

Rwanda:

Joint Governance Assessment report

The JGA Report adopted by Cabinet on 12/09/08

Table of Contents

| | |
|---|-----------|
| Abstract | 2 |
| Preface - Statement from the co-chairs of the Joint Governance Assessment Steering Committee | 3 |
| 1. Introduction | 6 |
| 1.1 Status of this report | 6 |
| 1.2 Objectives of the Joint Governance Assessment | 6 |
| 1.3 Ten principles for the Joint Governance Assessment | 8 |
| 1.4 Managing the process | 9 |
| 1.5 Scope of the assessment | 9 |
| 1.6 Approach to the assignment | 10 |
| 1.7 Steps in the analysis | 10 |
| 1.8 Governance indicators | 10 |
| 2. Governance Challenges in Rwanda | 15 |
| 2.1 Consolidating peace and security | 15 |
| 2.2 Promoting inclusive governance | 16 |
| 2.3 Strengthening the rule of law | 17 |
| 2.4 Enhancing accountability | 17 |
| 2.5 Making the links between governance and broader development goals | 18 |
| 3. Ruling Justly | 20 |
| 3.1 Establishing and maintaining security | 20 |
| 3.2 National reconciliation and transitional justice | 23 |
| 3.3 The rule of law | 27 |
| 3.4 Human rights and civil liberties | 30 |
| 3.5 Political rights | 36 |
| 3.6 Institutions of accountability | 40 |
| 4. Government Effectiveness | 45 |
| 4.1 Public financial management | 45 |
| 4.2 Anti-corruption | 53 |
| 4.3 Decentralisation | 56 |
| 4.4 Public Service Delivery | 60 |
| 4.5 Public Service Reform | 64 |
| 5. Investment climate and corporate governance | 67 |
| 5.1 Ease of doing business | 67 |
| 5.2 Corporate law and governance | 73 |
| 5.3 Private sector advocacy | 75 |
| 5.4 State-business relations | 77 |
| 6. Recommendations | 78 |
| Annex 1 – Provisional Monitoring Framework | 83 |
| Annex 2 – Terms of reference | 90 |

Abstract

This report is an assessment of governance in Rwanda, undertaken jointly by the Government of Rwanda and the development partners. It is intended to establish a common understanding of governance progress, problems and priorities, and a framework for assessing progress over the coming years on the basis of agreed indicators and benchmarks. The guiding principle has been to provide a basis for joint ownership and constructive discussion in order to improve the quality and usefulness of dialogue around issues of good governance.

The starting point (chapter 2) is an assessment of the key governance challenges, taking account of Rwanda's history, and the social, political and economic processes that set the context for governance, and reflecting both general principles drawn from international norms as well as Rwanda's aspirations as set out in the 2003 Constitution and policy statements, such as the EDPRS and Vision 2020. The challenges are discussed under five headings: consolidating peace and security; promoting inclusive governance; strengthening the rule of law; enhancing accountability; and making the links between governance and broader development goals.

The Joint Governance Assessment addresses three broad subject areas (chapters 3-5): Ruling Justly (covering the issues of establishing and maintaining security; national reconciliation and transitional justice; rule of law; human rights and civil liberties; political rights; and voice and accountability); Government Effectiveness (public financial management; corruption; decentralisation; public service delivery; and public service reform); and the Investment Climate and Corporate Governance (ease of doing business; corporate law and governance; private sector advocacy; and state-business relations).

In each of these areas, the report addresses three questions: What are the governance priorities and appropriate approaches, taking local realities and international norms into account? How does governance in Rwanda compare against these standards, and what progress has been made over the period 1998-2007? What indicators are needed to tell us whether Rwanda is moving in the right direction?

To address these questions a consulting team was commissioned to undertake detailed research in country over the first half of 2008. A large number of interviews have been undertaken with respondents in Government, civil society and the private sector. Stakeholder workshops have been held in Kigali and five districts.

A total of 45 indicators are proposed as the basis for a future monitoring framework (see Annex 1).

Some of the most important recommendations arising from the report are presented in chapter 6.

Preface

Statement from the co-chairs of the Joint Governance Assessment Steering Committee

On the request by His Excellency the President of the Republic of Rwanda during the Development Partners meeting of 21-23 November 2006, it was resolved to conduct a governance assessment, jointly owned by stakeholders to bring about common understanding and mutual confidence with regard to governance practices in Rwanda. To this effect, a series of meetings were subsequently held in December in preparation for the Joint Governance Assessment (JGA).

It should be recalled that the Joint Governance Assessment was initiated as a direct response to the plethora of assessments of various aspects of governance in Rwanda, several of which were externally driven with limited grounding in objective evidence and analysis. The fundamental objectives of the initiative are to: (i) develop a common (government and donors) understanding of governance issues in Rwanda; (ii) reduce transaction costs by consolidating different donor governance assessment activities; and (iii) provide an objective, evidence-based assessment that reflects Rwanda's specific governance history, its current context and realities that provides indications for future programmes and actions.

A high-level Steering Committee (SC) with the membership of ambassadors of the USA, UK, Belgium, the Netherlands, Swiss, EU and Germany, including heads of development agencies namely; the World Bank, AfDB, UNDP, USAID, SIDA, CIDA, DFID, Belgium Technical Co-operation, and the GTZ was put in place. Government's representation on the committee included a representative of the office of the President, Ministers of Local Government, Finance and Planning, Information, Public Service, Interior, Justice and Commerce. Relevant institutions on the committee also included the Ombudsman's Office, the Auditor General's Office, NEPAD, Rwanda Human Rights Commission, the Forum for Political Parties, RALGA, International NGO Network, Rwanda Civil Society Platform, Rwanda Governance Advisory Council and the Private Sector Federation.

The Steering Committee, jointly chaired by the Minister of Local Government and the World Bank Country Manager, was set up to lead and manage the JGA process. The SC was supported by a Joint Technical Committee comprising representatives from Government and development partners. Among other objectives, the Steering Committee sought to ensure that the JGA would be jointly owned by Government and development partners, and conducted with a high degree of professionalism and independence which would lend international credibility to the findings and recommendations. An international firm—The Policy Practice from the United Kingdom—was recruited through an open competitive process to carry out the JGA.

