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Broadening Access to Justice in Rwanda:

analysing the opportunity for Public Interest Litigation

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A paper for the Legal Aid Forum by Jennifer R Escott*

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On the cover:
This is a photo of a Rwandan family who were left without a roof over their heads during the campain against grass roofed houses (NYAKATSI). This photo was provided by COPORWA, a member of the Legal Aid Forum.

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analysing the opportunity for Public Interest Litigation

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* The views expressed here, as well as any errors, are the responsibility of the author alone and not of the Legal Aid Forum and its donors. It would not have been possible to realise this study without the assistance of Andrews Kananga, Coordinator of the LAF. The author is in debt to the work and ideas of the author of the previous research, Ngendahayo Kabuye Jean, which informed this paper and also to those of Claire Smith, particularly concerning aspects of international law. The author would like to thank all those she spoke to in the field research for their frankness, interest and support. Thanks are also extended to Karol Limondin who made useful comments on the draft versions of this paper and whose thinking guided the conception of this project and informed its broader strategy.

CONTENTS

Purpose

The purpose of this paper is to analyse the opportunity for public interest litigation in Rwanda and to suggest a strategy for the Legal Aid Forum (LAF) to take this phenomenon forward in order to benefit the indigent population and vulnerable groups in Rwanda.

It may be stated here that:

> "LAF sees public interest litigation as a strategic arm of legal aid intended to bring justice within the reach of those who on account of their indigence, illiteracy and lack of resources are unable to reach the courts. LAF is interested in finding out how organisations /associations acting in the interest of their members /the general public can launch cases before Rwandan courts or file *amicus curiae* briefs under the same law."[1]

1 Consultancy ToR

An Introduction to Public Interest Litigation

Public interest litigation refers to legal cases which raise issues of general public importance such that the public interest requires them to be resolved. Public interest litigation is an important tool for social transformation in many developed and developing countries as a vehicle for legislative and policy reform. In Rwanda however it is not yet well understood nor is it used strategically in legal practice.

Public interest litigation enables individuals, communities and organizations to challenge government decisions, policies, their lack of regulation or positive activity to ensure the fulfilment of their peoples' rights and where necessary to hold the authorities to account. Accordingly, it is also used to challenge the constitutionality of legislation passed. It can involve an individual challenging something where the impact of the case reaches far beyond the relief for the litigant himself with larger ramifications for the general public. But the litigation does not need to be filed by the injured party, an interested member of the public or an organization with an interest in the issue may initiate a case. Thus where disadvantaged individuals and vulnerable communities do not have the necessary resources to commence litigation, public interest litigation provides an opportunity for using the law to promote social, economic and environmental justice.

Public interest litigation has been used in African countries to enforce civil and political rights e.g. challenging the death penalty, torture and degrading treatment, restrictions on the right to bail, enforcing rights of prisoners and refugees, and to fight discrimination. However it has also been used to enforce socio-economic rights e.g. the right to education, housing, healthcare, land rights, women and children's rights and group rights and in order to protect the environment. As such, it gives tangible meaning and content to these socio-economic rights while empowering the holders of those rights. This is particularly important in countries where rapid socio-economic development is bringing widespread consequences on a scale previously unknown and often affecting adversely the poorest and most deprived sections of the population.

Previous LAF Research

A previous study for the Legal aid Forum (LAF) examined the concepts of *locus standi* and *amicus curiae*, both relevant for public interest litigation and asked if they were present and how they were applied in Rwandan law. *Locus standi* is Latin for standing which is the test used in most jurisdictions to decide who can go to court to enforce an obligation being disregarded by a fellow citizen or a public authority. In matters of public interest litigation what is of concern then is whether an interested member of the public as opposed to a victim or injured party can make a claim or indeed an organization with an interest in the issue. The former can be termed "citizen standing" and the latter may be seen as a kind of "representative standing". *Amicus curiae* on the other hand, allows an interested organization to file a brief on matters relevant to a case already proceeding before the court in order to assist the court to reach the correct decision.

Many jurisdictions have seen a broadening of these rules in the last thirty or forty years, removing the constraints of the procedural law in order to allow greater access to the courts and thereby to justice. Accordingly, the LAF sought to establish where the Rwandan law stood.

The author of the previous study concluded that although no provision was made for *amicus curiae* in Rwandan law the concept exists and should be used by the population, lawyers, associations and judges. However amending the legislation and rules of court was clearly desired and recommended. As regards standing the author found barriers though he did recommend organizations using the provisions for civil liability under the criminal procedure code. He recommended amending the constitution, passing a law relating to the promotion of administrative justice and amending the law of the Kigali Bar Association.

Field Research

In carrying out research to determine the current understanding of the PIL concepts and their applicability under Rwandan law the author of this paper (this author) talked to a number of practitioners - judges, advocates and NGO lawyers. The majority seemed to be of the opinion that the law was open to both concepts being argued before the courts and that a well prepared creative approach would be taken seriously by the judiciary some of whom would welcome it. One advocate with some experience of citing international law to support his oral arguments was less optimistic about the openness of the judges. However another had found they welcomed the citation of foreign cases. This author also talked to one academic who was more conservative on the limits of the civil law based system. However, in this author's discussions with the author of the previous study, (also an academic), the latter agreed that the law on standing was undefined and unclear and indeed could and should be tested in the courts. Further, the general consensus on standing amongst practitioners was that a constitutional challenge does not require the harm to be experienced by the petitioner whilst in civil matters the law as it stands does require the interested party to have experienced the harm in order to show the causal link for damages to be awarded or an injunction to be obtained, though there seemed to be no barrier to an organization showing this.

With this practical basis of understanding, this document proceeds as follows:

Firstly, an analysis of standing and *amicus curiae* in Rwanda and other countries;

Secondly, a look at the various types of PIL cases that could be attempted in Rwanda and the legal arguments to be made as well as some examples of relevant socio-economic cases; and

Thirdly, a discussion of the bigger picture and strategy needed for PIL to succeed in Rwanda.

