



THE LEGAL AID FORUM FORUM D'AIDE JURIDIQUE

MONITORING OF EDPRS INDICATORS IN THE JUSTICE SECTOR

August 2008 – January 2009

Summary Report

Survey of the Legal Aid Forum in partnership with Norwegian Peoples' Aid, with the technical and financial support of the Danish Institute for Human Rights and the contributions of the Embassy of the Kingdom of the Netherlands and DANIDA

Kigali, August 2009

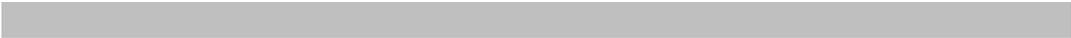
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The Legal Aid Forum is a membership based network encompassing over 30 national and international NGOs, international organisations, professional bodies, universities and faith based initiatives that provide legal aid services to the indigent Rwandan population or vulnerable groups (or that provide support to legal aid service providers in Rwanda). The mission of the Forum is to promote equitable access to justice for the indigent population and vulnerable groups, through the provision of accessible and high quality legal aid services. The Forum is governed by its Statutes adopted by the members on 12 May 2009, amending the initial Charter adopted on 26 October 2006.

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The content of the present report is the sole responsibility of its authors and of the Legal Aid Forum. It does not necessarily reflect the position of the other organisations and donors that supported this survey.



ACRONYMS AND ABBREVIATIONS

ADEPE:	<i>Action pour le Développement du Peuple</i>
AJPRODHO:	Youth Association for Human Rights Promotion and Development
ARDHO:	<i>Association Rwandaise des Droits de l'Homme</i>
ARPCDH:	<i>Association Rwandaise pour la Promotion de la Connaissance des Droits de l'Homme</i>
ASF:	<i>Avocats Sans Frontières</i>
AVEGA :	Association of Genocide Widows
CESTRAR:	<i>Centrale Syndicale des Travailleurs au Rwanda</i>
COSYLI:	<i>Conseil National des Organisations Syndicales Libres</i>
CRISAT:	<i>Confédération Rwandaise Indépendante des Syndicats et Associations des Travailleurs</i>
DANIDA:	Danish International Development Agency
DIHR:	Danish Institute for Human Rights
EDPRS:	Economic Development and Poverty Reduction Strategy
HIC:	Higher Instance Court
INILAK:	<i>Institut Laïque Adventiste de Kigali</i>
LIC:	Lower Instance Court
MAJ:	<i>Maison d'Accès à la Justice</i>
MDGs:	Millennium Development Goals
NPA:	Norwegian Peoples' Aid
NUR:	National University of Rwanda
NURC:	National Human Rights Commission
PPO:	Public Prosecutor's Office
SPSS:	Statistic Package for Social Sciences
ULK:	<i>Université Libre de Kigali</i>

FOREWORD

The monitoring of EDPRS indicators in the Justice Sector has been carried out with the participation and support of many persons, organisations and institutions that must be thanked here.

Both the Legal Aid Forum and the coordination and supervision team of the survey thank the Supreme Court, the National Public Prosecution Authority, the Ministry of Justice and the Ministry of Internal Security for authorising this survey to take place at court and prison level. As a result of their authorisation, the interviewers were able to contact litigants, i.e. the first source of information of the present survey.

We also thank all the staff of the courts where the data were obtained, in particular the Presidents, judges and clerks of the Higher Instance Courts of Gicumbi, Muhanga, Nyagatare, Nyarugenge and Rubavu, as well as those of the Lower Instance Courts of Byumba, Gisenyi, Kagarama, Kaniga, Kiramuruzi, Kiyumba, Nyagatare, Nyakiriba, Nyamabuye and Nyarugenge. Their collaboration has enriched and facilitated this survey.

We would like to thank especially NPA for the partnership concluded with the Legal Aid Forum regarding this survey, the DIHR for its technical and financial support, and the Embassy of the Kingdom of the Netherlands and DANIDA for their financial contributions.

Finally, we thank all the persons contacted at court or prison level who kindly provided us information on their legal cases. Without their generosity, this survey could not have succeeded.

Kigali, August 2009

The Legal Aid Forum

and the coordination and supervision team of the survey.

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CHAPTER ONE INTRODUCTION AND CONTEXT OF THE SURVEY

1.1. Introduction

Since 2002, Rwanda has launched into a vast plan of economical, political and social reform with a long term vision - the 'Vision 2020' - the implementation of which goes in the medium term through the Economic Development and Poverty Reduction Strategy, commonly known as EDPRS (2008-2012)¹.

In the pursuit of a general goal of sustainable economic growth and social development, the EDPRS proposes the achievement in the Justice Sector of the following objectives:

EDPRS STRATEGIC OBJECTIVE IN THE JUSTICE SECTOR²

Strengthening the rule of law to promote good governance and a culture of peace

1. *Universal access to quality justice;*
2. *Genocide ideology eradicated and reconciliation mechanisms reinforced;*
3. *Rule of law, accountability and human rights promoted;*
4. *Safety, law and order maintained and enhanced.*

The achievement of these strategic objectives requires an effective partnership of all actors: the public sector, the private sector, civil society and national and international donors.

In this framework, the Legal Aid Forum dedicates its efforts to the promotion of a universal access to quality justice³.

¹ The EDPRS – Economic Development and Poverty Reduction Strategy – is a national and multi-sector plan for development and poverty reduction for the period 2008-2012. For further details regarding the Justice Sector, see *Strategic priorities*, http://www.minijust.gov.rw/IMG/doc/Strategie_Ministry_of_Justice_COMPLETE_DOC, and *Justice, Reconciliation, Law and Order Sector Strategy and Budgeting Framework*, The Republic of Rwanda, January 2009 – June 2012, http://www.minijust.gov.rw/IMG/pdf/Rwanda_JRLO_Strategy_FINAL_25_Nov_08-3.pdf, both consulted on 16/08/2009.

² *JRLOS Strategy and Budgeting Framework*, p.7.

³ For further details, see the report and relevant documentation on the Thematic Conference on Access to Justice and Legal Aid in Africa, Kigali, Rwanda, 1-4 December 2008.

1.2. The Legal Aid Forum at the service of access to justice in Rwanda

The Legal Aid Forum is a civil society organisation that regroups 33 legal aid providers in Rwanda. The Legal Aid Forum aims at promoting equitable access to justice for the indigent population and vulnerable groups, through the provision of accessible and high quality legal aid services.

The Legal Aid Forum therefore means to be a network for discussion where organisations can learn from each other and collaborate on initiatives that will both strengthen members' capacity and facilitate advocacy on issues related to the provision of legal aid services.

This mission is carried out in practice by the pursuit of the 6 following objectives:

1. To increase collaboration and complementarity between activities and actors in the field of legal aid and access to justice;
2. To improve the quality and accessibility of legal aid service provision;
3. To reinforce the capacity of interveners in the area of legal aid;
4. To identify and initiate research and advocacy on legal issues affecting indigent population and vulnerable groups in Rwanda;
5. To contribute towards the development of an effective, sustainable legal aid system in Rwanda;
6. To mobilise resources and technical support to enhance legal aid⁴.

1.3. The Legal Aid Forum and the monitoring of EDPRS indicators in the Justice Sector

It appears from the above that the mission and the objectives of the Legal Aid Forum fall within the scope of the implementation of the strategic objective defined by the EDPRS in the Justice Sector, i.e. universal access to quality justice. It is in this framework that the Legal Aid Forum wished to carry out an evaluation of access to justice from the first year of implementation of the EDPRS (2008). Concrete data must be possessed prior to determining the actions to adopt in order to fulfil the EDPRS indicators in the Justice Sector by 2012.

The Legal Aid Forum believes that universal access to quality justice implies among others:

1. Efficient and speedy judicial proceedings;
2. Reasonable costs of access to justice for the litigant. Equality before the law may be achieved only if litigants can meet the necessary costs;
3. Accessible and available services of legal advice and of representation in court enabling litigants to ensure the good defence of their cases⁵.

⁴ *Statutes of the Legal Aid Forum*, 12 May 2009.

With respect to these elements, the EDPRS suggests some indicators of the development of justice from 2008 to 2012⁶. These are:

- Determine the number and categories of vulnerable groups/indigent persons who have access to legal aid services and reduce the costs of access to justice by setting up an institutional framework on legal aid and a legal aid fund in favour of vulnerable/indigent persons, the creation of one MAJ per district, the reduction of the distance between the litigant and the court from 6 km to 2 km;
- Improve judicial performances, by reducing, among other, the length of proceedings from an average of 6 months to an average of 2 months per case, and the average cost of prosecuting a case in court from 150,000 to 90,000 Rwf.

Accordingly, the Legal Aid Forum identified the three following indicators in the framework of this monitoring process:

1. Cost of access to justice for the litigant;
2. Availability and accessibility of services of representation in court and legal advice;
3. Length of the process of judgment.

1.4. Objectives of the survey

The present survey will enable all interveners in the Justice Sector to:

1. Benefit from reliable data on access to justice in Rwanda;
2. Be familiar with the difficulties and needs, and identify options for solutions regarding access to justice;
3. Better prepare their action plans and strategic plans;
4. Advocate in favour of an improved access to justice and better channel their efforts and resources in accordance with the identified needs;
5. Clarify the policies and reforms of the Justice Sector.

1.5. Structure of the report

The present report is composed of the following chapters:

- Methodology (Chapter 2);
- Cost of access to justice (Chapter 3);
- Availability and accessibility of services of representation in court (Chapter 4);

⁵ Failing this, the equality of all before the law, in accordance with article 16 of the Constitution of 4 June 2003 as revised to date, would no longer be ensured.

⁶ *Strategic priorities*, http://www.minijust.gov.rw/IMG/doc/Strategie_Ministry_of_Justice_COMPLETE_DOC, consulted on 16/08/2009.

- Availability and accessibility of services of legal advice (Chapter 5);
- Length of the process of judgment (Chapter 6);
- Conclusion and recommendations of the survey (Chapter 7).

CHAPTER 2 METHODOLOGY

A specific methodology has been adopted for this monitoring process of EDPRS indicators in the Justice Sector. It can be presented in various parts as follow: techniques of data collection, determination of the field of the study, training of interviewers and supervisors of the survey, test of the tools, verification of the data and data analysis methods.

2.1. Techniques used

Techniques of documentation, questionnaire and sampling were used for the preparation and carrying out of data collection.

2.1.1. Documentation

As explained above in Point 1.3. *The Legal Aid Forum and the monitoring of EDPRS indicators in the Justice Sector*, the Legal Aid Forum used the EDPRS document to identify three first key indicators related to access to justice to be assessed in this monitoring process.

Moreover, various documents from national and international policies and strategies, such as the Millennium Development Goals (MDGs), Vision 2020, the EDPRS, the policies and strategies both at sector and sub-sector levels of the Justice Sector and of good governance, have been useful for the determination of the indicators to assess.

The legislation on administration of justice and the relevant legal texts were consulted in order to identify the norms to which the data collected on the field have been compared.

2.1.2. Elaboration of the questionnaire

The main source of information in this monitoring was provided from structured interviews. A questionnaire⁷ as well as an interviewer's manual have been drafted in order to collect detailed information from litigants. The information so obtained was then cross-checked with the responses to the questionnaires provided by courts and legal aid providers.

2.1.3. Establishing the field of monitoring

2.1.3.1. Establishing target groups

The main source of information in this monitoring comes from persons who are or were involved in trials before the ordinary courts and therefore who go

⁷ The questionnaire is annexed to the present report.

or used to go frequently to court. Detainees in prison were a second source of information on criminal cases. Some persons whose cases are closed were met at home or at their Advocate's office⁸ or at the bailiff's office. The information provided by litigants has been completed with the information obtained from the courts and legal aid providers.

2.1.3.2. Establishing the sample

Given the impossibility to interview all litigants, it was decided that the monitoring would take place at 5 Higher Instance Courts (HIC), one for each province and at 2 Lower Instance Courts (LIC) of the jurisdiction of each HIC. In total, 10 LIC spread over the jurisdiction of the 5 chosen HIC have hence been selected.

The choice among the HIC was made according to their size, on the basis of the number of pending cases on 31 December 2007. Among the 5 HIC selected, 2 had a large number of pending cases, 1 had an average number of pending cases and 2 a relatively small number of pending cases.

The selection of the 2 LIC of the jurisdiction of each identified HIC was made according to their geographical location: one LIC in rural area and one LIC in urban areas were always selected.

