being a bailiff.

C. Lack of resources

The lack of resources of nonprofessional bailiffs is an obstacle in the enforcement of judgments. 53% of executive secretaries feel that the cost of enforcement is a major obstacle. Furthermore 83% of executive secretaries responded that extra financial or logistical support for enforcement would motivate them to enforce court judgments. This indicates that due to their lack of resources executive secretaries are reluctant to enforce judgments. These findings are similar to those for notaries, 41% felt that the cost of enforcement was a major obstacle. Notaries also feel that enforcement is an extra burden that they are not equipped to deal with. 100% of notaries interviewed who enforce court judgments felt that extra financial or logistical support would motivate them to enforce court judgments.

D. Personal liability

The obstacle of personal liability relates to the fact that enforcement agents are personally liable to the claimant for any errors committed during the enforcement of a court judgment. This is especially problematic in relation to auctioning of property, which requires adherence to complex legal requirements. 46% of executive secretaries felt that the risk of incurring personal liability was a major concern. 33% of notaries also listed the risk of incurring personal liability as a major concern. Only 29% of professional bailiffs listed personal liability as a concern in enforcement. These figures may seem surprising as many more professional bailiffs received fines than nonprofessional bailiffs. However professional bailiffs perceive the risk of personal liability as part and parcel of their day to day job. This is in contrast with nonprofessional bailiffs who are not paid for their duties and perform them in a public capacity.

F. Conclusion

Both notaries and executive secretaries highlighted their heavy workload, personal liability and lack of resources as obstacles to enforcement indicating that both groups feel ill equipped to enforce court judgments. Executive secretaries experience a conflict of interest between their role as local leader and enforcement agent, while professional bailiffs do not.

5. Enforcement mechanism and procedures

A. Enforcement mechanism – socio-legal perspective

i. Lack of assets of defendants

A major obstacle experienced by a great number of enforcement agents, and which renders enforcement impossible, is the lack of assets or insolvency of defendants. This is stated by 67% of professional bailiffs, 49% of executive secretaries and 41% of notaries. In cases where the defendant is insolvent, the claimant has no choice but to wait until the defendant has the means to pay.

ii. Reluctance of defendants

Despite the fact that enforcement agents are less than perfect in enforcing court judgments a recurring theme throughout the findings is that defendants obstruct the enforcement process. Only 6.9% of claimants interviewed had their judgment voluntarily executed without any pressure from an enforcement agent. This demonstrates the lack of understanding amongst defendants of the finality of a court judgment that has been affixed with the executory formula. The reluctance of defendants is seen as a major obstacle to enforcement by both enforcement agents as well as claimants: 52.9% of claimants interviewed cited the reluctance of defendants to cooperate with enforcement as the biggest obstacle to enforcement. This is also stated by 62.5% of professional bailiffs, 19.5% of executive secretaries and 11.8% of notaries.

The enforcement mechanism as it currently stands directs claimants to enforcement agents and places the pressure on enforcement agents to carry out enforcement. There is not enough focus on the responsibility of the defendant in enforcing a judgment: 58.9% of the claimants interviewed who had their judgment forcibly enforced did not contact the defendant first. However of those claimants who had their judgment executed voluntarily without pressure, 71.2% contacted the defendant before approaching an enforcement agent. This clearly demonstrates the value of including the defendant in the enforcement process.

B. Enforcement procedures – legal perspective

Where efforts to encourage the defendant to pay voluntarily (voluntary execution) have failed enforcement agents rely on the legal methods of forced enforcement set out in the law. Seizure of immovable property, used by 81.1% of executive secretaries and 62.5% of professional bailiffs, and seizure of movable property, used by 56.6% of executive secretaries and 62.5% of professional bailiffs, are the most commonly used methods of enforcement. 53% of executive secretaries and 41.7% of professional bailiffs find seizure of immovable property the most difficult method of enforcement. This is surprising as it is the most frequently used methods of enforcement implying that enforcement agents are not very comfortable with the methods of forced enforcement available to them. Executive secretaries struggle in particular with seizure of immovable property due to the legal requirements that have to be followed in auctioning property.

6. Effectiveness and public perception

The effectiveness and public perceptions of enforcement findings focus on the satisfaction and confidence of claimants in the enforcement process.

A. Confidence of claimants in enforcement

As a whole enforcement is not well perceived amongst the claimants interviewed. 33% of all claimants who are still waiting for their judgment to be enforced do not believe that their judgment will ever be enforced. Claimants using professional bailiffs are significantly more confident in a successful outcome of their enforcement than those using executive secretaries. For those interviewed claimants who have been waiting over 3 months for the enforcement of their court judgment, only 47.2% using an executive secretary believe their judgment will definitely be enforced as opposed to 83.3% using a professional bailiff.

Claimant confidence is inversely correlated with wait time, declining significantly as the wait time for enforcement increases. It is therefore important to decrease the wait time of claimants and to endeavour to keep enforcement within the 3-month limit as prescribed by law.

B. Satisfaction with enforcement agents

In terms of satisfaction with enforcement agents 26% of claimants who used notaries were either not very satisfied or totally dissatisfied with the service they received, as opposed to 36% of claimants who used executive secretaries and 11% of claimants who used professional bailiffs. This again supports the finding that executive secretaries struggle most with their enforcement role whereas professional bailiffs provide a better service given the fact that enforcement plays a key role in their employment.

II. RECOMMENDATIONS

From the key findings set out above and further explored in the report, various recommendations can be proposed to try to improve the system of enforcement in Rwanda.

1. Raise awareness with general public

The most important recommendation emanating from the report is that awareness amongst the general public needs to be raised on the importance of court judgments. Currently defendants have a negative attitude toward final judgments impeding their enforcement. A sensitization campaign is necessary in order that defendants accept a final judgment as a document with the force of law, which must be executed. Defendants should be less obstructive of the enforcement process which would assist reconciliation between the parties. Most enforcement problems would be solved if voluntary execution by defendants was at the forefront of the enforcement process.

2. Executive secretaries

Another important recommendation relates to executive secretaries, the most problematic of the enforcement agents. Given their workload and their reported lack of competence, executive secretaries should be discharged from their enforcement role. Their enforcement services should be taken over. Plausible options for individuals who could take over this role include:

- a) A new category of public servants that enforces court judgments as its only task.
- b) Another option is to grant professional bailiffs a monopoly over enforcement. Given that professional bailiffs charge fees, solutions for the poor would be required such as: professional bailiffs offering their services pro bono, defendants paying enforcement fees, or charging fees after enforcement.

If executive secretaries cannot be discharged from their enforcement duties, training should be improved and provided more regularly to better equip them in their enforcement roles. If training is provided, this should focus in particular on the legal requirements relating to auctioning property. Furthermore, a transport and communication budget would facilitate executive secretaries and notaries in the enforcement of court judgments and avoid any extravagant fees being charged by enforcement agents.

3. Professional bailiffs

In relation to professional bailiffs, efforts should be made to further clarify fees and to determine whether those fees should be uniform and fixed by the Professional Bailiff Association or by the Ministry of Justice. The manner in which fees are charged should also be examined. The number of professional bailiffs should also be increased to enable them to operate across the entire country. Training sessions should also focus strongly on best practise to reduce the incidence of fines against professional bailiffs.

4. Legal reform

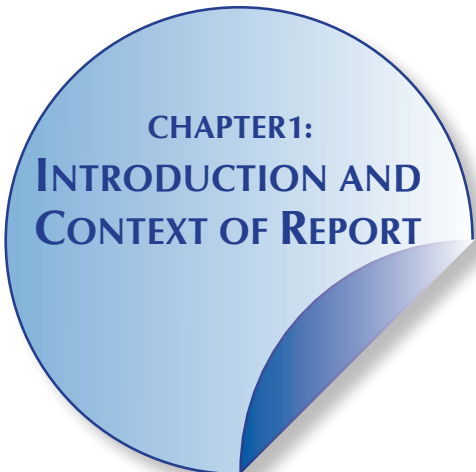
Legal reform is also required in order to further solidify an improved enforcement regime. Article 200 of the Civil Procedure Code, requiring enforcement agents to enforce final judgments within three months, should be rewritten as it is still subject to interpretative confusion. Nonprofessional bailiffs should also be relinquished of their personal liability under the law for committing errors during the enforcement of judgments. While enforcing court judgments, nonprofessional bailiffs are carrying out a public office and therefore should be protected from personal liability. Should they commit errors during the enforcement process, enforcement agents should receive disciplinary action rather than face personal liability or in the alternative be provided with a state lawyer. Any fines against nonprofessional bailiffs, excluding those arising from gross negligence or criminal conduct, should be shouldered by the state.

5. Role of judiciary

As discussed in more detail in the report, judges should endeavour to write clear judgments to avoid confusion and the delays caused where an enforcement agent must return to court for clarification of a judgment. Furthermore, a computerised record management system should be developed to avoid issues such as judgments being wrongly affixed with the executory formula.

III. CONCLUSION

The research carried out a holistic review of the enforcement process for civil, non-commercial judgments in Rwanda. It looked at the roles of each enforcement agent and the experiences of claimants in order to obtain a 360-degree view on enforcement. Enforcement of court judgments is often a difficult process, especially when defendants are reluctant to cooperate or have no assets over which to enforce. Unless enforcement agents are able to facilitate the process, Rwandan citizens have little, if any, substantial recourse to justice.



CHAPTER 1: INTRODUCTION AND CONTEXT OF REPORT

1. General introduction

This report sets out the findings of a research project conducted by The Legal Aid Forum into the enforcement of court judgments in Rwanda with a focus on access to justice. The objective of the research conducted by The Legal Aid Forum was to evaluate and monitor the enforcement of court judgments in Rwanda, in order to formulate recommendations to improve the current system where necessary.

Enforcement has been defined as *“the putting into effect of court decisions ... which compel the defendant to do, to refrain from doing or to pay what has been adjudged”*.¹ Enforcement of a final

court judgment is the last step for a citizen seeking justice. The timely and correct execution of court judgments is essential for a citizen as it signposts the moment that the citizen finally receives what is due to him/her and justice is considered done. An inordinate delay in enforcing or an inability to enforce court judgments undermines the effectiveness of the justice system as a whole. Furthermore, impediments to the enforcement of judgments act as a deterrent for citizens intending to commence proceedings. The enforcement or execution of court judgments is integral to the development of rule of law and to ensuring access to justice in any country.

2. Context of research

As part of the Economic Development and Poverty Reduction Strategy 2008-2012 (“EDPRS”), strengthening rule of law was highlighted as a priority. The EDPRS states:

“4.146 The objective of the justice sector is to strengthen the rule of law so as to promote good governance and a culture of peace. This will be achieved through four sets of interventions.

4.147 The first set aims to ensure universal access to justice in Rwanda. Justice, Reconciliation, Law and Order (JRLO) institutions will be strengthened after

1

Recommendation Rec (2003) 17 of the Committee of Ministers to member states on Enforcement. Council of Europe, <https://wcd.coe.int/ViewDoc.jsp?id=65531&Site=CM>

undertaking a benchmark study to establish the prevailing levels of human, material and organisational capacities within the sector.”²

The Justice, Reconciliation, Law & Order Sector Strategy: July 2009 – June 2012 (“JRLOSS”) sets out the main outputs to be achieved by the Justice Sector. Output 1 is “*Universal Access to Quality Justice*” which explicitly includes as Activity 1.12 “*Review system for enforcement of civil judgments*”. The JRLOSS makes specific reference to complaints received by the Ombudsman “*of failure of executive secretaries of cells to enforce Abunzi rulings*”³.

According to the UNDP Justice Sector Support Programme 2008-2012 report related to Rwanda titled, “*Access to Justice for All, The Foundation for Good Governance and Poverty Reduction*”

“the execution of justice decisions within reasonable delays is hindered by several factors, due particularly to the limited number of professional bailiffs, and to the fact that this mission is entrusted to the executive secretaries of local administration, who play the role of non-professional bailiffs (with lack of training), a sensitive task coming in addition to other numerous duties falling under their responsibilities.”⁴

Delays in execution of enforcement and problematic execution of court judgments are therefore key issues that were earmarked by the government, justice sector and international institutions for further study in order to guarantee universal access to quality justice for all.

3. Scope of research

This research explores the reasons for delays in enforcement and obstacles to the enforcement of court judgments in Rwanda. In order to achieve this objective a nationwide quantitative evaluation of enforcement was undertaken targeting enforcement agents as well as claimants who had experienced or are still experiencing the enforcement mechanism in Rwanda first hand.

The material scope of this research consists of civil cases. Criminal cases were excluded apart from civil claims emanating from criminal acts and category 3 genocide cases emanating from the gacaca courts. Criminal cases (apart from those listed above) were excluded for the following reasons: (a) the focus of our research project was the enforcement of civil cases which is poles apart from criminal cases; (b) we aimed to evaluate the experiences of civil claimants - the counterpart of which in criminal cases is the state which would not fit within our focus of access to justice; (c) we also aimed to evaluate enforcement agents of civil judgments, individuals that do not have a role in criminal cases; (d) targeting police and those in the prison service would have involved a completely different set of questions and approach; (e) enforcement of criminal cases usually takes place where the defendant is present and is instantaneous and therefore not as problematic (f) criminal cases are part of a completely different jurisdiction and involve completely different laws; and (g) the indicators governing the material approach of this research would not apply in the same way to criminal cases.

Commercial cases were also excluded from the scope of this survey given the focus on access to justice for the poor and vulnerable being central to the mission of LAF. The enforcement

² Economic Development and Poverty Reduction Strategy, 2008-2012, p.84 – 85, section 4.146 - 4.147

³ Justice, Reconciliation, Law & Order Sector Strategy: July 2009 – June 2012, p. 38, section 2.22

⁴ UNDP, “*Justice Sector Support Programme 2008-2012, Access to justice for all, the foundation for good governance and poverty reduction*”, 14, <http://www.undp.org.rw/PRODOC-dgu-justice-sector/project60453.pdf>

of commercial contracts does not fall into LAF's approach on access to justice.

In order to obtain information relating to the enforcement of civil judgments, we surveyed the following categories of enforcement agent: executive secretaries, notaries and professional bailiffs. Claimants were also interviewed. Only those claimants who had won their cases and had a final judgment affixed with the executory formula originating from gacaca courts (3rd category cases relating to property), abunzi or mediation committees and civil courts were surveyed. Claimants, having had their court judgments enforced, as well those who are still in the process of enforcing their judgments were surveyed.

The Maison d'Accès à la Justice ("MAJ") were also included within the scope of this research project in order to assess their role in assisting citizens with enforcement issues.



CHAPTER 2: METHODOLOGY

This chapter sets out the methodology used for data collection and analysis.

1. Indicators

The General Assembly of the Legal Aid Forum, held in March 2010, identified the key indicators for this research project that have been expanded to the list set out below:

1. Length of enforcing court judgments;
2. Costs involved in enforcing court judgments;
3. Availability of enforcement agents;
4. Competence of enforcement agents;
5. Enforcement mechanism and procedures;
6. Effectiveness of the enforcement system and public perception.

The above indicators form the basis of the questionnaires and taken together provide a broad perspective of the current state of enforcement within Rwanda.

2. Targeted populations

The targeted populations for this research survey are those persons involved in enforcement of civil court judgments. These include claimants who have had judgments in their favour and are in the process of enforcing their final judgment or have had their final judgment enforced ("claimants") (1) as well as enforcement agents (2). These populations have been identified to cover those who are affected and/or involved in enforcement from every angle.

1. Claimants

The targeted population of claimants is composed of claimants who have passed through the civil courts, the gacaca courts and the abunzi mediation committees.

There were 83,177 judged cases from 2008 to 2010⁵ in the primary courts, the intermediate courts, the High Court and the Supreme Court. This number can be broken down into the following categories: civil, general, social, administrative and cases involving minors. In 2010 alone there were 31,048 judged cases in these categories for all of the courts listed above. The figures relating to 2011 will be published in June 2012 and therefore were not

available for the purpose of this report. The targeted population of claimants also includes those cases that passed through the Abunzi mediation committees for which we do not have complete figures, as well as gacaca cases falling in the third category (property). We have obtained the Abunzi figures for the Southern Province from 2010 (6,426 cases⁶). We do not have concise figures relating to gacaca cases from 2008 to 2010, however we know that between 2005 and 2011 there were 809,434⁷ judged cases falling into category 3 (damage to property). The above figures are not sufficient to provide an absolute total value for our claimant population.

Claimants, for the purposes of this research, are those who have received final court judgments in their favour with the executory formula affixed to the judgment and who are either in the process of enforcing their judgment or who have had their final judgments enforced.

2. Enforcement agents

The targeted population of enforcement agents involved in enforcement is as follows:

- the professional bailiffs (54);
- the executive secretaries (2,565); and
- persons in charge of legal affairs at the district and sector level, also referred to for the purpose of this research as notaries (approximately 446).

The distribution of judged cases by category and the number of bailiffs is as follows:

Table 1: Distribution of judged cases by category and number of bailiffs

Category	Total judged cases as of end of 2008	Total judged cases as of end of 2009	Total judged cases as of end of 2010	Number of Professional bailiffs	Number of executive secretaries	Number of notaries	Maison d'Accès à la Justice (MAJ)
Civil	2,0115	28,573	28,966				
General	31	9	17				
Social	428	1,055	831				
Administrative	141	268	395				
Minors	482	1,027	839				
Travail	0	0	0				
Total	21,197	30,932	31,048	54	2,565	446	30

3. Maison d'Accès à la justice

The total population of Maison d'Accès à la Justice ("MAJ") in Rwanda is 30. We chose to include the MAJ in our survey to investigate their involvement in assisting claimants on enforcement matters and to examine what future role they could play in enforcement.

6 Informative Data on the Southern Province, July 12, 2010. <http://www.southernprovince.gov.rw/spip.php?article173>

7 National Service of Gacaca Courts, achievements at 31 December 2011, Gacaca Database - Ibonerahamweigaragazaimibarey'Imazazaciwen'InkikoGacacadufitemuri Database

3. Geographical coverage

Considering logistical and financial constraints faced by the Legal Aid Forum (LAF), the study was carried out in 10 districts, distributed in the four Provinces and the City of Kigali (see table below). The selection of 10 districts out of the 30 in Rwanda was decided by the General Assembly of LAF in March 2010. By choosing districts in the four provinces and the City of Kigali we strove to make our sample as representative as possible of Rwanda as a whole. The specific districts were chosen in line with the capabilities of the 8 implementing organizations that the Legal Aid Forum engaged to carry out the field work. Each of these implementing organizations provided 3 agents for data collection in their respective districts.

Table 2: Districts covered by Province/City of Kigali.

Province	District	Number of sector	Number of cells
Kigali City	Nyarugenge	10	46
Southern Province	Muhanga	12	60
	Huye	14	75
	Gisagara	13	58
	Rubavu	12	79
Western Province	Nyabihu	12	69
	Musanze	15	64
Northern Province	Gicumbi	21	101
	Rwamagana	14	77
Eastern Province	Ngoma	14	62
Total		137	691

Total numbers of administrative entities across Rwanda:

- Number of districts: 30
- Number of sectors: 416
- Number of cells: 2,149

4. Sampling and sample size

1. Theoretical background

There are two principal types of sampling methods: probability (random sampling) and non-probability sampling. The idea behind the probability sampling is random selection. More specifically, each sample from the population of interest has a known probability of selection under a given sampling scheme. The use of probability method supposes the existence of a sampling frame, meaning the availability of an exhaustive list of all observation units where each unit has equal probability of being in the sample. Nonprobability sampling is used when it is not possible to draw up a list of the total population from which a sample can be randomly selected. Selection shall therefore be purposive: the surveyors shall make a deliberate judgment of the sample size they need in order for it to be representative for the whole population. This nonprobability sampling is based on the assumption that if the used sample matches the population on a certain set of known characteristics (e.g. geographical coverage, sex, etc.), it may also match the target population as a whole.

2. Claimants sample strategy

We were examining the enforcement experience of claimants in Rwanda. We looked at those claimants with a non-appealable final judgment in their favour who are either still waiting for enforcement or who have already had their judgment enforced.

Given that this research focused on quantitative research methods it would have been ideal to carry out probability sampling. The list of names of all claimants was not available to us due to lack of records provided. Furthermore we did not have an accurate number of final judgments upon which to base a sample. Even with a list of all judged cases, this itself would not be a perfect basis for creating a sample as it is not clear how many judgments are appealed and do not become final non appealable judgments in the year listed. The number of judged cases cannot be equated to the total number of claimants for the following reasons: (a) one claimant may bring more than one case so may have more than one judgment to be enforced; and (b) one judgment may have more than one claimant as beneficiaries under the judgment. It would be advisable in the future that a record of all final judgments and number of claimants be maintained by a central body together with records of abunzi and gacaca judgments to facilitate research in the future.

The lack of concrete figures created the challenge of designing an adequate sample for claimants that was representative of the target population as a whole. Given that it was not possible to draw up a list of all the units in our targeted population or know the total size of our target population, we used non-probability purposive sampling in our research specifically targeting those claimants who had a final enforceable judgment.

Limitations of non-probability sampling

It is often stated that non-probability sampling is not as credible as probability sampling. This is due to the fact that the targeted units in a non-probability sample are generally selected on the basis of their accessibility or the personal judgment of a field agent. The limitation is therefore that an unknown proportion of the entire population is not sampled. This in turn makes it difficult to ascertain whether the sample reached accurately represents the entire target population.

Justification of sample

Non-probability sampling is however very useful to display traits within a certain population when taking a more exploratory approach to a subject. This is especially useful where the total population is not attainable, as in this case, but a thorough evaluation of the existence of issues within the enforcement process is possible.

We chose a sample of 3,000 claimants who already had final enforceable judgments and obtained data from 2,794 claimants (93% of our targeted sample). The number of 3,000 was chosen as it was a large enough sample that despite using non-probability sampling could provide reliable data. As a general rule smaller sample sizes have a higher sampling error than larger samples. This sample is larger than average sample sizes with the view to counter the limitations of non-probability sampling and reduce the sampling error. Further factors in the size of the sample were the cost and time restrictions of the project whereby 3,000 claimants was already an ambitious target.

In order to make this sample representative, we surveyed 10 districts across Rwanda (33% of all districts) and looked at districts falling within the 4 provinces and Kigali City to try to maximize our geographical scope. We therefore avoided giving extra weight to those claimants who were readily accessible; a criticism often directed against purposive sampling,

by spreading the geographical reach of our sample wide.

Another criticism often directed against non-probability sampling is that it does not enlist cooperation in the respondents. In this case our field agents did not report any reluctance on the part of claimants to cooperate with the research study especially in cases where their support was enlisted through the local authorities.

From our interviews and research into enforcement prior to commencement of field work it was clear that executive secretaries at the cell level were the most active within enforcement. We therefore focused the attention of our field workers at the cell level. We also stressed the importance of obtaining claimants who had cases originating from different courts to ensure that the sample was not biased in that it didn't represent claimants from certain courts.

Different organizations performed fieldwork in each district using random methods. The field agents made contact with local leaders, professional bailiffs, lawyers, abunzi/mediators, court clerks and civil society organizations. They also used their own personal networks in order to obtain contact information for possible interviewees. From there they expanded their network, in some cases through snowball sampling, whereby one claimant passes the details of another claimant to the field agent and the next respondent passes on the details of another claimant and so on. The main techniques of purposive sampling that were used in our research were snowball and maximum variety sampling also known as heterogeneous sampling. In heterogeneous sampling the aim is to obtain a wide range of perspectives on the issue. This was achieved by stressing the importance to our field agents of questioning claimants with judgments originating from different courts that were both waiting for enforcement or had already had their judgment enforced.

Our final sample is representative in that our sample has the following characteristics:

- Claimants using all types of enforcement agent
- Claimants originating from every court
- Claimants from each financial categorization/ economic status
- Claimants with cases relating to each matter
- Claimants whose judgments have not yet been enforced, have been partially enforced and have been fully enforced
- Claimants whose judgments have been enforced within the legal delay and those whose judgments were enforced beyond the legal delay.

The fact that different methods were used by each group of field agents ensured that the sample was obtained at random and is therefore more representative as a whole as it is not biased towards a certain method.

Conclusion on claimant sampling methods

Given the limitations of not having accurate figures available for all judged cases from all courts within the remit of our survey we used non-probability sampling. We sent 30 field agents out into 10 districts across all the provinces in Rwanda to find claimants with final non appealable judgments to investigate their enforcement experiences. This was conducted using quantitative methods to provide findings that could be subject to rigorous analysis. Furthermore we interviewed 2,794 claimants which is a significant sample size for any type of survey. We are unable to extrapolate the findings of our claimant data using a mathematical formula across the entire population of claimants in Rwanda due to the lack of figures on the total claimant population size. Despite this, our findings were spread across 10 districts in all the provinces of Rwanda and therefore issues that pervade each district

covered can be extended to those districts not included in our research survey. Problems with enforcement faced by claimants in the 10 districts covered are most likely experienced by many claimants in other districts of Rwanda.

3. Other target groups

Our targeted population also comprises professional bailiffs, executive secretaries, notaries and the Maisons d'Accès à la Justice. In these cases we know the targeted population size so a sample frame and sample size is easier to develop. Probability sampling was therefore possible. The below formula was applied to each category to assess the margin of error:

ss=	$Z^2 * (p) * (1-p)$
	c^2

Where:

Z = Z value (e.g. 1.96 for 95% confidence level)

p = percentage picking a choice, expressed as decimal (.5 used for sample size needed)

c = confidence interval, expressed as decimal (e.g., .04 = ± 4)

3.1. Professional bailiffs

The total number of professional bailiffs in Rwanda is 54. There are 46 bailiffs in the geographical remit of this research and we obtained a sample of 24 professional bailiffs. This sample is biased in that 20 of those interviewed were based in Nyarugenge, however this is representative of the population as a whole where 33 of the 54 bailiffs are based in that same district.

We had a full list of names of all professional bailiffs in Rwanda and their contact details. Probability sampling methods were therefore possible using random sampling techniques. This allows statistical inference to be made and reduces the bias of the data collected.

Using the above formula our confidence interval/margin of error within our geographical scope is 10%.

3.2. Executive secretaries

There are 2,565 executive secretaries in Rwanda in the district, sector and cell level and 828 in the geographical area falling within the scope of this research survey. We obtained a sample of 231 executive secretaries, being approximately 30 in each district. We obtained a sample of 10% of the total number of executive secretaries in Rwanda and 28% within our geographical scope. We therefore have a confidence interval/margin of error within our geographical scope of 5% using the above formula and 6% in Rwanda. We used quota sampling in order to obtain a balanced sample by directing our field agents to interview executive secretaries of the cell, sector and district.

3.3. Notaries

There are 446 notaries across Rwanda at district and sector level, and 147 in the geographical area falling within the scope of this research survey. We obtained a sample of 45 notaries, consisting of the district notaries and sector level notaries. As with executive secretaries we did not have a full list of all notaries in Rwanda to carry out random sampling methods. We therefore used quota sampling techniques targeting notaries of the sector and district and notaries that do enforce as well as those that do not enforce judgments. We obtained a sample of approximately 10% of all notaries in Rwanda and 30% of the notaries within the

geographical scope of our survey. Using the above formula the confidence interval/margin of error for our findings relating to notaries is 12% within our geographical scope and 14% across Rwanda.

3.4. MAJ

There are 30 MAJ across Rwanda, one in each district and therefore 10 within the geographical scope of this research survey. We sampled all those MAJ that fell within the scope of this survey so a total of 10 MAJ were interviewed representing a third of the total (33%). Using the above formula the confidence interval/margin of error for our findings relating to MAJ is 0% within the geographical scope of our survey as we interviewed all 10 MAJ.

Table 3: Distribution of the targeted sample size by Province, District and implementing organizations.

District	Organisation	Clai- mants	Professional bailiffs	Executive secretaries	Nota- ries	MAJ	Total
Nyarugenge	INALAS	300	22	30	6	1	359
Nyabihu	ARPCDH	300		30	6	1	337
Rubavu	Clinique Juridique / ULK Gisenyi	300	3	30	6	1	340
Huye	Clinique Juridique /UNR	300	1	30	6	1	338
Gisagara	Clinique Juridique /UNR	300		30	6	1	337
Muhanga	CESTRAR	300		30	6	1	337
Musanze	CDJ	300	3	30	6	1	340
Gicumbi	CDJ	300	1	30	6	1	338
Ngoma	ADL	300	1	30	6	1	338
Rwamagana	MPEDH	300		30	6	1	337
Total		3,000	31	300	60	10	3401

5. Data collection

Both qualitative and quantitative methods were used to collect data. While we obtained non numerical data through our qualitative methods our quantitative methods captured numerical data about enforcement.

1. Qualitative methods

1.1. Review of publicly available documents

This involved the review of various publicly available documents. Below is a non-exhaustive list of some of the documents reviewed:

- Rwandan laws governing powers of enforcement agents:
 - Law n° 31/2001 of 12/06/2001 establishing and instituting the Organization of a Professional Bailiffs Association (O.G. n° 23 of 1/12/200 1)
 - Ministerial Order n° 114/11 of 03/08/2006 authorizing civil servants and employees of local administrative entities to execute judgments, judicial orders and writs with an executory stamp, (O.G. n° 17 of 1st September 2006)
 - Ministerial Order n° 167/0811 of 09/11/2011 Extending the Jurisdiction of

- Professional Court Bailiffs.
 - Arrêté Présidentiel n° 29/01 du 05/07/2005 portant désignation des agents de l'Etat pour remplir les fonctions de notaire, le nombre, le siège et le ressort des offices notariaux
 - Presidential Order n°02/01 of 28/01/2006 designating government officers to serve as notaries, head office and jurisdiction of notarial areas (O.G. n° special of 28 January 2006)
- Rwandan laws governing enforcement in general:
 - Law n° 18/2004 of 20/6/2004 establishing the Code of Civil, Commercial, Social and Administrative Procedure (O.G. N° special bis of 30 July 2004)
- Documents emanating from the Supreme Court
- The EDPRS Framework
- Reports on the Justice Sector in Rwanda
- Training materials for enforcement agents issued by, inter alia, Institute of Legal Practice and Development (I.L.P.D).

This review assisted in the preparation of guidance questions for the face-to-face interviews and focus group discussions as well as for the questionnaires.