PART ONE

a) Standing

Standing is used in many countries to decide who can sue in court. Traditionally the law of standing required "injury" or "invasion of a legal right" or that the party be "aggrieved" or have had their "interests affected".[2] Whatever the term used, and whether in common law or civil law, it meant that this element had to be present for a party to seize the court. However many legal systems have become more flexible in granting standing under substantive law and procedural law over the last period. Three approaches to granting standing have generally been taken regardless of the culture or legal system, these are judge-made standing law, constitution based standing and legislation based standing[3]. For the purposes of the LAF's question[4] we are really interested in the first of these and the second where constitutional provisions are implied. Though in civil law based systems judges do not "make" law, in both France and Argentina as well as other European and South American countries their law on standing has been liberalized through case law. This means there is scope for judges to allow PIL cases in Rwanda. At the same time Rwandan law is now open to common law concepts and using legal opinions and learning from elsewhere as per Article 6 of the Civil, Commercial, Labour and Administrative Procedure Code[5]. Accordingly as a member of the East African Community which is seeking to harmonise policies, laws and set best practices, "in a manner that guarantees social justice",[6] Rwanda can look to the growing body of jurisprudence on standing both at the court and in the member countries.[7] These factors may allow /enable the judicial self-confidence, 'courage', creativity and willingness to expand the law as has been seen in numerous countries as described below in the following sections on standing.

2 Bonine, J. E. (1999). '*Broadening "Standing to Sue" for Citizen Enforcement*', Fifth International Conference on Environmental Compliance and Enforcement, at page 249.

3 Ibid, at page 250.

4 See second paragraph under 'Purpose', above.

5 Article 6 states in relevant part as follows: "Judges… must decide cases… guided by judicial precedents, custom and usages, general principles of law and written legal opinions."

6 Press Release: EAC Top Official Roots for Tough Action on Corruption at Regional Lawyers' Meet, 23 No vember 2010

7 See section below, 'Jurisprudence from the East African Community''.

Before proceeding further it should be stated however that passing legislation on standing is in many ways the preferred approach. Many countries, especially civil law based systems in Europe, have done this and the advantage is that it makes the law clear and straight forward. The disadvantage in following this approach for Rwandan citizens at this moment is that legislation can take so long to be passed and the government may not be in favour of introducing liberal standing laws for PIL.

Judge-made standing law

In Rwandan law, Article 2 of the CCLAPC states that "the plaintiff must have the status, interest and capacity to bring the suit".[8] There is no definition of these words in the limited Rwandan jurisprudence.

Interestingly these terms are similar to those used in the Scottish law of title and interest. Scots law is a mixed system and is like most legal systems based on private rights and property rights. Scots law basically does not allow standing unless the party has a private interest in the case, generally excluding 'interested members of the public', NGOs and pressure groups from seeking judicial review, though the law does allow associations to seek judicial review if their members have title and interest. In their restrictive approach the courts have been relying on precedents from 100 years ago which many argue are not relevant today. Indeed there have also been more liberal judgments so that currently the law is somewhat unclear. In *Wilson v IBA*[9], Lord Ross said,

> "In Scotland I see no reason in principle why an individual should not sue in order to prevent a breach by a public body of a duty owed by that public body to the public".

Due to the legal uncertainty, the lack of initiative from the judges as well as the cost of a test case, lawyers are arguing for primary legislation to replace the test for standing. Recently two statutory modifications of the rules have allowed environmental organizations standing for enforcing certain rights and the Equality and Human Rights Commission to have standing to appear in court as an interested party or to intervene in matters of discrimination.[10]

8 Article 3 then states that only the interested parties can bring an action, unless the law provides otherwise.
9 1979 SC 351
10 Aarhus Convention and Equality Act 2006.

We can mention here that the law concerning the Rwandan National Commission for Human Rights[11] gives the Commission the power to "seize the courts with the claims relating to human rights violations", Article 9. This is expanded in Article 10 as follows:

> "The Commission shall have powers to seize civil, commercial, labour and administrative courts in case of violation of human rights as provided by the Constitution, international conventions ratified by Rwanda and other laws. In that regard, the Commission may be represented by state attorneys or Lawyers of its own choice.
>
> While exercising its powers, the Commission shall respect the Rwandan laws without prejudice to attributions of other institutions, and it shall employ such powers in case of violation of public and individual interests or if other relevant institutions fail to fulfil the requirements as required by laws."

Unfortunately the Commission is yet to exercise its powers in this way.

Meanwhile in England from a similar starting point to Scotland, the judges have made the law flexible and open to those arguing for the public interest, both individuals and associations. This shows the key and discretionary role of the judiciary in PIL. The English test is now whether the petitioner has a "sufficient interest" and the courts have found a genuine public motive to be enough to satisfy this test. The Court of Appeal said in a 2009 case,

> "there is a public interest in bringing judicial scrutiny and remedies to bear on improper acts and decisions of public bodies".[12]

Indeed it should be noted that the effect of restrictive *locus standi* rules is to exclude some people from the assistance of the courts in declaring and enforcing the law, such that in any such case the law is preferring to let an illegality continue than let someone have access to the courts[13]. This is an argument that can be employed by Rwandan lawyers when making their case for standing.

11 LAW N° 30/2007 OF 06/07/2007 DETERMINING THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL COMMISSION FOR HUMAN RIGHTS.

12 EWCA Civ 1402

13 Mitchell, J. QC (2010). 'Standing in Public Law Cases', a talk to the *Scottish Public Law Group Annual Conference*

Now Rwanda has no definitive doctrine nor binding precedent on standing so the judges would seem to be open to interpret this flexibly and widely too. Thus the importance of a compelling well argued case to allow them to do this. The basis of the English opening where judges said that if the concern was a misuse of public power any person or organisation could bring this to court is basing public law on wrongs as opposed to rights. Simply holding the authorities to account may not be well understood in Rwanda but the argument that the courts are assisting the government by drawing to their attention some problems / issues which they can remedy may be more constructive. Thus it seems very much up to the Rwandan lawyers to be creative, precise and sober in their arguments to court.

It is instructive therefore to now look at the development of the judge-made law of standing in France and Argentina.

In France case law began to erode the traditional rules on standing. In 1913 the Cour de Cassation, the highest French civil court, ruled that a *syndicat professionnel* could sue as the "representative of the 'collective interest of the association'".[14] A few years later the court began a series of rulings that opened the way for certain *associations de défense* to sue to defend the common interests of their members.[15] These widened interpretations of standing were later confirmed, supported and expanded by statute, allowing trade unions, consumer associations and most recently environmental associations to bring actions. Today an individual or organization can demonstrate an 'interest to act' by showing a "grief moral". NGOs must demonstrate a connection between their objectives and activities and the interests at stake.