The combination of these criteria guarantees the representativeness of the results on a national scale.

The distribution of the selected courts is as follows:

Table 1 – Distribution of the surveyed courts

Provinces	HIC	LIC
West	Rubavu	Gisenyi and Nyakiriba
East	Nyagatare	Nyagatare and Kiramuruzi
North	Gicumbi	Byumba and Kaniga
South	Muhanga	Nyamabuye and Kiyumba
City of Kigali	Nyarugenge	Nyarugenge and Kagarama

According to the sampling technique applied, the number of interviewed persons corresponds to 10% of the total number of closed trials in 2007 and of those still pending on 31 December 2007. The same sample of 10% was then applied for each type of cases (civil, criminal, social, administrative and commercial).

The selected persons for the survey have been contacted at random among the litigants met at the courts or in prison on the days of the survey. Visits have also been organised at the home or in the work place of the

⁸ Throughout this report, the term 'Advocate' refers to the Advocates registered at the Bar Association.

interviewees for the cases closed in 2007 and for which the person no longer had to go to court. In all cases, the respective part of the various types of cases was taken into consideration (in relation with a sample of 10% per type of cases).

The interviews took place in camera at the court's premises (or outside with a sufficient space to ensure the confidentiality of the exchanges), in prison, at the home or the work place of the interviewee.

2.2. Recruitment, training of interveners and test of the tools

2.2.1. Recruitment of the monitoring team

The monitoring has been carried out by a team composed of interviewers, supervisors and researchers.

- The interviewers have been selected among the legal officers and paralegals of the member organisations of the Legal Aid Forum that provide legal aid services. The choice of these organisations was made on the basis of pre-established criteria by the Legal Aid Forum and in the framework of a call for proposals to all Legal Aid Forum members. The selected organisations then chose among their legal officers and paralegals the interviewers for this survey, on the basis of the criteria transmitted by the Legal Aid Forum and in consideration of their interest for the questions of access to justice and their experience with judicial environments;
- To ensure the quality of the data, the interviewers were supervised on a daily basis by supervisors. These were identified by the selected organisations following the same process and considerations as for the selection of the interviewers;
- The survey was coordinated and supervised by a team composed of two Advocates (among whom one Lecturer at ULK) and one expert in data management.

2.2.2. Training of interveners and test of the tools

Following the recruitment of the various interveners and the elaboration of the tools, the interviewers and supervisors were trained by the coordination and supervision team to ensure their good command of the interviewer's questionnaire and its administration.

These tools were then improved following the discussions of the training.

This phase was followed by a test phase of the questionnaire that took the form of a simulation of questionnaire administration made at court level. This phase enabled the interviewers and supervisors to enrich their knowledge and to verify the clarity and exhaustiveness of the elements of

the questionnaire. At the end of the test, a meeting of all interveners was organised in order to assess its results and to improve the tools of data collection.

2.3. Administration of the questionnaire and verification of the data

The administration of the questionnaire took place in compliance with the instructions given during the training.

To ensure the quality of the data and the reliability of the survey, the data collection was subject to a double supervision.

Each team of two interviewers was charged with the data collection in one HIC and two LIC located in the jurisdiction of the HIC. Each team benefited from the services of a supervisor in charge of the regular verification of the coherence of the data collected. The supervisor accompanied the interviewers in the field in order to verify the conditions of the survey, the quality of the data detailed in the questionnaire and to help the interviewers find solutions to the possible difficulties arising on the field.

The coordination and supervision team of the survey was responsible for technically supporting the data collection in the field, providing advice to the interviewers and supervisors and verifying the quality of the questionnaires before their capture. This aimed at preventing errors, or correcting them and avoiding their repetition.

2.4. Data analysis

After the collection, the data obtained were exploited according to the following data analysis steps:

- Elaboration of the data entry form;
- Training of the data entry agent;
- Capture of the data: this capture was made in a database developed according to the MS Access software. The data entry forms developed take the form of the questionnaires used during the interviews;
- Clearing up the captured data (corrections): this process was firstly realised with the SPSS software (statistic software for data analysis) during the elaboration of the analysis files;
- Data analysis: production of tables of results with the SPSS software;
- Interpretation of the results;
- Drafting of the monitoring report.

Thanks to this methodology, scientific and objective data could be obtained on the cost of access to justice, the availability and accessibility of the services of representation in court and legal advice, as well as the length of the process of judgment. The results are presented in Chapters 3, 4 and 5 respectively.

CHAPTER 3 COST OF ACCESS TO JUSTICE

3.1. Components of the cost of access to justice

The survey analyses the costs incurred by the interviewed persons during civil, criminal, social, administrative and commercial trials. The cost of access to justice presented here consist of all the costs incurred by the litigant all along the process of judgment, to the exception of the costs of representation in court and of legal advice. Five types of costs incurred by litigants have been identified: (i) court fees deposit and case filing related fees, (ii) transport and communication costs, (iii) accommodation and food costs, (iv) costs incurred in the search for evidence and (v) other miscellaneous costs incurred by the litigant.

Table 2 – Cost of access to justice in comparison with the average income of the litigant

Cost of access to justice (<i>per litigant</i>)	Amount (<i>Rwf</i>)	%
Court fees deposit/case filing related fees	3,734	2.4
Transport and communication costs	49,486	31.2
Accommodation and food costs	24,398	15.4
Costs incurred in the search for evidence	14,115	8.9
Other miscellaneous costs incurred by the litigant (expert appraisal, examination, etc.)	66,991	42.2
Total cost of access to justice (<i>per litigant</i>)	158,724	100
Average monthly income of the litigant (<i>Rwf</i>)	28,349	

This table shows the average costs incurred by litigants in relation to their trial. These are expenses that the litigant cannot avoid and that are necessary to the good running of the trial before the courts.

These expenses are analysed hereafter according to their importance within the total cost of access to justice for a litigant, i.e. 158,724 Rwf; and in comparison with the average monthly income of the litigant, i.e. 28,349 Rwf.

On the average monthly income of the litigant

The average monthly income of the litigant is computed on the basis of the declarations made by the latter to the interviewers and of the assessment of the various sources of monthly income received by the litigant – including income from all activities, from agricultural products (for their values assessed by the interviewers according to the declared quantity of production and the market price at the place and time of the survey), etc.

The average monthly income in Table 2 is the average of all monthly incomes of the interviewed litigants. This monthly income amounts on average to 28,349 Rwf. Given that the costs incurred by a trial amount to a total of 158,724 Rwf, they represent thus 559.9% of the average monthly income of the litigant.

(i) Court fees deposit and case filing related fees

The court fees deposit and case filing related fees amount on average to 3,734 Rwf, which corresponds to 2.4% of the total cost per litigant of access to justice and to 13.2 % of the average monthly income of the litigant. Compared to other costs, it is the smallest category of expense. Its rather small amount seems to indicate that it does not act as a significant break to access to justice, especially since indigent persons who have a certificate of indigence delivered by the administration are exempted from paying these fees.

(ii) Transport and communication costs

Transport and communication costs amount on average to 49,486 Rwf, which represents 31.2% of the total cost per litigant of access to justice and 174.6% of the average monthly income of the litigant.

The significance of these costs results from the length of trials, the litigant having to go to court repeatedly, and from the distance of the courts (see Table 3).

(iii) Accommodation and food costs

Accommodation and food costs amount to 24,398 Rwf on average, which corresponds to 15.4% of the total cost per litigant of access to justice and to 86.1% of the average monthly income of the litigant.

These important costs are related to the distance between the home of litigants and the courts (see Table 3). Almost 40% of the interviewees live at more than 12 km from the court. Some of them are therefore sometimes compelled to spend the night there while waiting for the hearing or in case of an adjournment.

Table 3 – Distance between the litigant’s home and the court

Distance between the litigant’s home and the court	Total	
	No.	%
< 2 km	181	6.7
3-6 km	769	28.3
7-12 km	399	14.7
13-18 km	243	9.0
19-24 km	159	5.9
25-30 km	167	6.2
31-40 km	177	6.5
41-50 km	69	2.5
51-60 km	57	2.1
61-70 km	56	2.1
71-80 km	23	0.8
81-90 km	13	0.5
91-100 km	16	0.6
More than 100 km	87	3.2
Does not know	297	10.9
Total	2,713	100

The above table shows that solely 35% of the interviewees live between 0 and 6 km from the court, which the first EDPRS data consider to be the distance between litigants and courts. Only 49.7% of the interviewees live between 0 and 12 km from the court. The remoteness of the courts has however a significant impact on the litigant’s cost of access to justice regarding transport, communication, food and accommodation costs. These costs once cumulated correspond to 46.5% of the total cost of access to justice, i.e. the largest fraction of the expenses incurred by a litigant.

The first analyses resulting from this situation are as follow:

The judicial map is such that courts’ benches are not easily accessible in term of distance.

Indeed, each district has two LIC on average⁹. Since each district covers an average area of 878 km², the average area covered by each LIC is 439 km². As a result, an important part of the population is a long way from the LIC.

The situation is even more problematic concerning HIC. There are 12 of them in the country, covering each an average area of 2,195 km². The distances to reach them are therefore much longer for litigants.

⁹ Rwanda currently has 30 districts and 60 LIC.

In addition, courts' *itinérances*¹⁰ are not frequent, although they could render justice more accessible to litigants.

Moreover, one observes a great disparity of *rationae materiae* jurisdiction between LIC and HIC. The HIC, more distant from the litigants, deal with a larger number of cases.

The LIC – competent in civil matters up to 3 million Rwf and in criminal matters for offences (*délits*) – see most of these cases handled by the Committees of Mediators – a compulsory pre-jurisdictional body prior to the case's submission to court, the decision of which becomes binding if the case is not submitted to the LIC in the prescribed time limit.

On the contrary, the HIC, which deal with the appeals of all LIC cases, and also with crimes, cases involving minors, all social and administrative cases, as well as with all civil cases exceeding the jurisdiction of the LIC, continue to receive a large number of cases to try – without benefiting from alternative strategies at sector level as this was organised in relation to LIC (with the creation of the Committees of Mediators in 2004).

(iv) Costs related to the search for elements of evidence

The costs related to the search for elements of evidence amount on average to 14,115 Rwf, which represents 8.9% of the total cost per litigant of access to justice and to 49.8% of the litigant's average monthly income.

Elements of evidence are necessary in all trials, since all that is argued must be demonstrated. Each litigant therefore attempts to substantiate her/his claims by searching for elements of evidence. It can be material or written evidence or testimony.

Although it is one of the smallest categories of expenses (with deposit of court fees and case filing related fees), the costs incurred by the litigant to gather elements of evidence are by no means insignificant compared to her/his average monthly income.

(v) Other expenses incurred by the litigant

The other types of expenses incurred by the litigant amount on average to 66,991 Rwf, i.e. 42.2% of the total cost per litigant of access to justice and to 236.3% of the litigant's average monthly income.

¹⁰ This is possibility for all Courts, with the exception of the Supreme Court, to sit and hear cases from any town within their jurisdiction, if their Presidents deem it necessary for a good administration of justice. See articles 61 to 63, Organisation, Functioning and Jurisdiction of Courts, Organic Law No 07/2004 of 25/04/2004 as amended to date.

These expenses form a major part of the cost of access to justice and are as important as the costs related to transport, communication, food and accommodation (46.5%).

These expenses are incurred in relation to the following procedures or steps:

1. Medical or technical experts' appraisals or examinations – in relation with the non-execution of the work, the establishing of material damage, etc. The cost of intervention for these experts depends on the steps taken, from about 10,000 Rwf for some medical examination (e.g. recording of sexual abuse) to more than 100,000 Rwf for the expert's appraisal of material damage;
2. Notification of acts of proceedings – writs, summons, judgments, etc. These cost a minimum of about 5.000 Rwf (to which other related costs can be added, such as transport expenses);
3. Photocopies of elements of evidence and other documents that the litigant wishes to add to her/his case file and communicate to the opponent, for an amount of a few thousands Rwandan francs according to the number of pages to photocopy and the cost of photocopy per page. In some cases, costs of drafting/capture are added when the litigant is not able to draft her/himself acts or documents needed for the file and for the running of the trial (such as trial submissions or some types of letters);
4. Costs to obtain copies of the elements of the judicial file – generally more important in criminal matters. They represent an amount of a few thousands Rwandan francs (depending on the size of the file);
5. Certificates delivered by the administrative authorities – birth certificate, death certificate, authentication of documents, etc. the cost of which does not generally exceed a few hundreds Rwandan francs.