1.2. Face-to-face interviews

Face-to-face interviews were conducted with the following individuals:

- State attorney from the Ministry of Justice
- President of the Bailiff Association
- Trainers from the I.L.P.D who provided training to enforcement agents:
 - Deputy registrar of land titles
 - Commercial High Court judge
- Executive secretary from the cell level in Rwamagana district

Guidance questions were prepared for each of these. The objective of these interviews was to obtain an overview of the enforcement situation in Rwanda. All interviewees provided significant insights and discussed key issues to be addressed.

1.3. Focus group discussions

Focus group discussions were held to assess, inter alia, the general feeling on the enforcement procedure, the most often cited reasons for delays in the system, and the effect on the justice system as a whole.

The following focus group discussions took place:

- 1) Conference on enforcement in Gisenyi on Thursday 22 September 2011 (organized by ADEPE) – attended by local executive secretaries of sectors and cells, judges, legal professionals, professional bailiffs and civil society organizations. This was very helpful in discussing key topics. We also arranged for the participants to split into groups to discuss questions of vital importance to enforcement and then present their responses to the group as a whole. This was interesting both to identify recurring themes, but also to note the different attitudes among the different respondents.
- 2) Focus group discussion with three judges from the Intermediate Court for Nyarugenge on Monday 26 September 2011. In this focus group we had prepared guidance questions and opened the floor to the judges to respond. This provided us with

useful insights into the role of the judiciary in enforcement.

1.4. Questionnaires

The questionnaires contained a small number of open questions, which provided further qualitative data to be analyzed.

2. Quantitative methods

The questionnaires that were used by the field agents were accompanied with general instruction manuals in French and detailed instructions in English and Kinyarwanda. The questionnaires, originally drafted in English, were translated into Kinyarwanda and were also accompanied with instructions in Kinyarwanda. Five different questionnaires were designed to cover our target population (one for claimants, one for professional bailiffs, one for executive secretaries, one for notaries and one for the MAJ). These questionnaires consisted primarily of closed questions. (See annexes)

2.1. Training of field agents

Training of field agents is important to ensure that these individuals are well acquainted with the questionnaires and so as to not bias data collected through the survey process. The Legal Aid Forum organized an intensive two day training session at the Centre d'Accueil François d'Assisi in Kigali on Monday 3 and Tuesday 4 October 2011. This training was attended by all 30 field agents.

The training focused on the importance of the research project, the methodology for the research project, the importance of the field agents' demeanour throughout the data collection and the questionnaires. Through a collaborative process each questionnaire was discussed in turn and each question was reviewed. The questionnaires were then amended to reflect the discussions with the field agents, to ensure that each question was clear and comprehensible.

2.2. Pre-test of the questionnaires

It is essential to pre-test any questionnaire for the following reasons:

- To ensure that the participants understand the questions;
- To ensure that participants interpret the questions correctly;
- To ensure that the tests do not take an inordinate amount of time to administer;
- To ensure that the questionnaire yields useful/verifiable data; and
- To ensure that there is no statistical bias to any question.

Following the training of the field agents and the subsequent amendments to the questionnaires, the field agents (3 per district) were asked to conduct a pre-test of three questionnaires from 7 to 10 October. Taking into consideration the feedback of the field agents, various changes were made to the questionnaires to ensure that they would produce more reliable results.

2.3. Collecting data on the field

The 30 field agents (10 teams of 3 field agents) collected data over 10 districts for an initial period of 12 days. The role of the field agents was to locate and enlist the cooperation of respondents and to ask questions and record answers from the questionnaires, probing incomplete answers where necessary to ensure that answers met the question objectives. The field agents used the support letters received from Ministry of Justice (MINIJUST) and Ministry of Local Government (MINALOC) as well as a copy of the visa received from the National Institute of Statistics to facilitate their data collection.

2.4. Quality control of data collection

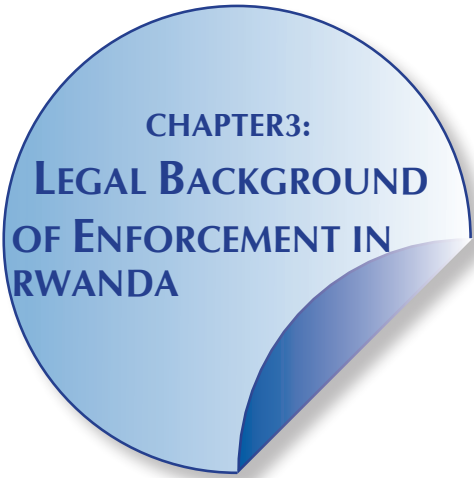
The Legal Aid Forum remained in constant contact with the field agents to provide coaching and guidance where required. The Legal Aid Forum spoke to the focal points from each team on a regular basis. Three teams were monitored during the data collection period.

2.5. Data entry

Data entry clerks were hired to input all of the data from the returned questionnaires into a database designed by the statistician. Six data entry clerks were hired for a total of 20 days to input all of the data. The data entry clerks were trained on the data entry process prior to commencing. The Legal Aid Forum conducted quality control throughout the data entry process.

2.6. Data analysis

After the data was entered into the computer database, data analysis of all the data received took place.



CHAPTER3: LEGAL BACKGROUND OF ENFORCEMENT IN RWANDA

The following chapter provides a brief overview of the legal background of enforcement in Rwanda. The purpose of this chapter is not to provide an exhaustive study of the legal framework on enforcement, but to put the findings of our research in their legal context.⁸ It considers the preliminary conditions for enforcing a judgment, the different forms of enforcement, the different players within enforcement and the time limits they have to comply with, the different mechanisms of enforcement, and the role of the judiciary. We also provide a brief introduction on the role of the MAJ.

1. Preliminary conditions for enforcement

In order to enforce a judgment it is necessary to have a final court judgment that is no longer appealable. The main appeal options are opposition against a judgment in default, and appeal against a standard judgment. An application for opposition against a judgment in default must be made within fifteen days from when a defendant in person gets notice of the judgment for standard judgments⁹ and within 10 days from the mediation decision being notified for *abunzi* cases¹⁰, whereas for a standard appeal the time for appeal is 1 month.¹¹ While a judgment is still appealable execution is suspended.¹² The actual appeal of a judgment also suspends execution except where provisional execution has been ordered by the judge.¹³ When a judgment is no longer appealable and no appeal has been lodged the enforcement process can commence. Judgments relating to compensation for damaged property in the *gacaca* courts, being those *gacaca* judgments within the scope of this research, are not appealable.¹⁴

⁸ For a more academic study on enforcement refer to booklet published by Clinique Juridique of the Faculte de Droit of the Université Nationale du Rwanda titled “De L’Execution des Jugements, Ordonnances et Autres Actes revêtus de la Formule Exécutoire” of December 2006.

⁹ Article 158, Law N° 18/2004 Of 20/6/2004 Relating to the Civil, Commercial, Labour and Administrative Procedure, hereafter referred to as the ‘Civil Procedure Code’.

¹⁰ Article 19, Organic Law N° 02/2010/OL of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee. OG n°24 Bis of 14/06/2010

¹¹ Article 163, Civil Procedure Code, Article 26, Organic Law N° 02/2010/OL of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee. OG n°24 Bis of 14/06/2010

¹² Article 161, paragraph 1; Article 171, paragraph 1, Civil Procedure Code.

¹³ Article 161, paragraph 2; Article 171, paragraph 2, Civil Procedure Code.

¹⁴ Article 94, Organic Law N°16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of *Gacaca*



2. Forms of enforcement

The Civil Procedure Code sets out the enforcement agents, the various legal methods of forced enforcement and the procedures that must be adhered to in carrying out these methods. Enforcement can be carried out in two ways, it can either be voluntary or forced.

1. Voluntary enforcement

Where the losing party spontaneously complies with the obligations set out in the final judgment against him or her, this constitutes voluntary enforcement, or rather voluntary execution.¹⁵ Voluntary enforcement avoids the involvement of enforcement agents and the time and cost they incur. It is therefore the simplest and most efficient method of enforcement.

2. Forced enforcement

Where voluntary enforcement is not an option or has been tried and failed, the winning party can proceed with the execution of their judgment by way of forced or compulsory¹⁶ execution¹⁷.

2.1. Civil and gacaca judgments

Prior to proceeding with forced enforcement, the final court judgment must be affixed with the executory formula¹⁸. The form of the executory formula and who affixes it, is prescribed

Court 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, as amended to date.

15 Article 193, Civil Procedure Code; Article 95, Organic Law N°16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Court 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, as amended to date.

16 The English version of the Civil Procedure Code mentions the word “compulsory” as the opposite method to voluntary enforcement. This usage of the word compulsory may be confusing as voluntary enforcement is also compulsory. This report will refer to “forced” enforcement instead of “compulsory” enforcement in line with the French version of the Civil Procedure Code that uses the term “*exécution forcée*”.

17 Article 253, Civil Procedure Code

18 Article 196, Civil Procedure Code. Note however that there are discrepancies between the English and French versions of the Civil Procedure Code. Only the French version explicitly mentions the necessity of the executory formula whereas the English version is more nebulous.

by law.¹⁹ Once the executory formula has been affixed to the final judgment forced execution can take place. Where gacaca judgments are not executed voluntarily, the execution is carried out in line with the force of law.²⁰

2.2. Abunzi judgments

In order for abunzi decisions to be enforced through forced enforcement the mediation minutes must be appended with the enforcement order. This order is obtained by request in writing or verbally by the interested party to the President of the Primary Court²¹. The enforcement order cannot be appended while the time for appeal (or for filing an action against the Abunzi decision) is still running, which is one month from the date the decision was notified.²²

3. Enforcement agents

Article 199 Civil Procedure Code specifies those responsible for forced enforcement of court judgments in Rwanda:

“Those in charge of the execution of judgments, orders and writs with an executory stamp are: Public officials, Court clerks, and the employees of local administrative entities authorized by the Minister in charge of Justice and private bailiffs.”

The following sections will provide an in-depth analysis of their enforcement roles.

1. Professional bailiffs

1.1. Legal foundation

Professional bailiffs²³ were established in 2001 by the law No 31/2001 of 12/06/2001.²⁴ This law is subject to revision which will review the organization of bailiffs, including their territorial competence and the recruitment process.²⁵

1.2. Professional status

Professional bailiffs are public officers²⁶ exercising a power of the state and regulated by the Ministry of Justice, however they operate independently. Article 26 of the Professional Bailiff Law states that professional bailiffs *“can exercise his/her profession as an individual or on behalf of the Association”*. Despite exercising a power of the state they are *“responsible for acts committed individually”* and thus are personally liable for the actions that they take.²⁷

19 Article 196, 197, Civil Procedure Code.

20 Article 95, Organic Law N°16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Court 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, as amended to date.

21 Article 24, Organic Law N° 02/2010/OL of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee. OG n°24 Bis of 14/06/2010

22 Article 26, 27, Organic Law N° 02/2010/OL of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee. OG n°24 Bis of 14/06/2010

23 These are referred to in the Civil Procedure Code as private bailiffs.

24 Law No 31/2001 of 12/06/2001 Establishing and Instituting the Organization of a Professional Bailiffs Association (O.G. no. 23 of 1/12/2001) (hereafter referred to as “the Professional Bailiff Law”)

25 Personal interview, President of the Professional Bailiff Association, Habimana Vedaste, 14 September 2011. See also P. Buhura, “Karugarama tables bill on court bailiffs”, <http://www.newtimes.co.rw/news/index.php?i=14890&a=39237>.

26 Article 2, the Professional Bailiff Law.

27 Article 29, the Professional Bailiff Law.

1.3. Number

According to the president of the bailiff association, in 2003 there were only eight professional bailiffs in Rwanda²⁸. Currently there are 54 professional bailiffs across the country; however 37 of the 54 professional bailiffs (almost 7 out of 10), are based in Kigali, in the districts of Nyarugenge and Gasabo.

1.4. Jurisdiction

Under the Professional Bailiff Law professional bailiffs are obliged to work within the jurisdiction of the intermediate court to which they are assigned.²⁹ Their geographical reach was therefore limited. However, article 20, paragraph 2 of the Professional Bailiff Law allows the Minister of Justice to authorize professional bailiffs to work outside of their jurisdiction where necessary. The Minister of Justice has, in accordance with that article, passed on 9 November 2011 a ministerial order extending the jurisdiction of professional bailiffs.³⁰ This ministerial order is a three year interim measure while the law on professional bailiffs is being revised. It extends the jurisdiction of the professional bailiffs listed in its annex³¹. Those professional bailiffs listed have full national competence³². This will make them more flexible and solve practical problems such as the enforcement over assets that are located in more than one jurisdiction.

1.5. Professional requirements

In order to become a professional bailiff, the applicant must be Rwandan, be at least 25 years of age and hold a bachelor's degree in law or its equivalent³³. Applications to become professional bailiffs are submitted to the Minister of Justice with evidence proving that he/she fulfils the requirement of Article 4³⁴. There is no formal interview process and applicants are accepted on the basis of their written application³⁵.

1.6. Appointment and dismissal

Professional bailiffs fall within the remit of the Ministry of Justice. They are appointed by the Ministry of Justice³⁶ and can equally be dismissed from the profession by the Ministry of Justice where they commit acts which amount to a breach of the law governing professional bailiffs³⁷.

1.7. Fees

Professional bailiffs are paid by their clients for the duties they perform. The Ministry of Justice is, according to the law, responsible for fixing the fees that clients pay to professional bailiffs³⁸. The fees should be published in the Official Gazette at the request of the Minister of Justice³⁹. The fees that bailiffs charge have never been fixed and therefore have never

28 Personal interview, President of the Professional Bailiff Association, Habimana Vedaste, 14 September 2011.

29 Article 20, paragraph 1, sentence 1, the Professional Bailiff Law stated that professional bailiffs were assigned to the primary courts, however this was changed to the intermediate courts ("*tribunal de grande instance*") as part of the 2004 judicial reforms pursuant to Organic Law N° 51/2008 Of 09/09/2008 Determining the Organisation, Functioning and Jurisdiction of Court.

30 Ministerial Order No 167/0811 Extending the Jurisdiction of Professional Court Bailiffs.

31 Only 42 professional bailiffs are mentioned in the annex while there are 54 professional bailiffs in Rwanda. The reason that 12 professional bailiffs are not included in the annex is that they did not attend the meeting with the Minister of Justice where this extension was discussed. They can apply for an extension of their competence by written application.

32 This is favoured among professional bailiffs. Personal interview, President of the Professional Bailiff Association, Habimana Vedaste, 14 September 2011.

33 Article 4, the Professional Bailiff Law.

34 Article 5, the Professional Bailiff Law.

35 Article 6, the Professional Bailiff Law.

36 Article 6, the Professional Bailiff Law.

37 Article 34, the Professional Bailiff Law.

38 Article 36, paragraph 1, the Professional Bailiff Law.

39 Article 36, paragraph 2, the Professional Bailiff Law.

been published in the Official Gazette. As a result of this professional bailiffs are able to charge their clients whatever fees they deem applicable.

1.8. Training

According to Article 37 of the Professional Bailiff Law *“the Minister responsible for Justice organizes adequate training courses for approved Professional Bailiffs before they start working.”* This training has never taken place⁴⁰.

1.9. Duties

The duties of the professional bailiff are set out in Chapter V of the Professional Bailiff Law. Professional bailiffs are entitled to execute court judgments and may evict people from other people’s property and sell by public auction any movable or immovable property not listed at the land registry⁴¹. Consequently professional bailiffs are not able to enforce over registered assets. This has led to confusion relating to enforcement over allotments and more specifically in gacaca cases⁴².

Professional bailiffs are obliged to work for any person who asks for their services⁴³.

1.10. Conduct

There is no specific code of ethics governing professional bailiffs; however certain articles from the Professional Bailiff Law govern the behaviour of professional bailiffs. For instance Article 23 states that *“the Professional Bailiff must act with discretion and circumspection with those he/she is serving whose interests are at risk he/she should be discerning, fair and serious in his/her duties”*. Furthermore they cannot carry out their professional bailiff duties for personal matters nor for the matters of their family members.⁴⁴ Professional Bailiffs cannot purchase any properties auctioned by themselves or those auctions they are supposed to supervise.⁴⁵ Professional bailiffs are also prohibited from exercising any other paid activity unless teaching on a temporary basis.⁴⁶

1.11. Professional Bailiff Association

The Professional Bailiff Association was established by the Professional Bailiff Law.⁴⁷ The Professional Bailiff Association has, among other duties, the responsibility for overseeing the conduct of professional bailiffs⁴⁸. In reality given financial constraints and lack of capacity this oversight is limited⁴⁹. The Professional Bailiff Association can also request the Minister of Justice to dismiss certain professional bailiffs⁵⁰.

Each professional bailiff makes a contribution to the Professional Bailiff Association to enable it to fulfil its mandate⁵¹. These fees remain insufficient for the Professional Bailiff Association to be able to rent its own office⁵².

40 Personal interview: President of Professional Bailiff Association, HabimanaVedaste 14 September 2011.

41 Article 18, the Professional Bailiff Law.

42 Personal Interview, State Attorney Ministry of Justice, 13 September 2011.

43 Article 21, paragraph 1, the Professional Bailiff Law.

44 Article 21, paragraph 2, the Professional Bailiff Law.

45 Article 32, paragraph 1, the Professional Bailiff Law.

46 Article 17, the Professional Bailiff Law.

47 Article 1, the Professional Bailiff Law.

48 Article 13, the Professional Bailiff Law.

49 Personal interview, President of the Professional Bailiff Association, HabimanaVedaste, 14 September 2011.

50 Article 34, paragraph 1, the Professional Bailiff Law.

51 Article 14, the Professional Bailiff Law.

52 Personal interview, President of the Professional Bailiff Association, HabimanaVedaste, 14 September 2011.

2. Persons in charge of legal affairs (“Notaries”)

2.1. Legal foundation

The Presidential Order⁵³ designating government officers to serve as notaries states that “the Officer of the District in charge of legal affairs is hereby designated to discharge notarial duties” and “the Officer of the Sector in charge of legal affairs is hereby designated to discharge notarial duties”⁵⁴.

Hereafter for the purposes of this report they will be referred to as notaries.

The Ministerial Order authorizing civil servants and employees of local administration entities to execute judgments⁵⁵ authorizes employees of local administrative entities to execute judgments. Article 3 of this order lists those authorized employees of local administration as:

*“1. a person in charge of **legal affairs in the District**; in his/her absence District Executive Secretary is hereby authorized;*

*2. a person in charge of **legal affairs in the Sector**, in his/her absence the Executive Secretary of the Sector is hereby authorized;*

3. the Executive Secretary of the Cell.”

This article therefore empowers those persons in charge of legal affairs, or notaries, of the sector to enforce court judgments. District notaries were already empowered by Ministerial Order 29/01. This new article does not therefore extend the powers of the person in charge of legal affairs in the district, however where that person has not yet taken the oath to become a notary they can now enforce as a person in charge of legal affairs. This article also sets out the hierarchy between notaries and executive secretaries in the enforcement of court judgments: notaries are the first in line to deal with enforcement matters; only in their absence do executive secretaries enforce.

2.2. Number

Each district (30 in total) and sector (416 in total) has officers in charge of legal affairs who pursuant to the Notary Presidential Order are able to carry out notarial duties.

2.3. Enforcement requirements and duties

The Ministerial Order designating agents of the State to carry out the functions of notary⁵⁶ states, in article 9, that one of the duties of notaries at the district level is to execute judgments where ordered to do so pursuant to other laws. Note that this Ministerial Order does not entitle notaries of the sector to execute court judgments. The prerequisite for carrying out notarial duties is that notaries have to swear an oath.⁵⁷

In order to be able to enforce court judgments, pursuant to Article 4 of Ministerial Order 114/11, persons in charge of legal affairs have to swear an oath *“before the Minister having justice in his or her attributions or any other person appointed by the Minister.”* Once this has been performed they are able to enforce court judgments on behalf of those who

53 Presidential Order N° 02/01 of 28/01/2006 designating government officers to serve as notaries, head office and jurisdiction of notarial areas, O.G. 28 January 2006, hereafter referred to as the “Notary Presidential Order”.

54 Article 6, the Notary Presidential Order.

55 Ministerial Order No 114/11 of 03/08/2006 Authorizing Civil Servants and Employees of Local Administration Entities to Execute Judgments, Judicial Orders and Writs with an Executory Stamp, hereafter referred to a “Ministerial Order 114/11”.

56 Ministerial Order 29/01 of 05/07/2005 Designating agents of the State to carry out the Functions of Notary, the number, the seat and the resources of Notarial Offices, hereafter referred to a “Ministerial Order 29/01”.

57 Décret du 17 November 1953 Actes notariés, B.O. 12 April 1954.

petition for their services.

In summary, notaries at the district level can automatically enforce judgments once they have taken the notary oath. Notaries at the sector level can only enforce wearing their hat as person in charge of legal affairs and taking the oath under Ministerial Order 114/11.

2.4. Organization

Persons in charge of legal affairs at the sector and district level are the responsibility of the Ministry of Local Government (“MINALOC”) however their enforcement role falls under the Ministry of Justice (“MINIJUST”).

3. Executive secretaries

3.1. Legal foundation

Executive secretaries are authorized to enforce court judgment by Ministerial Order 114/11. Article 3 of this order lists those authorized employees of legal administration as:

*“1. a person in charge of legal affairs in the District; in his/her absence **District Executive Secretary** is hereby;*

*2. a person in charge of legal affairs in the Sector, in his/her absence the **Executive Secretary of the Sector** is hereby authorized;*

*3. the **Executive Secretary of the Cell.**”*

Executive secretaries of the province are not listed in the above article and therefore do not enforce.⁵⁸ Executive secretaries of the district and sector only enforce in the absence of the person in charge of legal affairs according to the Ministerial Order 114/11. As with notaries, in order to enforce court judgments, executive secretaries must swear an oath.

3.2. Number

Executive secretaries exist at the cell, sector, district and province levels. There are 2,570 executive secretaries in Rwanda.

3.3. Enforcement requirements and duties

The duties of executive secretaries are set out in Presidential Order No 28/01 of 06/7/2009 Modifying and Complementing the Presidential Order No 57/01 of 15/10/2006 Determining the Responsibilities, Structure and Functioning of Village Cell and Sector (hereafter the “Executive Secretary Presidential Order”).

The duties of executive secretaries of the cell are set out in Article 22 of the Executive Secretary Presidential Order and include, amongst others, *“perform daily duties of the Cell administration”* and *“prepare all reports required from the Cell administration”*.

The duties of executive secretaries of the sector are set out in Article 33 of Executive Secretary Presidential Order and include *“co-ordinate Government programs in the sector level”* and *“prepare the Sector budget and plan of action”*.

Executive secretaries must swear an oath in order to enforce court judgments under Ministerial Order 114/11.

58

Cf. Article 30, Law No 01/2006 of 24/01/2006 Establishing the Organization and Functioning of Province.

3.4. Educational requirements

The Executive Secretary Presidential Order sets out the educational requirements of cell and sector level executive secretaries. Pursuant to Article 22 thereof, executive secretaries of the cell *“must hold at least a six year secondary education or equivalent certificate”*. Executive secretaries of the sector, under Article 31 of the same Order, *“shall have a minimum qualification of a University degree”*.

3.5. Organization

Executive secretaries also fall within the remit of MINALOC however their enforcement role falls under MINIJUST. The districts are responsible for providing a budget to the sector and cell local authorities so that they can execute their duties.

4. Time limits for enforcement and penalties for delayed enforcement

1. Time limits for defendants

Defendants are obliged to comply with the time limits and manner of enforcement as set out in the final judgment by the judge. A judge can also include in a judgment, after request by the other party, provision for a fine (*“astreinte”*) against the defendant for failure to comply with the judgment.

2. Time limits for enforcement agents

Enforcement agents who carry out forced enforcement are obliged to do so within time limits prescribed by law. These limits are set out in article 200 of the Civil Procedure Code, paragraph 1 of which reads:

“Judicial decisions and acts affixed with the executory formula shall be executed in a period not exceeding three (3) months of the date the winning party or one with the ordinance of the judge so requests or from the date the act affixed with executory formula is received.”

The above article gives enforcement agents 3 months in which to enforce judgments affixed with an executory formula. This 3 month period begins to run from the moment they are petitioned by a claimant to enforce a judgment or from the time they receive the judgment.

Where an enforcement agent is not able to comply with the 3 month time limit he or she is at risk of receiving sanctions under article 200 of the Civil Procedure Code, paragraph 2 which reads:

“Failure to comply with the time limits provided for by the preceding paragraph shall be liable to a civil fine ranging from twenty thousand (20.000) francs to one hundred (100.000) francs without prejudice to payment of due damages to the injured party as well as other penalties provided for by the law.”

Despite the fact that enforcement agents are carrying out a public office in executing court judgments, they are personally liable for any mistaken or delayed enforcement.

5. Methods of enforcement

Methods of enforcement used by enforcement agents when they carry out forced enforcement are set out in the Civil Procedure Code. All references to articles below refer to articles within the Civil Procedure Code. Enforcement agents only have the option to use executory seizure when enforcing by force.

The first step in executory seizure is set out in article 254:

“All execution seizures are preceded by formal order to pay made prior to the

seizure, and containing notice of the executable title if it had not already been notified."

The general provisions relating to the different methods of executory seizure are set out in articles 253 to 270 of the Civil Procedure Code. These methods will be discussed briefly below.

1. Seizure by garnishment (Articles 271 – 278)

Seizure by garnishment involves seizure of movable property that is in the hands of a third party. After notice of the seizure the garnishee is unable to deal in any way with the assets that form the subject matter of the seizure.

2. Seizure of crops (Articles 279-281)

Under article 279 it is possible to seize crops for payment of a judgment debt:

"A seizure of crops is a seizure in enforcement covering fruits, which are attached to the branches or by roots before their harvesting."

3. Seizure of income (Articles 282 – 284)

Seizure of income is defined in article 282 of the Civil Procedure Code as follows:

"The seizure of income is a means of enforcement whereby a creditor stops and seizes in the hands of a third party, debtor of income, the right to interests and pension and a due arrears owing or which may become owing."

4. Seizure of immovable property (Articles 286 – 312) (public auction)

Article 287 sets out that:

"The seizure of immovable property cannot be made unless the value of the real property of the debtor is not sufficient to cover the debt and court fees save where an agreement contains a clause permitting the creditor to sell mortgaged property without recourse to judicial proceedings."

The procedure governing the seizure of real property is very prescriptive. For instance, article 289 states that:

"A creditor who wishes to undertake the seizure of real property, requests the registrar of land titles of where the property is located, the copy of the property from the land registrar or in its absence, an official public deed confirming that the real property does indeed belong to the debtor".

Any seizure of immovable property must be conducted with article 260 in mind, as any seizure cannot take place if it will result in the destitution of the debtor.

5. Seizure of movable property (public auction)

Article 260 protects certain assets of the losing party to ensure that the execution of the judgment would not result in extreme poverty of the losing party:

"The seizure of that share of movable property, which would expose the debtor to extreme poverty or make him or her dependent on the community, is not permitted."

The following are not subject to seizure:

*“1° necessary beddings and clothings of the seized person and his or her family;
2° tools which are essential for the vital activity, profession, trade or personal undertakings of the seized person of which in their absence he or she and his or her family may not survive;
3° two thirds (2/3) of the food required for the life and survival of the seized person and his or her family;*

4° quota of the total remuneration on which social laws lift the seizure and one third of the pension of a worker who does not have any other means of subsistence.”

6. Role of the judiciary

Judges have the ability to set out, within a final judgment, provisions relating to the time and manner in which the judgment should be enforced⁵⁹. They can also, albeit after request from one of the parties, include provision for a fine (*astreinte*) against the defendant for failure to comply with the judgment⁶⁰.

The judiciary has a very limited role in the execution of court judgments. Once a judgment is final and has been affixed with the executory formula the judiciary only plays a further role if one of the parties or an enforcement agent returns to court. The main reasons that a party or enforcement agent may return to court in relation to enforcement can be the following: if the judgment is unclear and requires judicial clarification⁶¹, if a further order is required in order to effect compulsory enforcement⁶², resolve procedural difficulties that may occur in the course of seizure⁶³ or if there is an appeal against the execution of an enforcement agent⁶⁴. The abovementioned penalties, that an enforcement agent can incur under article 200 when he or she does not comply with time limits for enforcement, would fall within the definition of an appeal against an enforcement agent.

7. Maison d’Accès à la Justice (“MAJ”)

We also surveyed the Maison d’Accès à la Justice, or Access to Justice Bureaus or Offices, as part of this research in order to ascertain their role in enforcement. This section sets out a brief introduction of the roles and duties of MAJ as a whole. A MAJ is a public office designed to provide legal assistance to the general public in order to increase access to justice across Rwanda. There is currently a MAJ in every district in Rwanda; this is in line with Commitment 58 from the Kivu Retreat of the Government in 2009 to:

“Increase the “Access to Justice Bureaus” from the 5 pilot districts to 10 by July 2009, to 20 by Dec. 2009 and to 30 by Dec. 2010.”

There is no law governing the MAJ nor is there a written policy setting out the scope of their work, however the below excerpt from the JRLOS 2009 - 2012⁶⁵, about the pilot MAJ in the district of Nyanza, provides a summary of the work they undertake.

59 Article 215, Civil Procedure Code

60 Article 201, Civil Procedure Code

61 Article 154, Civil Procedure Code

62 Article 257, Civil Procedure Code

63 Article 313, Civil Procedure Code

64 Article 219, Civil Procedure Code

65 The Republic of Rwanda: Justice, Reconciliation, Law & Order Sector Strategy and Budgeting Framework: January 2009-June 2012

“The mandate of the MAJ is to:

- *improve impact and effectiveness of legal aid by coordinating initiatives in Nyanza District*
- *serve as the first point of orientation for the general public*
- *sensitise the population on their rights and the national legal framework*
- *undertake training and monitoring of Abunzi activities*

Typical activities of the Nyanza MAJ include:

- *general legal aid services (advice, referrals, education, representation)*
- *assisting prisoners (e.g. ensuring prison release forms are acted on)*
- *coordinating between different actors in the justice system*
- *hotline service across District (often used by citizens in other Districts)*
- *contribution to research and surveys (e.g.: Legal Aid Baseline Survey 2007)*
- *think tank for legal aid policy”⁶⁶*

One of the actions of the Government Programme 2010 – 2017⁶⁷ is as follows:

“To keep empowering all justice institutions to be available in all Districts and to be at the service of the citizens mainly through Access to Justice Bureau/Maison d’Accès à la Justice (MAJ) so that new cases entering courts of law reduce by at least 20% annually”.⁶⁸

The MAJ were incorporated into this research project to evaluate their role in assisting citizens with enforcement related problems.