In Argentina, in the eighties, a lawyer called Dr Alberto Kattan was successful in arguing that Article 33 of the Argentine Constitution which protected his own rights and principles of Roman law that as a citizen he had a duty to protect the "dominio public" granted him the right to sue in a number of health and environmental cases. Of course a receptive judiciary was significant in these arguments being successful.[16]

14 Weisbrod, B. A. with Handler, J. F. and Komesar, N. K. (1979). *Public Interest Law: an economic and institutional analysis*. University of California Press, London, at page 505

15 Ibid, at page 505

16 Supra note 1, at page 252.

Constitution based standing – implied provisions

Indeed the second approach to granting standing as mentioned above that is relevant for Rwanda at this stage is that of interpreting the constitution to imply rules of standing. In some countries where the constitution does not explicitly set out rules on *locus standi*, judges have made liberal judgments in PIL cases allowing standing, in particular to NGOs, by reading procedural rights to standing into the substantive rights (usually human rights) contained in the constitution. India, Slovenia, and Tanzania are good examples here.

India has led the world in finding standing rights implicit in a constitution. The Supreme Court of India has largely abolished restrictions on legal standing in cases that it is willing to recognize as public interest cases.[17] This dramatic breaking down of barriers has been premised in part upon the reasoning of the judges and in part on the existence of fundamental rights provisions in the constitution. In the landmark Indian case Justice Bhagwati declared that "any citizen who is acting bona fide and who has sufficient interest has to be accorded standing".[18] Lawyers, law professors, journalists and motivated citizens have sued on behalf of those who could not, including prisoners, the mentally ill, children and orphans. Indeed lawyers have regularly been recognized as entitled to act themselves, as both petitioner and attorney, on behalf of the public interest.[19]

Interestingly a High Court Judge interviewed during the field research mentioned above referred to a constitutional challenge brought by a Rwandan lawyer representing himself which was accepted in court although the lawyer had no personal interest in the case.[20]

Following India's lead the Lahore High Court explained the Pakistani approach as follows:

> "The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of the law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficiency and corruption at various levels. In such socio-economic and political milieu, the non-intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority."[21]

17 Ibid, at page 254.

18 S P Gupta v Union of India, AIR 1982 SC 149.

19 Supra note 1, at page 255.

20 It has not been possible to obtain a copy of the case report but it was believed to have been decided in 2008.

21 *State v M D Wasa*, 2000 CLC 22 (Lahore) 471, 475 (HC).

In Tanzania following several liberal judgments on standing[22], the court in *Mtikila v Attorney General*[23], gave a very progressive opinion relating to the social conditions and human rights situation in Tanzania as follows:

> "…if there should spring up a public-spirited individual and seek the Court's intervention against legislation or actions that pervert the Constitution, the Court, as guardian and trustee of the Constitution and what it stands for, is under an obligation to rise up to the occasion and grant him standing."

It concluded:

> "In matters of public interest litigation this Court will not deny standing to a genuine and bona fide litigant even where he has no personal interest in the matter… [S]tanding will be granted on the basis of public interest litigation where the petition is bona fide and evidently for the public good and where the Court can provide an effective remedy."

Jurisprudence from the East African Community

Kenyan courts, though initially taking a restrictive view on *locus standi,* as expunged in the famous case brought by leading Kenyan conservationist, Prof. Maathai [24] have in the last decade liberally granted *locus standi*. The new approach is explained in the High Court case of *Albert Ruturi & Another v. Minister for Finance and Others*[25]*:*

> "We state with firm conviction that as part of the reasonable, fair and just procedure to uphold constitutional guarantees, the right of access to justice entails a liberal approach to the question of *locus standi.* Accordingly, in constitutional questions, human rights cases, and public interest litigation and class actions, the ordinary rule of Anglo-Saxon jurisprudence, that action can be brought only by a person to whom legal injury is caused, must be departed from. In these types of cases, any person or social groups,

22 *Festo Balegele and 749 others v. Dar es Salaam City Council,* Civil Case No. 90 of 1991, High Court of Tanzania (Rubana, J). and *Abdi Athumani and 9 others v. The District Commissioner of Tunduru District and others.*

23 *Rev. Christopher Mtikila v. The Attorney General,* Civil Case No. 5 of 1993, High Court of Tanzania, T.L.R. 31.

24 *Wangari Maathai v. Kenya Times Media Trust Lid,* (1989) H.C.K. 5403 (Kenya).

25 *Albert Ruturi & Another v. Minister for Finance and Others,* (2002) 1K.L.R. 61 (Kenya).

acting in good faith, can approach the Court seeking judicial redress for a legal injury caused or threatened to be caused to a defined class of persons represented."

In Uganda the courts have been able to rely on explicit provisions in the constitution to develop very liberal standing rules. Article 50 provides that "any person or organization may bring an action against the violation of another person's or group's human rights." Courts have interpreted this to give every person and organisation *locus standi.*[26]

Lastly, it is instructive to cite the view of the East African Court of Justice. In a 2007 case[27], the court examined the law on *locus standi* when the respondents in that case contended that the applicants did not have *locus standi* as their rights and interests had not been violated nor infringed. The applicants were Law Societies who were bringing the action on behalf of the citizens of East Africa. The court, after examining the developments in *locus standi* in India, England and Tanzania found that as they were "satisfied that the applicants are genuinely interested in the matter complained of"[28] they had *locus standi* to make the application.

b) Amicus Curiae

Amicus Curiae or 'friend of the court', refers to an individual or organization, who is not a party to the case in question, who attempts to inform the court on a matter of law or of facts or situations, the knowledge of which is necessary to assist the court in deciding correctly a matter before it and which otherwise the court might miss. The information may be a legal opinion in the form of a brief, a testimony that has not been solicited by any of the parties, or a learned treatise on a matter that bears on the case.

The decision whether to admit the information lies with the discretion of the court. The *amicus curiae* as the term implies should attempt to help the court rather than the parties. Such intervention is granted not as a matter of right but of privilege and the privilege ends when the intervention has been made: the *amicus curiae* cannot take any other part in the case.

26 Courts as Champions of Sustainable Development: Lessons from East Africa, Patricia Kameri-Mbote and Collins Odote, in Sustainable Development Law and Policy p.35.
27 Application No 9 of 2007 by *EALS and 4 others v Secretary General of EAC and 3 other Attorney Generals.*
28 Ibid p.7.

The *amicus curiae* may have originated in the common law or in Roman Law, it is not clear. However it developed first in the English law and extended to most common law countries and several civil law countries. It is also used in international law in the courts and in arbitration forums. Today a*mici curiae* is most commonly used in cases raising human rights issues or other issues which are in the public interest.