It must be recalled that all these expenses are essential to the litigant and cannot be avoided to guarantee the good running of the legal action both in civil and criminal matters.

Some are necessary as evidence of the party's interest to the action or of the right claimed (for expense categories 1, 3, 4 and 5) whereas those indicated under point 2 are imposed by the proceedings.

Whereas some expenses depend on market prices (expense categories 1 and 3), others (expense categories 2, 4 and 5) depend on the level of administrative taxes as set by the State.

3.2. Impact of the cost of access to justice

The total cost of access to justice for a litigant largely exceeds her/his average monthly income. A litigant must indeed devote the whole of her/his income during almost six months to finance her/his legal case.

The litigant is therefore certainly compelled to dedicate a large part of her/his savings and/or to get into debt to meet the necessary expenses to launch and follow a legal case through until its end. The litigant is consequently seriously affected financially and considerably impoverished.

Efficient mechanisms must be implemented to reduce significantly the cost of launch and follow-through of a legal case for the litigant. The strategies to consider should enable on the one hand the acceleration of the process of judgment – without affecting its quality – and on the other hand an increased proximity of the courts for litigants (see recommendations in Chapter 7).

CHAPTER 4

AVAILABILITY AND ACCESSIBILITY OF SERVICES OF REPRESENTATION IN COURT

Representation in court consists for a person in entrusting the defence of her/his legal case to an Advocate or a judicial defender of her/his choice, or in specific cases, to one that is assigned to her/him by law.

According to the Law No. 3/97 of 19/03/1997 establishing the Bar Association in Rwanda, representation in court is limited to Advocates (see Art. 2) and to judicial defenders (in the limits defined by the law – see Art. 94-96) exercising on a liberal basis, excepting when a party pleads by her/himself (self-representation), or is represented by a relative (her/his spouse, her/his parent or relation registered specially by the judge), her/his guardian or legal representative (see Art. 50).

The present survey and the following developments are dedicated specifically to representation in court carried out by Advocates and judicial defenders.

4.1. Percentage of litigants represented in court

Table 4 – Percentage of litigants represented in court

Litigants represented in court	No.	%
Yes	560	20.6
No	2,132	78.6
Not yet	21	0.8
Total	2,713	100

Out of 2,713 litigants, only 560 have had access to a service of representation in court, i.e. 20.6%.

The remainder of the interviewees, i.e. 2,153 litigants, did not have access to a service of representation in court, which means that 79.4% of the litigants were not represented in court. Among these, 21 litigants, i.e. 0.8%, had requested a representation in court but had not yet been granted it at the time of the survey.

Many Rwandan citizens are therefore deprived of one of their fundamental rights, the right of access to representation in court. For the reasons exposed hereafter, this low rate of representation in court, combined with the low level of education of most litigants could infringe the principle of fair trial.

Table 5 – Education level of the interviewees

Education level	No.	%
None	744	28.8
Primary	1,279	49.6
Professional	92	3.6
Secondary	391	15.2
University	74	2.9
Total	2,580	100

Only 465 litigants out of 2,580 individual respondents went to secondary school, i.e. 18% of the interviewees, and among them only 2.9% benefited from a university education.

The low level of education of most interviewed persons does not enable them to ensure alone the defence of their cases. In many cases, such situation cannot guarantee a fair trial. Indeed, ensuring the best defence of one's legal case requires a sufficient command both of the legal matter in relation with the trial and of the applicable law. If such is not the case, the litigant may wrongly believe that s/he is able to represent her/himself and as a result sacrifice her/his legitimate interests in the legal and judicial mazes s/he does not master. Moreover, legal publications, including the Official Gazette of the Republic of Rwanda, websites, booklets and compilations of legal texts, remain unavailable to a large part of the population. 1,000 copies of the Official Gazette are usually published, except when the demand justifies a larger print run. Websites such as www.primature.gov.rw on which is published the Official Gazette and www.amategeko.net where the codes and laws of Rwanda are published are only available to those who live in urban areas and benefit from internet and electricity¹¹.

¹¹ According to the EDPRS, only 4.3% of the population had access to electric energy in 2006/2007, situation to which other restrictive factors add up, such as the cost of internet connection and the unavailability of internet services in some areas outside urban zones.

4.2. Reasons of non representation in court

Table 6 – Reasons of non representation in court

Reasons of non representation in court	No.	%
Not aware of the existence of representation in court	172	8.1
Expensive service/Lack of means	1,484	69.6
Service distant from the clients	36	1.7
Disappointed by the service of representation in court	16	0.8
Capable to represent her/himself	304	14.3
Does not need an Advocate because pleads guilty	24	1.1
Other reasons (has not yet found an Advocate/judicial defender or is currently looking for an Advocate/judicial defender; use of mediation; Advocate/judicial defender no longer available during the trial)	75	3.5
No answer	21	1.0
Total number of litigants not represented in court	2.132	100

The reasons identified by the litigants are as follows (*in decreasing order in terms of frequency*):

4.2.1. High cost of representation in court

Out of a total of 2,132 litigants not represented in court, 1,484, i.e. 69.6%, declared that they could not be represented in court because of the expensive cost of these services or their lack of means.

It is the main and majority reason of non representation in court. One indeed observed that the average cost of representation in court per case amounts to 256,641 Rwf (see Table 8), which is very significant in light of the litigant's average monthly income of 28,349 Rwf (see Table 2).

4.2.2. Ability to represent oneself in court/Pleading guilty

304 of the litigants not represented in court, i.e. 14.3% of the respondents, claimed to be able to ensure the defence of their case before the courts and therefore to represent themselves in court.

It is the second cause of non representation in court. As mentioned above, it should be noted that this is however frequently a deceptive impression and a potential source of disappointments and frustrations, as the low level of education of most litigants suggests that they do not have sufficient capability to represent themselves in a satisfactory way.

In the same line, 24 of the litigants not represented in court, i.e. 1.1% of the respondents, have not deemed necessary to be represented in court due to the fact that they have been pleading guilty. However, in criminal cases,

the freedom of the persons is at stake. The intervention of an Advocate or a judicial defender is therefore particularly important, regardless of the decision of the litigant to plead guilty or not.

4.2.3. Ignorance of the existence of representation in court

172 of the litigants not represented in court, i.e. 8.1% of the respondents, stated that they were not aware of the possibility to be represented in court.

This third reason seems also related to the low level of education of the litigants. The limited presence of Advocates/judicial defenders in rural areas and their generally limited number participate also to this lack of information among litigants.

4.2.4. Distance of Advocates/judicial defenders' offices

36 of the litigants not represented in court, i.e. 1.7% of the respondents mentioned the remoteness of Advocates/judicial defenders' offices.

This limited percentage could lead to believe that the geographical remoteness of Advocates/judicial defenders' offices is not one of the major reasons of non representation in court. However, this factor plays an important role in restricting access to representation in court.

Most Advocates' offices are indeed located in Kigali, and to a certain extent in secondary cities (among others Musanze, Huye, Nyanza, Nyagatare, Nyamata, Rubavu, Rusizi), which leaves rural areas without easy access to Advocates. The situation is almost the same regarding offices of judicial defenders.

Moreover, Rwanda has a rather limited number of Advocates compared to the actual population of the country. The ratio Advocates/inhabitants was at the beginning of 2009 of one Advocate for 31,329 persons¹². By comparison with other East African countries, this ratio is of one Advocate for 7,200 persons in Kenya, and of one Advocate for 8,857 persons in Uganda¹³.

It should be finally mentioned that Rwanda has only one Bar Association that covers the entirety of the country and the seat of which is located in Kigali, whereas in other countries with a longer experience of services of representation in court, there is at least one Bar Association for each Appeal Court.

¹² On the basis of a population of 9.9 million and 316 Advocates (including trainees) at the beginning of 2009.

¹³ On the basis of a population in Kenya of 36 million and in Uganda of 31 million (BAD, OECD). Regarding the number of Advocates in these two countries, see the speech of the President of the East Africa Law Society (EALS) during the conference on the East Africa Community, organised in Kigali on 23 July 2007 by EALS in relation with the Bar Association of Rwanda.

4.2.5. Quality of the service of representation in court

16 of the litigants not represented in court, i.e. 0.8% of the respondents, declared themselves disappointed by the services of representation in court.

This reason which is least mentioned by the litigants does not appear as one of the main causes of non representation in court.

4.2.6. Other reasons of non representation in court

Finally, 75 of the litigants not represented, i.e. 3.5% of the respondents, provided other reasons of non representation in court.

Each of the given reasons is provided by a small part of the respondents. These reasons can however be regrouped into three categories: those who have not yet found an Advocate/judicial defender or those who are currently looking for an Advocate/judicial defender; those who use mediation between the parties; and those for which the Advocate/judicial defender became no longer available during the trial.

4.3. Cost of representation in court

Table 7 – Part of the cost of representation in court met by the litigants

Part of the cost of representation in court met (per litigant)	No.	%
The totality of the cost	430	76.8
Part of the cost	12	2.1
None of the cost	118	21.1
No. of litigants represented	560	100

Table 8 – Average cost of representation in court

Average cost of representation in court	Amount (Rwf)	No.
Average cost paid by a represented person who met all or part of the cost	256,641	442

Advocates and judicial defenders, grouped within their respective professional bodies, have the monopoly of representation in court. Their services are provided against payment and are computed according to the contracts concluded between the litigants who request a representation service and the Advocates or judicial defenders.

In general, fees and outlays are fixed in accordance with the scale adopted by the professional body, according to the dispute, its importance and the person who request this service. If the person is indigent, s/he can ask for a representation in court free of charge, called *pro deo* or *pro bono*. In

certain cases, the contracts with the Advocates or judicial defenders are concluded by civil society organisations/institutions that provide legal aid. These pay directly the cost of the representation in court of their beneficiaries – indigent or vulnerable persons.

As mentioned above, only 560 litigants (20.6%) out of the 2,713 interviewed persons benefit or have benefited from representation in court.

430 respondents (i.e. 76.8%) paid themselves the total cost of representation in court and 12 respondents (i.e. 2.1%) paid part of it.

For these 442 litigants, the average cost of representation in court per case amounts to 256,641 Rwf, which corresponds to 905.3% of the litigant's average monthly income (28,349 Rwf – see Table 2).

Adding to this the other costs of access to justice, amounting to 158,724 Rwf on average (see Table 2), the total cost for a litigant that paid her/himself all or part of the cost of representation in court is tantamount on average to 415,365 Rwf, which corresponds to 1,465.2% of the litigant's average monthly income.

4.4. Distribution of persons represented in court

4.4.1. Percentage of representation in court per sex

Table 9 – Percentage of representation in court per sex (M/F)/legal entities

Representation in court	Sex				Legal entity ¹⁴		Total	
	Men		Women		No.	%	No.	%
	No.	%	No.	%				
Yes	309	55.2	134	23.9	117	20.9	560	20.6
No	1,477	69.3	639	30.0	16	0.8	2,132	78.6
Not yet	8	38.1	13	61.9	0	0	21	0.8
Total	1,794	66.1	786	29.0	133	4.9	2,713	100

Table 10 – Distribution of interviewees per sex (M/F)/legal entities

Sex	No.	%
Men	1,794	66.1
Women	786	29.0
Legal entities	133	4.9
Total	2,713	100

Out of the 560 litigants (20.6% of the interviewees) represented in court, 55.2% are men, 23.9% are women and 20.9% are legal entities.

¹⁴ Legal entity: A group of several persons endowed with legal personality.

However, in light of the distribution of the interviewees per sex, it appears that 309 men were represented in court out of a total of 1,794 men interviewed, i.e. 17,2%. Similarly, 134 women have been represented in court out of a total of 786 women interviewed, i.e. 17%. Both sexes are thus represented in court in the same proportions.

It is important to note that there were much more men among the interviewees (66.1%) than women (29%). This unbalance must however be qualified, since it is mostly men who go to court in all civil cases in relation with the interests of the couple or the family. Women that go to court are therefore mostly single, separated or in conflict with their husband, and appear as main party to the trial.