⁶⁶ JRLOS 2009 – 2012, p. 34.

⁶⁷ The Republic of Rwanda, Government Programme 2010 – 2017, October 2010.

⁶⁸ The Republic of Rwanda, Government Programme 2010 – 2017, October 2010, p. 24, activity 61.



CHAPTER 4: FINDINGS OF RESEARCH

After a brief preliminary identification of the interviewed people, the findings from this research project are explored in the following sections arranged according to the following indicators:

- I. Length of enforcing court judgments
- II. Cost of enforcing court judgments
- III. Competence of enforcement agents
- IV. Availability of enforcement agents
- V. Mechanism and procedures of enforcement
- VI. Effectiveness of the enforcement process and public perception

1. Preliminary identification of sample

1. Claimants

- 2794 claimants were interviewed.
- The group of claimants interviewed has an almost equal ratio of men (51 %) to women (49 %).
- We interviewed claimants from 10 districts: Nyarugenge, Gisagara, Huye, Muhanga, Rubavu, Nyabihu, Musanze, Gicumbi, Rwamagana and Ngoma. In each of the 10 districts, more or less the same numbers of claimants were interviewed.
- The split by category⁶⁹ per district for our claimants interviewed was as follows:

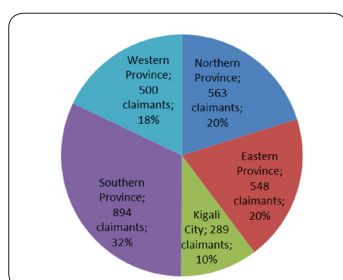
⁶⁹ This is the category the respondents placed themselves in.

Table 4: Claimants split by social category per district⁷⁰

	Indigent people	Very poor	Poor	Fairly poor	Professional	Wealthy individuals	I do not feel comfortable categorizing myself	Total percentage (absolute number)
Nyarugenge		7,3%	63,8%	27,5%		0,3%	1,0%	100% (287)
Gisagara	3,4%	31,5%	54,7%	3,0%	0,3%		7,0%	100% (298)
Huye	7,1%	32,4%	48,1%	5,8%	0,6%	0,3%	5,8%	100% (312)
Muhanga		4,6%	64,9%	27,7%	0,4%		2,5%	100% (285)
Rubavu	2,0%	8,2%	73,0%	15,3%	1,0%		0,5%	100% (196)
Nyabihu	0,7%	12,5%	60,4%	25,1%			1,3%	100% (303)
Musanze		0,7%	27,7%	60,1%	0,0%	0,7%	10,8%	100% (278)
Gicumbi		9,2%	49,3%	27,1%	5,6%	2,1%	6,7%	100% (284)
Rwamagana		0,7%	62,2%	35,8%	0,3%	0,3%	0,7%	100% (296)
Ngoma		5,1%	58,9%	28,9%	4,3%		2,8%	100% (253)
Total	1,4%	11,7%	55,8%	25,6%	1,2%	0,4%	4,0%	100% (2792)

- Claimants in all 5 provinces of Rwanda were included in the sample: Kigali City, the Eastern, Southern, Western and Northern Province, but not equally, as shown in the chart below:

Chart 1: Geographical origin of interviewed claimants



- The below table shows the split of how many claimants used each type of enforcement agent:

Table 5: Use of different types of enforcement agents⁷¹

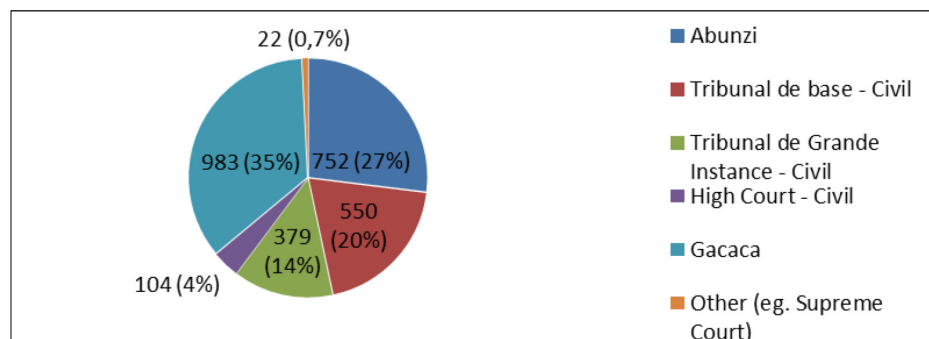
Province	Frequency	Percentage
Executive secretary of the cell	2269	83.5%
Executive secretary of the sector	243	8.9%
Executive secretary of the district	8	0.3%
The person in charge of legal affairs for the sector	13	0.5%
The person in charge of legal affairs for the district	19	0.7%
Professional bailiffs	163	6.0%
Not applicable	1	0.0004%
Total	2716	100.0%

⁷⁰ A total of 2792 respondents provided an answer out of a total of 2794 (response rate 99.9%).

⁷¹ A total of 2716 respondents provided an answer out of a total of 2794 (response rate 97.2%).

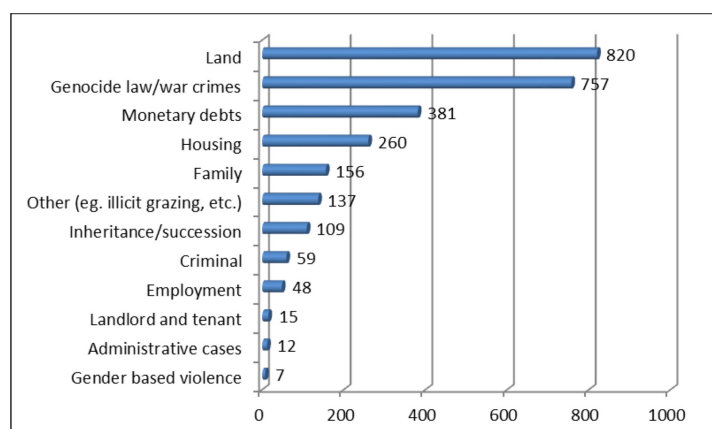
- Claimants had cases originating from all of the different courts. 35% of claimants had cases that came from gacaca courts. 27% came from abunzi (mediation committees), 20% from primary courts ("*tribunal de base*"), 14% from intermediate courts ("*tribunal de grande instance*") and 4% from the high court ("*haute cour*").

Chart 2: Court that judgments originated from



- Claimants had cases relating to all different matters as shown by the graph below:

Chart 3: Type of cases of interviewed claimants



2. Executive secretaries

- 231 executive secretaries out of 2565 across all of Rwanda were interviewed in 10 districts out of 30 across all of Rwanda.
- The number of executive secretaries interviewed ranged from 12 to 31 per district – the largest number is from Rwamagana (13.4%)
- Split between male and female is quite even – 54% male and 45.5% female.
- The age range is from 22 to 83 years old.
- Executive secretaries in all 5 provinces of Rwanda were included in the sample: Kigali City, the Eastern, Southern, Western and Northern Province, but not equally, as shown in the table below.

Table 6: Geographical spread of interviewed executive secretaries, per province

Province	Frequency	Percentage
Kigali City	25	10.8%
Southern Province	53	22.9%
Western Province	43	18.6%
Northern Province	52	22.5%
Eastern Province	58	25.1%
Total	231	100.0%

3. Professional bailiffs

- 24 professional bailiffs were interviewed, out of a total of 54 in the whole of Rwanda.
- We interviewed professional bailiffs from 4 districts: Nyarugenge, Gicumbi, Musanze and Rubavu.
- Those were spread over Kigali City, the Western and the Northern Province, but not equally, as shown in the table below.

Table 7: Geographical spread of interviewed professional bailiffs, per province

Province	Frequency	Percentage
Kigali City	20	83.3%
Western Province	1	4.2%
Northern Province	3	12.5%
Total	24	100.0%

- 20 out of the 33 professional bailiffs in Nyarugenge were interviewed; 2 out of 5 professional bailiffs based in Musanze were interviewed; the only professional bailiff active in Gicumbi was interviewed; and 1 out of the 3 professional bailiffs in Rubavu was interviewed.

4. Notaries

- 45 notaries were interviewed, on a presumed⁷² total of 446 in the whole of Rwanda.
- We interviewed notaries from the sector level and district level as per the below

Table 8: Different types of notaries interviewed

Type of notary	Frequency	Percentage
Notary of the sector	37	84.1%
Notary of the district	7	15.9%
Total	44	100.0%

⁷² There is supposed to be one notary in every district (30 in total) and in every sector (416 in total).

- We interviewed notaries from all 10 districts covered in this survey.
- Those were spread over all 5 provinces of Rwanda, but not equally.

5. MAJ

- There's 30 MAJ's in the whole of Rwanda, of which we interviewed 10 officials.
- We interviewed MAJ officials from those MAJ's in all 10 districts within the scope of our research.
- Those were spread over the 5 provinces of Rwanda, but not equally, as shown below:

Table 9: Geographical spread of interviewed MAJ officials, per province

Province	Frequency	Percentage
Kigali City	1	10%
Southern Province	3	30%
Western Province	2	20%
Northern Province	2	20%
Eastern Province	2	20%
Total	10	100%

I. INDICATOR 1 – LENGTH OF ENFORCING COURT JUDGMENTS

The time that claimants wait to enforce court judgments is of paramount importance when analysing the effectiveness of enforcement as a whole. In accordance with the Civil Procedure Code, once a nonprofessional or professional bailiff has been requested by a claimant to assist in enforcing their judgment they must enforce said judgment within 3 months⁷³. Under the Civil Procedure Code failure to comply with this 3 month timeframe results in the enforcement agent being personally liable for fines⁷⁴. Undue delay in enforcing court judgments further serves to undermine confidence in the justice system and has a direct impact on access to justice.

From our findings 40% of claimants interviewed had their judgments fully enforced, 15% partially enforced and 45% not yet enforced of which 64.4% have been waiting for more than the 3 month period. In fact 6 claimants waited for more than 8 years before having their judgment enforced. Of those claimants who had their judgments fully enforced 54.5% waited between 0 and 3 months.

This indicator will first analyse the findings related to judgments that have not yet been enforced (1), then judgments that have been fully enforced (2) and finally judgments that have been partially enforced (3). In analysing the length of enforcement this section will discuss length per type of enforcement agent, type of case and type of court. This indicator will also examine data provided by enforcement agents on how long it takes them to enforce and the main reasons that enforcement takes over 3 months.

⁷³ Article 200, paragraph 1, Civil Procedure Code

⁷⁴ Article 200, paragraph 2, Civil Procedure Code

Key findings observed under this indicator include:

- The majority of respondents (64.4%) who haven't had their judgment enforced have been waiting longer than the legal 3 month delay for enforcement since they contacted their enforcement agent.
- 66.4% of claimants with final judgments emanating from the gacaca courts, who have not yet had their judgment enforced, have been waiting between 1 and 6 years for enforcement.
- 76.5% of claimants using an executive secretary of the cell have been waiting more than 3 months for the enforcement of their judgment since contacting their enforcement agent.
- 92.0% of all genocide cases exceed the three month time limit amongst those claimants who have not yet had their judgment enforced.
- Professional bailiffs are able to enforce judgments in a shorter time period than nonprofessional bailiffs and also illicit more confidence in the successful outcome of enforcement among claimants.
- The poor and vulnerable are disadvantaged as they are most likely to use executive secretaries of the cell who take the longest to enforce judgments.
- The main reason that enforcement agents take longer than 3 months to enforce court judgments is the lack of assets/insolvency of defendants.

1. Not enforced judgments

Not enforced judgments are those judgments that have not been enforced at all, even in part. The following section analyses the data from our claimants who have not had their judgments enforced (45%). This section looks at the time taken for the enforcement of those unenforced judgments correlated with the type of enforcement agent, the type of case and the type of court the case originated in.

1.1. Time waited so far for enforcement

The below table shows how long claimants, who have not yet had their judgment enforced, have been waiting, in months, for the enforcement of their court judgment since the time they requested enforcement from an enforcement agent.

Table 10: Time waiting since contacting enforcement agent⁷⁵

Time	Frequency	Percentage
Up to 3 months	298	27.1%
3 - 6 months	123	11.2%
6 - 12 months	217	19.7%
12-24 months (1-2 years)	160	14.5%
24-36 months (2-3 years)	186	16.9%
36-48 months (3-4 years)	84	7.6%
48-60 months (4-5 years)	16	1.5%
60-72 months (5-6 years)	10	0.9%
72-108 months (6-9 years)	2	0.2%
108-180 months (9-15 years)	4	0.4%
Total	1100	100.0%

⁷⁵ A total of 1100 respondents provided an answer out of a total of 1246 respondents who did not yet have their judgment enforced (response rate 88.3%).

1.1.1. Within 3 month period

The table above indicates that 23.9% of respondents who have not had their judgment enforced have been waiting for enforcement of their judgment for up to 3 months since contacting their enforcement agent.

1.1.2. Exceeding 3 month period

11.7% of respondents who indicated that their judgment has not yet been enforced did not provide an answer to this question. The majority of respondents (64.4%) who haven't had their judgment enforced have been waiting longer than the legal 3 month delay for enforcement since they contacted their enforcement agent. 4 claimants have been waiting for 15 years for their final judgments to be enforced.

1.2. Correlation between type of enforcement agent and amount of time waited

The below table shows the percentage of claimants, who have not yet had their judgment enforced, using each type of enforcement agent who have been waiting for a certain amount of time for the enforcement of their judgment.

Table 11: Correlation between type of enforcement agent and time waiting for enforcement⁷⁶

	Executive secretary of the cell	Executive secretary of the sector	Executive secretary of the district	The person in charge of legal affairs for the sector	The person in charge of legal affairs for the district	Professional Bailiffs
Up to 3 months	23.5%	34.1%		40.0%	36.4%	62.1%
3-6 months	10.7%	13.2%			9.1%	20.7%
6-12 months	21.2%	13.2%		40.0%	27.3%	5.2%
1-2 years	14.5%	18.7%			18.2%	5.2%
2-3 years	19.1%	9.9%	33.3%	20.0%		1.7%
3-4 years	8.8%	3.3%	33.3%			1.7%
4-5 years	1.2%	2.2%				1.7%
5-6 years	0.9%	1.1%	33.3%			1.7%
6-9 years		1.1%			9.1%	
9-15 years	0.1%	3.3%				
Total percentage (total absolute number)	100.0% (913)	100.0% (91)	100.0% (3)	100.0% (5)	100.0% (11)	100.0% (58)

1.2.1. Respecting 3 month period

From the above table it can be extracted that only 23.5% of claimants who haven't yet had their judgment enforced and who have contacted an executive secretary of the cell to do so, have been waiting for enforcement for less than 3 months. For claimants using an executive secretary of the sector, this percentage is higher (34.1%). For claimants using the person in charge of legal affairs at sector level (40.0%) and at district level (36.4%) this percentage is more or less the same. The highest percentage of people who have been waiting for less than 3 months is to be found in the group of claimants using professional bailiffs (62.1%). These figures are only indicative in that these claimants are still waiting for enforcement and may ultimately wait longer than the legal 3 month delay for enforcement.

1.2.2. Exceeding 3 month period

The majority of claimants, waiting for their enforcement, who used nonprofessional bailiffs, have already been waiting for longer than 3 months:

- 76.5% of claimants using an executive secretary of the cell have already been waiting more than 3 months for the enforcement of their judgment since contacting

76

A total of 1098 respondents provided an answer out of a total of 1246 who did not yet have their judgement enforced.

their enforcement agent.

- 65.9% of claimants using an executive secretary of the sector have already been waiting more than 3 months for the enforcement of their judgment since contacting their enforcement agent.
- 63.6% of claimants using the person in charge of legal affairs for the district have already been waiting more than 3 months for the enforcement of their judgment since contacting their enforcement agent.

Those claimants using professional bailiffs are less likely to have waited over 3 months

- 37.9 % of claimants using a professional bailiff have already been waiting more than 3 months for the enforcement of their judgment since contacting their enforcement agent.

1.2.3. Conclusion

Regarding the time the interviewed claimants have been waiting for the enforcement of their judgment, there is a clear distinction between professional and nonprofessional bailiffs: professional bailiffs have been letting the majority of their clients wait for a shorter time than the legal delay of 3 months (62.1%) whereas nonprofessional bailiffs are letting the majority of their 'clients' wait more than 3 months (average of 61.0%). This means that using a nonprofessional bailiff to enforce a court judgment considerably increases the risk of having to await the actual enforcement for more than 3 months. Note however that these figures are for those claimants who have not yet had their judgment enforced so there is no certainty as to when their judgments may be enforced, however it is noteworthy that the majority of claimants waiting for enforcement using professional bailiffs have been waiting less time.

1.3. Correlation between type of court and amount of time waited

Table 12: Correlation between type of court and time waiting for enforcement⁷⁷

Type of court	Abunzi	Primary court	Intermediate court	High Court	Gacaca	Other
Up to 3 months	45.2%	45.4%	50.4%	44.4%	6.7%	22.2%
3 to 6 months	17.6%	20.2%	17.8%	13.3%	4.5%	22.2%
6 to 12 months	26.6%	17.6%	17.0%	15.6%	20.1%	
1 to 2 years	5.3%	8.4%	6.7%	6.7%	22.1%	22.2%
2 to 3 years	2.1%	5.0%	4.4%	4.4%	30.3%	
3 to 4 years	1.6%	1.7%	0.7%	4.4%	13.9%	
4 to 5 years	0.5%		0.7%	6.7%	1.7%	11.1%
5 to 6 years	1.1%	1.7%		2.2%	0.7%	
6 to 9 years			1.5%			
9 to 15 years			0.7%	2.2%		22.2%
Total percentage (total absolute number)	100 % (188)	100 % (119)	100 % (135)	100 % (45)	100 % (538)	100 % (9)

77

A total of 1034 respondents provided an answer out of a total of 1246 who did not yet have their judgement enforced (response rate 83.0%).

1.3.1. *Abunzi*

Of all the claimants who are still waiting for the enforcement of their abunzi decision, 45.2% have been waiting for up to 3 months, 44.2% have been waiting between 3 and 12 months after contacting their enforcement agent. Another 10.6% have been waiting between 1 and 6 years.

1.3.2. *Primary court*

For those claimants who are still waiting for the enforcement of their civil judgment from a primary court, 45.4% have been waiting for up to 3 months, 37.8% have been waiting between 3 and 12 months after contacting their enforcement agent. Another 16.8% have been waiting between 1 and 6 years.

1.3.3. *Intermediate court*

Of all the claimants who are still waiting for the enforcement of their civil judgment from an intermediate court, 50.4% have been waiting for up to 3 months, 34.8% have been waiting between 3 and 12 months after contacting their enforcement agent. Another 14.8 % have been waiting between 1 and 15 years.

1.3.4. *High Court*

Of all the claimants who are still waiting for the enforcement of their civil judgment from the High Court, 44.4% have been waiting for up to 3 months, 28.9% have been waiting between 3 and 12 months after contacting their enforcement agent. Another 26.7% have been waiting between 1 and 15 years.

1.3.5. *Gacaca*

Of all the claimants who are still waiting for the enforcement of their gacaca judgment, 6.7% have been waiting up to 3 months, 25.6% have been waiting between 3 and 12 months after contacting their enforcement agent. Another 67.7% have been waiting between 1 and 6 years.

1.3.6. *Conclusion*

From the above findings it is clear that those claimants with gacaca judgments have to wait the longest for enforcement with the highest percentage of those claimants interviewed having waited longer than 3 months (93.3%). This is due to the complex and highly sensitive nature of such judgments. This is followed by high court judgments where 56.6% of claimants have been waiting over 3 months.

1.4. *Correlation between type of case and amount of time waited*

From crossing the type of case and the time claimants who are still waiting for their enforcement have been waiting, it is clear that the following types of cases result in the longest wait times:

1. Genocide: 92.0% of cases exceed the 3 month legal delay
2. Housing: 88.4% of cases exceed the 3 month legal delay

For land cases, 1 in 3 claimants with a land related judgment have been waiting for more than 3 months and only 32.6% have been waiting up to 3 months.

Note however that many claimants with land related cases did not provide an answer to how long they had been waiting.

For matters related to monetary debts, employment, family and inheritance/succession, more or less 1 in 2 claimants who are still waiting for their enforcement have been waiting for more than 3 months.

1.4.1. *Conclusion*

As with the type of court, genocide cases are the hardest to enforce within 3 months. This is supported by the results relating to cases emanating from gacaca courts discussed above (see 1.3.5).

1.5. *Confidence in enforcement of their judgment*

1.5.1. *In general*

Of all claimants who are still waiting for their judgment to be enforced, only 25.8% believes that enforcement will definitely take place. Another 39.8% believes that their judgment may be enforced. About 1 in 3 claimants (32.3 %) who are still waiting for their judgment to be enforced do not believe that their judgment will be enforced. It is clear that those claimants who have not yet had their judgment enforced lack confidence in the enforcement process.

1.5.2. *Correlated with enforcement agent*

Claimants who are using a professional bailiff to enforce their court judgment, and are still waiting for their enforcement, are generally more confident in the positive outcome of their enforcement. The claimants who are using nonprofessional bailiffs are less confident in the successful enforcement of their court judgment. For instance for those claimants who have been waiting for up to 3 months for their judgment to be enforced, only 47.2% believe that their judgment will definitely be enforced if they are using an executive secretary of the cell and 48.4% if using an executive secretary of the sector but 83.3% if using a professional bailiff. Of those claimants who do not feel that their judgment will be enforced 213/410 (52%) have been waiting 2-4 years.

2. **Enforced judgments**

Enforced judgments are those judgments that have been enforced in full. The following section analyses the data from our claimants who have had their judgments fully enforced. This section looks at the time taken for the enforcement of those fully enforced judgments correlated with the type of enforcement agent, the method of enforcement, the type of case and the type of court the case originated in.

2.1. *Time waited for enforcement*

The below table shows how long claimants, who have had their judgment enforced, waited in months, for the enforcement of their court judgment from the time they requested enforcement from an enforcement agent.

Table 13: Time waited for full enforcement⁷⁸

Time	Frequency	Percentage
Up to 3 months	597	59.6%
3 - 6 months	205	20.5%
6 - 12 months	114	11.4%
1 - 2 years	46	4.6%
2 - 3 years	19	1.9%
3 - 4 years	10	1.0%
4 - 5 years	3	0.3%
5 - 6 years	1	0.1%
6 - 9 years	4	0.4%
9 - 15 years	3	0.3%
Total	1002	100.0%

2.1.1. Respecting the 3 month period

59.6% of interviewed claimants who had their judgment enforced waited between 0 and 3 months for enforcement of their judgments. Although this percentage is quite high, it still means that almost 1 in 2 people requesting enforcement is unable to have their judgment enforced within 3 months.

2.1.2. Exceeding 3 month period

8.6% did not provide an answer to this question, but a total of 36.9% of claimants waited for more than 3 months to have their judgment enforced. 29.1% waited up to 12 months, 4.2% waited up to 2 years and 3.6% waited from 2 to 15 years for their judgment to be enforced. Of that last group, 1 claimant waited for 15 years.

2.1.3. In general

For those claimants interviewed who had their judgment fully enforced a far greater percentage had their judgments enforced within the 3 month period than those who are still waiting for their judgment to be enforced.

2.2. Method of enforcement

The below table shows the method of enforcement used for those claimants who have had their judgment fully enforced.

⁷⁸ A total of 1002 respondents provided an answer out of a total of 1096 who had their judgement fully enforced (response rate of 91.4%).

Table 14: Method of enforcement used for claimants with full enforcement of judgment⁷⁹

Method of enforcement	Frequency	Percentage
Defendant paid voluntarily without pressure from enforcement agent	78	7.3%
Defendant paid voluntarily after pressure from enforcement agent	722	67.4%
Seizure of movable property	47	4.4%
Seizure of immovable property	167	15.6%
Seizure of crops	1	.1%
Seizure by garnishment	8	.7%
Other	22	2.1%
Not applicable	26	2.4%
Total	1071	100.0%

74.7% of those claimants who had their judgment enforced and provided an answer to this question had their judgment executed voluntarily: only 7.3% without pressure from the enforcement agent and 67.4% after pressure from an enforcement agent (or respectively 9.8% and 90.2% of voluntary enforcements). Of the methods of forced enforcement (used in 20.8% of the successful enforcements), seizure of immovable property is the most used (15.6% of the total and 75.0% of the forced enforcements).

64.1% of those cases that were executed voluntarily without pressure were enforced within 3 months. Of those cases that used voluntary enforcement with pressure 56.1% were enforced within 3 months. Further, 54.5% of cases that used seizure of immovable property as a method of enforcement were enforced within 3 months.

2.2.1. Conclusion

Where enforcement is voluntary there is a high chance that it will be a swift process (64.1% within 3 months). However amongst the claimants interviewed only 7.3% had their judgment executed voluntarily without pressure from an enforcement agent. This demonstrates that voluntary enforcement is underutilized due to resistance of defendants and lack of assets, which should be addressed to minimize enforcement delays.

2.3. Correlation between type of enforcement agent and amount of time waited

The below table shows the percentage of claimants using each type of enforcement agent who waited for a specific amount of time for the enforcement of their judgment:

⁷⁹

A total of 1071 respondents provided an answer out of a total of 1096 who had their judgement fully enforced (response rate of 97.7%).

Table 15: Correlation between time waited for full enforcement and type of enforcement agent used⁸⁰

	Executive secretary of the cell	Executive secretary of the sector	Executive secretary of the district	The person in charge of legal affairs for the sector	The person in charge of legal affairs for the district	Professional bailiffs
Up to 3 months	62.5%	31.6%	75.0%	100.0%	100.0%	68.3%
3-6 months	21.6%	18.4%	25.0%			15.9%
6-12 months	9.1%	23.7%				9.5%
1-2 years	3.2%	21.1%				3.1%
2-3 years	1.3%	5.3%				1.6%
3-4 years	1.1%					1.6%
4-5 years	0.3%					
6-9 years	0.4%					
9-15 years	0.3%					
Total percentage (absolute total) providing an answer	100.0% (624)	100.0% (38)	100.0% (4)	100.0% (3)	100.0% (2)	100.0% (63)

2.3.1. Respecting the 3 month period

- Of all judgments fully enforced by an executive secretary of the sector, only 31.6% were enforced within the legal delay of 3 months.
- Of all judgments fully enforced by an executive secretary of the cell, 62.5% were enforced within the legal delay of 3 months.
- Of all judgments fully enforced by a professional bailiff, 68.3% were enforced within the legal delay of 3 months.

2.3.2. Exceeding 3 month period

- Of all the judgments fully enforced by an executive secretary of the sector, almost 2 in 3 (65%) were enforced after more than 3 months.
- Of all judgments fully enforced by an executive secretary of the cell, more than 1 in 3 (37.5%) were enforced after more than 3 months.
- Of all judgments fully enforced by a professional bailiff, almost 1 in 3 (31.7%) were enforced after more than 3 months.

⁸⁰ A total of 1002 respondents provided an answer out of a total of 1096 who had their judgement fully enforced (response rate of 91.4%).

2.3.3. Conclusion

From the findings above, relating to cases that have been fully enforced, it is apparent that professional bailiffs perform best, followed by executive secretaries of the cell. Executive secretaries of the sector perform the worst being the most likely to exceed the three month period for enforcement.

2.4. Correlation between type of court and amount of time waited

Table 16: Correlation between time waited for full enforcement and type of court

Type of court	Abunzi	Primary courts	Intermediate courts	High Court	Gacaca	Other
Up to 3 months	61.5	64.8	57.4	62.5	39.8	55.6%
3 to 6 months	25.0	22.3	12.0	15.1	7.1	33.3%
6 to 12 months	9.5	7.1	16.7	17.5	23.1	11.1%
1 to 2 years	1.9	2.5	7.5	2.5	18.6	
2 to 3 years	1.2	1.3	1.8	2.5	6.2	
3 to 4 years	0.4	0.6	1.8		3.5	
4 to 5 years	0.2		1.0		0.9	
5 to 6 years			1.0			
6 to 9 years		0.6	1.0		0.9	
9 to 15 years	0.2	0.6				
Total percentage (total absolute number)	100% (423)	100% (309)	100% (108)	100% (40)	100% (113)	100% (9)

2.4.1. Abunzi

Of all abunzi decisions that were fully enforced, 61.5% were enforced within 3 months of contacting their enforcement agent. Another 34.5% were enforced within 1 year. 4.0% waited for full enforcement for between 1 and 15 years.

2.4.2. Primary court

Of all civil judgments from the primary courts that were fully enforced, 64.8% were enforced within 3 months after contacting their enforcement agent. Another 29.4% were enforced within 1 year. 5.8% even waited for full enforcement for between 1 and 15 years.

2.4.3. Intermediate court

Of all civil judgments from the intermediate courts that were fully enforced, 57.4% were enforced within 3 months after contacting their enforcement agent. Another 28.7% were enforced within 1 year. 13.9% waited for full enforcement for between 1 and 9 years.

2.4.4. High Court

Of all civil judgments from the High Court that were fully enforced, 62.5% were enforced within 3 months after contacting their enforcement agent. Another 32.6% were enforced within 1 year. 5% waited for full enforcement for between 1 and 3 years.

2.4.5. Gacaca

Of all gacaca judgments that were fully enforced, only 39.8% were enforced within 3 months after contacting their enforcement agent. Another 30.2% were enforced within 1 year. 30% waited for full enforcement for between 1 and 9 years.

2.4.6. Conclusion

As for those judgments that have not yet been enforced, gacaca judgments are the most likely to take longer than the 3 month period to be enforced.