The exact rules concerning the role of *amicus curiae* vary from jurisdiction to jurisdiction as does the test as to whether to accept an *amicus curiae* brief. As regards its role it can be that the court can seek or permit the services of an *amicus curiae* or simply the latter. An *amicus curiae* can be required to be impartial though most jurisdictions do not require this and some on the other hand may require the *amicus curiae* to have an interest in the outcome of the case. In several jurisdictions the *amicus curiae* is restricted to the appeal courts or even only the Supreme Court. It can be that the *amicus curiae* can only advise on legal aspects of a case or on both legal and factual aspects. Occasionally the court may need the approval of the parties to hear the *amicus curiae* submissions but this goes against "the very notion of an *amicus curiae*, that it be a friend of the court and serve the courts purpose of a fully informed decision".

For the Rwandan legal system the *amicus curiae* would be most helpful in its widest form i.e. allowed in any court, for fact and law, completely at the courts discretion whether the parties agree or not and without being required to be impartial nor to have a justified interest.

As stated above the test as to whether to accept an *amicus curiae* brief also varies between jurisdictions though the basis is generally whether the submissions will be helpful to the court. It may simply require that the *amicus curiae* will "be of assistance in determining an issue before the court"[29]. As such the submissions do not have to cover all of the issues before the court, providing a new perspective on one issue is enough. However it is important to note that even where this test is met it is entirely at the court's discretion whether to allow the brief.

It should be noted that costs are usually borne by the *amicus curiae*.

29 Iwala v Minister for Justice, Equality and Law Reform [2004] 1 ILRM 27; [2003] IESC 38, (an Irish case).

The author of the previous study relates that though there is nothing specific in the Rwandan law on *amicus curiae*, Rwandan law has many provisions showing that *amicus curiae* exists: this author would disagree with this analysis but as it seems to be the case that in the Rwandan legal system judges are interventionist and have powers to ask anyone to come to court to give evidence and to go themselves and collect evidence it may not be too far a step to accept an *amicus curiae* brief. The author of the previous study also relates that the Rwandan law has been exposed to the concept of *amicus curiae* through the Gacaca courts and the ICTR. However the Gacaca model was one of participative justice which must be distinguished. The ICTR had provisions specifically providing for *amicus curiae* so although it is useful exposure, it does not follow that Rwandan law accepts the concept.

Returning to the idea that the Rwandan law directs judges to look at all the available evidence, this might be the best basis on which a lawyer acting on behalf of an organization would submit a brief to court. The lawyer would have to petition the court stating that the organization had evidence relevant to the case and then it would seem to be open for the judge to decide if he wanted to consider this evidence and invite the organization to give evidence if so. (It would be more straight forward if the parties consented to this first but that would depend on the nature of the case.) The above mentioned High Court Judge stated that the court is often sent letters from a community member or leader with information pertaining to a particular case before a judge. The practice is for the President of the Court to read these and may give them to the judge presiding on the case. This seems to be analogous to accepting an *amicus curiae* testimony. The High Court Judge cautiously opined that the court would accept an *amicus curiae* legal brief, depending on the case, the parties, the arguments etc. In the same vein the court would likely be open to a brief providing evidence of the relevant situation.

As the author of the previous study states it would be helpful for the Rules of Court and the legislation to be amended[30] but it may well be that the courts will accept briefs as the law stands and thus this author would recommend such an intervention is attempted by a well established organisation on a suitable case brought to court.

30 Though noting that with legislation the advantages of clarity and certainty must be weighed against the disadvantage of rigidity in the law.

PART TWO

Types of PIL cases and legal arguments to be made

In concluding that there is no definitive prohibition on those requiring standing for PIL cases being granted standing it is appropriate to look at the different types of cases that could be brought in Rwanda:

1) Judicial Review – an individual or an organization could bring a case in the public interest challenging a decision or policy made by a public authority.

2) Constitutional challenge – an individual or organization could take a case stating that a law or policy is unconstitutional, contravening the fundamental rights provisions and in particular being inconsistent with the socio-economic rights guaranteed therein.

Note: The constitutional challenge cases presented in the research papers for LAF's previous study were all brought by the individual affected though the outcome certainly affected the population at large. All the cases were concerning the criminal law.

Note: When PIL started in South Africa the cases were mostly focusing on the effects of the constitution on criminal law rather than on socio-economic rights and social change but in the last ten years cases on the latter have seen exciting developments. Attacking government policies and legislation on socio-economic rights is critical to addressing the persistent concerns of the poor and marginalized i.e. rights to education, housing, health care and land.

Note: An individual or organization making a constitutional challenge has a good chance of success and it seems such a case by an individual, the lawyer mentioned above, has already been accepted. However challenging government policies on socio-economic rights will be more controversial than challenging laws that are simply not in line with the constitution.

3) International human rights law – an individual or organization could take a case to the Supreme Court stating that a law is not in line with international human rights law.

4) In categories 1) and 2) cases of individuals and of groups of individuals[31] which are raising issues which are in the public interest, again particularly on socio-economic rights, could be brought.

5) In category 1) an association could seek Judicial Review if their members have status and interest.

Note: This is following the approach in Scotland where the association's members have title and interest.

6) Amicus Curiae - an organization could try to intervene in a Judicial Review, constitutional challenge, especially if on socio-economic rights, or a civil law case as *amicus curiae*.

7) Offences - an association could use the civil liability provisions in Rwandan's criminal procedure code to claim damages on behalf of the victim.

Note: This would seem to have a good chance of success though there seems to be a great deal of confusion on this law amongst Rwandan lawyers, (which may explain why it has never been done).

Note: This is similar to the French law and Rwandan lawyers could try to follow the French development of this avenue to pursue environmental polluters and other matters of collective interests.[32]

31 Group cases can be brought using techniques of joinder of claims or consolidation of individual actions. (At the time of writing it was not clear whether there was a provision in the administrative law to extend the effects of a judgment rendered on an individual-case basis to persons in the same situation as the individual concerned in the judgment.)

32 Papadopoulou, D. (2009). 'The role of French environmental associations in civil liability for environmental harm: courtesy of Erika', in *Journal of Environmental Law*, p.87.