The JGA concludes that Rwanda has made impressive progress in governance since the 1994 genocide and identifies remaining challenges in 'Ruling Justly', 'Government Effectiveness', 'Investment Climate and Corporate Governance'. There are three broad tasks that are highlighted for focused attention:

- institutions need to be further strengthened and rules-based governance more rigorously enforced;
- vertical accountability between government and citizens needs to be strengthened, in particular by enabling constructive state-society engagement around participatory processes such as budgeting, planning and monitoring; and
- transparency and access to reliable information are essential to nearly all aspects of good governance.

Recognizing both the scale of the challenges and the context of Rwanda, the Joint Governance Assessment shows that a great deal has been achieved in a short time. The assessment however, proposes an ambitious approach to further strengthen governance in Rwanda. It also recognizes there are many linkages between different areas of governance, such that progress in any one area is influenced by progress in others. Given resources limitations, the prioritization and sequencing of interventions will be essential.

Thus the JGA provides the basis for identifying areas in Rwanda's governance program that need greater attention, and for harmonizing governance interventions across different government agencies and different development partners. It includes a results framework for regular monitoring of governance progress in Rwanda. It is envisaged that over time this process will build strong local capacity to carry out critical analysis and monitoring of governance progress. The JGA will be shared with other internal agencies that carry out governance assessments and evaluations so as to be used as a basis for future assessments.

As critical next steps to this first JGA, development partners will confirm and seek the support of their various headquarters on this report as part of the effort of ensuring that:

- (i) The JGA becomes the governance assessment mechanism that all partners use,
- (ii) Government and Development Partners will jointly review existing governance programmes to ensure alignment with the recommendations of the JGA.
- (iii) Both Government and Partners will also ensure that new programs are designed to fill areas where there are gaps,
- (iv) Under the newly established EDPRS Results Monitoring Framework, the coordination of the implementation and monitoring of the findings of the assessment will be taken forward by the EDPRS Governance Implementation Working Group (IWG) which is jointly chaired by the Ministry of Local Government and the UNDP.

To help consolidate this initiative, a second version of the JGA which responds to comments from partner headquarters and other governance agencies on this first report will be made available in August 2009 with the exercise repeated in 2010 and 2011.

In conclusion, we the co-chairs, are exceedingly happy to see that both Government and Development partners have been able to come together around the important issue of governance and have made progress towards achieving a common goal of the understanding of this issue. The Joint Governance Assessment that has just been concluded is the first of its kind ever conducted in developing countries. That it has come to a successful conclusion is a strong evidence of the commitment of the Government of Rwanda and its Development Partners to strengthening Governance in Rwanda. It demonstrates the growing maturity of the partnership and the willingness on both sides to continue to find innovative ways to build a shared vision of the state of governance in Rwanda that underpins the achievement of development results. Hard and difficult issues were brought to light, frankly discussed and their solutions were found, a merit for the jointly owned effort. In our humble view, therefore, this is an achievement that should make us all proud.

We, the Co-chairs are therefore profoundly grateful to Government, Development Partners, other stakeholders and the public at large for their valuable contributions and assistance in providing vital information and advice for the successful completion of the JGA. We are particularly grateful to the President of the Republic of Rwanda for providing the vision that initiated the process. We appreciate the strong and practical support from the funding agencies namely the EU and DFID who met all the contractual costs. We also thank the UNDP for its role in managing the contracts to execute the assignment. We strongly recognize and commend the professionalism and commitment displayed by the consultants (The Policy Practice Ltd.) during the entire assessment period. The Joint Governance Assessment is also in conformity with the aspirations of the Paris Declaration, one of which is to minimize transaction costs in governance assessments.

Protais MUSONI

Minister for Local Government
Co-Chair

Victoria Kwakwa

World Bank Country Manager
Co-Chair

1. Introduction

1.1 Status of this report

This report is an assessment of governance in Rwanda, jointly undertaken by the Government of Rwanda and its development partners, working together through a Joint Steering Committee. It has been drafted with professional input from The Policy Practice, on the basis of detailed research on governance conditions in Rwanda, as well as in-depth consultation with Government, the development partners and other key stakeholders in civil society and the private sector. In response to feedback on earlier drafts this report is intended to provide a basis for consensus, joint ownership and ongoing dialogue on remaining issues where agreement has yet to be reached.

A provisional set of 45 indicators (see Annex 1) are identified for ongoing monitoring. As far as possible, data have been gathered to provide baseline values for the provisional indicators, but some of the indicators are not yet available. An action plan for gathering this information on an ongoing basis will be agreed shortly.

Government and partners will commission, annually, a review of progress against the monitoring framework, and against the recommendations of the narrative report. There will be opportunity at each annual review for government and partners to agree on amendments to the framework, and also to agree on new recommendations for tracking. It is anticipated that the annual review process will provide opportunities to more closely integrate this framework with the sectoral and comprehensive results matrices of Rwanda's Economic Development and Poverty Reduction Strategy and the Common Performance Assessment Framework (CPAF).

1.2 Objectives of the Joint Governance Assessment

The Joint Governance Assessment is a mechanism for the assessment of governance issues in Rwanda by the Government of Rwanda and its development partners. It aims to establish a common understanding of governance problems and priorities, and a framework for assessing progress on the basis of agreed indicators and benchmarks. The assessment has three main objectives:

- ① To undertake a thorough and rigorous analysis of existing institutions, laws and practices affecting governance in Rwanda, and propose policy improvements.
- ② To define and monitor indicators to measure performance, assess progress, highlight weaknesses and establish priorities for action.
- ③ To make recommendations on establishing an ongoing system for monitoring the agreed indicators, including training for the Rwanda Governance Advisory Council.

Box 1 - Definition of Good Governance used in the Joint Governance Assessment

Governance is defined by UNDP as “the exercise of economic, political, and administrative authority to manage a country’s affairs at all levels, comprising the mechanisms, processes, and institutions through which that authority is directed.”

In referring to good governance, this assessment seeks to highlight attributes of governance that are most likely to promote development, human rights, justice and peace. The assessment avoids taking an overly normative view of the form that institutions should take to bring about ideal government. Instead, it takes a pragmatic view of how to strengthen the existing institutional framework on a step-by-step basis by supporting processes that promote particular attributes of good governance, including:

- **State capability** – government should be capable of ensuring security and the rule of law, and providing the goods and services required for development.
- **Accountability** – mechanisms should exist for the public to hold politicians and civil servants responsible for their performance. Accountability may be **horizontal** between governmental bodies, or **vertical** between government and citizens.
- **Responsiveness** – government policy making should be responsive to demands emerging from society. Participatory mechanisms can promote this.
- **Fairness** – established rules should apply equally to everyone.
- **Inclusiveness** – government employment, institutions and services need to be open to all individuals and groups in society without discrimination.
- **Legitimacy** – the basis of state institutions should be widely accepted across society.