2.5. Correlation between type of case and amount of time waited

Table 17: Correlation between time waited for full enforcement and type of case⁸¹

	Up to 3 m	3-6 m	6-12 m	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5-6 yrs	6-9 yrs	9-15 yrs	Total per- centage (total abso- lute num- ber)
Land	64.5 %	18.0 %	11.3 %	2.7 %	1.5 %	1.0 %	0.2 %	0.2 %	0.2 %	0.2 %	100% (406)
Monetary debts	59.6 %	30.5 %	5.3 %	3.4 %	0.4 %		0.4 %				100% (206)
Landlord and tenant	66.7 %	33.3 %									100% (6)
Employe nt	30.0 %	40.0 %	10.0 %			10.0 %			10.0 %		100% (10)
Family	57.6 %	23.1 %	11.5 %	3.9 %	1.2 %	1.2 %				1.2 %	100% (78)
Inheritance /succession	63.6 %	20.0 %	12.7 %	1.8 %						1.8 %	100% (55)
Housing	56.5 %	19.6 %	21.7 %		2.2 %						100% (46)
Criminal	85.7 %	7.2 %	3.5 %		3.5						100% (28)
Genocide law/war crimes	37.4 %	7.5 %	24.3 %	18.7 %	6.5 %	3.7 %	1.0 %		1.0 %		100% (107)
Gender based violence	50.0 %			50.0 %							100% (2)
Admini- strative cases		33.3 %	33.3 %						33.3 %		100% (3)
Other	58.2 %	27.9 %	2.3 %	7.0 %	4.6 %						100% (43)

The type of cases most frequently exceeding the legal 3 month delay for enforcement, where the court judgment has been enforced, are employment and genocide cases: only 30.0% of those claimants providing an answer had their judgment relating to employment enforced within the legal 3 month delay, only 37.4% with judgments relating to genocide crimes. 6.1% of claimants with land related cases waited for over a year for full enforcement. Monetary debts were the most likely to be enforced in a timely manner: 59.6% were enforced within the legal 3 month delay, another 30.5% were enforced within 6 months.

⁸¹ A total of 1002 respondents provided an answer out of a total of 1096 who had their judgement fully enforced (response rate of 91.4%).

The fact that both land and genocide cases take longer to enforce is understandable in the context of Rwandan history.

2.5.1. Conclusion

The above figures, reinforced by the finding in relation to not yet enforced cases, show clearly that genocide cases take the longest to enforce. The conclusion that genocide cases create particular enforcement problems is supported by the finding that enforcement agents find gacaca cases the hardest to enforce.

3. Partially enforced judgments

Partially enforced judgments are judgments that have not been enforced in full and have only been enforced in part. The following section analyses the data from our claimants who have only had their judgments enforced in part. This section looks at the time taken for the partial enforcement of those judgments correlated with the type of enforcement agent, the type of case and the type of court the case originated in.

3.1. Time waited for partial enforcement

The below table shows how long claimants, who have had their judgment partially enforced, waited in months, for the partial enforcement of their court judgment from the time they requested enforcement from an enforcement agent.

Table 18: Time waited for partial enforcement⁸²

	Frequency	Percentage
Up to 3 months	25	8.4%
3 - 6 months	26	8.8%
6 - 12 months	39	13.2%
1 - 2 years	36	12.2%
2 - 3 years	99	33.4%
3 - 4 years	60	20.3%
4 - 5 years	8	2.7%
5 - 6 years	1	0.3%
6 - 9 years	1	0.3%
9 - 15 years	1	0.3%
Total	296	100.0%

3.1.1. Respecting 3 month period

Only 8.4% of respondents, who indicated that their judgment has been partially enforced, waited for up to 3 months from contacting their enforcement agent for the partial enforcement of their judgment.⁸³

3.1.2. Exceeding 3 month period

29.7% of respondents who indicated that their judgment has been partially enforced did not provide an answer to this question, making a total of 61.1% of respondents who waited for

⁸² A total of 296 respondents provided an answer out of a total of 421 who had their judgement partially enforced (response rate of 70.3%).

⁸³ Note that partial enforcement is still not full enforcement: of those 8.4% that obtained partial enforcement within the legal 3 month delay, it is still possible that some or even all of them exceed the legal delay in obtaining full enforcement.

more than 3 months since contacting their enforcement agent for the partial enforcement of their judgment. One claimant waited up to 15 years for the partial enforcement of his case.

3.1.3. Conclusion

Looking at both claimants who haven't had their judgment enforced as well as claimants who have already had partial enforcement of their judgment (i.e. all the claimants who are still waiting for full enforcement), it is clear that most of the claimants (more than 60%) who – at the time of their interview – were still waiting for their full enforcement, have been waiting for more than 3 months, thus exceeding the legal time period for enforcement. The fact that only 8.4% of claimants with a partial enforcement waited up to 3 months means that claimants have to wait a long time even for just the partial enforcement of their judgment. These findings clearly indicate that there are problems with enforcement.

3.2. Method of enforcement

For 53.0% of those claimants who had their judgment partially enforced, the defendant paid voluntarily after pressure from the enforcement agent(s). This is also the main method of enforcement for those claimants who have had their judgment fully enforced.⁸⁴

61.2% of claimants who already had a partial or full enforcement had their judgment executed voluntarily after pressure from an enforcement agent. Another 12.3% had their judgment executed voluntarily without pressure from an enforcement agent. That means that the vast majority (a cumulative 73.5%) of judgments were executed voluntarily, in most cases after pressure from the enforcement agent. Only 21.6% of claimants who already had a partial or full enforcement used a forced method of enforcement. However, this is a greater percentage than the number of judgments that were executed voluntarily without pressure from an enforcement agent.

3.3. Correlation between type of enforcement agent and amount of time waited for partial enforcement

Table 1: Correlation between time waited for partial enforcement and type of enforcement agent used

	Executive secretary of the cell	Executive secretary of the sector	Executive secretary of the district	The person in charge of legal affairs for the sector	The person in charge of legal affairs for the district	Professional bailiff
No answer	10.40%	12.50%	100.00%	33.30%	20.00%	5.90%
Up to 3 months	31.10%	37.50%				70.60%
3 - 6 months	12.60%	18.80%		33.30%	40.00%	11.80%
6 - 12 months	18.90%	6.20%				5.90%
1 - 2 years	12.60%	18.80%			20.00%	5.90%
2 - 3 years	7.90%			33.30%		
3 - 4 years	3.30%				20.00%	
4 - 5 years	2.20%					
5 - 6 years	0.30%	6.20%				
6 - 9 years	0.30%					
9 - 15 years	0.50%					

84 See subsection 2, paragraph 2.2

3.3.1. Respecting the 3 month period

- Of all judgments partially enforced by an executive secretary of the cell, 31.1% were enforced within the legal delay of 3 months.
- Of all judgments partially enforced by an executive secretary of the sector, 37.5% were enforced within the legal delay of 3 months.
- Of all judgments partially enforced by a professional bailiff, 70.6% were enforced within the legal delay of 3 months.

3.3.2. Exceeding 3 month period

- Executive secretary of the cell: 60.5% of claimants who used an executive secretary of the cell waited longer than 3 months for partial enforcement.
- Executive secretary of the sector: 50% of claimants who used an executive secretary of the sector waited longer than 3 months for partial enforcement. 6.2% of those claimants using an executive secretary of the sector waited between 5 and 6 years for the partial enforcement of their claim.
- Professional bailiff: Only 23.5% of those claimants who used a professional bailiff waited over 3 months for the partial enforcement of their judgment. None of the claimants using a professional bailiff waited over 2 years for the partial enforcement of their judgment.

3.3.3. Conclusion

From the findings above, it is clear that professional bailiffs are able to enforce judgments in a timelier manner than nonprofessional bailiffs. However this only relates to partial enforcement and not full enforcement of a final judgment.

3.4. Correlation between court and time taken for partial enforcement

Table 20: Correlation between time waited for partial enforcement and type of court⁸⁵

	Abunzi	Primary courts	Intermediate courts	High Court	Gacaca	Other
No answer	20.0%	19.0%	20.7%		8.0%	
Up to 3 months	46.7%	54.8%	44.8%	41.7%	24.3%	25.0%
3 to 6 months	13.3%	11.9%	13.8%	25.0%	12.2%	
6 to 12 months	6.7%	9.5%	13.8%	8.3%	20.8%	25.0%
1 to 2 years	2.2%			16.7%	19.1%	
2 to 3 years		2.4%	3.4%	8.3%	9.7%	
3 to 4 years	4.4%				3.5%	25.0%
4 to 5 years	2.2%	2.4%			1.7%	25.0%
5 to 6 years	2.2%				.3%	
6 to 9 years			3.4%			
9 to 12 years	2.2%				.3%	
Total percentage (absolute number)	100% (45)	100% (42)	100% (29)	100% (12)	100% (288)	100% (4)

85

A total of 420 respondents out of a total of 421 respondents who had their judgment partially enforced (response rate of 99.8%).

3.4.1. *Abunzi*

46.7% of claimants with cases originating from the abunzi mediation committees had partial enforcement in up to 3 months. 13.2% of abunzi cases that were partially enforced, were enforced between 1 and 12 years after contacting the enforcement agent.

3.4.2. *Primary court*

Of all the claimants who had a partial enforcement of their civil judgment from the primary courts, 54.8% had a partial enforcement within 3 months after contacting the enforcement agent.

3.4.3. *Intermediate court*

44.8% of all cases originating from the intermediate courts were partially enforced within 3 months.

3.4.4. *High Court*

41.7% of civil cases from the High Court were partially enforced in up to 3 months. 25.0% of civil cases were partially enforced between 1 and 3 years after contacting the enforcement agent.

3.4.5. *Gacaca*

Of all the claimants who had a partial enforcement of their gacaca judgment, only 24.3% had a partial enforcement within 3 months after contacting the enforcement agent. 34.7% of claimants had to wait for more than a year for their partial enforcement.

3.4.6. *In general*

Given that these findings relate to partial enforcement, it is disappointing that so many claimants had to wait such a long time for only a partial enforcement of their judgment. As with the results from those claimants with a fully enforced judgment and claimants still waiting for enforcement, cases originating from the gacaca courts were most likely to take over 3 months to enforce. Similarly to those results relating to not enforced judgments, cases originating from the high court are the second most likely to take over 3 months to enforce. This could be due to the fact that where a case has gone to the high court there have been, in most cases, a series of appeals meaning that the defendant may be very reluctant to cooperate with enforcement. Equally the judgment could be more complex.

3.5. Correlation between type of case and amount of time waited

Table 21. Correlation between time waited for partial enforcement and type of case⁸⁶

	Land	Monetary debts	Landlord and tenant	Employment	Family	Inheritance/Succession	Housing	Criminal	Genocide	Other
No answer	23.5 %	10.5%	100.0 %	25.0%	11.8%	25.0%	8.5%		8.0%	9.1%
Up to 3 months	37.3 %	55.3%			70.6%	50.0%	59.6%	57.1%	13.6%	48.5 %
3 to 6 months	13.7 %	15.8%		50.0%	11.8%		6.4%	28.6%	14.1%	3.0%
6 to 12 months	7.8%	10.5%			5.9%	25.0%	14.9%	14.3%	22.1%	21.2 %
1 to 2 years	5.9%						6.4%		21.6%	15.2 %
2 to 3 years	2.0%	2.6%		25.0%			2.1%		12.2%	3.0%
3 to 4 years	3.9%	2.6%							4.7%	
4 to 5 years	2.0%	2.6%							2.8%	
5 to 6 years	2.0%						2.1%			
6 to 9 years									.5%	
9 to 12 years	2.0%								.5%	
Total percentage (total absolute number)	100 % (51)	100% (38)	100% (1)	100% (4)	100% (17)	100% (4)	100% (47)	100% (7)	100% (213)	100% (33)

3.5.1. Genocide cases

Of all the claimants who had a partial enforcement of their genocide related judgment, 13.6% had enforcement in up to 3 months, 42.3% waited for more than 1 year, and 36.2% waited between 3 and 12 months.

3.5.2. Land cases

Of all the claimants who had a partial enforcement of their land related judgment, 37.3% had their cases partially enforced within 3 months, 17.8% waited for more than 1 year. Another 21.5% waited between 3 and 12 months.

3.5.3. Monetary debt cases

55.3% of claimants who had a partial enforcement of their monetary debt judgment, had their partial enforcement within 3 months.

86

A total of 415 respondents out of a total of 421 respondents who had their judgment partially enforced (response rate of 98.7%).

3.5.4. *Housing cases*

59.6% of claimants who had a partial enforcement of their housing related judgment, had their partial enforcement within 3 months.

3.5.5. *Family cases*

70.6% of claimants who had a partial enforcement of their family related judgment, had their partial enforcement within 3 months.

3.5.6. *In general*

Many claimants who only managed to have partial enforcement of their judgment waited for more than 6 or 12 months for that partial enforcement, especially those claimants with a genocide or land related judgment. This again supports the findings relating to gacaca court judgments being the hardest to enforce in a timely manner. Enforcement of genocide related judgments is a real problem that exists for claimants whether they have had their judgment fully enforced, partially enforced or not yet enforced.

4. All claimants

4.1. *Are the poor and vulnerable disadvantaged?*

The poor and vulnerable are most likely to use an executive secretary rather than a notary or professional bailiff. Our sample of claimants was split per district and per category as table 4 above indicates. These social categories were broadly based on the MINALOC categorisation⁸⁷. Our indigent category refers to the first category of 'poorest' people. Rather than 'food rich' and 'money rich' we interpreted these categories to relate to professional and wealthy individuals. The majority of claimants interviewed categorized themselves as 'poor' (55.7%). The second largest group of claimants is 'fairly poor' (equal to the MINALOC category 'resourceful poor') (25.6%), and the third largest is 'very poor' (11.7%). Small minorities in the sample are indigent people (1.4%), professionals (1.2%) and wealthy individuals (0.4%). 4% of respondents did not feel comfortable categorizing themselves.

From the above categories, the below table sets out how many claimants from each category used which type of enforcement agent:

⁸⁷ Forming part of the nationwide Ubuhede Project "based on the idea that citizens will analyse their own poverty among the community and develop solutions together to solve the identified problems (Participatory Poverty Assessment)", www.socialsecurityextension.org/gimi/gess/RessFileDownload. There are 6 Ubedehecategories- Category 1: poorest, no able bodied person(s), Category 2: very poor, with able body person(s), Category 3: poor, some land and housing, Category 4: resourceful poor, Category 5: food rich, and Category 6: money rich. <http://www.ids.ac.uk/files/dmfile/Siegeletal2011AdaptiveSocialProtectioninRwanda02CSPconferencedraft.pdf>

Table 22: Correlation of categories of claimants and types of enforcement agent used⁸⁸

	Indi- gent people	Very poor	Poor	Fairly poor	Profes- sional	Wealthy indivi- duals	I don't feel comfortable categorizing myself	Total percent- tage (total absolute number)
Executive secretary of the cell	1,6%	13,1%	58,6%	22,5%	0,8%	0,0%	3,3%	100,0% (2267)
Executive secretary of the sector	0,0%	4,1%	39,5%	36,6%	6,6%	3,3%	9,9%	100,0% (243)
Executive secretary of the district	0,0%	0,0%	50,0%	50,0%	0,0%	0,0%	0,0%	100,0% (8)
The person in charge of legal affairs for the sector	0,0%	7,7%	53,8%	30,8%	0,0%	0,0%	7,7%	100,0% (13)
The person in charge of legal affairs for the district	0,0%	0,0%	52,6%	42,1%	0,0%	0,0%	5,3%	100,0% (19)
Professional bailiffs	0,0%	4,9%	42,3%	48,5%	0,0%	1,2%	3,1%	100,0% (163)

There is a clear trend that claimants who are better off are more likely to use an enforcement agent from a higher level be it an executive secretary, notary or a professional bailiff. 100% of the indigent people interviewed used an executive secretary of the cell. Furthermore executive secretaries admitted to having very few wealthy claimants, only 12% of executive secretaries had any wealthy clients and the majority of those 12% had between 1 and 10% wealthy claimants. The majority of claimants that executive secretaries deal with are from a poor background (141 executive secretaries have claimants from this category – 61%).

Given that professional bailiffs are able to enforce in the least time delay and executive secretaries of the cell enforce judgments in the greatest time delay the poor and vulnerable are most affected by inefficient enforcement of their court judgments. 70% of the MAJ officials interviewed also feel that the poor and vulnerable experience the highest number of problems in relation to enforcement. This especially affects indigent people who are most likely to use an executive secretary of the cell. 96.2% of indigent people who have not yet had their judgment enforced have been waiting for longer than 3 months for enforcement since they contacted an enforcement agent. Equally 82.8% of claimants who are 'very poor' and who at the time of interview were still waiting for enforcement had been waiting for over 3 months for enforcement.

88 A total of 2714 respondents out of a total of 2794 claimants interviewed (response rate of 97.1%).

4.2. Claimant obstacles

The main obstacles listed by claimants in the enforcement of their court judgments are set out in the table below.

Table 23: Obstacles in enforcement given by claimants⁸⁹

Obstacle	Frequency	Percentage
1. Formalities (excessive legal requirements)	366	14.5%
2. Corruption	73	2.9%
3. Lack of information on enforcement agents	427	17.0%
4. Lack of information on appeal procedures	410	16.3%
5. Lack of information on enforcement procedure	409	16.2%
6. Cost of enforcement agents	38	1.5%
7. Incompetence of enforcement agents	43	1.7%
8. Unavailability of enforcement agents	657	26.1%
9. Bias of enforcement agent	247	9.8%
10. Reluctance of enforcement agent to enforce	875	34.8%
11. Reluctance of defendant	1478	58.7%
12. Defendant not having any means	313	12.4%
13. Inability to access assets	243	9.7%
14. Inability to locate assets	103	4.1%
15. Difficulties in enforcing administrative cases	79	3.1%
16. My attitude	28	1.1%
17. Other (please specify)	233	9.3%

In common with the reasons given by enforcement agents for their inability to enforce within 3 months, 'reluctance of defendant' is the biggest obstacle cited by claimants (58.7%). This is followed by 34.8% of claimants who feel that the 'reluctance of enforcement agents' to enforce their judgments is a main obstacle. Other responses given by claimants include nepotism, waiting for crops to be harvested, and disrespect of the defendant. In one case where the claimant had been waiting for 11 years, the reason for delay is nepotism. In that land case the reason for the delay was that the defendant was related to the executive secretary, who continuously favoured the defendant and obstructed the enforcement of the judgment. An example of corruption cited by one of the claimants interviewed was where the executive secretaries intentionally delayed the enforcement process over land where the executive secretary wants to buy the auctioned land himself. These obstacles adversely affect the length of enforcement of their judgments.

5. Enforcement agents

5.1. Type of cases

The table below shows the distribution of cases originating from the different courts among the different enforcement agents:

⁸⁹ A total of 2517 respondents to this question out of a total of 2794 interviewed claimants (response rate of 90.1%).

Table 24: Correlation of type of case and type of enforcement agent used⁹⁰

	Executive secretary of the cell	Executive secretary of the sector	Executive secretary of the district	The person in charge of legal affairs for the sector	The person in charge of legal affairs for the district	Professional Bailiffs	Total percentage (total absolute number)
Abunzi	91,2%	3,7%	0,1%	0,5%	0,4%	4,0%	100,0% (731)
Primary court - Civil	82,7%	8,6%	0,4%	0,2%	0,2%	7,9%	100,0% (532)
Intermediate court - Civil	48,6%	33,0%	0,8%	0,8%	1,9%	14,8%	100,0% (364)
High Court - Civil	51,1%	13,2%	0,0%	1,0%	3,1%	31,6%	100,0% (98)
Gacaca	95,0%	3,6%	0,0%	0,3%	0,5%	0,5%	100,0% (968)
Other	63,5%	10,3%	10,6%	5,3%	0,0%	10,3%	100,0% (19)

The vast majority of cases are dealt with by executive secretaries of the cell who receive the most gacaca cases followed by abunzi cases. 95% of all cases originating from the gacaca courts were dealt with by executive secretaries of the cell. Those claimants using an executive secretary from a higher level, a notary or a professional bailiff are less likely to have a gacaca case and more likely to have a case that originates in the tribunal de grande instance. Gacaca cases are considered some of the hardest cases to enforce and may therefore explain the greater time taken for enforcement among executive secretaries of the cell.

According to executive secretaries the hardest types of cases to enforce are genocide claims (102/231; 44%) of which the majority originate from the gacaca courts (98.7%) and as per the table above constitute the majority of the cases received by executive secretaries of the cell. Land claims (98/231, 42%) and monetary debt claims (62/231, 27%) are also considered difficult to enforce for executive secretaries. Some of the reasons given by executive secretaries to explain why these types of cases are the hardest to enforce are set out below:

1. Land

- ✓ The land belongs to the family while the crime is individual;
- ✓ Mostly they are related to demarcation, people always don't tell the truth and this requires diligence;
- ✓ Land shared by several people which makes distribution difficult;
- ✓ There are cases with no indication of size of land, demarcation or if we measure, it is less than the required size or in case we extend to get the required size we need, we find land overlapping with the home;
- ✓ Land issues are complicated as there are conflicts which lead to insecurity because they want to murder one another especially when they don't comply with the execution of case;
- ✓ The land is often small and the family problems relating to those who rebel against the execution of case;

90

A total of 2712 respondents out of a total of 2794 claimants interviewed (response rate of 97.1%).

- ✓ As for lands, there is no precise size and demarcation indicated in the cases of the heirs;
 - ✓ These types of cases are troublesome and the most difficult as each and every one fights to protect his land. Even if you execute the case, there are consequences related to the uprooting of demarcation line or re-using the land already deprived in order to rebel against the ruling.
2. Family
- ✓ The Rwandan economy is based on agriculture and when it comes to succession/legacies some families believe that females should not be involved;
 - ✓ Some families believe that females should not inherit and that their brothers should determine their shares, which delays the execution of a case;
 - ✓ For family issues, we have sympathy for children without another home available to them.
3. Monetary debts
- ✓ It's difficult to get a land with the pecuniary value matching with the debt to be paid; there are cases whereby the accused is dead and his relatives refuse to compensate or have no means;
 - ✓ Pecuniary matters cause problems especially when the debtor is poor;
 - ✓ As regards the pecuniary debts there are no financial means for repayment, those involved in war crimes are dead and therefore no compensation means are available;
 - ✓ Pecuniary matters are complicated as the debtors have no money and not even willing to show up what he has;
 - ✓ Most of the time the debtor has no money to compensate due to poverty and he may own insufficient immovable assets.
4. Genocide
- ✓ Destroyers have no assets;
 - ✓ Most of them accuse one another, this matter concerns the entire Rwandan community at large, there is no compensation;
 - ✓ Mostly, those involved in the looting of assets during genocide reject to have been tried. For others it's clear that they have no means to compensate;
 - ✓ Genocide cases are difficult to execute as often most of those who have to compensate are dead and left no assets, most were unknown or even homeless people;
 - ✓ As regards the genocide cases, those involved have no assets.

The above reasons demonstrate that land cases are difficult to enforce due to shared ownership, insufficient land or unclear demarcations. The main reason that genocide cases are hard to enforce, from the answers given, is that the defendants do not have any assets to enforce over.

For notaries the hardest types of cases to enforce are genocide cases (33.3%), family cases (33.3%), and land cases (27.8%).

Monetary debts (29%), family (26%), land (16%) and genocide cases (13%) are found the most difficult for professional bailiffs. Some of the reasons given by professional bailiffs to explain why these types of cases are the hardest to enforce are set out below:

1. Land

- ✓ Land cases involve several people (parties) such that at the time of enforcement there is always an appeal or an application for review (of the judgment) and so on which hinders the enforcement.
- ✓ No one wishes/accepts to give up his/her land.
- ✓ Assets to enforce over are co-owned by several individuals hence there are endless applications/requests for revision which makes the enforcement very difficult.
- ✓ Land is sometimes co-owned by several individuals hence partitioning it becomes difficult.
- ✓ Issues related to land sharing or partitioning.

2. Monetary debts

- ✓ With regard to money claims/payments people are not able to pay/insolvent.
- ✓ You find that the defendant is poor.
- ✓ Lack of assets to get money from.
- ✓ Money related claims are difficult to enforce because usually defendants are insolvent.
- ✓ To get the assets to enforce over as well as the required documents.
- ✓ Resistance from the defendant to (voluntarily) pay.
- ✓ Most of the time defendants are very poor or are (defendants) children that have no assets (to enforce over). Other people hide their assets/properties.

3. Family

- ✓ Though there are misunderstandings in the families, there is still some "sentiments".
- ✓ Decisions/judgments are not clear and it's difficult to track down assets (assets have disappeared).
- ✓ Family related cases are difficult to enforce because there are no assets to enforce over or the assets have disappeared.
- ✓ Family issues are very difficult because they tell you that they have resolved it amicably/internally (within the family) and then after sometime they come back with the same issue.
- ✓ These judgments are difficult because they usually take long to finally be enforced as there is always a new complaint coming up (from the family) about their enforcement.
- ✓ In case of divorce there is a process of sharing the property and the provision of money for upbringing the child which sometimes leads to conflicts/ misunderstandings that can also cause other legal cases/battles.

4. Genocide law/war crimes

- ✓ Genocide cases because usually enforcement is done on houses which are inhabited (and people have nowhere to go).
- ✓ With regard to Genocide crimes people don't accept the decisions which leads to resistance during the period of enforcement.
- ✓ Disappearance of assets to enforce over.
- ✓ In Gacaca cases there is a process of review of cases which takes long.

The above findings reflect the views of those executive secretaries, professional bailiffs, judges and representatives from MINIJUST who were present at a conference on enforcement in

Gisenyi⁹¹ who agreed that the hardest cases to enforce are genocide related judgments, land judgments, money claims and family related judgments. Examples given by the participants of difficult family judgments include where a judgment orders one spouse to provide alimony to the other spouse for children or where a judgment relates to a search for paternity and the 'supposed' father deliberately denies any paternity and resists the implications of the judgment. As seen from the above reasons given by professional bailiffs, land partitioning and co-ownership is a common reason why the enforcement of land cases creates many problems. This is also given as a reason by executive secretaries as set out above.

5.2. How long enforcement agents say it takes to enforce court judgments

5.2.1. Executive secretaries

The following table sets out the percentage of court judgments executive secretaries state they can enforce within a 3 months period.

Table 25: Enforcement within 3 months according to executive secretaries⁹²

Percentage of cases enforced within 3 months	Frequency	Percentage
0-10%	12	5.5%
11-20%	7	3.2%
21-30%	11	5.1%
31-40%	9	4.1%
41-50%	23	10.6%
51-60%	21	9.7%
61-70%	29	13.4%
71-80%	22	10.1%
81-90%	53	24.4%
91-100%	30	13.8%
Total	217	100.0%

The highest percentage of executive secretaries enforce between 81-90% of their cases within 3 months. 12 executive secretaries stated that they were only able to enforce 0-10% of their cases within 3 months being 5% of executive secretaries interviewed.

Furthermore, 86.6% of executive secretaries who gave a time taken to enforce money cases stated that they could do so in 3 months or under. 13.4% of executive secretaries who responded, stated that it takes over 3 months to enforce money claims. 90.4% of executive secretaries stated that they enforce land cases in 3 months or under and 9.6% stated that it took over 3 months to enforce judgments over land. 83.75% of those executive secretaries who stated how long it takes to enforce claims that do not relate to money or land stated that they could do so in 3 months or under. 16.25% of executive secretaries responded that it takes over 3 months to enforce 'other' claims. 'Other' cases, which include genocide related judgments, are more likely to take over 3 months to enforce according to executive secretaries. This is in keeping with the fact that executive secretaries find genocide cases the hardest to enforce.

These figures demonstrate that executive secretaries feel they can enforce more cases within 3 months than our claimants findings show.

91 Conference on enforcement in Gisenyi organized by ADEPE, Thursday 22nd September 2011.

92 A total of 217 respondents to this question out of a total of 231 executive secretaries interviewed (response rate of 94.0%).

5.2.2. Notaries

The following table sets out the percentage of court judgments notaries state they can enforce within a 3 months period.

Table 26: Enforcement within 3 months according to notaries⁹³

Percentage of cases enforced within 3 months	Frequency	Percentage
0-10%	2	14.3
11-20%	1	7.1
21-30%	1	7.1
31-40%	1	7.1
51-60%	1	7.1
71-80%	4	28.6
91-100%	4	28.6
Total	14	100.0

57.2% of notaries who responded to this question stated that they can enforce from 71 to 100% of their cases within 3 months. Only 28.6% stated that they can enforce between 91-100% of their cases within 3 months. 14.3% of notaries admitted to only being able to enforce between 0-10% of their cases within 3 months. Only 8 notaries gave a time period for enforcing money and land claims. For money claims all but one respondent stated that it took under 3 months to enforce money claims. For land claims all respondents stated that it took under 3 months to enforce a final judgment, the average amount of time given being 1.5 months. Only 5 notaries stated how long it takes to enforce a final judgment relating to other cases, and apart from one notary who stated that it takes him/her 4.5 months to enforce such a judgment all the other respondents stated that it took 3 months or under. It is not possible to draw concrete conclusions from the data given by notaries given that so few answered these questions, however of those that did the vast majority stated that they enforced within the 3 month delay. Only 1.2% of the claimants interviewed used notaries to enforce their judgments.

5.2.3. Professional bailiffs

The following table sets out the percentage of court judgments professional bailiffs state they can enforce within a 3 months period.

Table 27: Enforcement within 3 months according to professional bailiffs⁹⁴

Percentage of cases enforced within 3 months	Frequency	Percentage
0-10%	2	8.7%
11-20%	2	8.7%
21-30%	1	4.3%
31-40%	1	4.3%
41-50%	3	13.0%
51-60%	3	13.0%
61-70%	3	13.0%
71-80%	2	8.7%
81-90%	3	13.0%
91-100%	3	13.0%
Total	23	100.0

⁹³ A total of 14 respondents out of a total of 18 notaries enforcing court judgments (response rate of 77.8%). 18 notaries interviewed responded that they enforce court judgments, however only 14 notaries answered this question. This may be due to the fact that for a few notaries they have either just taken the oath or have taken the oath yet have not yet received a case to enforce.

⁹⁴ A total of 23 respondents out of a total of 24 professional bailiffs interviewed (response rate of 95.9%).

The majority of professional bailiffs (60.8 %) indicated that they have successfully enforced more than 80% of their cases since 2008. However, the above table indicates that few professional bailiffs (13.0% of respondents) are able to enforce from 91 to 100% of their cases within 3 months. This appears more realistic and in line with the results given by claimants, many of which have been waiting or waited over 3 months for the enforcement of their judgment.

When asked to give specific time frames for different types of cases the responses are slightly at odds with the results above. All but 1 professional bailiff responded that they are able to enforce court judgments within 3 months. The one exception stated that it took him 6 months to enforce money claims. It takes professional bailiffs longer on average to enforce land claims. 68.2% of respondents enforce land cases within 3 months, 18.2% even manages to do so within 1.5 months. Unlike money claims, when it concerns land cases a lot of professional bailiffs do not respect the legal 3 month delay: 31.8% indicate that they need on average 4 to 6 months to enforce land cases. In relation to other cases which are taken to include genocide cases 73.3% of respondents respects the legal 3 months delay for enforcement. However, the remaining 26.7% does not respect this delay: 1 respondent indicates he needs 3.5 months on average to enforce other cases, 2 need 3 years and 1 respondent needs on average 4 years.