The following arguments can be developed in order to argue that an individual or organization should have standing in the public interest:

1) Constitution – the substantive rights in the constitution mean that the procedural rights to standing are implied;

Note: In Rwanda the international and regional human rights norms are already incorporated in the domestic system so that litigation can be used to give them tangible meaning and content.[33]

2) African Charter – protecting the substantive rights of the "peoples" which Rwanda has promised to do (through implementing the Charter), requires the procedural means to enforce these collective rights which include socio-economic and environmental rights. Group rights of course mean any test of being personally affected is inappropriate;

3) African Commission – in overseeing the implementation of the Charter the Commission itself has allowed organizations to bring cases i.e. not requiring a specified 'victim'[34];

4) Soft law – the Principles and Guidelines on the Right to a Fair trial and Legal Assistance in Africa are persuasive. On *locus standi* they say, "states must ensure, through adoption of national legislation, that in regard to human rights violations, which are matters of public concern, any individual, group of individuals or NGO is entitled to bring an issue before judicial bodies for determination"[35];

5) Following best practice from other countries – examples from France, Argentina, Slovenia, Hungary, England, South Africa, Kenya, Tanzania, India can be cited;

6) Following the jurisprudence of the East African Court of Justice which has moved on from the 'traditional view' on *locus standi,*(as seen above)*;*

33 See the preamble to the constitution and article 190 but noting article 192

34 See Jawara v the Gambia (2000), Article 19 v Eritrea and SERAC v Nigeria (2006)

35 Section E. LOCUS STANDI, ACHPR Principles and Guidelines, 2001. The principles and guidelines were adopted by the African Commission in 2003.

7) That - it cannot be preferable that an illegality continues than standing law is interpreted liberally;

8) That - (dramatically) such cases are in the interests of the rule of law or (less dramatically) assist the effective operation of government or that, (more softly), such cases are assisting the government in their work; and

9) That – (following the rationale behind public interest litigation in developing countries given in the Pakistani judgement cited above) "[i]n such a socio-economic and political milieu, the non-intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority".

The following arguments can be developed in order to argue that an *amicus curiae* brief should be accepted:

1) Inherent jurisdiction of the court – "an implied power to ensure that it is properly informed of matters which it should take into account in reaching its decision"[36];

2) That - "[t]he importance of a court being informed of all relevant arguments and having them debated fully cannot be underestimated";

3) That "…*amici curiae* may occasionally have perspectives which help the court see a problem in a context larger than that which the parties are willing, or able, to offer"[37];

4) That - "[i]t is for the honour of the court to avoid errors in its judgment..."[38]; and

5) That - the concept of the friend of the court is "a useful instrument destined, inter alia, to allow citizens to participate in the administration of justice"[39].

36 *Re United States Tobacco Company v Minister for Consumer Affairs* (1988) 83 ALR 79, at 93 (an Australian case)
37 *Levy v Victoria and Ors* [1997] HCA 31; [1997]189 CLR 579 (an Australian case)
38 Counsel's argument, *Protector v Geering*, Hardes 85, 86, 145 [1656] 145 All ER 394 (Ex) (an English case)
39 Regulation of the Supreme Court of Justice of the Nation, Acordada 28/04 of 14 July 2004

Case examples on socio-economic rights

A number of cases have been referred to throughout the text but a few are mentioned here in order to illustrate some key points on how the court can look at such socio-economic rights and on behalf of whom.

Right to adequate housing:

In *Government of South Africa and Others v Grootboom and Others* (2001), Mrs. Irene Grootboom was evicted from her shack on land that was earmarked for low cost housing i.e. for people like her and her children. She occupied this land together with a number of other people whose original homes, already subject to appalling conditions, (no water, sewerage or refuse removal), had been flooded by the seasonal rains. The community, forced to live in terrible conditions, asserted its constitutional rights to shelter and housing. The South African Human Rights Commission and the Community Law Centre intervened in the Constitutional Court as *amici curiae*, represented by a legal aid NGO, the Legal Resources Centre (LRC). The critical role of the LRC's intervention was described by Justice Albie Sachs. As he explained:

> "The amicus intervention swung the debate dramatically… [the LRC intervention] forced us to consider what the nature of the obligations imposed by these rights was. Although we didn't accept the entire argument of the amici, this wasn't vital. What was important was the nature of the discourse. It was placing socio-economic rights at the centre of our thinking and doctrine."

The Constitutional Court ruled that the Cape Town local authorities had a constitutional obligation to provide shelter to homeless people. The Constitutional Court found the policy of the government to be unreasonable: Justice Yacoob stated that reasonableness can be evaluated at the level of legislative programming and its implementation.

> "Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive. The programme must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligations".

He added:

> "Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the rights. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test."

Right to a clean and healthy environment:

In *Vellore Citizens' Welfare Forum vs. Union of India* (1996) the Supreme Court allowed standing to a public-spirited social organisation for protecting the health of residents of Vellore. In Vellore, tanneries situated around a river were found discharging untreated effluents into the river, jeopardising the health of the residents. The Court noticed that the leather industry was a major foreign exchange earner and Tamil Nadu's export of finished leather accounted for 80% of the country's export of that commodity. Nevertheless, the Court pointed out that the leather industry had no right to destroy the ecology, degrade the environment and pose a health hazard. The Court asked the tanneries to close their business.

In *R v Inspectorate of Pollution, ex parte Greenpeace, Ltd. (No. 2)* (1994) standing was granted to Greenpeace to challenge an official decision to allow a company a variation in its licence to reprocess nuclear waste at a power plant in England. The High Court said that Greenpeace was a "responsible and respected body with a genuine concern for the environment" and that they would represent the interests of 2,500 of its members living in the local area of the plant.

Part three

a) Litigation strategy

Learning from Eastern Europe and South Africa emphasises the importance of a litigation strategy for PIL and in particular carefully choosing the first case or sequence of cases so that they have a successful outcome. In Rwanda however with little jurisprudence in general, no tradition of human rights cases and a poor understanding amongst the judiciary of the PIL concepts this is not so clear cut. More relevant is taking guidance from South America and following Kenya's experience which suggests bringing various cases, accepting they may not all succeed, in order to sustain pressure on the judicial system to force such cases into the court process. In the Rwandan context such an approach is also necessary to build recognition and understanding of the PIL concepts and issues raised by them amongst the judiciary. However ultimately a lot depends on whether the judiciary will take up the challenge to be activist in developing public policy. Indeed much also will depend simply on the individual judge assigned to a case, their knowledge of the law and susceptibility to outside pressure or interference. Thus although it is certainly wise to choose a compelling, clear-cut, non controversial case to start off with, hoping it opens the door to other cases, it is too risky to 'put all the eggs in one basket' and it would be most sensible to initiate various cases and then a number of similar cases and assess the outcome of them all.