The focus of this study is on governance exercised by the state. However, attention is also given to the role of non-state actors in civil society and the private sector.

The Joint Governance Assessment reflects a desire on the part of both the Government of Rwanda and its development partners to improve the ways in which governance issues are assessed and discussed, portray accurately the status of governance in Rwanda, and set a stage for future monitoring aimed at improving governance. The Government of Rwanda has increasingly emphasised the importance of good governance, which features as one of the three flagship programmes of its Economic Development and Poverty Reduction Strategy (EDPRS). The Joint Governance Assessment will contribute to the implementation of this strategy by providing a basis for reviewing governance priorities and monitoring progress.

Rwanda’s development partners are deeply engaged in supporting good governance, which is increasingly emphasised as a condition for human rights, conflict prevention, economic development and aid effectiveness. Most development agencies are now required to report on governance issues as part of aid programming and accountability to their own parliaments and taxpayers. This has led to a situation where many different governance assessments have been

conducted in parallel by different development partners. Separate assessments have resulted in duplication of effort and have not provided a coherent basis for dialogue with government. The Joint Governance Assessment aims to bring about a harmonised approach based on a common set of indicators and benchmarks. It may not fully replace individual governance assessments undertaken by development partners, but should improve coordination by providing a commonly agreed monitoring framework that can be drawn on by development partners as a basis for the governance assessments they require.

Many existing assessments of governance in Rwanda draw heavily on international comparative indicators. Such indicators have proven useful to identify in general terms the governance issues where Rwanda compares well or unfavourably with other countries. However, they have been less useful to assess the specific problems facing Rwanda and to identify priorities for action. There has also been a degree of controversy in Rwanda surrounding some international indicators, which are in some cases contradictory or are regarded by some stakeholders as being inaccurate. This experience has highlighted the need to improve understanding by undertaking an assessment of the governance issues facing Rwanda that is grounded in a specific understanding of the country context.

1.3 Ten principles for the Joint Governance Assessment

The Joint Governance Assessment is a novel and challenging process that seeks to bring about an improved approach to addressing governance issues based on a set of jointly agreed principles. The aspiration of Government of Rwanda and its development partners is that the assessment will as far as possible:

- ① be jointly 'owned' by the Government of Rwanda and its development partners,
- ② be conducted in an open and consultative manner,
- ③ be forward looking and aim to provide a basis to identify priorities for action,
- ④ be acceptable to development partners as a basis for their own governance reporting,
- ⑤ be credible by virtue of the thoroughness and rigour of the analysis,
- ⑥ take due account of the specific governance and historical context of Rwanda,
- ⑦ analyse underlying explanations of governance that need to be addressed to bring about improvements,
- ⑧ be of high professional quality and based on sound evidence,
- ⑨ provide a basis for well-informed on-going dialogue among stakeholders on governance issues,
- ⑩ establish a monitoring framework for continuing assessments over the coming years.

It is recognised that there are sometimes trade-offs and compromises to be made between these objectives, in particular where there are remaining differences of opinion between the parties engaged in this process. For these it has been agreed that a forum for continuous dialogue and engagement will be set up between government and development partners. The guiding principle for this report has been to provide an assessment that provides a basis for joint ownership and

constructive discussion in order to improve the quality and usefulness of dialogue around issues of good governance.

1.4 Managing the process

In order to ensure adherence to the above principles a management structure was put in place comprising of the following elements:

- A **Joint Steering Committee** comprising high level representatives of the Government of Rwanda and its development partners. The committee was chaired by Honourable Minister of Local Government, Mr Protais Musoni, and the World Bank Country Representative, Ms Victoria Kwakwa.
- A **Technical Committee** chaired by the Rwanda Governance Advisory Council and comprising experts from the Government of Rwanda and its development partners advising on methodological and analytical issues.
- A **Consultant Team** recruited through a competitive tender to provide professional input over the period December 2007 – June 2008. The team was managed by The Policy Practice Ltd and consisted of four core international consultants and four local consultants.¹ The consultant team report to the Joint Steering Committee.

1.5 Scope of the assessment

The Joint Governance Assessment addresses three broad subject areas: Ruling Justly, Government Effectiveness, and the Investment Climate and Corporate Governance. Specific issues covered under each of these areas are outlined in table 1 below:

Table 1: The scope of the Joint Governance Assessment

| | <i>Ruling Justly</i> | <i>Government Effectiveness</i> | <i>The Investment Climate and Corporate Governance</i> |
|-------------------------------|--|---|---|
| | Chapter 3 | Chapter 4 | Chapter 5 |
| <i>Specific issues</i> | <ul style="list-style-type: none"> • establishing and maintaining security • national reconciliation and transitional justice • rule of law • human rights and civil liberties • political rights • voice and accountability | <ul style="list-style-type: none"> • public financial management • corruption • decentralisation • public service delivery • public service reform | <ul style="list-style-type: none"> • ease of doing business • corporate law and governance • private sector advocacy • state-business relations |

¹ The Project Director was Alex Duncan assisted by the in-country team leader, Gareth Williams. The Ruling Justly component was led by Tim Sheehy and Théodore Simburudali. Government Effectiveness was covered by Pierre Landell-Mills, Sam Kanyarukiga and Charles Gasana. The investment climate chapter was researched by Gareth Williams and Désiré Kamanzi. Sue Unsworth and Andrew Barnett of The Policy Practice provided advice and quality control. Specific inputs were commissioned from Anna Khakee (literature review), Christina Wille (security sector), Sharon Haba (Citizens Report Cards) and Susie Alegre (anti-incitement laws).

1.6 Approach to the assignment

Each of the three components of the study has been addressed by a sub-team comprising of one international and one Rwandan consultant.

The principal research methods used have been:

- a review of existing governance literature and indicators on Rwanda,
- interviews with around 200 respondents in Government, civil society and the private sector,
- a stakeholder workshop for 119 participants on 31 January 2008 in Kigali,
- discussion of the draft indicator framework at the Development Partners retreat on 27 March 2008 in Gisenyi.
- consultations with district government in 5 districts.² These took the form of meetings and workshops attended by local officials and representatives of civil society and the private sector,
- regular meetings with the Steering Committee and Technical Committee to discuss progress, earlier drafts and next steps.