4.4.2. Percentage of representation in court according to the type of case

Table 11 – Percentage of representation in court according to the type of case

Type of case	Representation in court						Total	
	Yes		No		Not yet		No.	%
	No.	%	No.	%	No.	%		
Criminal	179	16.3	909	82.7	11	1.0	1,099	40.5
Civil	192	15.4	1,042	83.8	9	0.7	1,243	45.8
Commercial	140	52.2	128	47.8	0	0	268	9.9
Social	43	45.3	51	53.7	1	1.1	95	3.5
Administrative	6	75.0	2	25.0	0	0	8	0.3
Total	560	20.6	2,132	78.6	21	0.8	2,713	100

In administrative cases, 4 out of 6 litigants benefited from a representation in court, i.e. 75%. It is the type of cases for which representation in court was most frequently ensured. Given the reduced number of administrative cases, it would be premature to draw definitive conclusions on the reasons explaining this high percentage. However, it seems that since these cases implicate the State against an individual, the latter thinks that s/he must entrust her/his case to a professional. Besides, persons generally implicated in these cases tend to enjoy a higher social position (public officers, beneficiaries from procurement contract, etc.) and have therefore more financial means available to afford representation in court.

Regarding commercial cases, 140 out of 268 litigants have been represented in court, i.e. 52.2%. This high rate can be explained by the fact that a large part of these cases concerns companies the legal representative of which (entitled by law to represent the company) cannot or will not her/himself go to court, either for lack of time or because s/he is not specialist enough in the legal and judicial field. Moreover, these companies in general have the financial means to be represented in court by a professional. Also, a company would consider representation in court as

appropriate, since the cost of this representation is compensated by the necessity to ensure the best possible defence of its legal case, given the financial and commercial interests at stake between companies.

In social cases, 43 out of 95 litigants were represented in court, i.e. 45.3%. This high rate can be explained by the fact that employers are almost always represented by professionals, which entices employees to do the same. In a number of cases, trade unions support the wronged employee, offering her/him a representation in court as legal aid.

On the contrary, in criminal cases, only 179 litigants out of 1,099 have been represented in court, i.e. 16.3%. However, in criminal cases, the freedom of the persons is at stake. It is therefore particularly crucial in this field that each litigant be as much as possible assisted by an Advocate or a judicial defender. On the basis of these considerations, this low rate of representation in court of litigants in criminal cases is worrying.

Finally, in civil cases, solely 192 litigants out of 1,243 have been represented in court, i.e. 15.4%. It is the lowest rate of representation in court compared with the other types of cases. However, in a context of great poverty as Rwanda's, the outcome of a civil trial has a direct and significant impact on the litigant's living standards (according to the damages to pay, the goods to return, etc.). Therefore, representation in court in this type of trial should not be neglected and should be further ensured.

On the whole, one notes that social, commercial and administrative cases with important financial stakes or that concern institutions/organisations (companies, administrations, trade unions) benefit from a high level of representation in court – between 45 and 75% of the litigants depending on the legal matters.

Conversely, criminal and civil cases have a low rate of representation in court – 15-16% of the litigants, whereas the degree of vulnerability of the litigants (whose average monthly income is 28,349 Rwf – see Table 2) and of the population as a whole (56.9% of the population living below poverty line in 2006/2007¹⁵) make representation in court all the more crucial in these fields.

¹⁵ EDPRS 2008-2012.

4.4.3. Percentage of representation in court per court

Table 12 – Percentage of representation in court per court

Court	Representation in court						Total	
	Yes		No		Not yet			
	No.	%	No.	%	No.	%	No.	%
LIC Byumba	11	12.0	81	88.0	0	0	92	3.4
LIC Gisenyi	23	21.5	81	75.7	3	2.8	107	3.9
LIC Kagarama	28	36.4	49	63.6	0	0	77	2.8
LIC Kaniga	3	6.4	44	93.6	0	0	47	1.7
LIC Kiramuruzi	1	1.4	69	98.6	0	0	70	2.6
LIC Kiyumba	1	4.5	21	95.5	0	0	22	0.8
LIC Nyagatare	0	0	83	100	0	0	83	3.1
LIC Nyakiriba	13	17.6	61	82.4	0	0	74	2.7
LIC Nyamabuye	5	9.1	50	90.9	0	0	55	2.0
LIC Nyarugenge	16	12.5	107	83.6	5	3.9	128	4.7
HIC Gicumbi	34	12.1	245	87.5	1	0.4	280	10.3
HIC Muhanga	34	12.2	242	86.7	3	1.1	279	10.3
HIC Nyagatare	16	13.6	102	86.4	0	0	118	4.3
HIC Nyarugenge	291	38.9	448	59.9	9	1.2	748	27.6
HIC Rubavu	84	15.8	449	84.2	0	0	533	19.6
Total	560	20.6	2,132	78.6	21	0.8	2,713	100

As presented in the above table, 20.6% of litigants have had access to representation in court at national level.

At LIC level, the average rate of representation in court corresponds to 13.4%.

The LIC of Nyagatare has a rate of representation in court of 0%, none of the respondents having been represented. Other LIC have very low rates of representation in court, such as the LIC of Kiramuruzi (1.4%), Kiyumba (4.5%) and Kaniga (6.4%).

On the contrary, other LIC have much better rates of representation in court, which remain however insufficient: 17.6% at the LIC of Nyakiriba, 21.5% at the LIC of Gisenyi and 36.4% at the LIC of Kagarama.

At HIC level, the average rate of representation in court amounts to 23.4% of the litigants.

The HIC of Nyarugenge has a rate of representation in court of 38.9%, i.e. the highest among the HIC surveyed. All the other HIC have low rates of representation in court, ranging from 12.1% to 15.8% of the interviewed persons.

Comparison per geographical areas

When comparing the situation by region, it appears that the courts of Kigali have the highest level of representation in court (35.2%), followed by Rubavu (16.8%), then Gicumbi (11.5%) and Muhanga (11.2%) and finally Nyagatare (6.3%).

The situation is comparatively better in Rubavu than in the other areas (Kigali excepted), due to the presence in this area of many legal aid providers that work in close collaboration with Advocates and judicial defenders – among others ADEPE, ASF, ARPCDH (non exhaustive list).

On the contrary, the rather remote situation of Nyagatare – where fewer legal aid providers are present – combined with the cost of representation in court lead to a significantly low level of recourse to Advocates and judicial defenders in this area.

Comparison rural/urban areas

Generally, the level of representation in court is higher in urban areas (for the City of Kigali and secondary cities) than before the courts located in rural area. This is illustrated by the average rate of representation of 15.3% for LIC located in urban areas (LIC of Byumba, Gisenyi, Kagarama, Nyagatare, Nyamabuye and Nyarugenge) against 8.5% for LIC located in rural areas (Kaniga, Kiramuruzi, Kiyumba, Nyakiriba).

There is also a gap between the situations in Kigali and in secondary cities. The rate of representation reaches 38.9% before the HIC of Nyarugenge whereas the average is only of 13.9% for the four other HIC surveyed (Muhanga, Gicumbi, Nyagatare and Rubavu).

On the whole, this gap between the rate of representation in court in Kigali, in secondary cities and then in rural areas must be related to the concentration in urban areas (and more specifically in Kigali) of Advocates' and judicial defenders' offices, to city dwellers' higher financial means (with also more resources at the level of the capital city)¹⁶ and to their greater awareness of the existence of services of representation in court and the interest to use them to ensure a good defence of one's interests in justice.

¹⁶ Poor persons (56.9% of the population) are comparatively much more numerous in rural areas (91.6%) than in Kigali (1.7%) and in the other urban areas (6.7%). *Preliminary Poverty Update Report, Integrated Living Conditions Survey 2005/2006*, National Institute Statistics Rwanda, December 2006.

4.4.4. Percentage of representation in court per age category

Table 13 – Percentage of representation in court per age category

Age category	Representation in court						Total	
	Yes		No		Not yet			
	No.	%	No.	%	No.	%	No.	%
Less than 14	1	12.5	6	75.0	1	12.5	8	0.3
14-18	48	46.6	53	51.5	2	1.9	103	3.8
19-21	15	15.2	82	82.8	2	2.0	99	3.6
22-25	29	11.3	227	88.3	1	0.4	257	9.5
26-30	47	11.8	350	87.9	1	0.3	398	14.7
31-35	47	17.3	224	82.4	1	0.4	272	10.0
36-40	54	14.2	324	85.5	1	0.3	379	14.0
41-45	50	17.5	233	81.8	2	0.7	285	10.5
46-50	54	18.7	231	79.9	4	1.4	289	10.7
51-55	39	21.8	136	76.0	4	2.2	179	6.6
56-60	22	21.0	83	79.0	0	0	105	3.9
61 and more	33	18.2	146	80.7	2	1.1	181	6.7
Does not know	4	16.0	21	84.0	0	0	25	0.9
Legal entities	117	88.0	16	12.0	0	0	133	4.9
Total	560	20.6	2,132	78.6	21	0.8	2,713	100

To analyse the data, the respondents have been grouped according to their age category. These categories have been established on the basis of a few legal considerations: those who are less than 14 years old are not criminally responsible, those between 14 and 18 years old are criminally responsible but must be tried by a specialised court with reduced sentences, those between 18 and 21 years old are adults regarding criminal cases but still considered as minors in civil matters. As from 21 years old, the age categories have been made by 5-year intervals.

The 14-18 years old benefit from a better rate of representation in court (46.7%) than the other age categories. It is a rather high percentage compared to the global average of 20.6% for all age categories together. This could be explained by the fact that a special court for minors has been created in 2004 in all HIC of the country. In this criminal court, all minors must be represented by Advocates or judicial defenders¹⁷. Since 2006, a minimum of two Advocates are affected to each minors' court to represent minors, thanks to the funding of the State and donors. Moreover, a certain number of programs of assistance in court that include minors among their beneficiaries – in criminal and/or civil matters – are implemented by various civil society organisations/institutions providing legal aid. All these initiatives have thus participated to improving minor's global level of representation in court.

¹⁷ Any minor facing criminal prosecution must be represented by legal counsel. Art. 185, Code of Criminal Procedure, Law No. 13/2004 of 17/05/2004 as amended to date.

The 51-55 and 56-60 age categories are also better represented (21.8% and 21% respectively) than the other groups. This could be explained by the fact that the persons in these age categories are generally more financially stable and therefore more able to meet the costs of a representation in court by an Advocate or a judicial defender.

The age categories that are less represented are the 22-25 years old and 26-30 years old with only 11.3% and 11.8% of litigants represented respectively. These low rates can be explained by the fact that they concern persons who are still young, still relatively unstable from a financial point of view and for which the costs of the services of an Advocate or a judicial defender are more difficult to meet.

On the whole, the level of representation in court progresses between 22 and 55 years old, going respectively from 11.3% to 21.8%. From 56 years old and onwards, this rate begins again to lower (21% for the 56-60 years old, then 18.2% for the 61 years old and more).

CHAPTER 5

AVAILABILITY AND ACCESSIBILITY OF SERVICES OF LEGAL ADVICE

Legal advice is the provision of information, analysis and assistance to a litigant on legal issues related to a specific case.

Legal advice can be provided free of charge or against payment by an Advocate, a judicial defender, a legal officer, a law student or a paralegal (working either within national or international NGOs, trade unions, faith-based organisations, universities' legal clinics, Access to Justice Bureaus (MAJ), the National Human Rights Commission (NHRC) or still the Labour Inspection).

For a litigant, access to legal advice is a prerequisite condition for an effective exercise of the defence right and the other guarantees of a fair trial.

In order to measure the impact of the service of legal advice in Rwanda, and therefore the impact of providers of legal advice, this chapter will be dedicated specifically to the analysis of data on legal advice received among the interviewed litigants, whether the person has also been represented in court or not by an Advocate or a judicial defender.

5.1. Percentage of litigants having received legal advice

Table 14 – Percentage of litigants having received legal advice

Legal advice received	No.	%
Yes	517	19.1
No	2,196	80.9
Total	2,713	100

Only 517 persons out of 2,713 interviewed litigants, i.e. 19.1% of the respondents, received legal advice on their case.

This rate is low given the importance of legal advice in the analysis of the legal problem and in the research of an appropriate solution (preparation of the defence arguments and of legal submissions, presentation of one's case in court).

Indeed, the provision of legal advice is an essential step of the process by which the litigant may better understand and analyse her/his rights as well as the legal issues concerning her/his file, and then better present and defend her/his case before the competent authority or judge. On this subject, one must repeat the critiques and remarks made above under points 4.1 and 4.2 (on representation in court) regarding the importance of obtaining legal advice in light of the general lack of awareness of the law

and the low level of education of most interviewed persons (see Table 5), in order to ensure an efficient defence of litigants' interests.