It is also important to understand that in public interest litigation cases it can be that you 'win in losing' or even 'lose in winning'.[40] The former can be because although the case is lost the cause is so worthy that due to press and public pressure action is taken by the government and if relevant the private parties involved. The Kenyan case of Prof. Maathai mentioned above is a good example of this where the case was dismissed but the construction on the public park in question was dropped. However what is more troublesome for PIL and its clients is the latter, when the case is won and then the judgement is not enforced, the required action simply never happens or there is only 'lip service' and no meaningful change. Unfortunately this is the reality and the limitations need to be understood by all those involved and especially the clients.

40 Mati, M. (2001). 'Public Interest Litigation as a vehicle for legislative and policy reform', presented at *the 10th International Anti-Corruption Conference*

As regards strategy, taking all these factors into account it seems that at this time in Rwanda it is important for lawyers to be supported to bring cases of the downtrodden and disenfranchised in any form in order to create a legal culture where the rights of the ordinary people, men, women and children are respected and enforced. Challenging expropriation, exploitation and abuse are the other side of the coin of classic PIL issues such as enforcing rights to housing, land, healthcare, a healthy environment and education. Accordingly the LAF (and concerned donors) would be well advised to widen its PIL strategy focusing on organizations / associations[41] to one of strategic litigation where test cases, judicial reviews and civil cases of wronged individuals are all used, pushing towards the same end. It goes without saying that more legal aid is required across the board.

Choosing a case – what are the possible cases noting some key factors

Coming back to choosing PIL cases however the aim must be to get some cases challenging socio-economic rights off the ground. Good starting cases however would seem to be ones on childrens' and womens' civil and political rights. For example juvenile offenders' rights, orphan's rights, the rights of women who are not formally married and employee rights. The first of these would seem particularly non-controversial and is widely believed to be a problem. One of the new provisions from Rwanda's recent law reforms states that children cannot be tried without legal representation. This has resulted in children languishing in jail whilst waiting for a lawyer for periods greater than any sentence, if found guilty, would be. This is because the government has not yet established a legal aid policy and an implementation framework providing legal aid so that lawyers are systematically instructed and paid to represent the children. Though an uncontroversial issue, in the current context the litigation would be controversial by nature as it would need to challenge the government on its inadequate policy which does not meet its constitutional obligations as spelt out by the new law. Similarly, one can see that addressing orphans' rights issues including challenging the current law, challenging its implementation and alleging bad practices of local authorities taking away the land of orphans who are genocide survivors for *Umudugudu*[42], could be seen to be attacking both the government and local authorities. On the other hand

41 See second paragraph under 'Purpose' above
42 Unnamed source.

examining the implementation of womens' rights, for example the property rights of women who are not formally married, is somewhat political and may affect some vested interests. Litigating employee rights would surely affect vested interests and challenging domestic workers rights would no doubt be unpopular amongst some of their employers. However taking such cases, (on womens', employees' and domestic workers' rights) to the Supreme Court to say that the law is not in line with international human rights law would be thought to be much less troublesome than seeking an order to instruct the government to amend its policies where they are unconstitutional.

In these cases it is incredibly important to characterise the case in as clear and non-controversial arguments as possible so that others, journalists, politicians or parts of civil society / the public cannot misrepresent the issue and sway the court and government against the litigation. This is a key factor in successful PIL and of course applies to litigating socio-economic rights though the usual obstacle to these cases succeeding, (in that the courts issue instructions to the government which are followed), is the elite, the judiciary, the government, (and the economic powers) not accepting this 'intrusion', such that judgments rendered are either unhelpful or unenforced, (as discussed below).

More controversial then will be to challenge government policies concerning socio-economic rights, and in particular, and especially given the recent history, those on land and housing. Whether the government is providing the people with adequate land or housing may include challenging the development plans for Kigali and the agricultural modernisation of the marsh lands country wide. As to the latter if the subsistence farmers no longer have enough land to live off they may have a right to use what was formerly public property especially when it is not being exploited. With the new rural policies where the use of land is being converted there may be valid challenges to the policies or indeed their correct implementation. Rapid socio-economic changes generally undermine the security of land and housing for the poor, particularly in strategic places and in relation to high-value lands such as desirable urban areas, peri-urban land and fertile lands. Accordingly public interest litigation cases are paramount.

Human rights law requires governments to ensure access to water and sanitation to the population. There are various legal arguments to be made to show that the government has positive obligations to meet this requirement countrywide including providing water or a certain amount of water at no cost. It also may be the case that in Kigali there are different tariffs for consumption of water which mean that the poor actually pay more than the rich; if so this can be challenged on grounds of discrimination.

Next there are a series of possible cases to enforce the right to education, Article 40 of the Constitution[43]. Governments often see their obligation primarily as providing institutions and allowing access but do not consider their role in ensuring that the poor and vulnerable access education and that the quality of education is guaranteed.[44] Though the government introduced free primary education the schools may be far away, (hindering attendance), of poor quality and so congested that students do not receive an adequate education. In addition policies requiring uniforms and books to be supplied by pupils, 'non-fee barriers', prevent poor students going to school, breaching their constitutional rights. The latter situation would provide a relatively straightforward PIL case.

The other obvious category of cases and where there are problems as in any developing country is with industry, mining and factories. There is a local example where pollution / chemicals are causing health problems due to their proximity to local settlements where locals' skin and respiration systems are being affected.[45] Another local example is where a factory has caused physical injury to local residents without giving compensation.[46] In such cases the government is challenged on its obligations i.e. to regulate business in order to protect its citizens. The other major categories of cases are: environmental ones such as deforestation causing flooding and drought; prisoners' rights cases challenging the conditions in prison and the lack of safeguards against the risk of violence and abuse to inmates; and cases asserting refugees' rights. Cases challenging government policy on health may be less clear cut as the government has taken various steps to improve the population's access to health care, however it may be argued that in certain areas what has been done does not meet the minimum legal content of the right. Research is another key factor in successful PIL and at this stage in Rwanda research needs to be done to decide exactly what concrete cases are viable to litigate.

43 Article 40 reads in relevant part as follows: "Every person has the right to education."
44 RTE Meeting Report.
45 Unnamed source.
46 Ibid.