1.7 Steps in the analysis

Against the background of the contextual analysis in chapter 2 below, and reflecting the principles of the Joint Governance Assessment, the consultant team has undertaken its analysis of each of the governance issues addressed by this report using a three stage approach.

- ① Step 1 - What are the governance priorities and appropriate approaches taking local realities and international norms into account? Within each subsection of the report this is discussed under the heading **principles and priorities**.
- ② Step 2 - How does governance in Rwanda compare against these standards, and what progress has been made over the period 1998-2007? Within each subsection of the report this is discussed under the heading **assessment**.
- ③ Step 3 - What indicators are needed to tell us whether Rwanda is moving in the right direction? Within each subsection of the report this is discussed under the heading **monitoring framework**. The complete monitoring framework is also shown in annex 1.

1.8 Governance indicators

One of the main purposes of the Joint Governance Assessment is to establish jointly agreed indicators for assessing governance in Rwanda. It is important at the outset to determine criteria for the selection of indicators. These criteria need to reflect the principles underlying the Joint

² The five districts covered were: Musanze (Northern Province), Huye and Nyamagabe (Southern Province), Karongi (Western Province) and Rwamagana (Eastern Province)

Governance Assessment (section 1.3), and experience on the uses and abuses of indicators, their well-known pitfalls and inherent risks (box 2).

The criteria used in indicator selection are as follows:

- **Specificity to governance.** The indicators must relate to processes of governance (such as the accountability, responsiveness, capacity, legitimacy and inclusiveness of government), and are not intended to measure broader socioeconomic trends.
- **Relevance.** The indicators must be relevant to the most important governance processes.
- **Action orientation.** The indicators should reflect the performance of government policies and should help to identify priorities for action.
- **Appropriateness to the local context.** The indicators must be appropriate to the Rwandan context and take account of local specificity. In this respect there is a preference for domestically generated indicators rather than those developed for the purpose of international comparison (for information on international comparative indicators see box 3).
- **International credibility.** The selected indicators should include issues of concern to international observers, and should not exclude controversial subjects.
- **Reliability.** The proposed indicators should not be prone to large measurement error, biased sampling, unrepresentativeness and comparability problems, and should originate from respected and reliable sources.
- **Triangulation from several sources.** It is important to provide a balanced presentation of evidence from different sources, including national and international actors, and state and non-state bodies. Citizen's organisations have a key role in gathering and monitoring data. The report attempts to provide evidence based and balanced judgement on the merits and reliability of different sources. However, in some cases it has not been possible to make a definitive judgement to resolve contradictions between sources.
- **SMART criteria.** Good practice suggests that indicators should be:
 - ➔ Specific (to the process being measured),
 - ➔ Measurable (either in quantitative or qualitative terms),
 - ➔ Achievable (without overstressing local statistics capacity),
 - ➔ Realistic (cost-effective) and
 - ➔ Timely (available quickly and amenable to repeat monitoring)

A balance needs to be struck in deciding on an **appropriate number of indicators**. It is important to propose a sufficient number of indicators to capture the diversity of governance processes at work and to avoid creating incentives to focus on a narrow set of targets. At the same time it is essential to guard against the temptation to include too many indicators, which would result in a loss of focus and burdensome data collection and analysis. In view of these considerations several

rounds of consultations have taken place on the proposed monitoring framework, and 45 core indicators are now put forward.

Another important consideration is to achieve **sufficient diversity** in the selection of indicators in order to reflect the full situation. A mix of indicators should be proposed to ensure:

- A combination of process-oriented and results-focussed indicators. **Process indicators** are essential to understand the functioning of institutions. **Results indicators** are also required to assess their impact.
- Balanced coverage between the three components of the assessment (section 1.5).
- A diversity of sources (governmental and independent, non-governmental sources).
- A suitable balance of fact-based and perception-based measures.
- Inclusion of the both expert opinions based on researched evidence and survey data. This should include a mix of objective fact based indicators and survey based evidence judging citizen's perceptions of governance and service delivery.
- Understanding of issues facing particular social groups (for example, gender-disaggregated measures should be calculated where feasible).

One of the most difficult challenges in designing a monitoring framework is to capture processes and results that are not amenable to quantification, but are nevertheless highly important for good governance, for example building trust, reconciliation and national identity. In order to assess these processes it may be possible to organise large scale perceptions surveys. In some cases assessments must rely on the informed judgement of experts familiar with the issue in question. Such assessments are necessarily subjective rather than fact-based, but must be considered alongside more objective quantifiable measures. This principle is reflected in the Joint Governance Assessment, which includes monitoring of specific indicators, and places this within a broader framework of assessment based on bringing together the analysis and judgement of the consulting team with comments and contributions from the Joint Steering Committee and Technical Committee.

Box 2 – Problems and pitfalls in the use of governance indicators

In recent years there has been an explosion in the number of indicators available to assess governance. This growth has been driven by demand from different types of users including governments, development agencies, investors, human rights organisations and academic researchers. It is important to recognise that different indicators are designed with different objectives in mind. Their usefulness is restricted to the purpose for which they were designed, and they are often abused when applied incorrectly.

Most of the existing governance indicators are used to make cross-country, international comparisons of certain aspects of governance. More country-specific indicators are required to understand how governance processes operate in the country context and to identify policy priorities. The Joint Governance Assessment is primarily concerned with developing Rwanda-specific indicators, although information will be derived from international comparative indicators where appropriate (see box 3).

There is a wide diversity of different types of indicator. Indicators may be *perception-based* or *fact-based*. They may be based on *expert judgements*, or a representative *sample survey*. Indicators may be *qualitative* or *quantitative*. They may measure one single attribute, or combine several measures in a single index. Each of these approaches may be valid in different circumstances, but none provide a perfect measure.

There are a number of potential pitfalls in the use of governance indicators that need to be considered carefully in the design of the monitoring framework for the Joint Governance Assessment.