The rate of legal advice provided (19.1%) is even lower than the rate of representation in court (20.6%) although the latter can be provided only by Advocates and judicial defenders, most of them located in Kigali and to some extent in secondary cities, and for an important cost per file (compared to the litigant's average income). On the contrary, services of legal advice can be provided by a large number of organisations and institutions located on the whole territory, including in rural areas, and for a lesser cost (see Table 17).

Table 15 – Combination of litigants that received legal advice and/or were represented in court

Legal advice received and/or representation in court	No.	%
Legal advice only	148	5.5
Representation in court only	212	7.8
Legal advice AND representation in court	369	13.6
Neither legal advice nor representation in court	1,984	73.1
Total	2,713	100

It appears from this table than only 26.9% of the interviewed litigants benefited from assistance in court – either by receiving legal advice (5.5%) or by being represented in court (7.8%) or by enjoying both legal advice on their case and representation in court (13.6%).

Almost three-fourths of the litigants – 1,984 i.e. 73.1% of the respondents – therefore received neither representation in court nor legal advice, and had to ensure alone the defence of their interests without any form of legal assistance.

5.2. Cost of the service of legal advice

Table 16 – Part of the cost of legal advice met by the litigant

Part of the cost of legal advice met (per litigant)	No.	%
Totality	362	70.0
Part of the cost	6	1.2
None	149	28.8
Total number of litigants advised	517	100

Table 17 – Average cost of legal advice

Average cost of legal advice	Amount (Rwf)	No.
Average cost paid by a person advised and who met part or whole of the cost	89,826	368

As mentioned above, besides legal advice provided by Advocates or judicial defenders in the exercise of their profession, this service is also provided by a number of organisations and institutions – including various NGOs, trade unions, faith-based organisations, universities’ legal clinics, Access to Justice Bureaus (MAJ), the NHRC, the Labour Inspection – through their qualified staff, including either legal officers, law students and/or paralegals. In some cases, these persons (Advocates, judicial defenders, legal officers, etc.) are close relations (family or friends) of the litigant and provide her/him directly with legal advice.

The NGOs, trade unions and faith-based organisations most frequently mentioned by the interviewees were particularly ADEPE, AJPRODHO, ARPCDH, ASF, AVEGA, the Justice & Peace Diocesan Commission of Nyundo, COSYLI, CRISAT, Haguruka, Hugukirwa, Ibuka, etc. The legal clinics of INILAK and ULK Gisenyi were also often mentioned. This list of organisations depends on the locations selected for the survey and has a purely indicative value. However, it illustrates well the number and diversity of legal aid providers active in this field.

As mentioned before, only 517 litigants (19.1%) out of 2,713 interviewees received legal advice on their case.

362 respondents (i.e. 70%) met themselves the totality of the cost of legal advice, and 6 respondents (i.e. 1.2%) met part of it.

For these 368 litigants, the average cost of legal advice received per case amounts to 89,826 Rwf, which corresponds to 316.9% of the litigant’s average income (28,349 Rwf – see Table 2).

Adding this to the other costs of access to justice for an amount of 158,724 Rwf on average (see Table 2), the total cost for a litigant who paid her/himself the totality or part of the received legal advice reaches 248,550 Rwf on average, which corresponds to 876.8 % of the litigant’s average monthly income.

5.3. Distribution of persons having received legal advice

5.3.1. Percentage of legal advice received per sex

Table 18 – Percentage of legal advice received per sex (M/F)/legal entities

Legal advice	Sex				Legal entities ¹⁸		Total	
	Men		Women		No.	%	No.	%
	No.	%	No.	%				
Yes	272	52.6	151	29.2	94	18.2	517	19.1
No	1,522	69.3	635	28.9	39	1.8	2,196	80.9
Total	1,794	66.1	786	29.0	133	4.9	2,713	100

Out of the 517 litigants (19.1% of the interviewees) who received legal advice, 52.6% are men, 29.2% are women and 18.2% are legal entities.

However, when one takes into account the repartition of interviewees by sex among the respondents (see Table 10), it appears that 272 men received legal advice out of a total of 1,794 men interviewed, i.e. 15.2%. Similarly, 151 women received legal advice out of a total of 786 women interviewed, i.e. 19.2%.

Women therefore benefit more from legal advice than men which must be related to the various programme of legal assistance that include women among their beneficiaries, implemented by civil society organisations/institutions providing legal aid.

As mentioned above, there are more men (66.1%) than women (29%) among the interviewees. This imbalance must however be qualified since it is mostly men who go to court for all civil cases that are related to the interests of the couple or of the family (see Table 10).

¹⁸ Legal entity: A group of several persons endowed with legal personality.

5.3.2. Percentage of legal advice according to the nature of the dispute

Table 19 – Percentage of legal advice according to the nature of the dispute

Nature of dispute	Legal advice				Total	
	Yes		No			
	No.	%	No.	%	No.	%
Criminal	123	11.2	976	88.8	1,099	40.5
Civil	227	18.3	1,016	81.7	1,243	45.8
Commercial	122	45.5	146	54.5	268	9.9
Social	40	42.1	55	57.9	95	3.5
Administrative	5	62.5	3	37.5	8	0.3
Total	517	19.1	2,196	80.9	2,713	100

Tendencies regarding representation in court according to the nature of the dispute (see Table 11) are largely identical regarding the level of legal advice, and for the same reasons, as mentioned hereafter.

In administrative cases, 5 litigants out of 8 received legal advice, i.e. 62.5%. It is the type of cases that benefit most from legal advice.

Given the small number of administrative cases, it would be premature to draw definitive conclusions on the reasons explaining this high percentage. However, it seems that since these cases implicate the State against an individual, the latter thinks that s/he must obtain legal advice on her/his case. Besides, persons generally implicated in these cases tend to enjoy a higher social position (public officers, beneficiaries from procurement contract, etc.) and have therefore more financial means available to afford legal advice.

In commercial cases, 122 out of 268 litigants received legal advice, i.e. 45.5%. This high rate can be explained by the fact that a large part of these cases concerns companies, the legal representative of which (entitled by law to represent the company) cannot or will not her/himself study the legal components of the case, either for lack of time or because s/he is not specialist enough in the legal and judicial field. Moreover, these companies in general have the financial means to obtain legal advice. Also, a company will consider the obtaining legal advice as appropriate, since the cost of this advice is compensated by the necessity to ensure the best possible defence of its legal case, given the financial and commercial interests at stake between companies.

In social cases, 40 out of 95 litigants received legal advice, i.e. 42.1%. This high rate can be explained by the fact that employers almost always ask legal advice from professionals, which entices employees to do the same. In a certain number of cases, trade unions support the wronged employee, offering her/him legal advice as legal aid.

On the contrary, out of 1,099 litigants in criminal cases, only 123 received legal advice, i.e. 11.2%. It is the lowest rate of legal advice among the other types of disputes. However, in criminal cases, the freedom of the persons is at stake. It is therefore particularly crucial in this field that each litigant be not only represented but also receive legal advice on her/his case. On the basis of these considerations, this low rate of legal advice in criminal cases is worrying.

Finally, out of 1,243 litigants in civil cases, only 227 received legal advice, i.e. 18.3%. It is also a low rate, since in a context of great poverty as Rwanda's the outcome of a civil trial has a direct and significant impact on the litigant's living standards (according to the damages to pay, the goods to return, etc.). Therefore, obtaining legal advice in this type of trial should not be neglected and should be further ensured.

On the whole, as for the level of representation in court according to the nature of the dispute (see Table 11), one notes that social, commercial and administrative cases with important financial stakes or that concern institutions/organisations (companies, administrations, trade unions) benefit from a high level of legal advice – between 42 and 63% of the cases depending on the legal matters (between 45 and 75% of the litigants for representation in court).

Conversely, criminal and civil cases benefit from a low rate of legal advice – between 11 and 18% of the litigants respectively (16 and 15% respectively for representation in court), whereas the degree of vulnerability of the litigants (whose average monthly income is 28,349 Rwf – see Table 2) and of the population as a whole (56.9% of the population living below poverty line in 2006/2007¹⁹) make legal advice all the more crucial in these fields. It must finally be noted that the rate of legal advice in criminal matters (11.2%) is particularly low compared to its rate in civil matters (18.3%), and to representation in court in criminal matters (16.3%).

¹⁹ EDPRS 2008-2012.

5.3.3. Percentage of legal advice per court

Table 20 – Percentage of legal advice per court

Court	Legal advice				Total	
	Yes		No			
	No.	%	No.	%	No.	%
LIC Byumba	4	4.3	88	95.7	92	3.4
LIC Gisenyi	27	25.2	80	74.8	107	3.9
LIC Kagarama	50	64.9	27	35.1	77	2.8
LIC Kaniga	2	4.3	45	95.7	47	1.7
LIC Kiramuruzi	3	4.3	67	95.7	70	2.6
LIC Kiyumba	0	0	22	100	22	0.8
LIC Nyagatare	5	6.0	78	94.0	83	3.1
LIC Nyakiriba	17	23.0	57	77.0	74	2.7
LIC Nyamabuye	9	16.4	46	83.6	55	2.0
LIC Nyarugenge	5	3.9	123	96.1	128	4.7
HIC Gicumbi	40	14.3	240	85.7	280	10.3
HIC Muhanga	48	17.2	231	82.8	279	10.3
HIC Nyagatare	7	5.9	111	94.1	118	4.3
HIC Nyarugenge	228	30.5	520	69.5	748	27.6
HIC Rubavu	72	13.5	461	86.5	533	19.6
Total	517	19.1	2,196	80.9	2,713	100

As mentioned above, 19.1% of litigants received legal advice at national level.

At LIC level, the average rate of legal advice is 16.2%.

6 out of the 10 surveyed LIC have a rate of legal advice that does not exceed 10%. The LIC of Kiyumba even has a rate of 0%, none of respondents having received legal advice. The other LIC have very low rates of legal advice, such as those of Nyarugenge (3.9%), Byumba (4.3%), Kaniga (4.3%), Kiramuruzi (4.3%) and Nyagatare (6%).

On the contrary, other LIC have better rates of legal advice, these remaining however insufficient: 16.4% at the LIC of Nyamabuye, 23% at the LIC of Nyakiriba and 25.2% at the LIC of Gisenyi. One should however note the extremely high rate (64.9%) of litigants that received legal advice at the LIC of Kagarama – highest rate and sole to exceed 50% among the surveyed LIC. This LIC already had the best rate of representation in court (36.4%).

At HIC level, the average rate of legal advice is 20.2%.

The HIC of Nyarugenge has a rate of legal advice of 30.5%, i.e. the highest among the HIC surveyed (which was already the case for representation in court – with a rate of 38.9%).

All other HIC have a small rate of legal advice, varying for the HIC of Rubavu, Gicumbi and Muhanga between 13.5% and 17.2% of the interviewees. The gap situation of the HIC of Nyagatare must be observed, with a rate of legal advice of 5.9% - whereas its rate of representation in court of 13.6% was at the same level as the 3 other HIC of Rubavu, Gicumbi and Muhanga.

Comparison per geographical areas

When comparing the situation per region, it appears that the courts in Kigali have the highest rate of legal advice (29.7%), followed by Rubavu (16.2%) and Muhanga (16%), then by Gicumbi (11%) and finally by Nyagatare (5.5%).

As noted regarding representation in court (see Table 12), the situation in Rubavu is comparatively better than in the other areas (excepting Kigali). As mentioned above, the area of Rubavu benefits from the active presence of more legal aid providers – NGOs, trade unions, a legal aid clinic, faith-based organisations as well as Advocates and judicial defenders. One should also note the rate of 16% for the region of Muhanga that is almost at the same level as Rubavu (16.2%).

On the contrary, the remote location of Nyagatare where fewer legal aid providers are present results in a very low rate of legal advice provided (5.5%) in this area (which is also the case for representation in court with a rate of 6.3% – see Table 12).

Comparison rural/urban areas

On the whole, the rate of legal advice received is higher in urban areas (in the City of Kigali and secondary cities) than before the courts in rural area. This is illustrated by the legal advice average rate of 18.5% for LIC located in urban areas (LIC of Byumba, Gisenyi, Kagarama, Nyagatare, Nyamabuye and Nyarugenge) against 10.3% for LIC located in rural areas (Kaniga, Kiramuruzi, Kiyumba, Nyakiriba).