Important factors in building a case

Now when then focusing on an individual PIL case particularly on socio-economic rights 'research based evidence' is key. The allegations against the state, (and private party if the case is about pollution for example) should be backed by reliable evidence. An example would be in a case on malnutrition deaths you need reports indicating the issue and data of the state regarding child mortality rates from various government surveys.[47] The more evidence the better – which is of course what makes PIL cases expensive. Further to add weight to this evidence it is good to make an NGO working on the issue a party to the case and if there can be more than one organisation agreeing on the issue it will hold more ground in the court. Lastly, expert opinions from a range of people in authority bolster the narrower interests of those running the litigation. And indeed if INGOs can be brought in as *amicus curiae* then the platform is solid.

It should be noted here that a good lawyer with experience in PIL adds advantage for the success of the PIL. The next section explores finding this in Rwanda. At a more basic level however lawyers must be proactive to achieve anything in the human rights field where there is a poor, uneducated population. This requires a cultural shift in Rwanda where lawyers are generally not proactive. The normal excuse given, that this is because Rwanda has a civil law based system is misguided: there is nothing in the civil system preventing a lawyer following all leads, researching all arguments and following up on whether his / her clients actually receive remedies sought or indeed 'due process'. A worry similarly expressed about PIL, again especially regarding cases on socio-economic rights, that it would involve lawyers touting for work, also needs clarified. On the one hand legal aid lawyers in many countries are simply exempted from advertising rules and this needs to be discussed with the Bar Association. On the other hand it is the NGOs which would be involved in discussing such cases with beneficiaries, explaining about the law and legal process and suggesting they instruct a lawyer who can advise them, assist them and represent them if necessary.

47 Taken from, 'Guidance for Indian PIL cases'. (Obviously one needs to take into account the credibility / reliability of government data.)

Final points on strategy

It must be remembered that the development of the law on standing for PIL in many countries takes time e.g. England, France, as does the development of PIL itself when standing is liberalized e.g. South Africa. And in some countries time has not changed the conservative view of the courts e.g. the federal courts of Germany and the Upper Courts of Scotland. However in other countries PIL has been led by lawyers and accepted quickly by the judiciary e.g. Argentina or even quickly led and accepted by the judiciary e.g. India.

In considering the context in which the LAF is operating this author would advise the LAF to pursue its PIL strategy through the courts and wait and see if there are any positive results there, but, to be prepared for the necessity of employing an advocacy strategy to lobby for legislative change so that there are clear rules on standing and a*micus curiae* inserted into the rules of court, new legislation, code of civil procedure and /or the constitution. The alternative approach would be to immediately start the advocacy strategy. The concern would be that then in any case brought before them the judges would deflect responsibility, waiting to see what Parliament decides, whilst the executive may not actually introduce a draft law containing such provisions. At the same time clear laws without doubt make it easier to take PIL cases to court so targeted lobbying to the law reform commission may be strategic if it was felt that the issue would be taken seriously and start the process rolling.

The other strategy that could be followed following a lack of success at the courts would be for an NGO to take a case to the African Commission /Court having exhausted local remedies. This would require careful thought but might be very exciting and influential though taking a long time, and much would depend on whether there was a suitable case for this forum.[48]

48 It may be the case that the East African Court of Justice will extend its jurisdiction to include human rights which would also present an avenue for pursuing PIL cases.

b) Wider strategy

Capacity building

In Rwanda there are few lawyers with any experience of PIL and few with human rights court experience. Needless to say, however, there are some keen young advocates, some knowledgable and interested NGO lawyers, some very capable experienced advocates and some supportive senior advocates. The LAF should initiate getting these lawyers together and building a litigation strategy. A series of workshops is required. Key participants are NGO lawyers from legal aid NGOs who know and understand the problem areas and the litigators who have done Judicial Review cases and constitutional challenges. With the assistance of the young advocates they can work out what cases are compelling and feasible, forming working groups. The support of well-established advocates and the majority of the Governing Council of the Bar in this process is very important. Engaging with the Ministry of Justice is practical and involving the MAJ lawyers may be constructive though would most likely be considered at a separate forum. Lastly, exposing the judges to PIL ideas, concepts and best practice from other countries, even noting the implications of Articles 2 and 6 of the Procedure Code, would also be beneficial if possible. Additionally in non-traditional subjects like environmental law capacity building for the judges may be required.[49]

In any event it would be recommended to bring in an expert from Europe, South Africa, South Asia or South America on a pro bono basis if possible, to analyse the cases suggested from the working groups and work through with the lawyers how to put the litigation together and when stuck giving examples from their own experience. The services of an expert from somewhere closer to home e.g. Kenya or another East African country, would also be beneficial to go over the legal arguments: it is incredibly important to get the legal arguments right and request the correct remedies.[50]

The other capacity building exercise which is required would be for NGOs. They have the tools to be taking cases for victims and the potential to instigate and lead PIL cases and appear as *amici curiae*. Currently however legal aid NGOs,

49 A number of institutions and organizations have the skills and capacity to conduct such trainings.

50 Marcus, G. and Budlender, S. (2008). 'A strategic evaluation of Public Interest Litigation in South Africa', published by *The Atlantic Philanthropies.*

not to mention others, are not aware, not skilled, not interested in litigation and not organised. A series of workshops would be advisable to increase their understanding and capacity to get involved as well as to then be able to galvanise a community and /or the public which would be part of a case strategy, as explained in the section below.

Networking, coordination and information sharing amongst all the relevant players are key factors to successful PIL and would also require initiation from the LAF in tandem with the above initiatives.

What must be taken seriously are the mental barriers to litigating such cases due to the history of justice in Rwanda. This applies to lawyers and to the public, the latter described in the section below. Many advocates talked to were apprehensive about the personal risks involved and legal /justice sector NGOs feel intimidated in various matters. However, advocates felt they would be more comfortable taking a joint case with a group of advocates and ideally supported by the Bar Association. Though it is not so common in Rwanda building a legal team for a case where advocates are supported by older ones would also assist greatly, firstly adding weight to young advocates' arguments in court and secondly not exposing the young advocates to being derided who are obviously apprehensive about establishing a good reputation for their career.

Client organization, public awareness and social mobilization

Usually a civil society strategy in an African country would involve giving information and awareness raising, providing general legal advice and assistance and capacity building advocacy skills, the aim basically to strengthen civil society in its ability to fight for its rights. The LAF and other justice sector NGOs are doing what they can on this in the context.