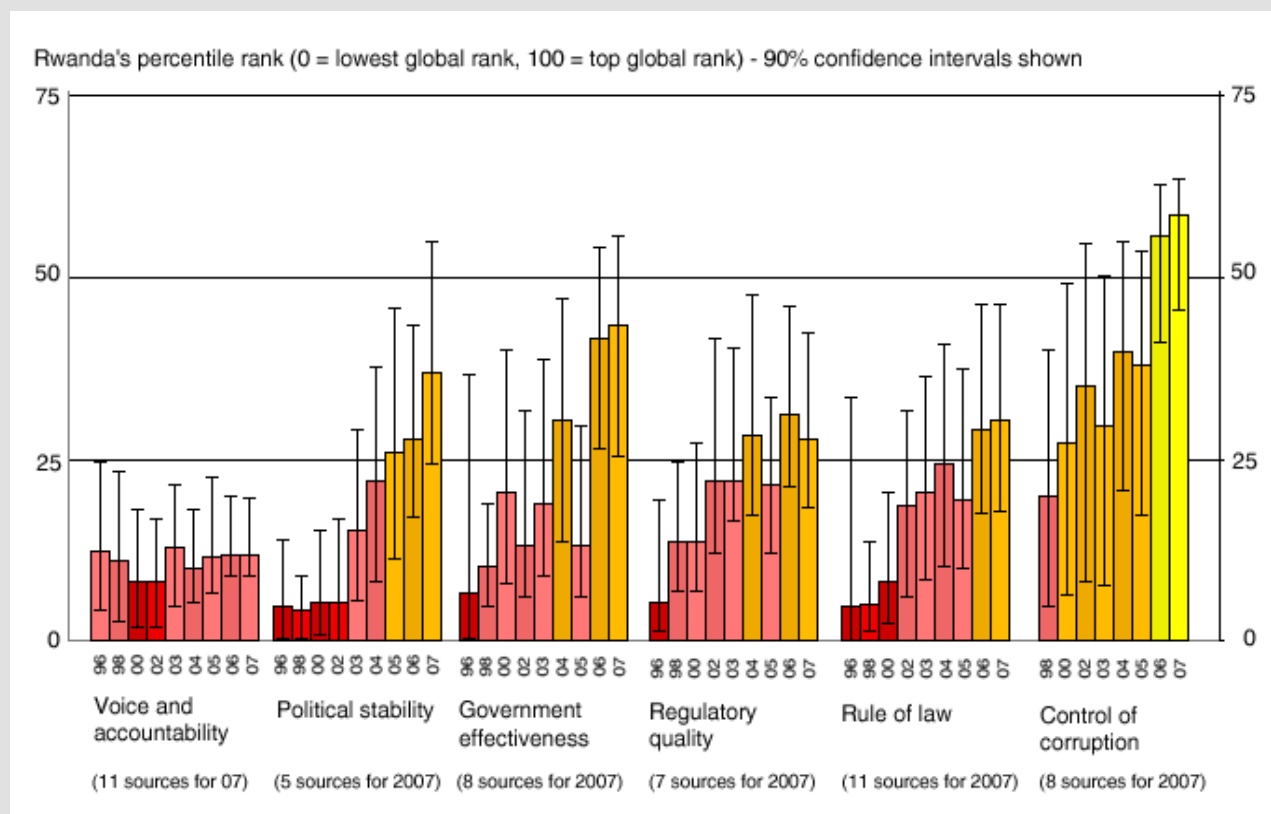
- **Lack of transparency.** A common criticism of governance indicators is that the assumptions, methodology and data sources behind them are often hidden or only partially explained.
- **Lack of comparability over time.** It is often impossible to use an indicator to make comparisons between different time periods because criteria, methods and sampling methods may change from one survey to the next.
- **Measurement error.** Indicators are often subject to large measurement errors and sampling bias, and should therefore not be treated as exact values, but as a range of possible values established using confidence intervals. A false degree of precision is often claimed in the use of governance indicators.
- **Selection bias.** There is a tendency in the selection of indicators to focus on attributes that are easiest to measure. These may not capture the most meaningful processes.
- **Perverse behaviour.** Rigid use of indicators can create incentives for policy makers to focus solely on a narrowly defined set of targets rather than broader aspects of performance.
- **Transactions and opportunity costs.** Indicators are costly to collect and divert resources and management time from other tasks.

For further discussion of these issues see: Arndt, C. and Oman, C. (2006) *The Uses and Abuses of Governance Indicators*, OECD Development Centre Studies

Box 3 – World Governance Indicators for Rwanda

The World Governance Indicators compiled in the World Bank's Annual Governance Matters report (Kaufmann, Kraay and Mastruzzi) are probably the most widely used and comprehensive international comparative measures of governance. They are based on a composite of 31 sources from 25 separate organisations, which are grouped into six categories. Rwanda's scores shown as a percentile rank of all surveyed countries are presented below. Most of the indicators show a marked improvement over the period 1996-2007. However, care needs to be taken in making comparisons because, as shown by the error bars, the confidence intervals are wide. A difference should only be seen as statistically significant where there is no overlap in the error bars.

The Joint Governance Assessment does not analyse these comparative indices in detail because its primary concern is to add value to internationally available data by providing locally generated evidence. However, the trends illustrated by international indicators are broadly consistent with the findings of this report.



Source: World Bank World Governance Indicators www.govindicators.org

2. Governance Challenges in Rwanda

The purpose of this chapter is to provide an assessment of the key governance challenges facing Rwanda, taking account of its specific context. It seeks to identify the underlying issues involved in strengthening key attributes of governance, in order to highlight some priorities for the future. The assessment is informed by an understanding of Rwanda's history, and the social, political and economic processes that set the context for governance. It also reflects general principles drawn from international norms and best practice, and a forward-looking view of Rwanda's aspirations as set out in the 2003 Constitution and policy statements, such as the EDPRS and Vision 2020.

On this basis, five broad challenges for governance in Rwanda are discussed below. These are necessarily selective. They reflect the difficult problems facing Rwanda, and the need to consolidate the huge progress made in recent years, while building for the future. Everything cannot be achieved at once, and there are priorities and trade-offs to be made. For example, the goal of prioritising security and national reconciliation has implications for other aspects of governance, and is reflected in the current preference for consensual rather than adversarial politics, and strict laws prohibiting hate speech, incitement and sectarianism. How best to balance these priorities and manage trade-offs in the short to medium term will be a key ongoing issue. A more detailed and comprehensive assessment of the main priority areas is provided in the following three chapters.

2.1 Consolidating peace and security

Since the 1994 genocide and the instability that followed it, Rwanda has made great progress in restoring peace and security. The vast majority of refugees who left the country in 1994 have since returned. Rwanda now stands out as one of the peaceful and stable countries in the region, a reputation that has recently been enhanced by the sending of 3,000 Rwandan peacekeepers to Sudan. The gains have been significant, but there remain significant security considerations, both external and internal, which require continued vigilance. Ex-FAR *Interahamwe* and FDLR groups behind the 1994 Tutsi genocide still operating in the eastern Democratic Republic of Congo. Killings of genocide survivors and witnesses, and continued activities of apologists for or proponents of the 1994 genocide constitute an ongoing security concern.