There is also a gap between the situations in Kigali and in secondary cities. For example, at HIC level, 30.5% of the litigants whose cases fell within the jurisdiction of the HIC of Nyarugenge received legal advice whereas this percentage is only 13.8% before the four other HIC surveyed (Muhanga, Gicumbi, Nyagatare and Rubavu).

The tendencies observed on representation in court (see Table 12) are identical to those regarding legal advice received by litigants. The reasons of the gap between the rates in Kigali, in other secondary cities and then in rural areas are the same: concentration in urban areas (and in Kigali in particular) of Advocates' and judicial defenders' offices as well as of civil

society organisations/institutions providing legal aid, higher financial resources of city dwellers (with also more resources in the capital city)²⁰, and a greater awareness in urban areas of the existence of these services of legal advice and the interest to use them to ensure a good defence of one's interests in justice.

5.3.4. Percentage of legal advice per age category

Table 21 – Percentage of legal advice per age category

Age category	Legal advice				Total	
	Yes		No		No.	%
	No.	%	No.	%		
Less than 14	2	25.0	6	75.0	8	0.3
14-18	32	31.1	71	68.9	103	3.8
19-21	8	8.1	91	91.9	99	3.6
22-25	27	10.5	230	89.5	257	9.5
26-30	61	15.3	337	84.7	398	14.7
31-35	32	11.8	240	88.2	272	10.0
36-40	55	14.5	324	85.5	379	14.0
41-45	54	18.9	231	81.1	285	10.5
46-50	66	22.8	223	77.2	289	10.7
51-55	35	19.6	144	80.4	179	6.6
56-60	16	15.2	89	84.8	105	3.9
61 years old and above	31	17.1	150	82.9	181	6.7
Does not know	4	16.0	21	84.0	25	0.9
Legal entities	94	70.7	39	29.3	133	4.9
Total	517	19.1	2,196	80.9	2,713	100

To analyse the data, respondents have been grouped according to their age category, in the same way as for the statistics on representation in court and on the basis of the same legal considerations (see Table 13).

The less than 14 years old and the 14-18 years old benefit from a better rate of legal advice than the other age categories, i.e. 25% and 31.1% respectively. It is a rather high percentage compared to the global average of 19.1% for all age categories together. This could be explained by the various programs of assistance to minors, either in terms of representation in court (by Advocates or judicial defenders) when this representation is accompanied with legal advice, or in terms of legal advice provided by legal officers, law students and paralegals working within NGOs, universities' legal clinics, etc.

²⁰ Poor persons (56.9% of the population) are comparatively much more numerous in rural areas (91.6%) than in Kigali (1.7%) and in other urban areas (6.7%). *Preliminary Poverty Update Report, Integrated Living Conditions Survey 2005/2006*, National Institute Statistics Rwanda, December 2006.

The 46-50 and 51-55 age categories also have higher rates of legal advice than the other groups, i.e. 22.8% and 19.6% respectively. The fact that the persons belonging to these age categories are in general more financially stable could explain that they are better equipped to meet this cost and therefore that they resort more to legal advice.

The age categories that receive less legal advice on their case are those of 19-21 years old and 22-25 years old with only 8.1% and 10.5% of litigants advised respectively. As these are still rather young and financially unstable, they have more difficulty to meet the cost of obtaining legal advice.

As a whole, the rate of legal advice is increasing from 22 years old until 50 years old, going from respectively 10.5% to 22.8%. As from 51 years old onwards, this rate begins to lower (19.6% for the 51-55 years old, and then between 15.2% and 17.1% for the successive age categories).

5.4. Length to obtain legal advice

Table 22 – Length to obtain legal advice (per litigant)

Length between the request and the obtaining of legal advice	No.	%
None	396	76.6
1 day	41	7.9
Between 2 and 10 days	52	10.1
Between 10 and 30 days	17	3.3
Between 1 and 3 months	6	1.2
More than 3 months	5	1.0
Total number of litigants advised	517	100

Legal advice, for those who have access to them, are most of the time provided without delay.

Among the 517 litigants who received legal advice, 396 (i.e. 76.6%) obtained them on the day of the first contact and without waiting period. 121 of the remaining surveyed persons (i.e. 23.4%) received them either the next day or within the following 2 and 10 days. In total, 489 out of the 517 advised litigants (i.e. 94.6%) received the requested legal advice within 10 days of the request.

However, for 11 of the interviewees (i.e. 2.2%), the waiting period exceeded one month, and in certain cases exceeded 3 months. The reasons of these long waiting periods seem to be two-fold: either due to the litigant her/himself (who did not come to the meetings planned initially with the contacted organisation/institution but returning afterwards to request legal advice on her/his case), or due to the case itself (great complexity of the case and/or delays in the obtaining of the necessary elements to the examination of the case).

CHAPTER 6

LENGTH OF THE PROCESS OF JUDGMENT

The length of the process of judgment is crucial for a good administration of justice.

According to article 11 of Code of Civil, Commercial, Labour and Administrative Procedure²¹ :

‘All cases should be adjudicated in a period not exceeding six months (6) starting from the day the court received the claim. If not that, the President of the seized court shall explain to the President of the Supreme Court in writing the reasons thereof and shall also inform parties to the case. Apart from hearing urgent claims that are realised in cases, all cases shall be given a date for hearing in accordance with the procedure they were recorded in the roll’.

Courts are therefore legally bound to ensure that all cases in court be resolved in a period not exceeding 6 months, exceptional cases excepted²². As mentioned above under point 1.3, the procedure time limits have been adopted in the EDPRS as one of the indicators of justice development from 2008 to 2012, with the objective of decreasing them from an average of 6 months to an average of 2 months²³.

²¹ Law No. 18/2004 of 20/6/2004 relating to the Civil, Commercial, Labour and Administrative Procedure as amended to date.

²² Courts must provide justifications for the cases that exceeded 6 months without judgment. The justifications given by the courts in these cases are related to the important number of pending cases.

²³ *Strategic priorities*, http://www.minijust.gov.rw/IMG/doc/Strategie_Ministry_of_Justice_COMPLETE_DOC, consulted on 16/08/2009.

6.1. Length of the process of judgment (all types of cases) / Status of the case in court

Table 23 – Length of process of judgment compared to the status of the case in court (on the day of the survey)

Length of the process of judgment	Less than 6 months		6-12 months		1-2 yrs		2-3 yrs		3-4 yrs		4-5 yrs		More than 5 yrs		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Status of the case in court on the day of the survey	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Case recorded into the roll	104	23.1	81	12.8	16	2.8	5	3.1	6	5.7	2	9.5	9	10.1	223	11.0
Date of hearing set	143	31.7	140	22.1	82	14.5	24	15.0	13	12.4	3	14.3	10	11.2	415	20.5
Writ of summons	57	12.6	101	16.0	57	10.1	8	5.0	12	11.4	2	9.5	10	11.2	247	12.2
Appearance in court or hearing	25	5.5	48	7.6	59	10.5	21	13.1	17	16.2	0	0	6	6.7	176	8.7
Field investigation	9	2.0	20	3.2	20	3.5	9	5.6	10	9.5	1	4.8	3	3.4	72	3.6
Deliberation	26	5.8	61	9.6	71	12.6	14	8.8	16	15.2	0	0	12	13.5	200	9.9
Judgement pronounced	87	19.3	182	28.8	259	45.9	79	49.4	31	29.5	13	62.0	39	43.8	690	34.1
Total number of respondents	451	22.3	633	31.3	564	27.9	160	7.9	105	5.2	21	1.0	89	4.4	2,023	100

Out of the 2,023 cases for which answers were provided, 451 (22.3%) were dated from less than six months since they were recorded into the roll. Out of these cases, 26, i.e. 5.8%, were in deliberation and the judgement had already been pronounced for 87 of them, i.e. 19.3%.

633 cases (31.3%) were dated from between six month and one year since they were recorded into the roll, among which 61, i.e. 9.6%, were in deliberation and the judgement had already been pronounced for 182 of them, i.e. 28.8%.

564 cases (27.9%) were dated from between 1 and 2 years since they were recorded into the roll, among which 71, i.e. 12.6%, were in deliberation and the judgement had already been pronounced for 259 of them, i.e. 45.9%.

286 dossiers (14.1%) were dated from between 2 and 5 years since they were recorded into the roll, among which 30, i.e. 10.5%, were in deliberation and the judgement had already been pronounced for 123 of them, i.e. 43%.

Finally, 89 cases were dated from more than 5 years since they were recorded into the roll, among which 12, i.e. 13.5%, were in deliberation and the judgement had already been pronounced for 39 of them, i.e. 43.8%.

In total, only 890 out of the 2,023 cases surveyed were in deliberation or had their judgement already pronounced on the day of the survey, i.e. 44%.

In term of length of procedure, only 113 cases, i.e. 5.6%, of the totality of the cases surveyed, reached the stage of deliberation or had their judgement pronounced within a period of less than six months.

According to the elements collected during the survey, various factors, described hereafter, explain why 94.4% of the cases exceed the six-month period.

6.2. Causes of the slowness of the process of judgment

6.2.1. Number of pending cases

Table 24 – Number of pending cases on 31 December 2007

		Number of pending cases on 31 December 2007 ²⁴							
		Civ.	Pen.	Gen.	Soc.	Adm.	Min.*	Com.	Total
Rubavu	HIC Rubavu	2,073	1,618	5	190	25	151	0	4,062
	LIC Gisenyi	163	79	0	0	0	0	0	242
	LIC Nyakiriba	140	47	0	0	0	0	0	187
Nyagatare	HIC Nyagatare	584	444	8	11	3	6	0	1,056
	LIC Nyagatare	77	39	0	0	0	0	0	116
	LIC Kiramuruzi	191	87	0	0	0	0	0	278
Gicumbi	HIC Gicumbi	1,437	664	62	41	21	71	0	2,296
	LIC Byumba	261	70	0	0	0	0	0	331
	LIC Kaniga	79	61	0	0	0	0	0	140
Kigali	HIC Nyarugenge	1,094	1,855	103	638	67	41	2,357	6,155
	LIC Nyarugenge	55	269	0	0	0	0	0	324
	LIC Kagarama	103	114	0	0	0	0	0	217
Muhanga	HIC Muhanga	970	762	36	22	17	45	0	1,852
	LIC Nyamabuye	215	96	0	0	0	0	0	311
	LIC Kiyumba	83	31	0	0	0	0	0	114
Total		7,525	6,236	214	902	133	314	2,357	17,681

* Minors

The above table shows that the number of pending cases on 31 December 2007 was very important, amounting to 17,681 cases for the 15 courts surveyed.

At LIC level, the total number of pending cases amounted to 2,260 for the 10 LIC surveyed, i.e. an average per court of 226 pending cases. With two judges (and two clerks) per LIC, it seems that the courts could manage this workload, considering that the creation of the Committees of Mediators participates to reducing the number of recourses to the LIC.

²⁴ Statistics for the year 2007, Supreme Court.

At HIC level, the total number of pending cases amounted to 15,421 for the 5 HIC surveyed, i.e. an average per court of 3,084 pending cases. This number, to which one must add the number of incoming new cases as from 1 January 2008 – seems to exceed largely the judgment passing capacities of the HIC, since those have 5 judges per court (to the exception of the HIC of Nyarugenge that counts 10 judges), who are sometimes gathered in college – which give an average of 514 pending cases per judge.

This important judicial backlog results partly from the successive judicial reforms that took place since 2004. Indeed, each of these reforms also caused the suspension of the jurisdictional activities, resulting in the accumulation of the new cases, added to the cases already pending.

The consequences of this situation continue to handicap the speedy proceeding of pending cases, as the courts suffer from a congestion in light of the available human resources – 2 judges per LIC, 5 judges per HIC (to the exception of the HIC of Nyarugenge that counts 10). Also, as mentioned above, the extended *rationae materiae* jurisdiction of the HIC (see Table 3) adds still to the congestion at their level in term of incoming cases.

As a result, the significant number of pending cases constitutes today one of the main causes of the slowness of the process of judgment.