However Rwandans do not like conflict and tend to accept what they are told rather than challenge wisdom from above. At this time becoming aware will not necessarily make citizens active nor sympathetic to a new argument. Challenging the government, taking it to court, may be seen as disloyal and the people and

indeed organisations may be reluctant to publicly support actions.[51] In cases where litigation would normally be accompanied by social mobilization, marches and protests may not be possible in Rwanda at this time.[52] And indeed public opinion may be less than influential on the court, the elite and the government.

Now where a case is dealing with a particular community's problem, it is incredibly important to create awareness amongst that group of people to get them on board with the litigation. Communities are often apathetic, lacking trust in the system and unconfident about claiming their rights. So that an organization or a lawyer can represent them properly, leaders need to be appointed who understand what is going on locally and legally and a small committee will be necessary to take decisions. The proper organisation of clients is key in such a case where the people must stand together. Further in contrast to general public opinion, if representatives attended court the weight of their pressure on the court because of their dire problems may well be influential. In choosing such a case to litigate the worse the conditions for this group the better and here we can mention also the importance of timing in PIL cases. If for example a case was about inadequate housing, the rainy season would be most helpful to focus judicial minds.[53]

It must be finally noted again that the political environment is an important factor in any PIL strategy. Thus although PIL is able to bluntly challenge the government, taking less challenging cases at first and arguing that the cases are assisting the government in their work may be the way for the LAF to begin. At the same time as already mentioned many *prima facie* non-controversial cases will be controversial in Rwanda. The two big obstacles to a socio-economic case ultimately succeeding are firstly whether the courts will take the line that they will not interfere with government policy and secondly whether the government will comply with a court decision instructing the government to change their policy. A major part of PIL strategy is the follow-up to ensure public pressure is put on the government to push it to comply which as mentioned above is unlikely to happen at this time in Rwanda and unlikely to work in any event. Nonetheless timing may be key here as there might be a political opening that can be exploited and a certain issue may be on the agenda of the government, EAC, AU or an international body.

51 Ibid

52 The possible consequences of public action also need considered i.e. police response, violence, social turmoil…

53 Supra note 40

A summary on strategy

Thus the types of cases and legal challenges involved i.e. it is surmised that it is more palatable for the court and government to find a law unconstitutional or not in line with international law, or an individual decision of a public authority to be wrong than to find that the government must amend its policy on land - will require careful analysis to decide which cases should proceed as a first tranche to start PIL in Rwanda. There are so many cases and causes that it may be best to take smaller cases benefiting some of the needy people whilst lawyers build their skills and judges their understanding and it is to be hoped acceptance of standing and PIL. At some stage it may be decided to bring a big case affecting many though it risks being unsuccessful. At the same time of course the cases need analysed on their risks in obtaining standing which also varies by the type of case as explained in Parts one and two. Thus both these factors must be considered in both the litigation and the wider strategy.

CONCLUSION

Starting PIL is not an easy task in Rwanda where the standing rules are unclear, advocates and the judiciary unaware and the political environment unsympathetic. In other countries researched there were less variable factors: in England, the standing rules were unclear but judiciary confidant and authorities ready to follow the courts decisions; in South Africa the standing rules were clear, the judiciary alive to the development of law and public policy[54] and the citizens active though the government was not listening; in Argentina the standing rules were not clear but the judiciary well-informed and receptive though the government unsympathetic. And in countries where governmental and economic powers are concentrated and hostile to PIL there are many problems inherent in attempts by civil society to use PIL to effect policy and social change including pressure put on the lawyers and witnesses and the use of exhaustive tactics[55] by the lawyers of the respondents / defendants.[56]

However having researched the development of PIL in a number of countries it does seem that as the Rwandan law does not define its general standing rules and does not mention *amicus curiae* these concepts are open for discussion. Then indeed a creative well argued case may well proceed. The legal arguments which could be employed are discussed above and include using constitutional and international law as well as citing experience from other countries, notably those in the East African Community. It may be however that a number of cases will be needed to build momentum and put pressure on the judiciary to convince them of PIL cases. Capacity will need to be built in the legal profession in order to do this successfully as well as judges sensitized to the idea and educated on the law.

If the courts do not accept the basis of PIL the LAF must lobby for laws specifically introducing the mentioned concepts, possibly the most straightforward solution would be a change in the Supreme Court Rules or Code of Civil Procedure, otherwise through introducing specific laws or ultimately through amending the constitution. Again the influence of the East African Community may assist here. Managing the cost of PIL will also require LAF's thought and action as the financial

54 At least until their most recent PIL case on socio-economic rights, *Mazibuko v. City of Johannesburg* [2009].
55 I.e. Using legal mechanisms in order to delay proceedings and increase costs.
56 Supra note 32.

barriers are what makes PIL sporadic and underutilised in many countries. The primary barrier to access to justice always being economic, PIL cases are both risky and expensive.[57]

Meanwhile it is clear that at this time in Rwanda it is necessary to push human rights cases in general which would help create a space for PIL over time. Supporting PIL in its widest sense, employing strategic litigation and bringing test cases, taking up individuals' judicial reviews and constitutional challenges, supporting cases of exploitation and abuse, including sexual, and employment rights cases including those of domestic workers, will develop a legal culture where the rights of the poor and disenfranchised are respected. In particular the LAF can encourage organizations to use the civil liability rules under the criminal law to bring cases on behalf of victims. At the same time it would be useful for the LAF to explore the use of other tools for group litigation such as class actions[58] and the collective actions of consumers[59].

Finally, as well as a competent legal profession, a sympathetic judiciary and a facilitating legal framework, successful PIL generally requires social mobilization and a political environment which enables a responsive policy framework i.e. one which responds positively to the court decisions.[60] Thus a litigation strategy should be accompanied by a civil society and advocacy strategy, making the public aware and active, steering public opinion to be sympathetic, influencing the government to accept the ideas being litigated and pressurizing the government to implement the court orders… how realistic this is in Rwanda at this time remains to be seen.

57 The only sustainable approach ultimately is for the government to provide funding for litigants to take PIL cases and for the cost rules to be changed for PIL cases so that the losing party does not have a potential liability to pay the winning party's legal costs. However donors may fill the gap and there are a number of interested donors based in East Africa not to mention those in Europe and North America.

58 Though class actions also arose in common law jurisdictions they have been successfully transposed to civil law countries e.g. Brazil.

59 Generally implemented through legislation.

60 Odhiambo, M. O. (1999). '*Legal and Institutional Constraints to Public Interest Litigation as a Mechanism for the Enforcement of Environmental Rights and Duties in Kenya'*, Fifth International Conference on Environmental Compliance and Enforcement, p.265

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