In this context consolidating peace and security remains an important challenge. The response requires a combination of measures: adequate resourcing of the security services combined with effective democratic oversight, adequate and well-defined laws against incitement to hatred and violence, effective mechanisms to resolve conflicts in society, and a broad set of programmes to encourage the rule of law, justice, reconciliation and unity. As discussed in the following chapter on 'ruling justly', Rwanda is making measurable progress in all of these areas, but further actions are required to consolidate the gains that have been made.

2.2 Promoting inclusive governance

Inclusive governance – and in particular ensuring that government employment, institutions and services and other opportunities are open to all groups without discrimination - is key to national reconciliation and building long-term peace and stability. The government of Rwanda has emphasised the importance of such inclusiveness, as an essential condition to overcome the legacy of ethnic-based discrimination and genocide, and the deep divisions and distrust this created within Rwandan society.

Inclusiveness can contribute over time to ensuring that broad sections of society see government as legitimate and responsive to their concerns, and give them confidence that public institutions offer an effective framework for resolving conflicts and negotiating competing interests. Such an approach needs to take account of diversity, and recognise that recent history has affected individuals in different ways, whether as survivors, perpetrators, refugees or returnees. Population movements occurring as a result of Rwanda's recent history mean that many Rwandans have been exposed to different political, economic, social, cultural and linguistic systems. In a positive sense this diversity offers opportunities, and a rich set of experiences and traditions upon which to draw. However, managing diversity in an inclusive manner also poses governance challenges. It requires clear and agreed upon rules and parameters that provide the space for debate, discussion and differences of opinion. At the same time some restrictions on freedom of expression are required to prevent ethnic discrimination and sectarianism, but these controls need to be carefully crafted and applied within the framework of the rule of law so as to guarantee political pluralism.

Rwanda has made significant progress in promoting inclusive governance. Fundamental to this change has been the approach chosen by Rwanda to reject any form of ethnic labelling, discrimination and representation in politics and government. The 2003 Constitution, agreed by referendum, outlaws all forms of discrimination, including ethnic discrimination (Article 11), and aspires towards the “eradication of ethnic, regional and other divisions, and promotion of national unity” (Article 9). There are encouraging signs that Rwanda has made progress in achieving these goals. While some observers and critics of the regime continue to perceive ethnic imbalance within government, the present government has taken positive steps, most importantly by demonstrating commitment to non-discrimination and meritocratic recruitment (albeit with special measures to provide opportunities for disadvantaged groups).

Promoting inclusiveness should remain a high priority, based on sustained measures to institutionalise non-discrimination and meritocracy, in particular by ensuring greater transparency and scrutiny in government recruitment, procurement and other aspects of policy. In addition to this, positive measures are needed to increase representation of socio-economically disadvantaged and marginalised groups, including proactive efforts to overcome the barriers to education faced by the poor (see section 4.4). The Constitution includes several creditable measures in this regard, for example the requirement that at least 30% of positions in decision making bodies should be occupied by women. Government policy also supports the principle of supporting poorer sections of society, for example the Vision 2020 *Umurenge* Programme, which aims to target assistance at the poorest sections of the population. The far-reaching decentralisation programme that is underway offers great potential to bring government closer to the grassroots, and to engage groups who may previously have been excluded from engagement in political affairs. These are all encouraging

developments that will need to be pursued vigorously with an aim to promote more inclusive, responsive and accessible government.

2.3 Strengthening the rule of law

In Rwanda, as in other countries recovering from conflict, social capital and trust have been deeply damaged. In this context, the fair and equitable application of the rule of law is essential to overcome distrust and division, to deliver timely justice for all perpetrators and victims of genocide and other crimes, and thereby to restore confidence in the future. Meeting this challenge requires the strengthening of law enforcement agencies and the judiciary, adherence to principles of independence and impartiality, as well as considerable investment in investigative, judicial and law enforcement capacity.

Considering Rwanda's recent history, the progress that has been made in strengthening the rule of law has been impressive, and is documented in the following chapter on 'ruling justly'. Rwanda has revised and modernised its framework of laws, has undertaken far-reaching reforms aimed at bolstering the effectiveness and independence of the judiciary, has strengthened the police, and nearly completed a process of community-based trials for certain categories of genocide crime (*gacaca*). Recent data from the World Values Survey suggests that the police and judiciary have earned a high level of public respect and confidence. However, significant issues remain, most of which concern capacity gaps and the daunting case backlog. The principal challenges relate to the speed of delivering justice, and the ability to enforce fully the law and put judgements into effect. Rwanda's institutions generally operate according to rules, but there will always be a need to look for ways to strengthen rules-based governance, reduce potential for individual discretion and abuse of power, and thereby enhance the resilience of institutions charged with upholding the rule of law.

2.4 Enhancing accountability

Accountability is essential to ensure that government works in the interest of citizens. There are several types of accountability that are discussed in this report. **Horizontal accountability** refers to the checks and balances existing between different governmental bodies (for example between the legislature and executive) aimed at ensuring adequate scrutiny and preventing abuse of power. **Vertical accountability** operates in an upwards and downwards direction between different levels of government and between government and citizens. The government of Rwanda and its development partners have also committed themselves to the principle of **mutual accountability** whereby government is responsible to donors for the proper use of aid funds, and donors are committed to support country-owned development strategies.

All of these forms of accountability exist in Rwanda and are discussed throughout this report. Over the past few years they have been strengthened in important ways, notably through the 2003 Constitution that upholds the principle of multiparty democracy (vertical accountability) and mandates numerous bodies charged with monitoring government performance (horizontal accountability). In addition, decentralisation reforms have introduced several mechanisms to enhance accountability towards citizens, for example local elections, the Joint Action and Development Forum, Citizen Report Cards and Community Scorecards and other participatory processes. A novel and home-grown system based on results oriented management and on the Rwandan cultural institution of *Imihigo* has been introduced across government, making each

agency responsible for the delivery of agreed targets. This progress in strengthening accountability is impressive given that prior to the genocide the political culture in Rwanda was notable for the absence of accountability and citizen participation.

In reviewing these institutions of accountability, the purpose of this report is to consider how well they work in practice, and to assess where there may be room for improvement. The report finds many good examples of horizontal accountability working well, but also points to areas that need to be strengthened, for example the oversight capacity of parliamentary committees. Upwards accountability is found to be strong, a factor that has contributed to building an administration, which in spite of capacity gaps, is notable for its general competence, discipline, direction and ability to meet targets.