6.2.2. Frequency of adjournments of hearing or of pronouncement of judgement

Table 25 – Number of adjournments of hearing and of pronouncement of judgement (per case)

Number of adjournments of hearing or of pronouncement of judgement (per case)	No.	%
None	1,124	41.4
Between 1-2	898	33.1
Between 3-4	402	14.8
Between 5-6	144	5.3
Between 7-8	47	1.7
Between 9-10	38	1.4
More than 11	60	2.2
Total	2,713	100

Out of 2,713 litigants surveyed, 1,589, i.e. 58.6%, have observed at least one adjournment in the dealing of their case. Among them, 691, i.e. 25.5%, have seen between three and up to more than eleven adjournments per case.

The length between the adjournments and the new hearing dates prevent the case from being tried within the six-month period prescribed by law. For example, in a number of cases consulted for information only, the

average length between the adjournment and the new hearing date was between 2 and 3 months before the LIC and between 4 and 9 months before the HIC.

Table 26 – Causes of adjournments of hearing and of pronouncement of judgement

Causes of adjournments of hearing and of pronouncement of judgement <i>(multiple answers possible)</i>	No.	% <i>(out of 1,589 case)</i>
Unavailability of the judge(s)	368	23.2
Unavailability of the clerk	13	0.8
Absence of the Prosecution	70	4.4
Absence of one of the parties	339	21.3
Absence of the parties	283	17.8
Absence of the Advocate/judicial defender	124	7.8
Absence of the witnesses	82	5.2
Absence of the interpreter	2	0.1
Other activities organised in the region	108	6.8
Too many trials planned on the day	80	5.0
Other logistical reasons (e.g. lack of vehicle for transport, lack of electricity)	5	0.3
Case file examination before the hearing not yet made	16	1,0
Incomplete case file	149	9,4
Unavailability of the copy of the judgment	80	5,0
Litigant not informed of the cause of adjournment	167	10,5
Total number of cases with one or more adjournments	1,589	

The unavailability of the judge(s) (23.2%) – that often results from meetings, training or other activities, from sick leaves, or in some instances as a consequence of the judicial reforms – as well as the absence of one of the parties (21.3%) or all the parties (17.8%) are the three main causes of adjournments and affect a majority of the cases with one or more adjournments.

Whereas some adjournments are necessary for a good administration of justice (to complete the case file, to exchange arguments between the parties, to become acquainted with an element of the case file, to summon the other party, etc.), a number of them could however be avoided, such as in case of unavailability of the judge(s) or of the clerk, absence of one of the parties or all the parties caused by irregular writ of summons or the lack of writ, absence of the witnesses, the Advocate or judicial defender or the Prosecution announced in advance. Similarly, some adjournments could be avoided when related to another activity organised in the region, when due to logistical reasons (see point 6.2.3) or when the case file is not yet ready to be heard in a hearing (see point 6.2.4).

Moreover, in addition to the fact that the adjournments of hearing infringe the speed of the process of judgment, it should be recalled how their impact, given the remoteness of the courts (see Table 3) is considerable for the litigant in terms of transport, accommodation and food costs (see Table 2). Indeed, no communication system exists between the courts and the litigants that could enable the latter to receive notice of adjournments that are known in advance, and therefore prevent litigants from coming unnecessarily to court. In the great majority of cases, the litigant is informed of the adjournment upon arrival to the court.

Confronted to repeated adjournments, some litigants can no longer afford to attend the hearings by lack of financial means or because they cannot miss the cultivation season. Others continue to go to court, at the cost of many hours of walk. It even happens in some cases that once arrived in court, the litigant is compelled to spend one or several nights there in order to accomplish the next day the necessary steps for having the date of hearing set for her/his case or in the expectation of a meeting the next day when s/he could not be received on the day²⁵.

6.2.3. Limited human and material resources at courts' disposal

During the courts' visits in the framework of this survey, the interviewers sometimes observed that no courtrooms were available for the trial planned on that day, or that the court's bench was flooded by the too many cases set on a same day. These elements were also mentioned by litigants as causes of adjournments (see Table 26). It was observed on several occasions that two judges would ask a same clerk to accompany them to their respective hearing, or that two court's benches would request the same courtroom at the same moment.

According to the interviews with the judicial staff, it appears that with the generalisation of the single judge on August 2008, the courts can indeed hold several benches at the same time. However, since the number of courtrooms and clerks has not been increased, this generalisation of the single judge does not produce all expected results.

Confronted to a lack of human and material resources, the courts are therefore sometimes forced to adjourn the case, which is then adjourned to a date between 2 and 9 months later (see Table 25) according to the availability of the court.

6.2.4. Handling exceptions and objections

Legal provisions regarding civil, social and administrative procedure do not provide for the pre trial period (in relation to the preparation of the case for

²⁵ Situation observed in particular at the HIC of GICUMBI and the LIC of BYUMBA – More than 10 cases observed during the survey.

trial), for the exchange of arguments between the parties or for the discussions on the exceptions/objections, which contribute to the extension of the length of the proceedings and to the congestion of the courts.

So, when all elements are not added to the case file, submissions are not communicated between parties, etc., one must wait the hearing on the substance of the case to discuss these various points, which leads to some adjournments as it appears in Table 26. It is also possible to raise some exceptions/objections until the end of the hearings, which delays the examination of the substance of the case and lead to adjournments.

It occurs hence that the inadmissibility of the case or the incompetence of the judge in charge of the case is noted only after a long period during which the case followed its course in court.

On the contrary, the commercial procedure provides for a preliminary hearing during which the parties prepare the case by adding to it all the necessary elements for its examination, exchange their arguments and raise all exceptions/objections that could delay the examination of the substance of the case. It limits the number of adjournments afterwards and prepares the case to be heard on the substance on the day of the hearing.

6.3. Length of delivery of the copies of judgment

Table 27 – Length of delivery of the copies of judgment

Number of days between the pronouncement of the judgement and the obtaining of the copy of judgment	No.	%
None/copy received on the day of the pronouncement	591	78.5
Less than 10 days	83	11.0
Between 10 and 30 days	51	6.8
Between 1 and 3 months	18	2.4
More than 3 months	10	1.3
Total	753	100

591 litigants, i.e. 78.5% of respondents, received the copies of their judgment on the day the decision was pronounced.

When adding this to the 83 litigants, i.e. 11% of respondents, who obtained copies of their judgment less than 10 days after the pronouncement of the decision, 89.5% of the litigants in total obtained a copy of their judgment within less than 10 days.

It appears therefore clearly that the obtaining of the copies of judgement is not an issue as such and is not one of the causes of the slowness of the process of judgment.

For the 79 litigants, i.e. 10.5% of respondents, that received a copy of their judgment more than 10 days after the pronouncement of the decision and up to more than 3 months in some cases, this delay seems mostly due to the appearance of the litigant in court before s/he paid the prescribed costs or to her/his appearance when the clerk in charge was unavailable.

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

7.1. Summary of the situation of access to justice in Rwanda

The monitoring process carried out in the framework of the present survey on the situation of access to justice in Rwanda draws the attention on a number of findings and concerns, as summarised hereafter:

7.1.1. On the cost of access to justice

- The litigant, whose average monthly income amounts to 28.349 Rwf, must pay costs of 158,724 Rwf on average throughout the process of judgment (not including the costs of representation in court and/or legal advice), i.e. almost the equivalent of 6 months of her/his whole income. The litigant is hence certainly compelled to dedicate a large part of her/his savings and/or to get into debt to face the necessary expenses to launch and follow a legal case through until its end. The litigant is as a result seriously affected financially and considerably impoverished;
- This sum is mostly composed of transport, communication, accommodation and food costs (46.5% of the total cost) on the one hand, and of various costs – medical or technical experts' appraisals or examinations, notifications of acts of proceedings, photocopies of elements of evidence and other documents (that the litigant wishes to add to her/his file and to communicate to the opponent), costs for obtaining copies of elements of the judicial file, etc. (42.2% of the total cost) on the other hand;
- This cost of access to justice is directly related to the distance between litigants and the courts – only 35% of the interviewees live between 0 and 6 km from the court, and to the important length of the legal proceedings and the various adjournments of hearing (see point 7.1.3), which the litigant is mostly informed of upon her/his arrival in court.

7.1.2. On the availability and accessibility of the services of representation in court and legal advice

- Only 26.9% of the interviewed persons benefited from an assistance in justice – either in receiving legal advice (5.5%), or by being represented in court (7.8%) or in benefiting both from legal advice on their case and representation in court (13.6%). Almost three-fourths of the litigants received therefore neither representation in court nor legal advice, and had to ensure themselves the defence of their interests without any form of legal assistance. Given the low level of education observed during the survey of most interviewed persons, the litigant is not able to ensure alone the defence of her/his legal interests and this low rate of legal assistance could hence infringe the principle of fair trial;

- The finding regarding both representation in court and legal advice is that social, commercial and administrative cases (with important financial stakes or that concern institutions/organisations – companies, administrations, trade unions) benefit from a comparatively higher rate of representation in court/legal advice than criminal and civil cases. For these latter two fields, the rates are even significantly low, ranging between 15-16% for representation in court and between 11 and 18% for legal advice. However, in criminal cases, the freedom of the persons is at stake. And in a context of great poverty as Rwanda's, the outcome of a civil trial has a direct and significant impact on the living standards of the litigant (according to the damages to pay, the goods to return, etc.);
- The rate of representation in court/legal advice is much better in urban areas (and in Kigali in particular) than in rural areas, which is related to the concentration in urban areas (and especially in Kigali) of Advocates' and judicial defenders' offices as well as of civil society organisations/institutions providing legal aid, to city dwellers' higher financial means (with also more resources in the capital city)²⁶ and to their greater awareness of the existence of these services and the interests to use them to ensure a good defence of their interests in justice;
- For the three-fourths of respondents who met themselves the cost of the service of representation in court, this cost amounted on average to 256,641 Rwf per case. This very important amount compared to the litigant's average monthly income of 28,349 Rwf is the main and majority reason of non representation in court;
- For the two-thirds of respondents who met themselves the cost of legal advice, this cost amounted on average to 89,826 Rwf per case, which is also a considerable amount.

7.1.3. On the length of the process of judgment

- In terms of length of proceedings, very few cases (about 5%) are resolved in less than 6 months. A number of factors that participate to this excessive length of the process of judgment have been identified, such as :
 - The importance of the number of cases accumulated before the courts – especially before the HIC with a large *rationae materiae* jurisdiction (compared to the LIC) and with an average of 514 pending cases per judge – which leads to a situation of congestion of

²⁶ Poor persons (56.9% of the population) are comparatively much more numerous in rural areas (91.6%) than in Kigali (1.7%) and in other urban areas (6.7%). *Preliminary Poverty Update Report, Integrated Living Conditions Survey 2005/2006*, National Institute Statistics Rwanda, December 2006.

the courts, in light of the limited human and material resources at their disposal (including an insufficient number of courtrooms and clerks since the generalisation of the single judge in August 2008);

- The frequency of adjournments (at least one for more than half of the interviewed litigants, and for half of these, between three and up to more than eleven adjournments) are due mostly to the unavailability of the judge(s), the absence of one of the parties or of all parties. However, the delays between the adjournments and the new hearing dates do not allow the case to be tried within the 6-month time limit prescribed by law (for example, the adjournments observed during the survey were generally of 2 to 3 months before the LIC and between 4 and 9 months before the HIC) ;
- The rules of procedure in civil, social and administrative cases do not provide for the pre trial period (in relation to the preparation of the case for trial), for the exchange of arguments between the parties or for the discussions on the exceptions/objections, which contribute to the extension of the length of the proceedings and the congestion of the courts.

7.2. Analysis and recommendations for the achievement of the objectives of the EDPRS in the Justice Sector

The comparison between the data of the survey and the EDPRS indicators (as indicated above under point 1.3) shows that some of the objectives of the EDPRS for 2012 would have been established on inaccurate basis. It is for example the case on the length of proceedings (a six-month period is considered as the point of departure in 2008) as well as on the distance between the litigant and the court (average of 6 km according to the EDPRS).

Therefore, at the end of the first year of the EDPRS (2008), no particular improvement can be noted in term of access to justice from the comparison between the results of the survey and the objectives set for the Justice Sector, not because nothing has been done but because the point of departure in 2008 according to the EDPRS would not be correct.

As a whole, the survey concludes that the cost of access to justice is still largely prohibitive for the litigant, that the services of representation in court and legal advice are not sufficiently available and accessible both in terms of geographical localisation and of cost for the litigant, and that the process of judgment is excessively long.

Hence, important measures must be adopted to attain in the short term the situation believed to be the current situation during the elaboration of the objectives of the EDPRS, in order to work then towards the achievement of the objectives expected in 2012.