As with the responses of executive secretaries, cases that do not relate to land or money, which for the most part relate to genocide or family cases take the longest to enforce and are the most likely not to be enforced within the 3 month time limit. As stated above professional bailiffs find monetary debts the hardest to enforce⁹⁵. This finding is not in line with the findings of how long it takes them to enforce court judgments. An explanation for this inconsistency is that family claims were considered the second most difficult and genocide claims the fourth most difficult to enforce for professional bailiffs which cumulatively could explain why 'other' cases take the longest to enforce.

5.2.4. *In general*

The above findings clearly contrast with the findings of claimants. The majority of enforcement agents state that they can enforce land and money claims within 3 months, yet when asked what percentage of their cases they can enforce within 3 months the results are quite different. Only 13% of professional bailiffs, 13.8% of executive secretaries and 28.6% of notaries states that they enforce between 91-100% of their cases within 3 months. This result is more closely aligned with the results from the claimant questionnaires and indicates that enforcement agents are aware of their limitations. The reasons for these delays are discussed below.

5.3. *Reasons for delays of over 3 months*

The below tables set out the main reasons that enforcement agents give for delays of over 3 months for enforcement.

95

See subsection 5, 5.1 above.

5.3.1. *Executive secretaries*

Table 28: Reasons for delayed enforcement given by executive secretaries

Reason	Number	Percentage
1. Difficulty in locating assets	94	40,7%
2. Heavy workload	104	45,0%
3. Lack of training (concerning enforcement)	28	12,1%
4. Inadequate legal framework	12	5,2%
5. Attitude of claimants	23	10,0%
6. Resistance of defendants to enforce	115	49,8%
7. Interference of third parties	15	6,5%
8. Unclear judgment/decision	81	35,1%
9. Delay in appointing enforcement agent	18	7,8%
10. Lack of assets of defendant	151	65,4%
11. Powerful defendants influencing enforcement	5	2,2%
12. Defendant being better informed about enforcement than enforcement agent	6	2,6%
13. Difficulty in valuing assets	17	7,4%
14. Formalities (excessive legal requirements in order to enforce)	58	25,1%
15. Personal liability	71	30,7%

The main reasons for delays of over 3 months given by executive secretaries are: lack of assets of defendant (65.37%), resistance of defendants to enforcement (49.78%), heavy workload (45%) and difficulty in locating assets (40.69%). 91 executive secretaries listed both resistance of defendants to enforcement as well as one of the other reasons listed above. These responses tie in with the fact that only 7.3% of enforcements for fully enforced cases are executed voluntarily without any pressure whereas 67.4% are executed voluntarily with pressure and 20.8% were enforced using a forced method of enforcement. Lack of assets of defendants is also a large obstacle as it makes enforcement impossible. 35% state that an unclear judgment/decision is the reason they are unable to enforce within 3 months again highlighting their lack of legal training and 12% blame their lack of training in relation to enforcement. The fact that unclear judgments/decisions are a reason for delays highlights the important role of the judiciary/Abunzi to ensure that they write clear judgments/decisions.

5.3.2. *Notaries*

Table 29: Reasons for delayed enforcement given by notaries

Reason	Frequency	Percentage
1. Difficulty in locating assets	6	35,3%
2. Heavy workload	11	64,7%
3. Lack of training (concerning enforcement)	2	11,8%
4. Inadequate legal framework	1	5,9%
5. Resistance of defendants to enforce	6	35,3%
6. Interference of third parties	1	5,9%
7. Unclear judgment order	6	35,3%
8. Lack of assets of defendant	8	47,1%
9. Difficulty in valuing assets	1	5,9%
10. Formalities (excessive legal requirements in order to enforce)	2	11,8%
11. Personal liability	4	23,5%

The main reasons that notaries are unable to enforce a judgment within 3 months, as set out in the table above, are a heavy workload (65%), lack of assets of defendant (47%), unclear judgment order (35%) and resistance of defendants to enforcement (35%). These are to a great extent similar to the main reasons given by executive secretaries; however to notaries their heavy workload is the main reason. This is supported in the finding that 82.4% of notaries feel overworked. Their enforcement duties are seen as a burden given all of their other duties.

5.3.3. Professional bailiffs

Table 30: Reasons for delayed enforcement given by professional bailiffs

Reason	Frequency	Percentage
1. Lack of assets/insolvency of defendant	18	75,0%
2. Difficulty in locating assets	16	66,7%
3. Resistance of defendants	13	54,2%
4. Interference of third parties	10	41,7%
5. Unclear judgment order	9	37,5%
6. Judge delaying in issuing further enforcement orders	7	29,2%
7. Powerful defendants influencing enforcement	6	25,0%
8. Formalities (excessive legal requirements in order to enforce)	6	25,0%
9. Inadequate legal framework	5	20,8%
10. Other	4	16,7%
11. Difficulty in reaching assets	1	4,2%
12. Delay in appointing enforcement agent	1	4,2%
13. Difficulty valuing assets	1	4,2%

The main reason given by professional bailiffs which results in an inability to enforce within 3 months is the lack of assets of the defendant. This is also given as a reason by professional bailiffs as to why monetary debts cases are the hardest to enforce (see above). 75% of respondents identify lack of assets/insolvency of defendant as one of the main reasons for delays to enforcement of over 3 months, followed by difficulty in locating assets (67%). Resistance of defendants (54%), the interference of third parties (42%), and unclear judgment orders (38%), are widely acknowledged as reasons for delay.

Professional bailiffs encounter practical or social problems when enforcing, such as insolvency or resistance of defendant, the interference of third parties or the difficulty in locating assets. Formal problems, involving the role of the judiciary and legislator, play a less important role. In contrast with the results of notaries no professional bailiffs list their heavy workload as a reason for lack of enforcement within 3 months. Furthermore no professional bailiff lists lack of training as a reason for not being able to enforce judgments within 3 months.

Examples of other responses:

- When you request the police to give you policemen to assist in the process, they sometimes start to go into the substance of the case as if they are judges which might take three months before being given a policeman; when the defendant is the state it doesn't pay on time because it has the privilege of voluntary execution (there is no forced execution on state properties/assets);
- The police do not provide, on time, the required assistance to the bailiff;
- It is sometimes difficult to get the property documents, from the authorities, for an

- immovable property, especially in the case of auctioning;
- It's very difficult to carry out expertise (Technical or expert evaluations e.g. the value of the house).

5.3.4. *In general*

The lack of assets of defendants, reluctance of defendants, and the difficulty locating assets to enforce over are obstacles to timely enforcement common to all enforcement agents. Heavy workload is not an obstacle for professional bailiffs but is for nonprofessional bailiffs.

The main reason for all enforcement agents which leads to delays in enforcement of over 3 months is the lack of assets/insolvency of defendants. According to article 296 of the Civil Procedure Code:

"The house of a destitute and half an acre of surrounding farmland necessary for the survival of the seized and his or her family cannot be seized unless it is proven that he or she possesses or is able to acquire another house or farmland without being turned into a pauper and becoming dependent on the community."

This article protects extremely poor defendants however makes it difficult for enforcement agents where the claimant is also extremely poor. Under the law where a defendant is very poor a claimant has no option but to wait to see if eventually the defendant will have the means to pay which could take some time and in some instances never happens.

Unclear judgment orders is a reason which delays enforcement listed by all the different types of enforcement agent. This underscores the important role of the judiciary to facilitate enforcement by writing clear judgment orders.

6. Conclusion

It is clear from the findings under this indicator that there is a problem with the enforcement process in Rwanda. An inordinate number of judgments are taking far longer than 3 months to be enforced. 61% of all the interviewed claimants who stated how long the process has taken have waited more than 3 months for enforcement. This means that 3 out of 5 of all enforcement cases in Rwanda breach the law requiring judgments to be enforced within 3 months. It is also clear that there is a difference between the times for enforcement between different enforcement agents. Professional bailiffs are able to enforce within the shortest delay while executive secretaries take the longest time to enforce judgments.

The cases that take the longest to enforce originate from the gacaca courts and/or relate to genocide matters. This is due in part to the fact that genocide cases relating to compensation for damages and not restitution of assets, are currently unenforceable. Genocide related cases are also difficult due to the complex and highly sensitive nature of these judgments.

The inability of defendants to pay is the main reason given by all enforcement agents that they take longer than 3 months to enforce court judgments. Equally claimants point the finger at defendants, with their main obstacle being the reluctance of defendants to cooperate with enforcement. This supports the reading of the findings that defendants impede the enforcement of a final court judgment affixed with an executory formula.

The findings also indicate that the judiciary plays a role in delaying enforcement through unclear judgments. Claimants also stated that the reluctance of enforcement agents to enforce was an obstacle that delayed their enforcement implying the unavailability and lack of competence among enforcement agents.

2. INDICATOR 2 – COST OF ENFORCING COURT JUDGMENT

Bringing a case through the courts is a time consuming and expensive process. Enforcement is merely the last step in this process and should be as simple as receiving what is set out in the final judgment by the judge. One would therefore expect that claimants would not incur significant further costs in trying to obtain what is legally theirs. This indicator explores the costs involved in enforcing court judgments. These costs include the fees payable to enforcement agents and further costs incurred by claimants.

Key findings observed under this indicator include:

- Professional bailiffs usually charge 1/10th of the judgment value as their fee for enforcing a judgment; however this fee is often charged upfront which has the potential to be problematic as enforcement has not yet occurred.
- 40.2% of claimants spent between 1,000 and 50,000RWF returning to visit their enforcement agent throughout the enforcement process.
- The major cost incurred by claimants beyond fees to enforcement agents is photocopying.
- 76.2% of claimants admitted to having incurred lost earnings trying to enforce their court judgment

1. Fees of enforcement agents

6% of all claimants interviewed were charged fees by enforcement agents in order to enforce their case. When claimants were asked which enforcement they paid fees to, the claimants responded as follows:

Table 31: Enforcement agents claimants paid fees to

Type of enforcement agent	Number of claimants
1. Executive secretary	24
2. Notary	0
3. Professional bailiff	138

It is immediately surprising that 24 claimants paid executive secretaries for the enforcement of their judgments when the enforcement services of executive secretaries are meant to be free of charge.

1.1. Fees of executive secretaries

Crossing the fees charged to their first enforcement agent and the type of enforcement agent used provides a further understanding of any fees charged by executive secretaries:

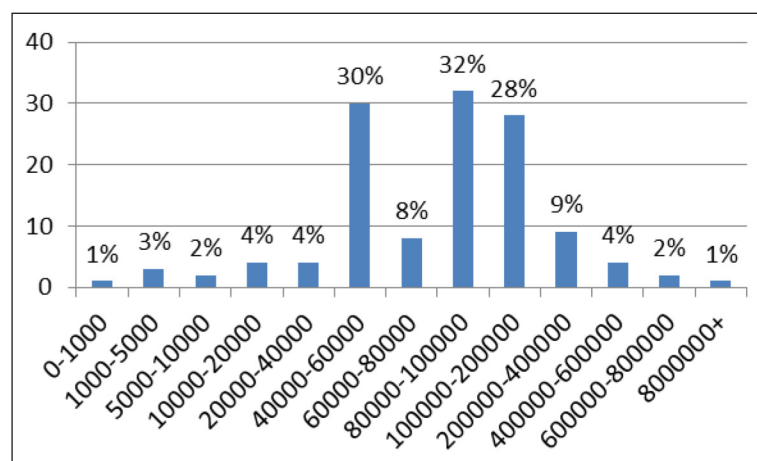
Table 32: Fees charged by executive secretaries

RWF	Executive secretary
0-1000	2
1000-5000	14
5000-10000	4
20000-40000	1
40000-60000	2
Total	23¹

The above table shows the amount paid by claimants to their first enforcement agent where that enforcement agent is an executive secretary. 2 executive secretaries of the cell charged very high fees: 50,000 and 53,000 respectively. This indicates corruption as claimants should not be paying nonprofessional bailiffs for enforcement. The majority of claimants who paid executive secretaries (14/23) paid between 1000 and 5000 francs and stated that these were transport and communication fees. This highlights that executive secretaries themselves do not have the adequate resources to carry out enforcement and therefore request claimants to front these costs. This is prejudicial for those claimants who have very little money and are unable to even cover these costs, again disadvantaging the poor and vulnerable.

1.2. Fees of professional bailiffs

Chart 4: Fees charged by professional bailiffs



From the results recorded⁹⁶ the fees range from less than 1000 francs to one case where the professional bailiff was paid 1,050,000 francs for a gacaca case that was fully enforced after 4 years. The claimant in that case was perfectly satisfied with the service received from a professional bailiff despite paying such a high fee.

The range of fees charged by professional bailiffs is due to the fact that they charge a percentage of the overall judgment value. However given that professional bailiff fees are not regulated this could lead to abuse of their power as enforcement agents.

1.3. Main method of charging fees of enforcement agents

1.3.1. Percentage of judgments value

The vast majority of professional bailiffs (85.7%) charges a percentage of the judgment value to their clients. 12.5% of professional bailiffs uses another form of payment, such as a forfeit or price negotiation. One professional bailiff who only works with banks gets paid on a monthly allowance.

For land cases professional bailiffs charge the following percentages of the final judgment to claimants:

⁹⁶ Only 128 responses were recorded for how much claimants paid professional bailiffs as their first enforcement agents, 6 of the missing 10 paid professional bailiffs as their second enforcement agent as they changed to professional bailiffs. 4 claimants did not provide details of the amount they paid to professional bailiffs.

Table 33: Percentages charged for land cases by professional bailiffs⁹⁷

Percentage of judgment value	Frequency	Percentage
5%	1	9.1%
6%	1	9.1%
8%	1	9.1%
10%	8	72.7%
Total	11	100.0%

The percentages charged by professional bailiffs for enforcement of land cases range from 5 to 10% of the total judgment value. The majority of professional bailiffs charge 10% (72.7% of respondents).

The percentage ranges including for money and other cases range from 4% to 10%. Overall the majority of professional bailiffs charge 10% of the total judgment value for all types of cases.

1.3.2. Timing of payments

Claimants responded as per the following table on when they paid their enforcement fees:

Table 34: Timing of payments by claimants to first and second enforcement agent

	First enforcement agent	Second enforcement agent	Total
Upfront	68	6	74
In instalments	64	6	70
After enforcement	20	4	24

Of those first enforcement agents, who charged upfront, 59 of them were professional bailiffs (approximately 80%), this is surprising as enforcement cannot be guaranteed and the fees charged by professional bailiffs are often very high, again this may result from lack of adequate supervision of the fees charged by professional bailiffs. However at the same time it is understandable as professional bailiffs want to be protected from claimants who obtain enforcement and fail/refuse to pay. Equally 82% of those enforcement agents who charge claimants in installments are professional bailiffs. The majority of executive secretaries who charged some sort of fee charged their fee upfront (62.5%).

2. Other costs

2.1. Cost of travelling to enforcement agent

The largest number of claimants (309) pays between 200 and 300 RWF for a one way trip to meet their enforcement agent. 252 claimants pay more than 1,000 RWF (21%). 5 claimants pay between 10,000 and 20,000 RWF.

The majority of claimants (79%) visited their enforcement agent between 1 and 10 times and 18% visited between 10 and 50 times. Considering the number of times claimants visit their enforcement agents and the cost of a one way trip this becomes a large cost to

⁹⁷ A total of 11 respondents to this question out of a total of 24 professional bailiffs interviewed (response rate 45.8%).

some claimants. However, 43.4% of respondents who provided information on the cost of a one way trip to their enforcement agent and the times they undertook this trip, say they haven't spent money on traveling to their enforcement agent. This is most likely due to the fact that they travelled by foot to meet their enforcement agent. 16.4% spent no more than 1,000 RWF, 21.1% spent up to 5,000 RWF, although these amounts may seem small they could mean a lot to the claimants involved, most of whom are poor. 17.2% up to 50,000 RWF and the remaining 1.9% spent more than 50,000 RWF in total traveling to meet their enforcement agent. Although not every claimant has incurred travel costs in trying to enforce their judgment, for those who do pay something this amount only increases as enforcement takes longer. For those that do not incur any travel costs most walk and are therefore more likely to lose earnings due to time spent away from their work.

2.2. Cost of returning to court

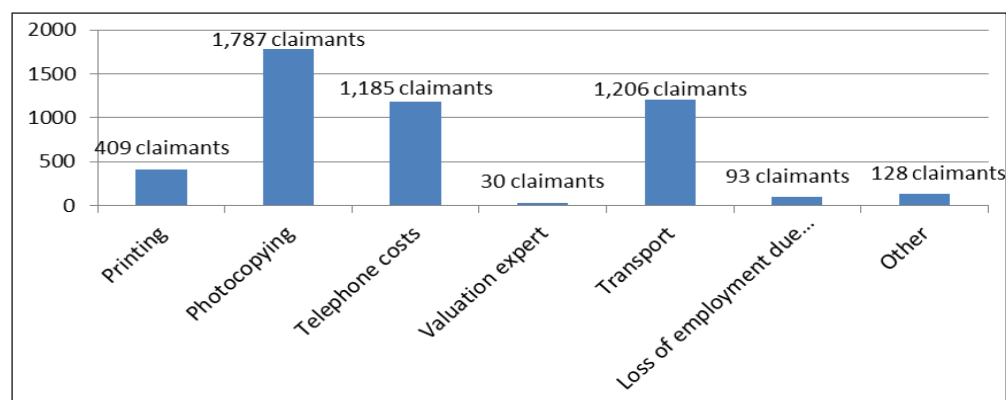
87% of claimants did not return to court for clarification of their judgment. 8% of claimants did not know it was possible, leaving 3% who did return to court. 32.9% of those claimants who returned to court returned only once. Another 25.6% returned 2 times and 18.3% returned 3 times. The average number of times claimants return to court is 2.1 times. 14.1% of claimants, who provided information on the cost of traveling to the court that rendered the final decision and the times they undertook this trip, did not spend money on this trip. For another 63.4%, the total cost of traveling back and forth to court was up to 1,000 FRW. 18.3% of claimants who returned to court spent up to 5,000 FRW and the last 4.2% spent up to 50,000 FRW.

Overall traveling back to the court that rendered the final decision does not cost a lot of money. However, this small amount may mean a lot to the very poor and indigent claimants. This is mostly due to the fact that claimants who do return to court only do so 2.1 times on average and only a very small percentage of claimants interviewed returned to court.

2.3. Further costs

Below is a graph showing the number of claimants who had further costs in relation to their enforcement and the type of costs:

Chart 5: Costs incurred by claimants other than fees, traveling to enforcement agent and court



Examples of 'other' responses given by claimants include restaurant expenses and not being able to carry out domestic work.

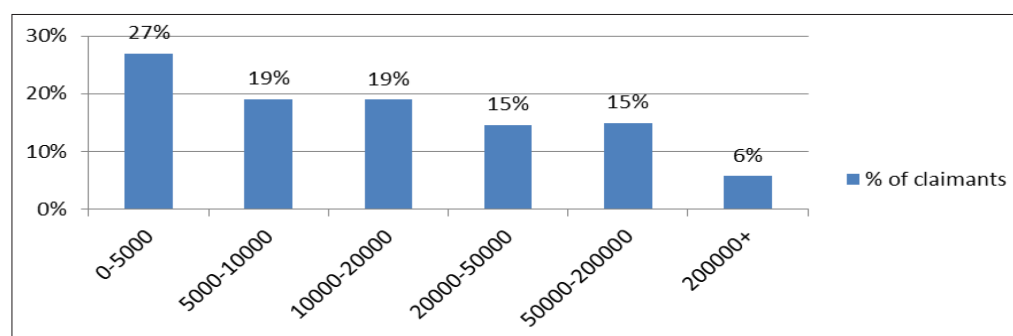
Major costs and losses incurred in trying to enforce the court judgment, other than lost earnings, are photocopying (indicated by 64.0% of respondents to this question), transport (43.2%) and telephone costs (42.4%).

2.4. Loss of earnings

78.2% of claimants admitted to having lost earnings trying to enforce their court judgment. This is due to time that is spent visiting their enforcement agent or the court rather than working.

The largest group of respondents who incurred lost earnings in trying to enforce their court judgment, lost up to 1 week of earnings (42.7%). Another 14.5% of respondents incurred up to 2 weeks of lost earnings and 16% incurred up to 3 weeks of lost earnings trying to enforce their court judgment. This makes almost 3 out of 4 claimants incurring lost earnings of up to 3 weeks in trying to enforce their court judgment (73.2%). The enforcement process being the last, purely instrumental step in the enforcement of rights, it is striking that this still costs so much money. This is only more striking when one considers that enforcement is generally free, because the majority of claimants use executive secretaries to enforce their court judgment.

Chart 6: Loss of earnings by claimants trying to enforce their court judgment



26.4% of claimants who incurred lost earnings trying to enforce their court judgment, lost up to 5,000 RWF. Another 38% lost between 5,000 to 20,000 RWF, 14.5% lost between 20,000 and 50,000 RWF and 14.9% lost between 50,000 and 200,000 RWF of earnings trying to enforce their court judgment. 5.7% incurred more than 200,000 RWF of lost earnings in trying to enforce their court judgment. The value of lost earnings incurred by claimants is high considering that they have already won their case and are only trying to enforce justice.

3. Conclusion

The costs incurred by claimants in trying to enforce their judgment are surprising given that enforcement is merely the next step for claimants in obtaining what is legally theirs. For the majority of claimants who use an executive secretary (and don't pay) their main costs of enforcement are loss of earnings and transport costs. Professional bailiffs generally charge 1/10th of the judgment value as a fee for the service rendered. This fee can be considerable where the value of the judgment is very high. Unfortunately certain executive secretaries charged fees for enforcement which is an injustice that must be abolished. If voluntary enforcement was more prevalent and enforcement was timelier the enforcement process would almost be free to most claimants as indeed it should be.

3. INDICATOR 3 – AVAILABILITY OF ENFORCEMENT AGENTS

The availability of enforcement agents or more likely the unavailability of enforcement agents is a common theme running through the findings. In looking at this indicator, the following issues will be discussed: the workload of enforcement agents, the issues of personal liability and conflict of interest as well as how many enforcement agents there are available to claimants.

Key findings observed under this indicator include:

- 80% of executive secretaries in Nyarugenge interviewed always feel overworked.
- 82% of notaries interviewed who enforce court judgments always feel overworked.
- 25% of claimants believe that they only have 1 enforcement agent to choose from in their area and 48% of claimants do not know how many enforcement agents are available to them in their area.

1. Time restraints

23.5% of claimants stated that the unavailability of the enforcement agent was the main obstacle to the enforcement of their judgment. Of those claimants 87% used an executive secretary of the cell. This demonstrates that the time restraints of enforcement agents significantly affect their availability to assist claimants with enforcement issues. Executive secretaries are seen to be the least available.

Feedback from our field agents during the fieldwork of this project highlighted the time restraints of nonprofessional bailiffs. Executive secretaries and notaries were constantly too busy to answer questionnaires often due to the number of meetings they were attending. This was especially the case for executive secretaries. This indicates that claimants who use executive secretaries must find it difficult to arrange a meeting with them to discuss the enforcement of their judgment.

2. Average number of cases per enforcement agent

2.1. Executive secretaries

In 2010 the average number of forced enforcements was 21.2, the maximum per executive secretary was 524 for the year. The average number of voluntary enforcements in 2010 was 45.5 with a maximum being 2111. In 2009 executive secretaries dealt on average with 21.9 forced enforcements with a maximum of 574. In 2009 the average number of voluntary enforcements was 47.4 per executive secretary with a maximum of 2120. On average therefore executive secretaries dealt with 76.7 cases in 2010 and 69.3 in 2009⁹⁸. The average number of enforcement cases that those executive secretaries interviewed dealt with increased from 2009 to 2010. 76.7 cases are approximately 6 cases a month.

2.2. Professional bailiffs

In 2010 professional bailiffs dealt with an average of 18.5 forced enforcements. The maximum per professional bailiff of forced enforcements in 2010 was 110. The average number of forced enforcements in 2009 was 14.2 with a maximum of 140. The average number of enforcements increased from 2009 to 2010, however even 18.5 cases on average a year is not a large number of cases. 18.5 cases equates to 1.5 cases a month.

98

Note: depending on whether answers were provided or not and the experience executive secretaries had, a sample of around 150 (for 2009) and around 220 (for 2010) was used.

2.3. Notaries

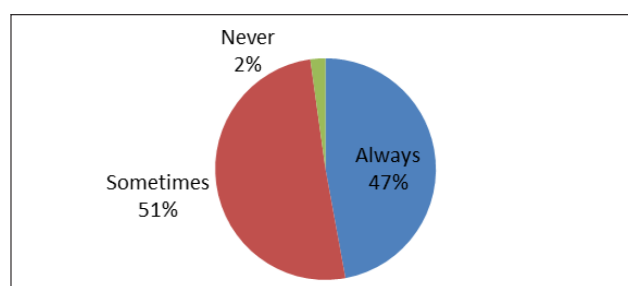
In 2010 notaries dealt with on average 2.3 forced enforcements and 5.1 voluntary enforcements. The maximum number of forced enforcements was 7 and 12 for voluntary enforcements. In 2009 notaries dealt on average with 2.2 forced enforcement cases a year and 1.5 voluntary enforcement cases. In 2009 the maximums were 9 for forced and 4 for voluntary enforcements. Notaries that we interviewed dealt with the least number of enforcement cases of the enforcement agents surveyed⁹⁹.

3. Workload

3.1. Executive secretaries

The below pie chart illustrates what percentage of executive secretaries feels overworked.

Chart 7: Percentages of executive secretaries feeling overworked

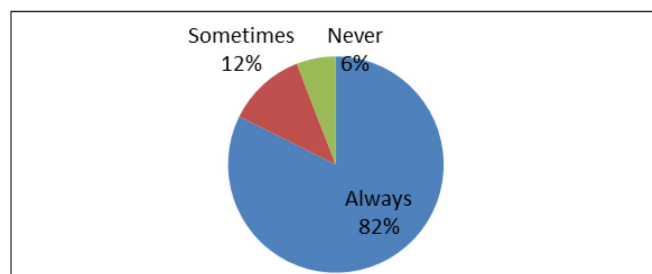


51% of executive secretaries sometimes feel overworked against only 2% that never feel overworked. 47% of all the executive secretaries interviewed always feel overworked. Executive secretaries in Nyarugenge district felt most overworked with 80% of executive secretaries from that district responding that they always feel overworked. This supports the finding that 74.5% of the claimants interviewed from Nyarugenge district have not had their judgment enforced. This is unsurprising as executive secretaries in Nyarugenge feel the most overworked and therefore will not be able to dedicate adequate time to the enforcement of court judgments.

3.2. Notaries

The below charts sets out how overworked those notaries interviewed that enforce court judgments feel.

Chart 8: Percentages of notaries feeling overworked



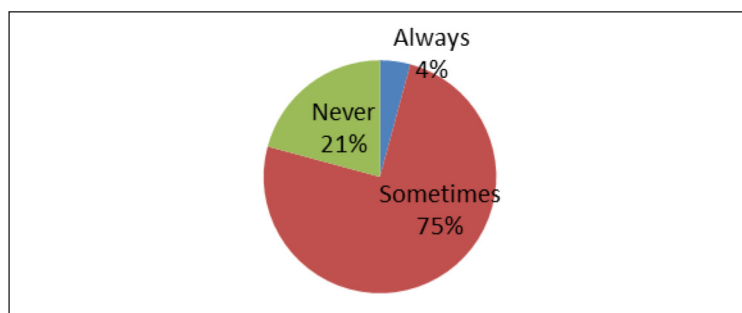
99

Note: only 6 of the interviewed notaries complied with the following three conditions: enforcing court judgments, providing answers to the number of cases they enforced and working since 2009.

82% of notaries responded that they always feel overworked and 6% feel that they are never overworked. This is a significant increase in the percentage of notaries who feel overworked compared to executive secretaries. Given the small number of enforcement cases that notaries deal with on an annual basis their other duties must be burdensome in themselves.

3.3. Professional bailiffs

Chart 9: Percentages of professional bailiffs feeling overworked



Very few professional bailiffs always feel overworked and almost 21% never feel overworked. The majority (75%) sometimes feel overworked. These findings contrast greatly with those of the nonprofessional bailiffs who feel more overworked than professional bailiffs. This is probably due to their more far reaching role that extends beyond solely the enforcement of court judgments.

4. Choice of enforcement agent

The below table shows the spread of enforcement agents for those claimants interviewed:

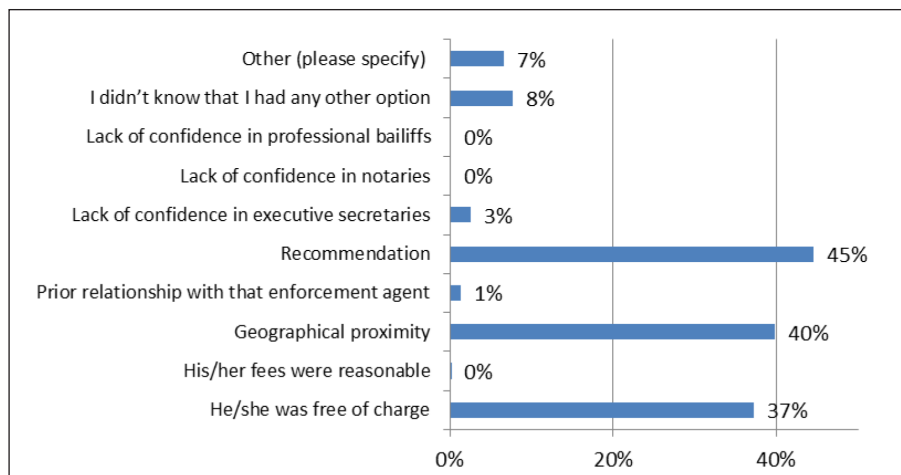
Table 35: Enforcement agents used by interviewed claimants¹⁰⁰

Type of enforcement agent	Frequency	Percentage
Executive secretary of the cell	2269	83,6%
Executive secretary of the sector	243	9,0%
Professional bailiffs	163	6,0%
Executive secretary of the district	8	0,3%
The person in charge of legal affairs for the sector	13	0,5%
The person in charge of legal affairs for the district	19	0,7%
Total	2715	100,0%

The below graph sets out the main reasons why claimants choose their enforcement agent:

¹⁰⁰ A total of 2715 respondents to this question out of a total of 2794 claimants interviewed (response rate of 97.2%)

Chart 10: Reasons why claimants choose their enforcement agent



As seen by the graph above the main reasons that govern a claimant's choice of enforcement agent are recommendations (45%), geographical proximity (40%) and the fact that he or she was free of charge (37%). A further 8% of claimants did not know that they had any other option apart from the enforcement agent they chose. An example of 'other' responses given by claimants is that executive secretaries of the cell are the only ones entrusted with the enforcement of gacaca cases. This highlights a misunderstanding amongst many claimants in relation to who can enforce their judgment. Professional bailiffs are allowed to enforce gacaca cases as long as they do not deal with registered property. This lack of understanding as well as the geographical scarcity of professional bailiffs affects their availability to claimants.