A major challenge will be to strengthen forms of state-society interaction that generate accountability from government towards citizens. In order to achieve this, it is particularly important to find ways to strengthen mechanisms for aggregating and channelling interests from the grassroots. In this regard there are some promising processes underway in Rwanda, for example citizen participation in local planning and budgeting, such the District Development Plan process. Tax reforms also have potential to strengthen constructive state – citizen engagement around revenue raising and public expenditure management issues. As mechanisms of vertical accountability, this report also emphasises to the importance of strengthening the role of civil society, private sector organisations and the media in scrutinising government performance, providing policy feedback and recommendations, and advocating change.

Democratic processes are also essential to generating vertical accountability between voters and their elected representatives. The democratisation process has progressed considerably over the past decade, and while many Rwandans express an understandable preference for a consensus mode of politics as a means to promote unity and overcome division, it is likely that with time greater political competition between and within political parties will emerge. The priority for the present discussion should be to consider whether the rules governing the political process provide an appropriate framework for this to evolve.

2.5 Making the links between governance and broader development goals

In undertaking the Joint Governance Assessment it is important to keep sight of the ultimate aim of good governance, which as stated in the EDPRS is an essential anchor for pro-poor growth, as well as being a goal in its own right.³ Improving governance needs to be seen as part of Rwanda's broader strategy to promote shared growth and development. These goals are to a large extent complementary. Good governance is likely to promote equitable patterns of growth, and also itself depends on processes of economic and social development. Some of the greatest constraints to governance in Rwanda are structural, and relate to poverty, low levels of education, insecure livelihoods and shortcomings in infrastructure. All of these factors will need to be addressed not only to raise incomes, but also to generate trust, build unity, consolidate peace and create a longer-term basis for civic participation in the context of a transparent, democratic process. While these broader development concerns are beyond the terms of reference of this report, it is important not to lose sight of these wider linkages. Development partners in particular need to consider how all their

³ Rwanda Economic development and Poverty reduction strategy, 2008-2012, page 47 paragraph 4.4

interventions – including aid modalities and programme and project design – can support or hinder the search for better governance.

3. Ruling Justly

This chapter of the Joint Governance Assessment addresses the following issues:

- ① establishing and maintaining security,
- ② national reconciliation and transitional justice,
- ③ rule of law,
- ④ human rights and civil liberties,
- ⑤ political rights, and
- ⑥ voice and accountability.

3.1 Establishing and maintaining security

Principles and priorities. Good governance and economic development depend on the support of capable security organs that can protect the population from violence from internal and external forces and enforce compliance with national laws. At the same time it is essential to ensure that the security sector is well governed, that it respects the rule of law and human rights, that it does not pose a threat to democratic governance, and that there are effective mechanisms for civilian oversight in place.

Assessment. Security has improved dramatically over the period 1998-2007, and there have been significant improvements in the governance of the security services. In 1998 insecurity still affected large parts of the country, in particular the northwest which suffered from frequent FDLR/Interahamwe cross-border incursions from DRC. To counter this threat Rwandan forces entered DRC in August 1998, where they remained for four years. Since 2001 the security situation in Rwanda has improved markedly. FDLR and other militia fighters began to return from DRC and were placed through a demobilisation and reintegration programme that has to date handled just over 6,000 returnees.⁴ An estimated 7,000 militia fighters originating from Rwanda remain in eastern DRC.⁵

Over the past decade the Rwandan Defence Force (RDF) has undergone substantial restructuring including large-scale demobilisation and skills upgrading for the remaining soldiers. More than 40,000 RDF soldiers have been demobilised, leaving around 20,000 men under arms.⁶ A key indicator of this trend has been the reduction in military spending from an estimated 4.3% of GDP in

⁴ Figure supplied by the Rwanda Demobilisation and Reintegration Programme. A total of 6,059 members of other armed groups operating outside Rwanda were demobilised between 2001 and December 2007. In addition, to this 21,706 ex-FAR (former government soldiers) passed through the national demobilisation process between April 2002 and December 2007. Former rebels returning to Rwanda receive civic education, literacy classes and professional training, as well as a reintegration package. The Rwanda Demobilisation and Reintegration Programme

⁵ Multi Country Demobilisation and Reintegration Program, Factsheet February 2008, http://www.mdrp.org/PDFs/MDRP_RWA_FS_0208.pdf

⁶ Information from the Ministry of Defence, 12 September 2008.

1998 to 1.6% of GDP in 2007.⁷ The significant reduction in the RDF payroll has allowed the army to invest in training and equipment. The RDF is widely acknowledged to be one of Africa's better trained and most effective armed forces. It has developed peace-keeping capacities, and currently has 3,000 soldiers serving in Sudan.

In addition to the Rwandan Defence Forces, the other security organs in Rwanda are the Rwanda National Police (RNP), the National Security Service responsible for internal and external intelligence, as well as immigration and emigration issues. Rwandan communities at village and cell level ensure their security through the Local Defence and Community Policing committee.

The Rwanda National Police was created in 2000 through the amalgamation of previous organs in charge of internal security such as the Gendarmerie, the *police communale* and various police departments within the Ministry of Justice and the Ministry of Interior. At present the police employ 6,000 staff, of whom around 2,000 had worked for previous organs and around 4,000 are new recruits. Women account for only about 11% of the police force. There are plans to expand the police force further, and a new approach for community policing has been rolled out. Recent survey evidence suggests that the police have earned a high level of public trust. Of the 1,507 respondents polled by the World Values Survey in Rwanda, 85.6% expressed 'a great deal' or 'quite a lot' of confidence in the police, the highest rate for any public body included in the questionnaire.⁸ There remain important issues to be addressed with the Rwandan National Police, including a need to professionalise further the force, sustain the integrity and ethical bearing of its officers, and improve internal investigations and reporting capabilities.

The Local Defence (LD hitherto known as the Local Defence) was set up as a community protection mechanism soon after the genocide. In the past human rights organisations have expressed concerns about the conduct and weak oversight of Local Defence. However, controls have since been tightened with the enactment of Law Number 25 of 2004 that placed Local Defence under the control of District Police Commander and District Mayors.⁹ The law requires that members of the Local Defence should only carry guns under appropriate circumstances, and that their firearms are under the control of the police. Local Defence currently number around 90,000.¹⁰ Because they are main security presence on the ground, careful oversight and management of local defence will remain a priority.