On the basis of the data collected during the survey, the difficulties observed and the analysis that followed, a number of recommendations are formulated hereafter, for the various actors and interveners of the Justice Sector in Rwanda, in favour of a speedy and effective improvement of the situation of the litigant in term of access to justice in Rwanda.

7.2.1. On the cost of access to justice

For a justice of proximity, to reduce the distance between the courts and the litigant, as well as transport, communication, accommodation and food costs of the litigant during the launch and follow up of her/his case in court:

- Redistribute the *rationae materiae* jurisdiction between LIC and HIC – for increased material competences of LIC;
- Modify the judicial map with an increased number of LIC and HIC – in order to limit to 6 km the average distance between the litigant and the court;
- Systematise the *itinérances* (and not only keeping them a possibility that the courts may or may not use) when the number of cases that would be tried in *itinérances* is sufficient. The HIC could group the cases of a same LIC or of two neighbouring LIC and try them in the same place during the *itinérances*. Similarly, a LIC could also decide to organise *itinérances* at sector level;

To reduce the length of the process of judgment:

- Reduce the number of adjournments, and when an adjournment is necessary, notify the interested parties in advance (see point 7.2.3).

7.2.2. On the availability and accessibility of the services of representation in court and of legal advice

In order for indigent persons and vulnerable groups to be more represented in court/receive legal advice on their cases as legal aid:

- Accelerate the setting up by law of an institutional framework on legal aid in Rwanda, including a legal aid fund benefiting to all civil society organisations/ institutions providing legal aid services to the vulnerable/indigent persons. Develop this institutional framework with a participatory approach through round tables of discussion with all civil society organisations/institutions providing legal aid in order to guarantee the current diversity of legal aid providers, and encouraging their specialisation and complementarity;

- Work so that the services of representation in court and of legal advice provided as legal aid:
 - Really reach rural areas – by relying on the civil society organisations that are implemented locally at sector and cell level, while continuing the setting up of additional MAJs;
 - Adequately cover civil and criminal cases – including mandatory legal representation to the accused persons for the most serious crimes; and
 - Benefit not only to indigent persons but also to the various vulnerable groups – such as minors, the youth, the elderly, women (with a specific attention to widows), detainees, etc.
- Organise regular information campaigns of the population on their rights but also on the existence and the role of legal aid providers, the type of legal aid services they can provide and the importance of contacting them when the person is confronted to a legal issue and/or finds her/himself subject to trial.

7.2.3. On the length of the process of judgment

In order to reduce significantly the length of the process of judgment:

- Continue to reduce the number of backlogged judicial cases with *ad hoc* teams of judges and clerks – initiative currently existing and that should be supported and reinforced so that courts deal only with the new cases, with their habitual resources, and do not lock themselves into a vicious circle of recurrent backlogs;
- Redistribute the *rationae materiae* jurisdiction between LIC and HIC so that more cases be tried by LIC (as suggested above in point 7.1.3), which would contribute to solving the congestion of the HIC regarding the number of incoming cases at their level;
- Modify the Code of Civil, Commercial, Labour and Administrative Procedure according to the commercial procedure for the generalisation of the preliminary hearing step. This step dedicated to the trial preparation of the case and the discussion on the claim of inadmissibility and exceptions/objections would enable a diminution of the number of adjournments, hence contributing to the acceleration of the process of judgment - without however affecting its quality – and therefore reducing the cost of the trial of a case from the point of view both of the judicial institution and of the litigant;
- Develop the internal organisational and management capacities of court presidents and the other agents of HIC and LIC, for an efficient functioning of the courts, in order to reduce the number of adjournments and avoid any accumulation of the incoming cases, which includes:

-
- Rigorous planning and with anticipation of the courts' work plan in order to avoid adjournments due to the unavailability of the judges (related to meetings, trainings, internships, transfers, etc.) and any other reason that can be known in advance (lack of courtrooms or of clerks, etc.);
 - And when an adjournment is really necessary:
 - ✓ Notify the interested parties in advance. To do so, collect during the institution of the proceedings the litigants' data and put in place an information system that enables the timely communication to the litigant of all important information on her/his file (including adjournments), and hence avoid unnecessary transport for the litigant;
 - ✓ Fix a hearing date as soon as possible and without waiting several months, so that the procedure time limits be not exceeded;
 - Reinforce the capacities of the courts in term of staff, infrastructure and other equipments – among other increase of the number of courtrooms and clerks that are insufficient since the generalisation of the single judge in August 2008 – so that the courts can face the important volume of cases to deal with.

ANNEX

I	Questionnaire's number	
II	Date of interview/...../..... Date Month Year
III	Name of interviewer	
IV	Name of court	
V	Identification (ID) ²⁷	

LITIGANT'S QUESTIONNAIRE FOR DATA COLLECTION

Observations

1. The present survey concerns litigants only;
2. The present survey aims at assessing the costs of access to justice for the litigant, the availability and accessibility of the services of legal advice and representation in court, and the speed of the process of judgment. The answers to the questions below will be used for that purpose only. Therefore, the confidentiality of the identity of the interviewees and of their answers is ensured. The results of the survey will be published, but no individual answers will be disclosed.

N°	Questions	Answers
A. Identification		
1.	Are you involved in a trial with this court?	1. Yes 2. No
2	What is the nature of the dispute?	1. Criminal 2. Civil 3. Commercial 4. Social 5. Administrative
3	Name of the interviewee	
4	Province	1. City of Kigali 2. Northern Province 3. Southern Province 4. Eastern Province 5. Western Province
5	District	
6	Sector	
7	Cell	
8	Village	
9	Interviewee's age	

²⁷ QV. ID (Identification) = No. HIC (##) + No. of LIC (##) + (###) No. of questionnaire

10	Sex	1. Male 2. Female
11	Interviewee's occupation	1. Farmer 2. Stock breeder 3. State officer 4. Agent in a private company 5. Tradesman 6. None 7. Other (specify)
12	Education level	1. None 2. Primary /...../ 3. Professional training /...../ 4. Secondary /...../ 5. University /...../
13	Judicial case file's number	
14	In case of a criminal case, are you defendant or private party associated with the public prosecutor (<i>'partie civile'</i>)?	1. Defendant 2. Private party associated with the public prosecutor
15	In case of a criminal matter, what are you prosecuted for? (NB. If Q14=1)	1. Offence against national security/High treason 2. Murder 3. Rape and/or sexual violence 4. Assault and battery 5. Theft 6. Genocide, genocide ideology 7. Drug trafficking 8. Other (specify)
16	In case of a civil, commercial or social matter, are you claimant or defendant?	1. Claimant 2. Defendant
B. Assess the cost of access to justice for the litigant		
17	How far from the court do you live?	/...../ km
18	How long does it take you to reach the court?	1. On foot /...../ hours 2. Bicycle /...../ hours 3. Motorcycle /...../ hours 4. Vehicle /...../ hours

19	What amount must be paid to the court for?	<ol style="list-style-type: none"> 1. Court fees deposit /...../ Rwf 2. Costs of writ of summons or writ of notification /...../ Rwf 3. Case filing related fees /...../ Rwf 4. Others (specify) /...../ Rwf
20	What is the amount of the costs of the preparation of the case?	<ol style="list-style-type: none"> 1. Costs of photocopy /...../ Rwf 2. Technical experts' appraisal /...../ Rwf 3. Others (specify) /...../ Rwf
21	What is the amount of the indirect costs in relation with the trial?	<ol style="list-style-type: none"> 1. Transport /...../ Rwf 2. Communication /...../ Rwf 3. Accommodation /...../ Rwf 4. Food /...../ Rwf 5. Others (specify) /...../ Rwf
22	What is the amount of the costs in relation with witnesses?	<ol style="list-style-type: none"> 1. Transport /...../ Rwf 2. Communication /...../ Rwf 3. Accommodation /...../ Rwf 4. Food /...../ Rwf 5. Per diem /...../ Rwf 6. Others (specify) /...../ Rwf

		Documents	Costs paid (Rwf)
23	Can you tell us which were the documents requested by the court to record the request as well as the corresponding costs?	1.	
		2.	
		3.	
		4.	
		5.	
C. Availability and accessibility of representation in court and legal advice			
C1. Representation in court			
24	Are you represented?	1. Yes 2. No 3. Not yet	If Q24=No, go to Q29 and following.
25	If yes, how much will you pay?	a) Rwf already paid b) Rwf remaining to be paid	
26	Who covers the costs of your representation?	1. I cover all of it 2. I cover part of it 3. covers all of it 4. covers part of it	
27	As from which level of the proceedings have you been represented?	1. From the introduction of the case 2. Since the summoning of the opponent 3. Since the preparation of the defence arguments 4. Others (specify)	
28	For cases in appeal , were you represented in first instance?	1. Yes 2. No	

29	If you are no represented, why not?	<ol style="list-style-type: none"> 1. Not aware of the existence of representation in court 2. Expensive service/Lack of means 3. Service far from the clients 4. Disappointed by the service of representation in court 5. Capable to represent her/himself 6. Others (specify) <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
C2. Legal advice		
30	Have you already received legal advice?	<ol style="list-style-type: none"> 1. Yes 2. No
31	What is the name of the organisation that provided you with legal advice?	<p>.....</p> <p>.....</p> <p>.....</p>
32	If legal advice has been provided by the Bar or by the Corps of Judicial Defenders, does the same person represent you in court?	<ol style="list-style-type: none"> 1. Yes 2. No
33	<p>If Q32 is more than one organisation</p> <p>Why did you ask legal advice to more than one organisation?</p>	<ol style="list-style-type: none"> 1. Unsatisfactory advice 2. Doubt 3. Slowness in the processing of the case 4. Non compliance with the appointments 5. Others (specify) <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
34	<p>If Q32 is more than one organisation</p> <p>According to you, which organisation(s) gave you satisfactory legal advice?</p>	<p>.....</p> <p>.....</p> <p>.....</p>

35	How much did the legal advice cost? Rwf
36	Who pays the costs of your legal advice?	<ol style="list-style-type: none"> 1. I cover all of it 2. I cover part of it 3. covers all of it 4. covers part of it
37	Did you receive legal advice on the first contact?	<ol style="list-style-type: none"> 1. Yes 2. No
38	If no, how many days did you wait? days (calendar days)
39	After how many meetings did you receive legal advice? meeting(s)
40	At what level of proceedings did you receive legal advice?	<ol style="list-style-type: none"> 1. Introduction of the case in court 2. Summoning of the opponent party 3. Preparation of the defence arguments 4. Others (specify)
NOT TO FORGET		
41	What is your average monthly income? Rwf
42	What is your financial participation to the whole costs of the case?	<ol style="list-style-type: none"> 1. Total (100%) 2. Most (75%) 3. Half (50%) 4. Less than half 5. Nothing
D. Assess the speed of the judicial process		
43	When was your case recorded into the roll? (NB. If the interviewee does not recall the exact date, the month and year must at least be mentioned)/...../..... Day Month Year

<p>44</p>	<p>At what stage is your trial?</p>	<ol style="list-style-type: none"> 1. Case recorded into the roll 2. Date of hearing set 3. Parties summoned (writ) 4. Appearance in court or Hearing 5. Field / Additional investigation 6. Judgement pronounced 7. Others (specify) <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>45</p>	<p>If the interviewee comes for the hearing, how many hearings were there already?</p>	<p>..... (number)</p>
<p>46</p>	<p>What are the causes of adjournment of hearing or of pronouncement of the judgement?</p>	<ol style="list-style-type: none"> 1. Unavailability of the judge(s) 2. Absence of one of the parties 3. Absence of the parties 4. Absence of the Advocate/judicial defender 5. Absence of the Prosecution 6. Other activities organised in the region 7. Others (specify) <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>47</p>	<p>How are you informed of any adjournment of hearing or of pronouncement of the judgement?</p>	<ol style="list-style-type: none"> 1. Once at the court 2. By my Advocate/judicial defender 3. Radio and communiqués 4. Others (specify) <p>.....</p> <p>.....</p>
<p>48</p>	<p>From the day when the judgement was pronounced, how long did it take for you to receive the copy of judgement?</p>	<p>..... days (calendar days)</p>

49	Which difficulties did you face to obtain copy of the decision (specify)
50	Status of the interview	1. Interview terminated 2. Interview suspended

END OF QUESTIONNAIRE