25% of claimants believe that they only have 1 enforcement agent to choose from in their area and 48% of claimants do not know how many enforcement agents are available to them in their area. Of those who do not know how many are available, 84% used the executive secretary in the cell to enforce their court judgment. Furthermore of the 25% who thought they only had 1 enforcement agent to choose from, 94% used the executive secretary of the cell. In the absence of any information, the average claimant believes that the executive secretary of the cell is the only person who can enforce their judgment. This places undue burden on the executive secretary of the cell and creates problems with enforcement.

A claimant usually has the following enforcement agents to choose from: executive secretary of the cell, executive secretary of the sector, executive secretary of the district, notary of the sector and notary of the district as well as (if available) professional bailiffs. It is clear that some claimants are unaware that they can consult the executive secretaries of a higher administrative level or notaries in order to enforce their judgments. Furthermore 46% of claimants who chose an executive secretary of the cell to enforce their judgment did so because of geographical proximity and 8% chose the executive secretary of the cell because they did not know that they had any other option. The finding that the majority of cases are enforced by executive secretaries is surprising given that under Ministerial Order No 114/11¹⁰¹ the executive secretaries are only meant to enforce in the absence of the person in charge of legal affairs (notary). This obviously does not happen in practise and executive secretaries bear the burden of enforcement.

101 See footnote 55

5. Notaries

Of those notaries interviewed, 45 in total, 60% do not enforce court judgments despite the law entitling them to do so¹⁰². All of those who do not enforce are notaries of the sector. 100% of the notaries of the district interviewed, 7 in total, enforce court judgments. 52% of those notaries who do not enforce court judgments do not enforce because they have not yet sworn the oath to enforce. The oath swearing ceremonies are the responsibility of MINIJUST, however MINALOC is responsible for informing MINIJUST of the swearing in requirements. This information sharing between the two ministries should improve in order that all notaries are able to enforce court judgments.

From the open responses given by notaries many of those who do not enforce did not know that there was a law that entitled them to enforce: they stated as a reason for not enforcing that there is no law permitting them to do so. One notary's open response translated to English stated as follows:

"There is no law related to nonprofessional bailiffs. In addition, we're overwhelmed and we have a lot of work with limited resources. Personal liability; the government doesn't give us any support in case we're sued when we actually act in our official capacities while enforcing these judgments".

Equally when asked if they had heard of the ministerial order empowering persons in charge of legal affairs to enforce court judgments, 40% answered that they hadn't. This is an area that should be covered by continuous training which should happen in tandem with swearing of the oath for enforcement for all those notaries who have not done so.

Given that the majority of sector level notaries have not yet sworn the oath there are not as many notaries available to claimants as there could be. This reduces the choice of enforcement agents for claimants and again increases the burden on executive secretaries.

6. Conflict of interest

6.1. Executive secretaries

The conflict of interest for executive secretaries between their role as enforcement agents and as local leaders puts pressure on their ability to enforce judgments.

Table 36: Concerns of executive secretaries relating to conflict of interest

Concerns of executive secretaries relating to conflict of interest	Frequency	Percentage
Conflict of interests because of prior knowledge of case	8	3.5%
Conflict of interest because of proximity with defendant	12	5.2%
Conflict of interest between enforcement role and other responsibilities	60	26.0%

Although apparently few executive secretaries list conflict of interest due to proximity with defendant (5%), a larger group (26%) lists as one of their main concerns the conflict between their responsibilities as a local leader and their role as an enforcement agent.

6.2. Notaries

The above results relating to executive secretaries contrast with those of notaries:

Table 37: Concerns of notaries relating to conflict of interest

Concerns of notaries relating to conflict of interest	Frequency	Percentage
Conflict of interests because of prior knowledge of case	0	0%
Conflict of interest because of proximity with defendant	0	0%
Conflict of interest between enforcement role and other responsibilities	5	27.8%

Again a large percentage of notaries find the conflict of interest between their other responsibilities and their enforcement role a major concern, (27.78%). This is reflected in how overworked they feel. However, none of the notaries who responded felt that they had any conflict of interest because of prior knowledge of the case or proximity with the defendant. This conflicts with the results of executive secretaries. Executive secretaries at the cell level work very closely with the local community and are likely to know both the claimant and the defendant.

6.3. Professional bailiffs

Conflict of interest does not affect professional bailiffs to the same extent as nonprofessional bailiffs. The role of enforcement is their everyday employment and as bailiffs they are not conflicted with other jobs as the law prohibits them from carrying out other employment¹⁰³.

6.4. In general

The issue of conflict of interest for nonprofessional bailiffs between their enforcement role and other responsibilities is intrinsically linked to their workload and therefore to the amount of time that they can dedicate to enforcement. This is clearly a problem for nonprofessional bailiffs.

7. Lack of resources

For 46% of executive secretaries lack of resources is a major concern which limits their availability. 53% of executive secretaries feel that the cost of enforcement is a major obstacle. Furthermore 83% of executive secretaries stated that financial or logistical support for enforcement would motivate them to enforce court judgments.

33% of notaries listed lack of resources as a major concern in their role as an enforcement agent and 41% felt that the cost of enforcement is a major obstacle. This is similar to the results for executive secretaries. Furthermore 100% of those notaries who enforce court judgments felt that an extra financial or logistical incentive would motivate them to enforce court judgments.

These results contrast with those of professional bailiffs, of whom only 8.3% feel that lack of resources is a concern. For 25% of professional bailiffs an obstacle to enforcement is the inability of claimants to pay. Given that professional bailiffs offer paid services it is unsurprising that lack of resources is not an important obstacle for them.

103 Article 17, the Professional Bailiff Law

The lack of resources is a major obstacle for nonprofessional bailiffs, which affects their availability to claimants.

8. Personal liability

Enforcement agents are personally liable for any errors they commit in enforcing a court judgment. This is a major concern mostly for nonprofessional bailiffs and can lead to their reluctance to enforce judgments. This reluctance affects the availability of nonprofessional bailiffs to claimants.

The risk of incurring personal liability is especially difficult when enforcing over property by way of auction which involves complex legal requirements. 46% of executive secretaries listed personal liability as a major concern. The majority of interviewed executive secretaries stated in the open responses that the type of further support they would like in their enforcement role is legal aid/legal support in the event they are sued for poor enforcement. This is clearly a serious impediment for them. One executive secretary stated, translated into English, that *"the bailiffs are victims in the case where they carry out an unlawful execution of a case, they stand a trial with no lawyers to help and have to compensate for themselves in case they lose the case"*.

33% of notaries and 29% of professional bailiffs consider personal liability a major concern. It is surprising that so many executive secretaries and notaries are concerned with their liability when very few reported receiving any fines. These figures may seem surprising as a great deal more professional bailiffs received fines for poor enforcement than nonprofessional bailiffs. Professional bailiffs perceive the risk of personal liability as part and parcel of their day to day job. This is in contrast with nonprofessional bailiffs who are not paid for their duties and perform them in a public capacity.

The concern of personal liability affects the willingness of nonprofessional bailiffs to enforce court judgments and therefore in turn affects their availability to claimants.

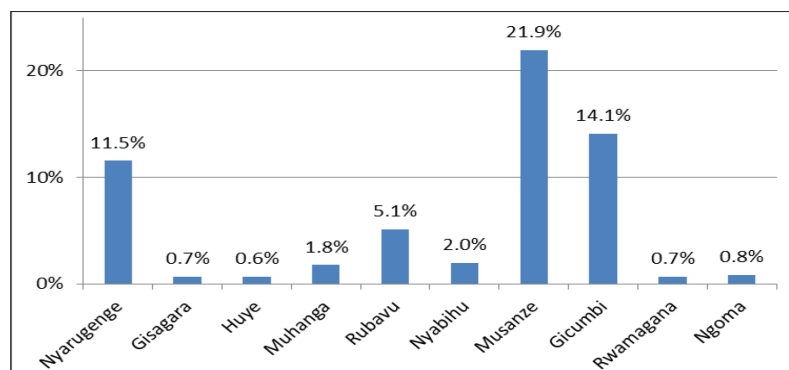
9. Professional bailiffs

9.1. Territorial availability of professional bailiffs

Traditionally professional bailiffs were restricted in geographical jurisdiction. This has been changed pursuant to Ministerial Order No. 167 of 08/2011 Extending the Jurisdiction of Professional Court Bailiffs which extends the majority of professional bailiff's jurisdiction to national competence, for a period of 3 years. Those professional bailiffs who do not feature in the annex to the MO are those who were unable to attend the meeting discussing the extension of their jurisdiction. Those professional bailiffs have to petition MINIJUST in writing to be included.

See below a chart showing the geographical spread of claimants within our research who used a professional bailiff. The table shows the proportions of claimants using a professional bailiff compared to the total of claimants interviewed in each district.

Chart 11: Geographical spread of claimants using a professional bailiff

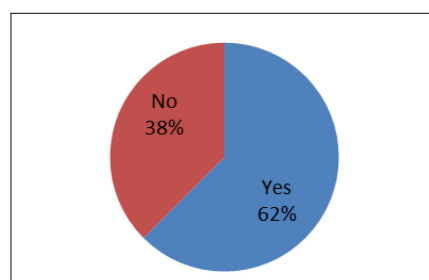


It is still very clear from the table above that certain areas have less access to professional bailiffs. The district where claimants used the highest number of professional bailiffs is Musanze (22%), followed by Gicumbi (14%) and finally Nyarugenge (12%). This is surprising as traditionally 61% of all professional bailiffs were based in Nyarugenge and only 11% of all professional bailiffs were based in Musanze. Only 1 bailiff was previously assigned to Gicumbi. Possible explanations are an immediate effect of the ministerial order of 9 November 2011 which extended territorial competence of selected professional bailiffs to the national territory; very active professional bailiffs in Musanze and Gicumbi; a selection bias of survey teams in those districts or even professional bailiffs operating out of their assigned territory (before the new MO) in Musanze, but certainly in Gicumbi.

9.2. Professional bailiffs and private institutions

Professional bailiffs are often associated with banks, insurance companies or other commercial institutions that use their services. This also serves to explain the geographical concentration of professional bailiffs in the environs of Kigali as the majority of commercial businesses is located in this area. The chart below shows the percentage of professional bailiffs interviewed that are associated with a commercial institution.

Chart 12: Association of professional bailiffs with commercial institutions



As shown by the above chart, 62% of the professional bailiffs interviewed are associated with a bank, insurance company or other commercial institution. Of that 62%, 33% receive between 81-100% of their cases from that institution and 40% receive between 0 - 40% of their cases from that institution. The fact that so many professional bailiffs receive a large proportion of their cases from private institutions may affect the availability of professional bailiffs to the general public.

10. Conclusion

There are many factors affecting the availability of enforcement agents to claimants. In the forefront is the workload of nonprofessional bailiffs. This, tied with their time restraints, conflict of interest between their enforcement role and other responsibilities and reluctance to incur personal liability, renders nonprofessional bailiffs less available to claimants.

Professional bailiffs are not as concerned about their heavy workload as it is their only employment responsibility and given that they are independent they control their workload.

A large number of the notaries of the sector/persons in charge of legal affairs interviewed do not enforce which also limits claimants' options. Overall enforcement agents are not as available to claimants as they should be for the range of factors discussed above.

4. INDICATOR 4 – COMPETENCE OF ENFORCEMENT AGENTS

As stated earlier in this report, enforcement agents are obliged to enforce court judgments within 3 months of receiving a petition from a claimant with a final judgment in their favour affixed with the executory formula¹⁰⁴. Where enforcement agents fail to comply with this they are subject to a fine¹⁰⁵. They can also be sued for poor enforcement of a court judgment. The number of fines that enforcement agents receive is therefore an indication of how competent they are. If enforcement agents are not competent, forced enforcement cannot function properly. This indicator looks in particular at the number of trainings attended by enforcement agents and number of fines received as ways to measure their competence.

Key findings observed under this indicator include:

- 58% of professional bailiffs interviewed have been sued for poor enforcement.
- 32% of executive secretaries interviewed have only had training once while 8% have had no training.
- 40% of executive secretaries feel that lack of adequate training is one of the main obstacles to effective enforcement.
- There does not appear to be any correlation between the number of trainings attended and the competence of enforcement agents which implies that training may not be adequate.

1. Fines received by enforcement agents

1.1. Executive secretaries

One executive secretary from the cell level¹⁰⁶ told us of the two instances where he had been sued by claimants for poor enforcement. In the first case he was sued because he had delayed a public auction of the property subject to the court order. In this case he had already set the date for the auction and published it, however on the eve of the auction he received an order from the judge not to proceed with the auction. This was due to the fact that the executory formula had been applied in error to the initial judgment and the defendant had appealed the case and won the appeal. In this case the executive secretary of the cell won at the first instance.

104 Article 200, paragraph 1, Civil Procedure Code.

105 Article 200, paragraph 2, Civil Procedure Code.

106 Personal Interview, Executive Secretary of a cell in Nyarugenge district, 5 October 2011.

In the second case where he was sued for poor enforcement he lost the case. The second case involved a land dispute and the demarcations of the land were not clear from the judgment. The executive secretary of the cell carried out forced enforcement over properties that had been built on the land since the court proceedings had commenced. The people who were forced off their land then sued the local authorities for wrongful enforcement and the judge agreed that the local authorities had exceeded the demarcation of the land and wrongfully enforced the judgment. The fine against the executive secretary of the cell has yet to be enforced.

In both of the above cases errors with the judgments themselves led to poor decisions of the enforcement agent. Judges from the Intermediate Court in Nyarugenge, Kigali¹⁰⁷ also agreed that there are problems with final judgments receiving the executory formula despite the fact that they have been appealed by the defendant. Furthermore, where a claimant does not know that an appeal has been lodged the defendant can obtain judgment in default and two final judgments with executory formula can exist. This causes problems for enforcement agents who try to enforce these judgments and can then be sued for wrongful enforcement. An improved records management system needs to be developed to prevent such issues and to protect enforcement agents in this situation as they have personal liability for any errors committed in enforcing court judgments.

Of those executive secretaries interviewed in our research only 4% admitted to receiving a fine for poor enforcement, of which 100% are executive secretaries of the cell. Only 1 executive secretary admitted to receiving a fine due to delayed enforcement. The fact that so few executive secretaries have been fined due to delayed enforcement where so many claimants have been waiting over 3 months or waited over 3 months for enforcement is due to the fact that 84% of claimants did not know that enforcement agents could be fined for delayed enforcement of over 3 months.

1.2. Notaries

None of the notaries who responded to the questions relating to fines admitted to receiving any fines for either poor or delayed enforcement.

1.3. Professional bailiffs

58.3% of professional bailiffs answered that they had been sued for poor enforcement. Some of the reasons that they were fined are set out below:

- *Accused by the defendants of wrong execution;*
- *For seizing assets that were not allowed to be seized¹⁰⁸;*
- *To remove the defendant from the house;*
- *Conflicts that emerged during enforcement;*
- *Enforcement not in conformity with the law;*
- *Enforcing a judgment that had been appealed;*
- *Wrong enforcement;*
- *Cancelling the enforcement;*
- *Not having announced the auctioning.*

None of the professional bailiffs admitted to receiving a fine due to delayed enforcement. This is most likely due to the fact that very few claimants know that this is a possibility. The reason given above relating to the fact that the judgment had been appealed is similar to the facts given by the executive secretary that had been sued twice for poor enforcement. This

107 Focus Group Discussion, Intermediate Court for Nyarugenge, Monday 26 September 2011.

108 The respondent added that he won the case.

again reflects issues at the court level with the management of final court judgments.

Professional bailiffs have received many more fines than executive secretaries or notaries. This is due in part to the fact that the service they provide is a paid service and therefore claimants are more likely to be demanding. Also, claimants that use professional bailiffs are most likely well-off with a certain level of education, hence informed of the possibility of suing a bailiff in case of wrong or delayed enforcement. Despite the fact that the majority of professional bailiffs admit that they have been sued for poor enforcement they appear to be able to enforce judgments in the timeliest manner of any group of enforcement agent.

2. Training of enforcement agents

2.1. Amount of training received

2.1.1. Executive secretaries

Having a legal background is not a requirement to become an executive secretary. Executive secretaries can therefore commence their profession without any prior knowledge of enforcement which makes it imperative that they receive training. This is even more important when considering that executive secretaries of the cell deal with the majority of enforcement cases (83.5% of claimants interviewed in this survey).

Of those executive secretaries who responded to our questionnaires 32% only had training once while 8% had received no training. Of those executive secretaries who received no training 69% had been executive secretaries for 3 years or above. Furthermore none of the executive secretaries of the sector interviewed had attended training more than 3 times, where 52% of the executive secretaries of the sector had been working in their jobs for 4 years or above. This does not appear to be an adequate number of trainings especially for executive secretaries of the sector given how complex the issues surrounding enforcement can be and the fact that they have no legal background. 73% of executive secretaries received training from MINIJUST and 21% indicated receiving training from MINALOC. MAJ also provided training sessions to some of the interviewed executive secretaries. 65% of executive secretaries feel that MINIJUST is best placed to provide training.

Given the low number of trainings attended by executive secretaries it is unsurprising that 12% of executive secretaries feel that lack of adequate training is a reason for delayed enforcement of over 3 months and 40% of executive secretaries feel that lack of adequate training is one of the main obstacles to effective enforcement. For 33% of executive secretaries their main concern in relation to their role of enforcement is lack of adequate training and for 25% their main concern is their lack of legal knowledge. This clearly highlights lack of training and understanding of enforcement as a reason that executive secretaries struggle in their role as enforcement agents.

It is of note that executive secretaries each receive a manual relating to enforcement to assist them in the enforcement process¹⁰⁹. This manual includes a list of issues that executive secretaries should look out for before enforcing judgments. These are as follows (translated from the original Kinyarwanda version into English):

- Things to pay attention to before enforcing a judgment:
 - o To check whether there is a genuine document requesting enforcement;
 - o To check whether he/she has the power to enforce the submitted document;
 - o To verify whether the (legal) required time/period for enforcing that document has reached;

109 Amahugurwa Y'Abahesha B'Inkiko Mu Gihugu Hose, Manual provided by MINIJUST, 21 April 2008 – 14 May 2008, & 9-13 May 2008.

- To verify whether there is no pending appeal against that document;
- To clearly understand what has been decided or ordered in that judgment;
- To fill the necessary forms for enforcement;
- To choose the day of auctioning;
- To auction (perform the exercise);
- To pay government fees;
- To pay the claimant and to give the remaining amount to the defendant.

This manual contains quite comprehensive guidance for executive secretaries in their duties to enforce court judgments. It is clear however, from the following recommendation from an executive secretary on how to improve enforcement, that not all executive secretaries have access to this manual:

“...to enact a law protecting the lay bailiffs or request penalties to those who rebel against the execution of cases, to prepare a compendium of the mostly used laws in the execution of cases, to prepare a handbook on the procedure relating to the execution of cases, the main requirements to take into account, do’s and don’ts.”

Furthermore, one of the main recommendations given by executive secretaries was to receive more training, indicating that they do not currently feel as though they receive adequate trainings to enforce effectively.

2.1.2. Notaries

None of the notaries interviewed had received training more than 3 times. 33% of the notaries interviewed who enforce court judgments had not attended any training. None of the notaries from Muhanga or Ngoma districts interviewed had received any training. This highlights that lack of training applies equally to notaries as it does to executive secretaries. 33% of notaries interviewed received training at ILPD – this was the largest provider of training for the notaries interviewed. More notaries than had training at MINIJUST believe that MINIJUST is the best placed institution to provide training on enforcement to notaries (41%).

46% of notaries who do not enforce court judgments stated that further training on enforcement would motivate them to enforce. 29% of notaries responded to the question *“what are the main obstacles to effective enforcement for notaries?”* with the response of lack of legal training. This is against 40% for executive secretaries; this could be due to the legal background of notaries who are therefore better equipped to deal with enforcement matters without training. Of the notaries that were interviewed, despite the fact that they generally have a legal background 4 out of the 45 notaries interviewed (9%) did not have a law degree. The majority of notaries interviewed (80%) hold a bachelor’s degree in law.

Only 23% of notaries feel that their lack of training on enforcement is a concern in their role as an enforcement agent. One of the main recommendations that notaries gave to improve the situation of enforcement in Rwanda was continuous and in-depth training to notaries, especially in light of the fact that the laws are subject to change. In general notaries do not receive adequate training. This is also seen from the finding that 9% of notaries that enforce had never heard of the Ministerial Order authorizing civil servants and employees of local administrative entities to execute judgments.

2.1.3. Professional bailiffs

More than half of the professional bailiffs interviewed (54.2%) received up to 3 trainings. 83.3% of professional bailiffs interviewed had been professional bailiffs for between 3 and 5 years. All of the professional bailiffs who responded to the question relating to how many trainings they had attended had attended at least 1 training session.

None of the professional bailiffs interviewed indicated that lack of training is a reason for a delay of over 3 months in enforcing a judgment. Only 2 professional bailiffs (8.3% of the sample) felt that inadequate training was an obstacle to effective enforcement. This is compared with 29% for notaries and 40% for executive secretaries. 83% of professional bailiffs received training at MINIJUST, 67% at ILPD and 42% at the Professional Bailiff Association. The highest percentage of professional bailiffs felt that the Professional Bailiff Association was best placed to carry out training (41.7%).

None of the professional bailiffs interviewed listed lack of training as a concern in their role as an enforcement agent, compared to 23% of notaries and 33% of executive secretaries. This implies that the prior legal knowledge of professional bailiffs makes training less important.

2.2. Is training adequate?

The following section explores whether the training that enforcement agents receive is adequate, by looking to see whether there is any correlation for each enforcement agents between the number of trainings and:

- The number of enforcements that are appealed by claimants;
- The number of fines received;
- The number of cases considered complicated; and
- The time taken to enforce court judgments.

2.2.1. Executive secretaries

Appeals

Apart from one very extreme case where an executive secretary who received no training had 252 of his cases appealed there does not appear to be any direct correlation linking fewer appeals with more training which would be the natural assumption. This indicates that the quality of the training received may not be adequate to assist executive secretaries in their roles as enforcement agents.

Percentage of cases enforced

Furthermore, there does not appear to be a correlation between the number of executive secretaries who enforce 100% of their cases and the number of trainings that executive secretaries attend. For instance 31% of executive secretaries who received no training stated that they enforce between 91-100% of their cases. We also asked executive secretaries what percentage of their cases they are able to enforce within 3 months. 23% of executive secretaries stated that they enforce 81-90% of their cases within 3 months and 12 executive secretaries (5% of sample) stated that they were only able to enforce 0-10% of their cases within 3 months. Despite the assumption that those executive secretaries who receive more trainings would be more likely to enforce a higher percentage of their cases within 3 months as required by law, 69% of those executive secretaries who received no trainings stated that they could enforce between 61- 100% of their cases within 3 months. This also supports the finding that executive secretaries feel overworked. Equally the one executive secretary who received 8 trainings felt that he or she could enforce between 61-70% of their cases within 3 months.

Complicated cases

56% of those executive secretaries who only attended one training session felt that 30 – 100% of their cases were complicated. 11% of the executive secretaries who only attended one training session thought 90-100% of their cases were complicated. This is compared to the one executive secretary who attended training once and did not find any of his/her cases complicated. Note however that too few executive secretaries attended a large number of trainings to carry out a full analysis of the correlation between the percentage of cases deemed complicated and the number of trainings attended. Despite the fact that there appears to be a small correlation (see 11% above) between the number of cases that an executive secretary feels are complicated and the number of trainings attended the fact that very few executive secretaries attended many training sessions is telling in itself that many of them may not be equipped to enforce court judgments.

Clarification of judgment

Of those executive secretaries who returned to court for clarification of the judgment – 56% of them returned 1 or 2 times. 39% of executive secretaries interviewed returned to court for clarification of court judgments. The main reasons that executive secretaries return to court for clarification of judgments are that there is a legal provision in the judgment that they do not understand or that the judgment is too complicated.

Other reasons given by executive secretaries (5.6%) as to why they return to court for clarification of a final judgment are as follows:

- ✓ *Unclear term has been used*
- ✓ *Judges issue the ruling without even making a trip to see the type of matters under trial on the field such as demarcation between fields, surface area*
- ✓ *There are cases where you find all parties involved in case with court orders to execute the case*
- ✓ *Executing a case basing on a ruling which is not clear*
- ✓ *Providing the value of the subject matters under trial*
- ✓ *If there are two cases that need execution only one shall be executed*
- ✓ *There is no size of the fields indicated in the ruling*
- ✓ *Lack of precise instructions on what the winner has to gain*
- ✓ *No indication of the whereabouts of the assets won*
- ✓ *They are not clear*
- ✓ *The court didn't indicate well the assets concerned with the execution*

The above list of 'other' reasons highlights issues with the court that delivered the final judgment. This indicates that seeking clarification is not solely due to a lack of understanding of the legal principles by the executive secretaries, but often due to a lack of thoroughness on the part of judges.

It is clear however, from the main reasons that executive secretaries return to court for clarification of a judgment, that their lack of legal knowledge is a major factor.

58% of executive secretaries who had attended training 3 times returned to court for clarification of court judgments. One executive secretary who attended training 5 times returned to court for clarification of judgments 4 times. Only 1% of executive secretaries who did not receive any training returned to court for clarification of a judgment. This

implies that there is no correlation linking number of times seeking clarification and number of trainings attended.

Fines

Only 4% of those executive secretaries interviewed received a fine relating to poor enforcement. Of that 4%, 33.3% (or 1 in 3) had attended training 6 times whereas none of the executive secretaries who had never attended any training or had attended training only 1 time had received a fine relating to enforcement. At the same instance those executive secretaries who received training 7, 8 or 9 times did not receive any fines relating to poor enforcement. These findings indicate that attending training does not necessarily reduce the number of fines that executive secretaries receive except where the executive secretaries attended a large number of trainings.

In general

The above findings relating to executive secretaries suggest that the training received is not adequate to fully equip executive secretaries with the necessary tools in order to enforce court judgments. There does not appear to be any correlation between the number of trainings received and an additional competence for executive secretaries.

2.2.2. Notaries

Appeals

67% of notaries who attended no trainings had judgments appealed by defendants or claimants. This indicates that those notaries who did not attend any training are more likely to have enforcements appealed against them.

Percentage enforced

33% of notaries who responded to the question '*what percentage of your cases are you able to enforce?*' enforce between 71-80% of their cases. 28.6% of the notaries felt that they could enforce between 71% and 80% of their cases within 3 months. 14% of notaries admitted to only being able to enforce between 0-10% of their cases within 3 months. There is no correlation between these findings and the number of trainings attended, in fact 50% of notaries who attended no training sessions felt that they could enforce between 91-100% of their cases. Of those notaries who admitted to only being able to enforce between 0-10% of their cases, 50% attended training once and 50% attended training twice. When comparing these findings to the number of trainings attended, again there is no direct correlation.

Clarification of judgments

57% of notaries had to return to court for clarification of court judgments, of which 80% had received no training. Furthermore 50% of the notaries that returned to court for clarification of a court judgment because the judgment was too complicated had attended no trainings.

Fines

None of the notaries interviewed who enforce court judgments (40% of total sample) had received any fines either due to poor enforcement or due to delayed enforcement.

Legal knowledge

Only 60% of notaries interviewed had heard of Ministerial Order No 144/11 which authorizes civil servants and employees of local administrative entities to execute judgments, of which 13% had attended training once. This indicates that the training was not adequate as it had not informed them of the law which governed their ability to enforce court judgments. 67% of those notaries who received no training felt that they enforced judgments effectively and

76% overall feel that they enforce effectively.

In general

There appears to be a stronger correlation for notaries between the number of trainings received and their competence, especially in relation to seeking clarification from the court and having enforcements appealed. However this could be due to the fact that 33% of those notaries interviewed had attended no training.

2.2.3. Professional bailiffs

Appeals

Only one professional bailiff interviewed had had any of his enforcements appealed by a claimant (i.e.: his client). That professional bailiff attended training 5 times. Of those professional bailiffs who had cases appealed by a defendant 15% attended training 3 times. However given that the majority of professional bailiffs attended 3 training sessions this is not a surprising result.

Percentage enforced

As with the nonprofessional bailiff data, when comparing the number of cases enforced by professional bailiffs and the number of trainings that they have received there is no direct correlation. Two professional bailiffs who only attended training once felt that they could enforce between 81-90% of their cases. Equally 100% of those professional bailiffs who only enforce between 0-10% of their cases within 3 months attended 1-2 training sessions, however at the same time 1 of the professional bailiffs who only attended training once felt that he or she enforced between 81-90% of their cases within 3 months.

Clarification of judgment

54.5% of professional bailiffs who returned to court for clarification of a court judgment did so because the judgment was too complicated. Of those professional bailiffs who stated that the main reason they seek clarification of a court judgment at court is because the judgment is too complicated, one attended training 5 times, two attended training twice and one attended training once. This again indicates no direct correlation.

Disciplinary action

Only 3 professional bailiffs admitted to having received disciplinary action from MINIJUST, of those 2 attended training twice and one attended training 3 times. There is not enough information from these results to draw conclusions between the correlation between trainings received and the number of professional bailiffs who had a disciplinary action against them. However from the available findings it does not appear that there is a correlation.

Fines

58.3% of professional bailiffs interviewed have been sued for poor enforcement. Of those who had been sued for poor enforcement 35.7% attended training twice. 100% of those professional bailiffs who attended training between 6 and 10 times were sued for poor enforcement.

In general

Again from the data available there does not appear to be a strong correlation between trainings and competence, however unlike the nonprofessional bailiffs all professional bailiffs interviewed had attended training at least one time. The lack of a clear correlation implies that the training received by professional bailiffs, as well as the other enforcement agents is not sufficient to improve the competence of enforcement agents.

3. Treatment of complicated judgments

The number of judgments that enforcement agents find complicated, as well as the way they treat complicated judgments is a signpost when measuring the competence of enforcement agents.

3.1. Executive secretaries

23% of executive secretaries feel that up to 10% of the enforcement cases that they receive are complicated. 8% find 100% of the cases that they receive complicated. The majority of executive secretaries, when dealing with a complicated judgment either: ask people with a legal background for advice (39%), refer it to a higher administrative level (31%), or ask advice from the court that rendered the final judgment (25%).

It is clear from the concerns of executive secretaries as well as their treatment of complicated cases that they do not feel that they have the adequate legal knowledge to enforce judgments and therefore have to consult other people with legal expertise in order to carry out their role as an enforcement agent. This coupled with their personal liability for errors committed during enforcement can lead to reluctance of executive secretaries to enforce court judgments.

3.2. Notaries

5 of the applicable notary respondents felt that none of the judgments that they had received were complicated. While 5 respondents felt that between 30 and 40% of their cases were complicated. 35% of notaries refer the judgment to the court that rendered the final decision when they find a case complicated. Examples of other actions that notaries take with complicated judgments include mediating between the parties to help them come to an agreement and asking colleagues for advice.

3.3. Professional bailiffs

54.5% of those professional bailiffs who return to court for clarification of a court judgment do so where a court judgment is too complicated. This demonstrates that even with their legal expertise they still find cases complicated and have to seek guidance on how to enforce them.

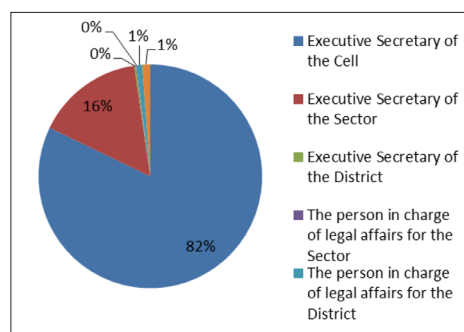
3.4. In general

Executive secretaries seem to have the greatest difficulty with difficult judgments and seek those with a legal background to assist them. This highlights the problems with their lack of legal background.

4. Reluctance of enforcement agents

The reluctance of enforcement agents to enforce is a manifestation of their incompetence to act as enforcement agents. The chart below highlights that the reluctance of enforcement agents to enforce judgments is a greater obstacle for claimants that are using an executive secretary of the cell than other enforcement agents. 31.3% of claimants stated that the reluctance of enforcement agents to enforce was an obstacle to the enforcement of their judgment.

Chart 13: Reluctance of enforcement agents to enforce as an obstacle for claimants



A significant 82% of claimants who stated that the reluctance of enforcement agents to enforce is an obstacle to their enforcement are using executive secretaries of the cell. This is a very significant finding which clearly demonstrates that executive secretaries are not adequately competent as enforcement agents.

5. Change of enforcement agents

Only 6% of claimants changed enforcement agents, of which 52% changed from executive secretary of the cell to executive secretary of the sector. 11% changed from executive secretary to professional bailiff. 31 claimants changed enforcement agent more than once. 25% of claimants who changed enforcement agent did so because their previous enforcement agent was ineffective. Open responses to this question list reasons such as the local authorities ignored my case/did not want to enforce it, executive secretaries told me they had no resources, and executive secretaries (who were dealing with the case) moved/left office. The majority of claimants who changed enforcement agent changed from an executive secretary either to another executive secretary or to a different type of enforcement agent. Coupled with the finding that executive secretaries of the cell take the longest to enforce court judgments, executive secretaries are the least effective enforcement agent available to claimants.

6. Code of ethics

There is no code of ethics governing the profession of executive secretaries, notaries or professional bailiffs. When asked whether they would want a codified code of ethics the majority of enforcement agents from each category answered yes. 81% of the executive secretaries who responded to the question *'do you feel there is a need for a code of ethics in your profession?'* feel that there is a need for a code of ethics in their profession. 82% of those notaries who enforce feel that a code of ethics is necessary in their profession. 16% of notaries either have no opinion or think there is no need for a code of ethics. Out of 22 respondents providing an answer, 77.3% of professional bailiffs feel that there is a need for a code of ethics, 1 respondent indicates feeling that there is no need for a code of ethics, and 4 others didn't have an opinion. It is surprising that so many professional bailiffs feel there is a need for a code of ethics as the law governing professional bailiffs contains many restrictions on the behaviour of professional bailiffs.

7. MAJ's view

The MAJ interviewed (10 out of 30 across Rwanda) stated that one of the most common enforcement problems that claimants come to them with is the incompetence of nonprofessional enforcement agents. 80% of the MAJ officials interviewed felt that enforcement agents were not competent enough in their jobs. The main recommendations

that the MAJ gave to improve enforcement related to providing further training to enforcement agents. The MAJ also feel that enforcement agents should have some legal background. 80% of the MAJ officials interviewed feel that the MAJ can do more to help effective enforcement. The MAJ officials indicate several possible measures that they can take to assist people with enforcement issues, the most prevalent being: organizing specific training on enforcement for bailiffs (8), providing legal advice for claimants (7) and providing legal advice to enforcement agents (9). The MAJ see the incompetence of enforcement agents as one of the major issues with enforcement in Rwanda. They propose that they themselves should provide training sessions to combat this issue.

8. Conclusion

It is clear from the findings that nonprofessional bailiffs are less competent than their professional counterparts. The lack of competence of certain enforcement agents is highlighted by claimants themselves as well as the MAJ who were interviewed. Trainings are not as numerous for executive secretaries as they should be given that executive secretaries enforce the most court judgments and lack legal knowledge. The training received by enforcement agents does not however, from the information available, appear to make a difference in the competence of enforcement agents. This implies that the training itself must be improved and focus on those issues most commonly dealt with by enforcement agents. The findings under this indicator also highlight the extent of the problem relating to executive secretaries being reluctant to enforce. This reluctance to enforce can be linked to the availability of executive secretaries discussed under the previous indicator.

5. INDICATOR 5 – ENFORCEMENT MECHANISM AND PROCEDURES

This indicator looks at the enforcement mechanism as a whole, both at the socio-legal aspects and the legal procedures. This looks in particular at the relationship between claimants and defendants, the relationship between enforcement agents and the role of defendants in enforcement. This also looks at the usage of voluntary as opposed to forced enforcement and the legal methods of enforcement.

Key findings observed under this indicator include:

- All types of enforcement agent feel they would like to have a closer relationship with other enforcement agents implying that currently the relationship is not very cohesive.
- Only 6.9% of claimants had their judgment executed voluntarily without pressure.
- The majority of claimants (64.7%) had their final judgments executed voluntarily after pressure from the enforcement agent.
- Seizure of immovable property is the legal method of forced enforcement that causes the most problems despite the fact that it is the most commonly used method.

1. Enforcement mechanism – socio-legal perspective

In this subsection we will take a closer look at the social issues that affect enforcement in general.

1.1. Lack of assets of defendants

The lack of assets of a defendant to enforce over is a major obstacle in the enforcement process. This obstacle has been identified not just by claimants but also for enforcement agents. 67% of professional bailiffs, 49% of executive secretaries, 41% of notaries and 12% of claimants with obstacles, list the lack of assets of the defendant as an obstacle to enforcement. Where a defendant is insolvent the claimant has to be patient and wait for the defendant to obtain means. This causes delays to enforcement where defendants are very poor and are unlikely to be able to pay the judgment debt for years if ever.

1.2. Claimants contact with defendants

49.5% of respondents, when asked whether they contacted the defendant before going to an enforcement agent, stated that they did contact the defendants in their claim. 50.5% did not contact the defendant to try to enforce their judgment before going to an enforcement agent. The main reason that claimants do not contact the defendant before contacting an enforcement agent is that it is clear from the final hearing that the defendant will not cooperate (62.4% of respondents who did not contact the defendant before going to the enforcement agent).

1.3. Voluntary vs forced enforcement

The majority of claimants who had their judgment fully enforced, had their judgment voluntarily executed after pressure from the enforcement agent (64.7%). Note however that this voluntary execution involves pressure from enforcement agents. The final judgment is therefore not complied with willingly. Only 21.6% of those claimants whose judgments had been fully or partially enforced used a procedure of forced enforcement.

From all claimants who had their judgment voluntarily executed by the defendant without pressure, 71.2% contacted the defendant first. Of those claimants who had their judgment enforced after a procedure of forced enforcement, only 41.1% contacted the defendant first. This indicates that where claimants contact the defendant first they are more likely to have their judgment voluntarily executed. Contacting the defendant before consulting an enforcement agent should be encouraged as it will serve to reduce the wait times for enforcement as there would be less forced enforcement. Furthermore it would reduce the burden on enforcement agents and assist in the reconciliation process between the parties.

Only 6.9% of claimants had their judgment executed voluntarily without pressure. This clearly demonstrates issues in the appreciation of the binding nature of final judgments by defendants and the unwillingness of defendants to cooperate. The general public requires further education to ensure that defendants take ultimate responsibility for complying with a court judgment. The 'reluctance of defendant' to the enforcement of a final judgment is the biggest obstacle cited by claimants (52.9%). This is also an obstacle cited by 62.5% of professional bailiffs, 19.5% of executive secretaries and 11.8% of notaries.

1.4. Relationship between enforcement agents

92% of professional bailiffs would like more cooperation with nonprofessional bailiffs. 94% of notaries who enforce judgments think it would be good to have more cooperation with professional bailiffs, opinion shared by 88% of executive secretaries who provided an answer on whether they would like to have more cooperation with professional bailiffs. From these responses it is clear that there could be increased cooperation between enforcement agents. If this willingness was to be exploited a solid cooperation between professional and nonprofessional bailiffs could be established in order to ensure a more effective enforcement system. This effectiveness could for instance be improved by designing a clear legal framework dividing enforcement responsibilities between the different types of

enforcement agent.

1.5. Relationship between professional bailiffs and local authorities

Certain professional bailiffs interviewed complained that they do not receive adequate support from the local authorities in obtaining the relevant documents needed for enforcement. Despite the fact that article 198 of the Civil Procedure Code states: *“The administrative authorities and law enforcement agents, legally requested to do so should assist the agents charged with the execution of judicial decisions and other legal instruments which bear the executory formula.”*

46% of professional bailiffs state that their main concern when enforcing a court judgment is their lack of security highlighting that law enforcement agents (police) do not provide the relevant support as required under the law. Furthermore many professional bailiffs complain in their open responses that the local authorities block their attempts to enforce judgments and are reluctant to provide documents to enable them to enforce court judgements. In order to be able to seize immovable property, a copy of the land title documents is required under article 289 of the Civil Procedure Code.

These requirements make it essential that professional bailiffs and local authorities have a good working relationship. At present there are no clear channels of communications between the two groups, which should be introduced in order to further benefit claimants.

2. Enforcement procedures – legal perspective

This subsection looks at the legal procedures that govern enforcement such as methods of forced enforcement and the role of the judiciary.

2.1. Methods of enforcement used by enforcement agents

The most commonly used methods of forced enforcement are seizure of immovable property and seizure of movable property.

For the 81.1% of executive secretaries who used seizure of immovable property as a method of enforcement, the frequency varies greatly: 9.1% used it only once, 22.4% up to 5 times, 14.7% up to 10 times, 11.2% up to 25 times, 10.5% up to 50 times, 7.7% up to 100 times and 5.6% up to 609 times.

43.4% of executive secretaries had never used seizure of movable property. For the 56.6% who used this method of enforcement, as with seizure of immovable property, the frequency varies: 7.7% used it only once, 20.3% up to 5 times, 7.0% up to 10 times, 11.2% up to 25 times, 5.6% up to 50 times, 1.4% up to 100 times and 3.5% up to 744 times.

For notaries the most frequently used method of enforcement is also seizure of immovable property. This is unsurprising as notaries are the main enforcement agents for registered property and are therefore most likely to enforce over immovable property. Equally the findings from professional bailiffs indicate that the most common methods of enforcement used are seizure of movable and immovable property.

2.1.1. Executive secretaries

Seizure of immovable property causes the most problems for executive secretaries (53% of respondents). Reasons given by the interviewed executive secretaries as to why this is the hardest type of forced enforcement are as follows: (i) the requirement to obtain permission from the President of the Intermediate Court in order to proceed to auction is a lengthy process; (ii) issues of multiple ownership; and (iii) the lack of adequate assets.

Judges from the Intermediate Court for Nyarugenge¹¹⁰ also concurred that the main problems encountered with enforcement agents relate to auction of property due to the more complicated legal requirements related thereto. For instance under article 263 of the Civil Procedure Code *“seized property cannot be auctioned before the expiry of fifteen (15) days starting from the day the statement of seizure is given.”* This is just one of many legal provisions that have to be adhered to in order for property to be auctioned.

An executive secretary from a cell in Rwamagana district¹¹² admitted: *“Because of my lack of legal background, I am nervous to enforce cases given the risk of personal liability. Due to my lack of legal knowledge I am more likely to make mistakes when enforcing court judgments such as not following all the procedures to auction a property.”* She also gave a concrete example of problems with seizure where goats were taken from the defendant for a period of time waiting for the defendant to pay the judgment value. *“In that case, it was difficult to find anyone to look after the goats and given the cost of looking after the goats I was obliged to sell them prior to the expiry of the relevant legally proscribed time period.”*

2.1.2. Notaries

The most difficult methods of enforcement for notaries are seizure of crops and seizure of immovable property (31% each). Unfortunately none of the notaries who stated that seizure of crops was the hardest method of enforcement provided details as to why. One can surmise that this may be due to the fact that often a lapse of time is required in order for crops to be ready for harvest and that you have to guard crops in order for them not to be destroyed.

2.1.3. Professional bailiffs

Professional bailiffs find seizure of movable and immovable property the most difficult methods of enforcement (41.7%). Reasons given by the interviewed professional bailiffs as to why certain forms of enforcement are harder than others are set out below:

2.1.3.1. Seizure of crops:

- Seizure of crops requires the guarding of those crops in order for them not to be destroyed.

2.1.3.2. Seizure of movable property

- It is difficult to obtain property documents (for movable and immovable properties) from the local authorities;
- Movable property requires police, manpower and it's easily misplaced/lost or stolen;
- The defendant hides his/her movable assets over which enforcement would have been done;
- Sometimes locating assets becomes a problem because the owner hides them;
- To find the assets and the related documents (property documents);
- It's difficult to locate movable assets because they are easily hidden by the defendant.

110 Focus Group Discussion, Intermediate Court for Nyarugenge, Monday 26 September 2011

111 Personal interview, Executive secretary of a cell in Rwamagana, Tuesday 20 September 2011.

2.1.3.3. *Seizure of immovable property*

- It is difficult to get the property documents (for movable and immovable properties) from the local authorities;
- It affects the family;
- The owners stick to it;
- It's because often the house subject to seizure is being inhabited by the family and it is difficult to throw them out;
- Sometime you seize the property and afterwards you find that it's not the defendant's or that he/she had registered it in the names of another person or sometimes the assets/property has disappeared;
- Immovable properties are seized through the use of public force;
- It is difficult to find the assets and the related documents (property documents);
- Because according to article 289 of the civil, commercial, labor and administrative code you can't seize immovable property without proof that the property belongs to him/her (defendant) which is hard to obtain;
- It's very difficult to get documents for co-owned property as local leaders are hesitant to provide such documents, which hinders enforcement;
- Before the land registration process, it was very difficult to locate one's property/land as it was hard to identify demarcations.

The above reasons clearly indicate that enforcement over both movable and immovable property causes a range of problems often due to lack of documents, reluctance of the defendant to co-operate with the enforcement agents and difficulties locating assets to enforce over.

2.2. *Relationship between judiciary and enforcement*

Unclear judgments and misunderstanding of the facts of the case reflected in a judgment cause delays in enforcement. Unclear judgments cause enforcement agents to return to court for clarification¹¹² of a judgment and can delay enforcement due to misunderstandings. Although most of the executive secretaries do not have a legal background court judgments should be written clearly so that all parties can easily understand them without any difficulty.

The judiciary plays a limited role in the enforcement process. The key role of the judiciary in enforcement is to write clear judgments setting out the clear obligations of the defendant and measures for noncompliance with such obligations.

Article 215 of the Civil Procedure Code:

"Judgments must be executed in the manner and time limits provided for in their rulings."

Noncompliance with a court order should be seen as having serious consequences. This does not appear to be the case as the time limits given in rulings cannot be complied with where a claimant has been waiting years for the enforcement of their court judgment. Again in some instances this reflects a lack of understanding on behalf of defendants of the importance and binding nature of a final court judgment.

However adequate laws are not sufficient to ensure compliance, a sensitization campaign is necessary for defendants and continuous training for enforcement agents.

¹¹² See indicator 4, 3.1.4, 3.2.3, 3.3.3 above.

3. Conclusion

The enforcement mechanism is impeded by both socio-legal and legal aspects. The socio-legal obstacles include the lack of assets of defendants and their reluctance to allow enforcement over their assets. Furthermore the lack of understanding among defendants of the finality of a court judgment is clearly obstructing enforcement.

The legal aspects that impede the smooth functioning of the enforcement mechanism relate to the methods of enforcement themselves and the lack of clear judgments delivered by the judiciary. The legal requirements relating to auctioning property are found particularly difficult by enforcement agents despite the fact that they are the most commonly used. This is reflected in the fact that professional bailiffs list the burdensome legal requirements as something that must be improved to facilitate the enforcement process.

The lack of willingness of defendants remains the largest impediment to enforcement. Although voluntary enforcement is more common than forced enforcement this is only after pressure from enforcement agents and therefore not willingly. Defendants are not adequately taken into account during the enforcement process and the full burden of enforcement rests upon the shoulders of enforcement agents, who often feel overworked.

6. INDICATOR 6 – EFFECTIVENESS OF ENFORCEMENT PROCESS AND PUBLIC PERCEPTION

The effectiveness of the enforcement process and the public perception thereof can be evaluated by looking at the level of satisfaction and confidence among claimants in the successful enforcement of their judgment and of the enforcement agents they are using.

Key findings observed under this indicator include:

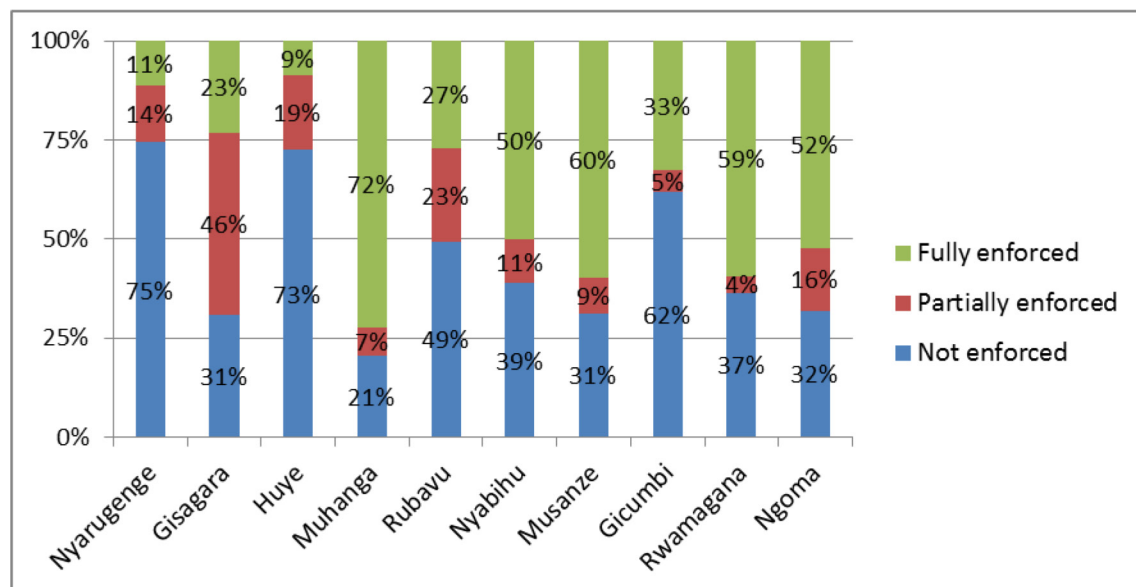
- 41% of claimants who have not yet had their judgment enforced only feel that their judgment 'may' be enforced.
- Confidence of claimants is inversely correlated with the amount of time waiting for enforcement.
- 36% of claimants who used executive secretaries are either not very satisfied or are totally dissatisfied with the service they received.
- 26% of claimants were either not very satisfied or totally dissatisfied with the service provided by notaries
- Only 11% of claimants who used professional bailiffs are either totally dissatisfied or not very satisfied with the service they received.

1. Partial enforcement as an indicator of ineffective enforcement

As stated under the length of enforcement indicator above, 15% of claimants only had their judgment partially enforced. Only 8.4% of those claimants had their partial enforcement within 3 months. The fact that claimants are only achieving partial enforcement of their judgment and therefore are not receiving the total amount of their final judgment is an indication of ineffective enforcement.

In evaluating the extent of partial enforcement it is important to analyse whether this is a countrywide issue. The below table shows the spread of enforcement cases and their outcome across the districts surveyed. Per district, the proportions of full, partial and no enforcement at all are displayed.

Chart 14: Geographical spread of outcome of enforcement



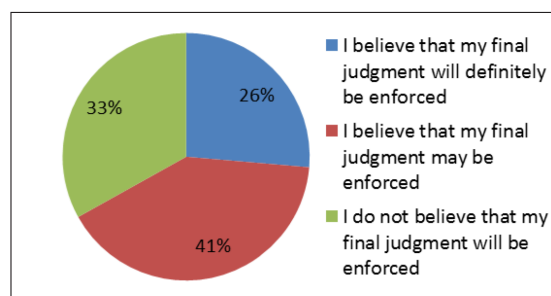
Gisagara has the highest percentage of cases that have only been partially enforced (46%) and Muhanga has the most cases that have been fully enforced (72%). Nyarugenge district has the highest number of cases that have not been enforced (75%). The above chart highlights that partial enforcement occurs in every district indicating that the ineffectiveness of the system is a countrywide problem.

2. Confidence of claimants in enforcement system

2.1. Confidence in successful enforcement of their judgment

Those claimants still waiting for their judgment to be enforced were asked how confident they are that their judgment would be fully enforced. The below chart shows the findings:

Chart 15: Confidence in full enforcement of claimants still waiting for enforcement



The largest group of respondents (41%) was not convinced that their final judgment would be enforced. Furthermore a more striking finding is that 33% of those who had not yet had their judgment enforced did not believe that their judgment would ever be enforced. This highlights a lack of faith in the enforcement system and therefore in access to justice.

2.2. Confidence in enforcement correlated to type of enforcement agent

The below table shows the confidence of those claimants who have not had their judgment

enforced correlated with the main types of enforcement agent and the length of time the claimant has been waiting since contacting an enforcement agent. Of those claimants using a notary (not included in the table) who gave an answer to the question about how confident they were that their judgment would be enforced, 46% believed that their judgment only may be enforced.

Table 38: Correlation of confidence of claimants still waiting for enforcement with time waiting since contacting an enforcement agent

Type of enforcement agent and number of months claimants who have not had their judgments enforced have waited since contacting their enforcement agent.		Confidence in enforcement			
		I believe that my final judgment will definitely be enforced	I believe that my final judgment may be enforced	I do not believe that my final judgment will be enforced	Not applicable
Executive secretary of the cell	Up to 3 months	47.2%	37.3%	15.6%	
	3 - 6 months	42.9%	38.8%	14.3%	4.1%
	6 - 12 months	18.1%	41.5%	39.9%	.5%
	1 - 2 years	9.8%	31.1%	59.1%	
	2 - 3 years	12.6%	29.9%	56.9%	.6%
	3 - 4 years	10.1%	22.8%	67.1%	
	4 - 5 years	9.1%	18.2%	72.7%	
	5 - 6 years	12.5%	50.0%	25.0%	12.5%
	6 - 9 years			100.0%	
Executive secretary of the sector	9 - 15 years	24.2%	35.6%	39.4%	.8%
	Up to 3 months	48.4%	41.9%	6.5%	3.2%
	3 - 6 months	9.1%	81.8%	9.1%	
	6 - 12 months	33.3%	41.7%	25.0%	
	1 - 2 years	29.4%	41.2%	29.4%	
	2 - 3 years	28.6%	57.1%	14.3%	
	3 - 4 years	50.0%	50.0%		
	4 - 5 years	100.0%			
	5 - 6 years		100.0%		
Professional bailiff	6 - 9 years	66.7%	33.3%		
	9 - 15 years	20.2%	71.2%	7.4%	1.2%
	Up to 3 months	72.2%	25.0%	2.8%	
	3 - 6 months	33.3%	41.7%	16.7%	8.3%
	6 - 12 months	33.3%	66.7%		
	1 - 2 years		100.0%		
	2 - 3 years		100.0%		
	3 - 4 years			100.0%	
	4 - 5 years			100.0%	
	5 - 6 years	58.1%	32.3%	8.1%	1.6%

The above table clearly demonstrates a decline in confidence of claimants in the three types of enforcement agents as the time waited for enforcement increases. This is particularly evident in relation to executive secretaries of the cell.

Where claimants, who are using an executive secretary of the cell, have been waiting for enforcement for over 1 year, the level of confidence in the eventual enforcement of their judgment is very low. The only exception to this is for those claimants who have been waiting between 5 and 6 years. For claimants using executive secretaries that have been waiting between 5 and 6 years the highest percentage believes their judgment may be enforced. It is worth noting that even for those claimants waiting between 5 and 6 years the percentage of claimants who believe that their judgment will not be enforced is still higher

than those who believe it will definitely be enforced. 100% of claimants using executive secretaries of the cell who have been waiting between 6 and 9 years for enforcement do not believe their judgment will be enforced. It is predictable that the longer a claimant waits for enforcement the more disheartened they become.

One claimant interviewed has waited to have his land claim enforced for 7 years now. He has lost confidence in the ability of the local authorities to enforce his judgment. This claimant explained: *"I am now waiting for the president, the ombudsman or the governor to visit our district so I can petition my case."*

This demonstrates a complete loss of confidence in the ability of local authorities to enforce a judgment after waiting such a long time for enforcement.

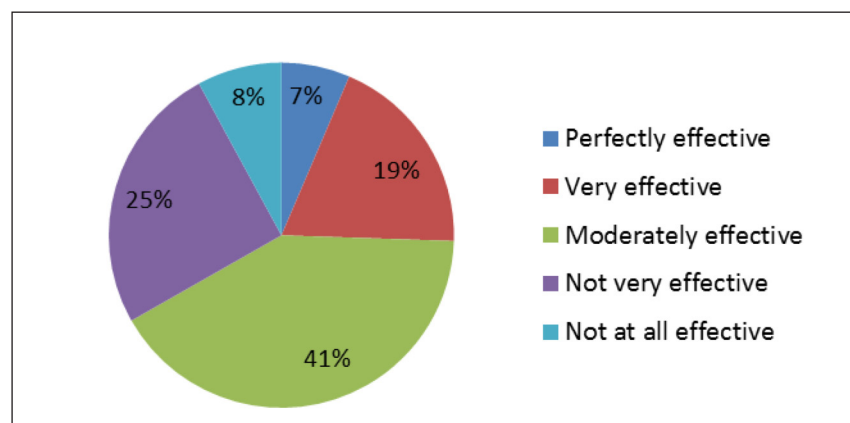
Claimants who are using an executive secretary of the sector are, as a general rule, more confident in the enforcement of their judgment than those using an executive secretary of the cell. A claimant who used an executive secretary of the sector was more likely to feel that their judgment may be enforced as time went by. This could be due to the fact that the executive secretary of the sector is more senior than the executive secretary of the cell and therefore claimants have a greater sense of confidence that their judgment will be enforced.

Claimants using a professional bailiff to enforce their court judgment, and who are still waiting for their enforcement, are in general confident in the positive outcome of their enforcement. For claimants who have been waiting for up to 3 months for enforcement, only 47.2% of those using an executive secretary of the cell believe that their judgment will definitely be enforced. This is opposed to 48.4% if using an executive secretary of the sector and 83.3% if using a professional bailiff. This displays an extra confidence from the outset amongst claimants using professional bailiffs as opposed to executive secretaries. This is most likely due to the fact that professional bailiffs charge for their services and therefore there is a belief that they will be more likely to deliver outcomes.

2.3. Claimants view on overall effectiveness of enforcement

The following chart shows how effectively claimants feel the enforcement procedure they are using is.

Chart 16: Claimant perception of effectiveness of enforcement procedure



The majority of claimants interviewed felt that their enforcement procedure was moderately effective (41%) followed by 25% of claimants who feel that the enforcement procedure is not very effective. This perception of claimants is based upon their personal experience of how their judgment has been enforced rather than of their understanding of the legal procedures underlying enforcement. This demonstrates a negative perception among claimants of the enforcement procedure. This negative perception together with the lack of confidence in enforcement demonstrates that public perceptions must be improved. It is vital to reinstate claimants' faith in justice as without the enforcement of their judgement they are unable to fully access the justice they deserve.

3. Claimants view of enforcement agents

3.1. Claimants view of effectiveness of enforcement per enforcement agent

The below table shows the correlation between how effectively claimants feel their enforcement procedure is or was and the type of bailiff they used/are using:

Table 39: Correlation between claimants' perception of effectiveness of enforcement procedure and type of bailiff used

Type of enforcement agent	Perception of effectiveness of enforcement procedure					Total
	Perfectly effective	Very effective	Moderately effective	Not very effective	Not at all effective	
Executive secretary of the cell	5.8%	18.6%	41.4%	25.6%	8.6%	100.0%
Executive secretary of the sector	6.0%	13.7%	36.9%	38.2%	5.2%	100.0%
Executive secretary of the district	37.5%	25.0%	37.5%			100.0%
The person in charge of legal affairs for the sector	15.4%	30.8%	46.2%	7.7%		100.0%
The person in charge of legal affairs for the district	16.7%		55.6%	16.7%	11.1%	100.0%
Professional bailiffs	10.3%	34.0%	47.4%	4.5%	3.8%	100.0%
Not applicable			100.0%			100.0%
Total	6.3%	19.0%	41.5%	25.2%	8.0%	100.0%

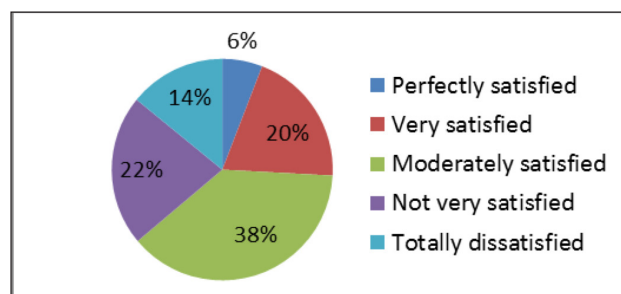
The highest percentage for each type of enforcement agent is 'moderately effective'. Those using an executive secretary of the district felt their procedure was either moderately, very or perfectly effective, however note that only 8 claimants interviewed used an executive secretary of the district. The highest percentage of claimants who felt their enforcement procedure was very effective used professional bailiffs. More claimants who used executive

secretaries of the cell felt that their enforcement procedure was not very effective or not at all effective than those who thought their enforcement procedure was perfectly or very effective. Note also that the effectiveness of their enforcement procedure is not only governed by the type of enforcement agent used, although this is the most important factor. This again demonstrates the superiority of professional bailiffs over nonprofessional bailiffs as enforcement agents.

3.2. Satisfaction with enforcement agents

3.2.1. Executive secretaries

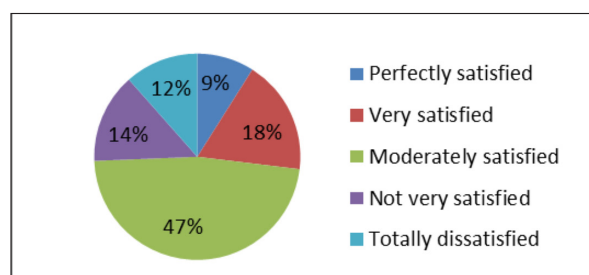
Chart 17: Claimants' satisfaction with executive secretaries



36% of claimants who used executive secretaries are either not very satisfied (22%) or are totally dissatisfied (14%) with the service they received. This is due to the longer delay in the enforcement of a court judgment for those claimants using executive secretaries. This lack of satisfaction does not instill confidence in claimants as reflected in the lack of confidence of those claimants using executive secretaries in the enforcement of their judgment. 20% of claimants are however very satisfied with the service that they received from executive secretaries and 6% are perfectly satisfied with the service that they received.

3.2.2. Notaries

Claimants' satisfaction with notaries

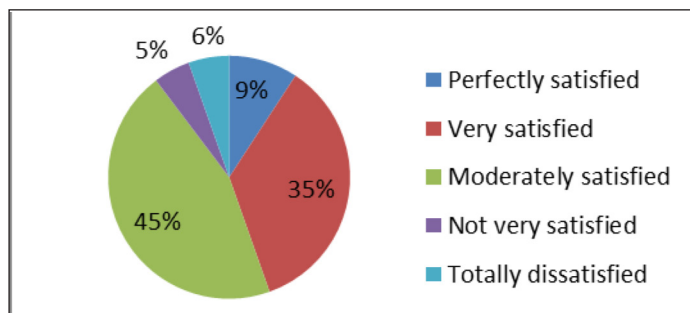


A higher percentage of claimants using notaries are perfectly satisfied with the service received than those claimants using executive secretaries: 9% as opposed to 6%. This is still a low percentage especially as 12% were totally dissatisfied with the service received from notaries in the enforcement of their judgment. The vast majority were moderately satisfied with notaries. 26% of claimants were either not very satisfied or totally dissatisfied with the service provided by notaries, as opposed to 36% of claimants using executive secretaries. This implies that overall claimants who used notaries are more satisfied with the service they

received than those who used executive secretaries.

3.2.3. Professional bailiffs

Chart 18: Claimants' satisfaction with professional bailiffs



41% of claimants who use professional bailiffs are either very satisfied or perfectly satisfied. Only 11% of claimants who used professional bailiffs are either totally dissatisfied (6%) or not very satisfied (5%) with the service they received. This supports the finding that claimants who use professional bailiffs are more confident that their judgment will be enforced. Professional bailiffs as a general rule enforce judgments in a timelier manner than nonprofessional bailiffs which is no doubt another reason for the higher level of satisfaction in professional bailiffs than in notaries and executive secretaries.

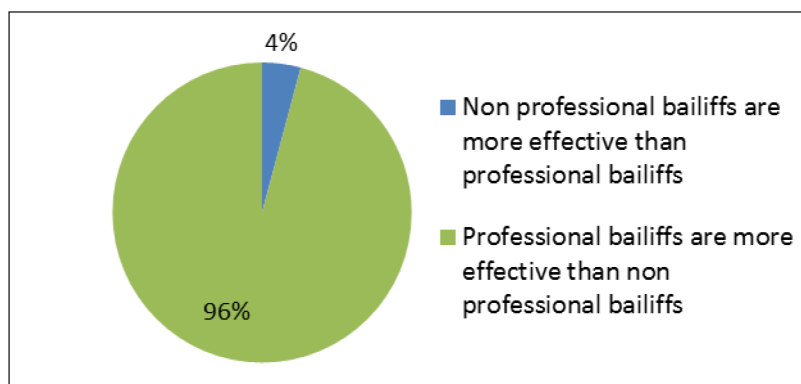
4. Enforcement agents view of enforcement

The majority of both notaries and executive secretaries interviewed would relinquish their enforcement role to professional bailiffs. Notaries and executive secretaries feel overworked and see enforcement as an additional duty. Professional bailiffs on the other hand see enforcement as a key part of their employment. They would however like more cooperation with the local authorities to assist them in their role and from the police to keep them safe.

4.1. Professional bailiffs

96% of professional bailiffs think that they are more effective than nonprofessional bailiffs. This is considerable and shows that they either have a high degree of confidence in their effectiveness or do not believe that nonprofessional bailiffs are very effective.

Chart 19: Professional bailiffs' view of their effectiveness compared to nonprofessional bailiffs

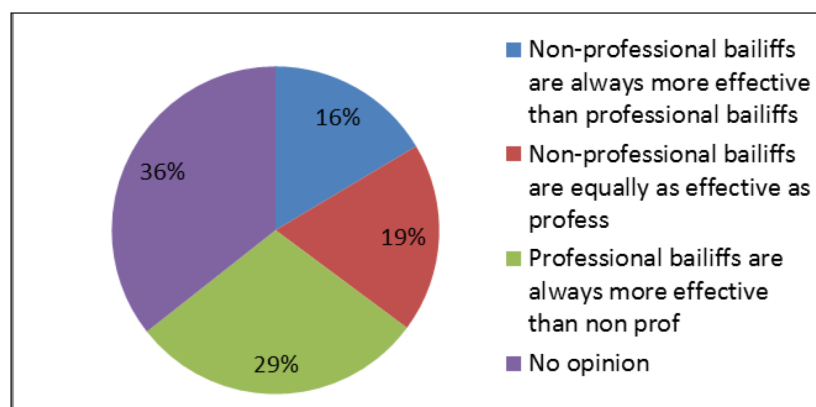


4.2. Executive secretaries

The majority of executive secretaries would want to relinquish their entire enforcement role to professional bailiffs (45%) and only 4% would not want to relinquish any of their enforcement role. Furthermore 27% of executive secretaries would want to relinquish their entire enforcement role to notaries while 7% would not want to relinquish their enforcement role to notaries.

Most executive secretaries had no opinion as to whether they are more effective than professional bailiffs (34%) followed by 64 respondents (28%) who responded that professional bailiffs are always more effective than nonprofessional bailiffs. This is quite self-critical and indicates that executive secretaries are aware of their shortcomings.

Chart 20: Executive secretaries' view of their effectiveness

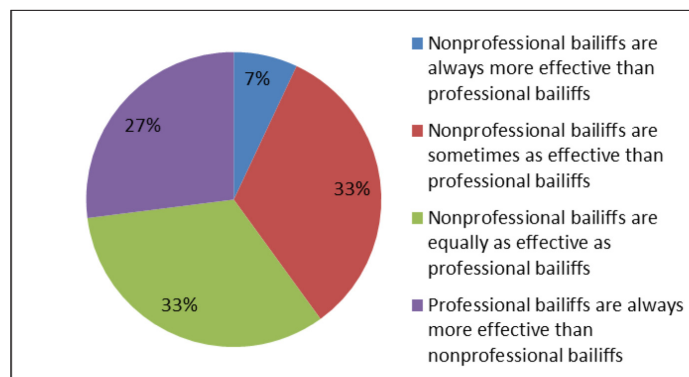


4.3. Notaries

47% of notaries who responded to how much of their enforcement role they would be prepared to relinquish admitted that they would relinquish their entire enforcement role to professional bailiffs.

7% of notaries felt that nonprofessional bailiffs are always more effective than professional bailiffs and 27% felt that professional bailiffs are always more effective than nonprofessional bailiffs. This demonstrates an awareness of their shortcomings.

Chart 21: Notaries' view of their effectiveness



When asked whether they think that they enforce effectively 76% of notaries responded 'yes' and 12% either answered 'no' or 'no opinion'. For 12% of those notaries interviewed that enforce court judgments to believe that they do not enforce effectively or have no opinion on the effectiveness of their enforcement, clearly demonstrates an awareness of their shortcomings.

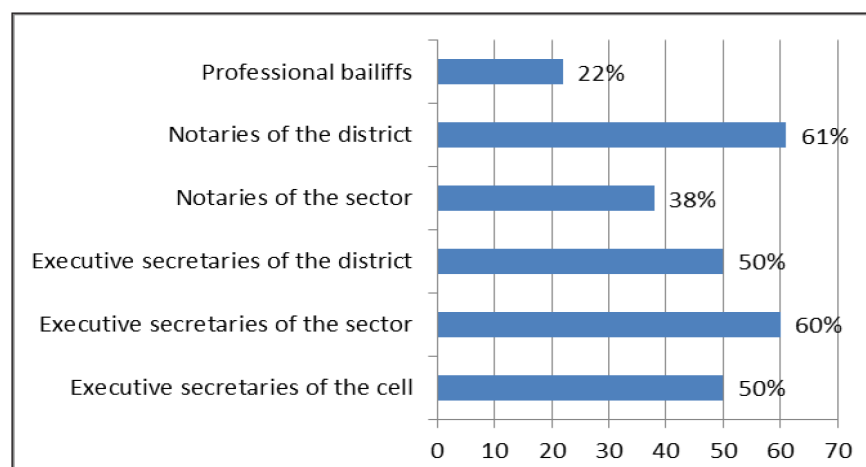
5. Importance given by claimants to court judgments

An understanding of the importance of court judgments by claimants is very important in their appreciation of the enforcement process as a whole. 90% of claimants interviewed believe that court judgments are very important and are always totally binding. This demonstrates that claimants understand the importance of court judgments. This is interesting given the number of claimants who do not believe their judgment will be enforced. 31.2% of those claimants who have not had their judgment enforced who believe that court judgments are very important and are always binding do not believe that their judgment will be enforced. This highlights an understanding of the importance of court judgments yet a lack of confidence in the enforcement process.

6. Claimant's access to information

The majority of claimants were not kept well informed by their enforcement agents, which negatively impacts their view of the enforcement procedure. Between 22% and 61% of claimants (depending on the type of enforcement agent used) were never contacted by their enforcement agent during the enforcement process. This is shown in the chart below:

Chart 22: Percentage of claimants never contacted about progress of enforcement by enforcement agent



This indicates that professional bailiffs are most likely to update their clients during the enforcement process. This could again highlight the fact that nonprofessional bailiffs do not have sufficient funds for enforcement which affects the number of times they would call a claimant. This is reflected in the findings above relating to the satisfaction of claimants who used professional bailiffs. However 22% of claimants who used professional bailiffs did not hear from them which is a high percentage especially as they provide a paid service.

Few claimants heard from their respective enforcement agent once a week: 26% of claimants who used professional bailiffs, 15% who used notaries of the sector, none of those who used notaries of the district or executive secretaries of the district, 12% who used executive secretaries of the sector, and 16% of claimants who used executive secretaries.

77% of executive secretaries state that they always inform claimants of the procedure that they will follow. Furthermore, 93% of those notaries and 100% of professional bailiffs who follow a standard procedure state that they always inform claimants of the procedure that they will take. However, 75% of claimants stated that they did not receive any information relating to what procedure their enforcement agent was going to take. Furthermore 72% of claimants state that they never received any information relating to their enforcement options. However of those who did receive information relating to enforcement, 28% received this from local government followed by 23% who received the information from family or a friend. This indicates that information on enforcement options is not sufficient or made readily available.

44.5% of claimants list lack of information either relating to enforcement agents, appeal procedures or enforcement procedure as the main obstacles in the enforcement of their judgment. Furthermore, 13% of those claimants who waited to contact an enforcement agent for some time after receiving their final judgment with the executory formula did so because they lacked information about their enforcement options. Lack of information creates problems for enforcement and can be easily counteracted through further training of enforcement agents and through sensitisation campaigns which educate the populace of their options.

6.1. The MAJ as an information provider

Only 30.2% of claimants responded that they had heard of the Maison d'Accès à la Justice (MAJ). The majority had not heard of them (67.7%). Only a small number of respondents indicated they had contact with the MAJ in relation to their enforcement (3.6%). Of the respondents who had contact with their local MAJ in relation to their enforcement, 48 indicated that the MAJ advised them on the enforcement procedure, while 38 were oriented by the MAJ to an enforcement agent. For those claimants who did seek advice from the MAJ in their district they received useful information, however very few claimants have heard of the MAJ.

These findings are in contrast with the MAJ responses whereby the majority believe that they are either very well known in their district or quite well known (90%). There appears to be a gap between their self-perception and the public perception. This could easily be rectified through an advertising campaign on behalf of the MAJ to inform the general public of their role.

6.1.1. MAJ's role in helping claimants

The claimants who receive advice from the MAJ were mainly advised on the enforcement procedure or orientated to an enforcement agent. The MAJ state that they usually tell claimants to go to enforcement agents, give them information about different enforcement agents and about appeal options. The MAJ also advocates on behalf of claimants to enforcement agents and institutions. One claimant who went to the MAJ gave the open response that the MAJ called the executive secretary in charge of his enforcement which resulted in his case being enforced. The MAJ's interviewed stated that they assist people more than 20 times per year in returning to court with enforcement issues.

6.1.2. *Further role of MAJ*

The MAJ officials interviewed feel that enforcement of court judgments is very important in access to justice and accept that there are problems with the enforcement of court judgments in Rwanda. Furthermore they feel that they could be more active in assisting the enforcement process, however they are not very well known across Rwanda. The population should be better informed on the services they render. Furthermore they could improve their ties with local authorities to try to encourage a more streamlined enforcement process.

The more information that claimants receive the better informed they will be and therefore their perception of the enforcement process can be improved.

7. Conclusion

33% of claimants still waiting for enforcement do not believe their judgment will be enforced. This clearly demonstrates a lack of confidence in the enforcement system. Satisfaction levels amongst those claimants using professional bailiffs are much higher than amongst those claimants using executive secretaries or notaries. 29% of executive secretaries feel that professional bailiffs are more effective than nonprofessional bailiffs. The findings under this indicator support the fact that professional bailiffs are better equipped to enforce court judgments and better perceived amongst claimants.

Claimants as a whole receive very little information on the progress of their enforcement from their enforcement agents. The MAJ could play a larger role in providing information to claimants relating to their enforcement problems, however remain quite unknown among the public. Information is central to improving the public perception of enforcement amongst claimants.



CHAPTER 5: RECOMMENDATIONS

From the above findings, it is clear that there are issues with the enforcement of court judgments in Rwanda. To counter these issues and provide sustainable solutions to problems with enforcement the following recommendations have been formulated.

1. Executive secretaries

Executive secretaries are most likely to struggle in their role as enforcement agents. They take the longest to enforce judgments of all enforcement agents and are also the most reluctant to enforce. It is proposed that executive secretaries be relieved of their role as an enforcement agent. If that is not an option, it will be crucial to improve the enforcement capacities of executive secretaries.

1. Alternative enforcement agents

The research findings show that the enforcement role of executive secretaries conflicts with their role as a local leader and impacts their neutrality. Given their lack of legal expertise, inadequate training and unavailability they are not best placed to carry out enforcement. It is essential however, given the number of judgments that executive secretaries enforce, that they be replaced with another type of enforcement agent. If they are not replaced this would create a massive vacuum which would cause the situation to further deteriorate. Below we discuss the various options of enforcement agent that could take on the role relinquished by executive secretaries.

1.1. New category

A new category of public servants should be created that enforces court judgments as its only task. This idea was also put forth by some of the interviewed executive secretaries, one of whom recommended that a *“special bailiff should be appointed with no conflicting assignments, paid by the government”*. This new category of enforcement agent would need to work closely with courts, to achieve clarity of court judgments, further orders relating to forced enforcement and so forth. It should also work closely with the MAJs (firstly to disseminate information relating to the new type of enforcement agent and also to stay abreast of problems experienced by the general public).

On a practical level this public servant could be a notary, and therefore someone with legal knowledge, who operates at the cell level in a revolving capacity. This notary could cover 3 or 4 cells depending on the number of cells in each sector and dedicate one day a week to enforcement matters spending the other days carrying out enforcement. These individuals would report their enforcement cases to MINALOC, through the district mayor, on a monthly basis who would then feed them up to MINIJUST. Information sharing and reporting between MINALOC and MINIJUST would therefore be strengthened through the implementation of a stronger reporting regime.

1.2. Professional bailiffs

In the alternative professional bailiffs could be granted a monopoly over enforcement which would result in more professional bailiffs across the whole country. This is in line with the views of other enforcement agents who would happily relinquish their enforcement role to professional bailiffs. This proposition is also supported by the research findings that professional bailiffs are the most competent of the different types of enforcement agent.

To guarantee access to the services of professional bailiffs for every citizen, including the poor and vulnerable, the number of professional bailiffs should be increased and their fees adapted to the income of their clients. To assure geographical coverage of the whole country, professional bailiffs should be obliged to establish their offices throughout the country. This process should be gradual, and could include the obligation for professional bailiffs to engage ex-notaries or law graduates to carry out part of their enforcement role, for instance the cases of lower value. For service delivery to poor clients, professional bailiffs should receive a fee fixed by and paid by the government (cf. pro bono services of lawyers).

1.3. MAJ to enforce

Following the findings that the MAJ would like to play a larger role in enforcement, the MAJ could also be empowered to enforce court judgments. This would be particularly helpful in that they already assist claimants with enforcement problems and have a legal background. However, there are insufficient MAJ officials across Rwanda to take on the role of enforcement singlehandedly or even with the assistance of professional bailiffs in their current number.

2. Improve capacity of executive secretaries

If executive secretaries were not to be relieved of their enforcement responsibilities, their enforcement capacities must be improved. The training should be improved and provided more regularly to executive secretaries to better equip them in their enforcement roles. If training is provided, this should focus on the more practical side of enforcement including, in particular, the legal requirements relating to auctioning property. The MAJ could be well positioned to provide this training and they are also willing to do so.

Furthermore executive secretaries and notaries should receive an adequate transport and communication budget to allow them to enforce judgments. This was a recurring theme amongst the recommendations given by nonprofessional bailiffs. This would also avoid the incidence of fees being charged by nonprofessional bailiffs.

2. Notaries

The fact that very few notaries enforce court judgments, or are aware of the Ministerial Order granting them powers to enforce, is an issue that should be addressed. Notaries also struggle with their enforcement role, and while in general they are more competent than executive secretaries they are less competent than professional bailiffs. This is mostly due to the fact that notaries are overworked and struggle to balance their responsibilities.

Very few notaries of the sector are yet able to enforce court judgments. The oath taking procedure should be sped up to give those notaries the ability to enforce court judgments. This would lighten the load on executive secretaries and give claimants more enforcement options.

Notaries should also be encouraged to attend further trainings focussed specifically on enforcement. Trainings must be improved to ensure that they have a positive impact on the ability of the enforcement agent. Follow up should be conducted after trainings to see if the competence of enforcement agents has improved. Enforcement should begin to play a role in the day to day duties of notaries rather than being seen as something surplus.

3. Professional bailiffs

Professional bailiffs are the most competent of the types of enforcement agent interviewed. There are however, only 54 professional bailiffs in Rwanda. Given that professional bailiffs charge fees they are not a viable option for the populace as a whole.

The competence of professional bailiffs has recently been extended by way of Ministerial Order; however this is only a 3 year interim measure and should be permanent. This ensures greater availability of professional bailiffs for claimants, however the number of professional bailiffs remains small. The professional bailiff profession should be encouraged in order to increase the number of professional bailiffs available across the whole country.

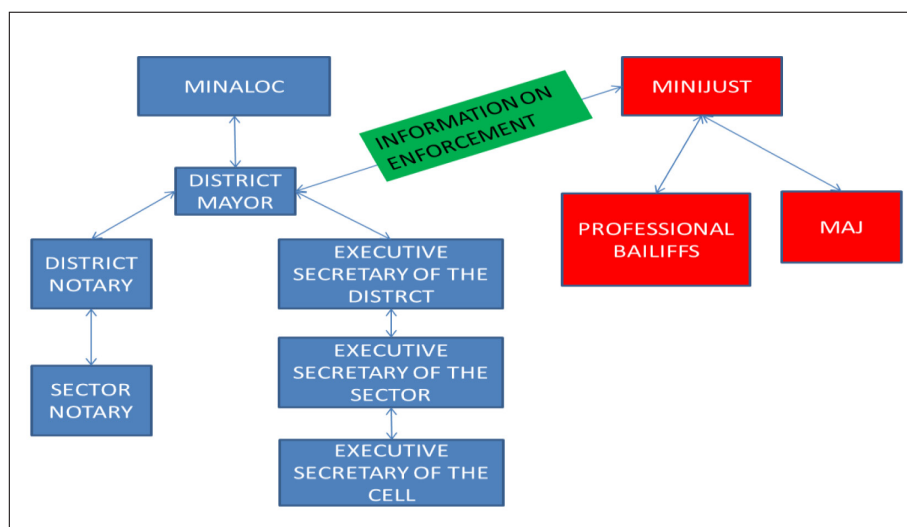
Furthermore, efforts should be made to clarify the fees of professional bailiffs and to determine whether those fees should be uniform and fixed by MINIJUST or the Professional Bailiff Association. The manner in which fees are charged should also be examined. If a more uniform service were implemented, claimants would have a better grasp of what to expect when using a professional bailiff.

As set out in the law governing professional bailiffs, training should be provided prior to carrying out any enforcement. Training should be a prerequisite to be able to enforce court judgments for all enforcement agents. This would also serve to reduce the number of fines received by professional bailiffs for poor enforcement. Again, as stated in relation to notaries and executive secretaries the content of this training should be revised to ensure that the training makes professional bailiffs better equipped to carry out their enforcement role.

4. Relationship between MINALOC and MINIJUST

The lack of a strong reporting mechanism between MINALOC and MINIJUST means that at present it is impossible (or very difficult, to say the least) for MINIJUST to adequately oversee enforcements carried out by executive secretaries or notaries. The difficulty of having individuals falling within one ministry carrying out a role that is under the remit of another ministry is thereby highlighted. This needs to be addressed to ensure that information does not get lost. All aspects of public servants' roles should be supervised and evaluated.

The information channels relating to enforcement should work as set out in the flowchart below:



The reporting mechanism from MINALOC to MINIJUST in relation to enforcement needs to be strengthened as set out above. This needs to occur, especially with the introduction of a new enforcement agent, to ensure that enforcement is monitored adequately. Without adequate supervision from the responsible ministry enforcement will not improve. If all enforcement agents were monitored through a centralized body this would greatly improve the efficiency of enforcement and strengthen reporting channels.

5. Role of the MAJ

The role of the MAJ should be extended within the sphere of enforcement. The MAJ themselves agree that they could do more in relation to enforcement and claimants feel that they lack information on their enforcement options. The MAJ should provide adequate and comprehensive materials to claimants detailing the enforcement procedure and options available to claimants. They could therefore serve to improve the public perception of enforcement amongst claimants. The MAJ are not very well known amongst the general public and should attempt to raise their profile if they want to make a significant contribution.

The MAJ should also have a better relationship with enforcement agents and act as mediators between executive secretaries, notaries and claimants where enforcement issues relating to enforcement agents arise. As set out above, the MAJ could also enforce court judgments.

6. General public

Given the reluctance of defendants to cooperate with enforcement, awareness needs to be raised among the general public as to the finality of court judgments to increase their willingness to co-operate. This should take the form of a nationwide sensitization campaign to teach claimants and defendants about the law governing enforcement and the respective roles of enforcement agents. One way that this could be conducted could be through (local) radio campaigns and community meetings (e.g. after Umuganda). At community meetings the different enforcement options can be explained to claimants as well as the role of the MAJ and the assistance that they can provide. Such dissemination of information would also serve to provide claimants with the valued information on their enforcement options that they are lacking. Voluntary enforcement should be prioritized with a sensitization campaign to explain the importance that defendants comply with final (non-appealable) court judgments against them while explaining to them the possible consequences of not respecting and honouring a court judgement/decision. Many of the issues relating to enforcement would be addressed if the use of voluntary enforcement was increased.

7. Legal reform

1. Article 200 Civil Procedure Code

Article 200 of the Civil Procedure Code, requiring enforcement agents to enforce final judgments within three months, requires revision as it is still subject to interpretative confusion. This article should clearly state who is liable for fines for delayed enforcement and at what point the clock for the 3 months begins to run.

2. Standard execution form

A practical solution to deal with the 3 month enforcement rule would be to have a standard form that is affixed to a final judgment with an executory formula that is filled in by the enforcement agent in duplicate the moment they receive the judgment for enforcement. Such a form could include a section where the enforcement agent signs that they are aware of their obligations to enforce within 3 months. The claimant would then take a copy of this form and could use it to calculate the three month period. In cases where enforcement is impossible due to lack of assets to enforce over the case could be referred to the MAJ to mediate between the parties to reach an alternative solution. This would also aid the reconciliation process.

3. Auctioning of property

Furthermore the legal requirements relating to auctioning of property should be simplified to avoid confusion, as the findings showed that the procedure is found difficult by many enforcement agents. More emphasis on this subject in the training for these enforcement agents is of course a valid option as well.

4. Monitoring of progress of court judgments

An improved computerized records management system should be developed to monitor the progress of court judgments. The new system should make it obligatory that defendants receive a copy of the judgment against them. Such a system would also prevent issues whereby

judgments are wrongly affixed with the executory formula. Furthermore a centralised body that deals solely with the enforcement of court judgments should be introduced within MINIJUST. This body would keep records of all judgments emanating from all the different courts, including abunzi and any remaining gacaca cases.

5. Compensation of genocide related damages

The treatment of genocide cases relating to compensation rather than restitution of property should be addressed. There is currently no mechanism to enforce these judgments. In order to resolve the backlog of enforcement cases and to improve the public perception of enforcement this matter requires attention. A tangible policy should be put in place that sets out how such cases are to be dealt with.

6. Enforcement role of judiciary

The judiciary should play a larger role in the enforcement process. Judges should take more responsibility for their final judgments ensuring that they are clearly written and understandable by all parties. Judgments should clearly spell out ramifications for defendants who do not comply with the judgment. Possible sanctions could be either interest payments on the judgment value or damages. Such sanctions should be specified in all final judgments irrespective of whether the claimants so requests as is currently set out in the law. Where claimants are unaware of the legal provisions and enforcement options it is unfair to penalize them because they do not request the judge to specify sanctions in a judgment. For the purposes of free access to justice such sanctions should be universal.

7. Genocide related cases

Although this research involved a holistic study of enforcement as a whole in Rwanda it became clear from the results that there are clearly problems in relation to the enforcement of genocide related cases. With the closure of the gacaca courts it is essential that some form of monitoring system, for those gacaca judgments yet to be enforced, be put in place to ensure that they are enforced in a timely manner. Furthermore, the MAJ should be empowered to act as mediators in the enforcement of genocide related cases to facilitate the process.

8. Personal liability of nonprofessional bailiffs

Nonprofessional bailiffs should also be relinquished of their personal liability under the law for committing errors during the enforcement of judgments. While enforcing court judgments, nonprofessional bailiffs are carrying out a public office and therefore should be protected from personal liability. This is not as much of an issue for professional bailiffs who are acting independently and providing a paid service. If nonprofessional bailiffs commit errors during the enforcement process, they should receive disciplinary action rather than face personal liability. Alternatively they should be provided with a state lawyer who would represent them and be tried in their official capacity. If they are tried in their official capacity, the state would be responsible for shouldering any fines against nonprofessional bailiffs, however if the reasons for the fines are criminal wrongdoings or gross negligence on the part of the nonprofessional bailiff, that nonprofessional bailiff would remain personally liable. This would help to combat the reluctance of nonprofessional bailiffs to enforce for fear of personal liability.

CONCLUSION

The findings discussed in this report clearly highlight problems with enforcement in Rwanda. Claimants wait longer than the legal 3 month delay for enforcement, many enforcement agents are not sufficiently competent to be carrying out the role of enforcement, claimants lack confidence in the enforcement of their court judgments and defendants are either reluctant to pay and/or do not understand the finality of a court judgment. The above recommendations would serve to address some of these problems and improve the enforcement of court judgments in Rwanda.

Even if the recommendations detailed in this report are implemented in full, enforcement in a developing country brings with it inherent challenges. These challenges include the insolvency of defendants and the lack of assets to enforce over. Implementing these recommendations will not make such issues disappear; there is no quick fix for such issues. Nonetheless, if executive secretaries were replaced with a more effective enforcement agent or adequately empowered to execute their enforcement duties this would be a giant leap towards improving the system of enforcement of civil judgments as a whole in Rwanda. A sensitization campaign to reinforce the finality of court judgments amongst the public would lead to increased numbers of voluntary enforcement which would reduce wait times and issues with enforcement.

Furthermore if each player within the enforcement field were better equipped to carry out their role in an effective manner the system would be greatly improved. Greater supervision from MINIJUST of enforcement activities would also introduce a level of accountability amongst enforcement agents.

A more effective enforcement system would improve access to justice for those claimants striving to obtain what is rightfully theirs. In conclusion, improved enforcement would provide a solid base for a sound rule of law and further support Rwanda as it develops into the future.