The considerable improvement in security conditions is evident in several indicators.¹¹ The recently published 2008 World Peace Index based on 24 indicators finds Rwanda to be the second most

⁷ 1998 figure from World Bank Technical Annex for a Proposed credit of SDR 20mn to the Republic of Rwanda for an Emergency Demobilisation and Reintegration Programme, Report Number T7498-RW. Figure for 2007 from IMF Operations of Central Government of Rwanda 2005-2009 supplied by MINECOFIN. The present ratio of military spending to GDP is close to the EAC average.

⁸ World Values Survey, Rwanda, forthcoming

⁹ Law n° 25/2004 of 19/11/2004 Establishing and Determining the Organisation and Functioning of the Local Service in Charge of Assisting in Maintenance of Security Referred to as Local Defence

¹⁰ In 2007 a baseline survey on security conditions was conducted as part of the monitoring framework for the EDPRS. However, this was restricted to 569 respondents in the city of Kigali. The survey found an average satisfaction level in personal security of 87% (84% for property security).

peaceful country in the East African Community after Tanzania.¹² Figures provided by Rwanda National Police indicate a homicide rate of 6.1 per 100,000, representing a decline from 7.2 in 2002. While cross-country data is limited, these appear to be relatively low figures compared to many other African countries.¹³

A remaining priority for the governance of the security sector is to strengthen mechanisms for democratic oversight. There are two parliamentary committees responsible for security issues, the Committee on Security and Territorial Integrity in the Chamber of Deputies and the Senate Committee on Foreign Affairs Cooperation and Security. Both committees undertake studies, consultations and policy recommendations, and have played a role in the formulation of the comprehensive national security policy (2008-2012). However, they are constrained by limited resources and capacity. The Committee on Security and Territorial Integrity includes seven Deputies, but has no support staff, and limited means to visit the field and cover the breadth of its mandate. So far this Committee has focussed mainly on the armed forces, and conditions for service personnel, and is only beginning to work with the police and local defence.¹⁴ There is also a National Security Committee chaired by the President.

Monitoring Framework. It is proposed that the main indicator on security conditions should be the homicide rate per 100,000 people. This is an objective measure, which can readily be collected from police sources, and serves as a valid international comparison. In addition to this fact-based measure, a few perceptions-based indicators should also be gathered as part of a perceptions questionnaire conducted every three years by an independent body for the Joint Governance Assessment. This would be based on the research questions piloted by the World Values Survey and the 2007 EDPRS security baseline survey.

¹² See Global Peace Index (2008) Institute for Economics and Peace

<http://www.visionofhumanity.org/images/content/Documents/2008%20GPI%20EIU%20Report.pdf>. The 2008 WPI report includes Rwanda for the first time. The Mo Ibrahim Safety and Security Index (based on 2005 data) places Rwanda in the same ranking.

¹³ Published homicide rates for comparable African countries include Uganda (2004): 7.4 per 100,000; Zimbabwe (2004): 8.44 per 100,000; Zambia (2000) 7.89 per 100,000 - United Nations Survey of Crime Trends and Operations of Criminal Justice Systems http://www.unodc.org/pdf/research/9th_survey/CTS9ByIndicatorExtract.pdf

¹⁴ Interview with the President of the Committee on Security and Territorial Integrity.

| Monitoring Framework 3.1 – Establishing and Maintaining Security | | | | | |
|---|---|-------------------|------------------------|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 1. % of respondents expressing confidence in the performance and conduct of security organs (a score of 3 or 4 on a scale of 4) | Ask separate questions for (1) Rwanda Defence Forces, (2) Rwanda National Police and (3) Local Defence Forces. Disaggregate by gender, district, if feasible. | Every three years | Perceptions survey | Survey to be commissioned from independent source. | 2007 estimate for Police – 85.6% (World Values Survey, forthcoming) |
| 2. % of respondents expressing a high level of satisfaction in their personal security (a score of 3 or 4 on a scale of 4) | Ask separate question for (1) personal and (2) property security. Disaggregate by gender, district if feasible | Every three years | Perceptions survey | Survey to be commissioned from independent source. | 2007 estimate for Kigali – 87% personal security, 84% property security (EDPRS security baseline) |
| 3. Number of homicides per 100,000 | Disaggregate by gender, district, categories of crime. | Annual | Rwanda National Police | Available | RNP figures (homicides per 100,000 includes: 'ubwicanyi', 'ubuhotozi' and 'kwihekura'): 2002: 7.2 2003: 8.0 2004: 6.6 2005: 5.9 2006: 7.2 2007: 6.1 |

3.2 National reconciliation and transitional justice

Principles and priorities. The 1994 genocide, killed upwards of a million Rwandan Tutsis and moderate Hutu within 100 days. As the RPF liberated the country the genocidal government and militia marched up to two million people out of Rwanda into refugee camps in neighbouring countries. Rwanda has faced an unparalleled challenge in rebuilding a devastated and divided society. International experience is of limited usefulness in guiding this task. Hence the approach that Rwanda has followed has for the most part been home-grown and based on traditional institutions. The priorities have been reconciliation, transitional justice, assisting survivors, reintegrating returnees and rebuilding unity and trust.

Assessment. A great deal of progress has been made in bringing about national reconciliation. A prime indicator of success has been the return of refugees, the majority of whom had returned to Rwanda by the early 2000s. While there have been inevitable land dispute and resettlement issues,

these difficulties have generally been managed smoothly. According to the Rwanda Repatriation Commission, between 1994 and 2002, 3,261,218 refugees returned: from Burundi (16.4%), Tanzania (26.9%), Uganda (10.2%), DRC (46.2%) and various other countries. Some Rwandan refugees remain in eastern DRC.¹⁵

The most immediate challenge in bringing about national reconciliation following the genocide was to embark on a process of transitional justice capable of addressing the demands of survivors and processing the enormous number of genocide suspects. Individuals charged with masterminding the genocide, who were captured abroad, have been transferred to the International Criminal Tribunal (ICTR) in Arusha, which has so far completed 33 cases. The mandate of the ICTR will expire in 2008, and Rwanda has made requests to transfer several of the remaining 16 suspects to face trial in Rwanda. Rwanda has met several conditions for such transfers, including the abolition of the death penalty in 2007, the passing of a law on the transfer of ICTR prisoners, the upgrading of prison facilities and permission for ICTR visits.

Rwanda has faced an enormous caseload of suspects accused of genocide crimes, who remained in Rwanda in 1994 or have since returned. These were classified into three groups, which in 2006 totalled 818,564 accused:

- Category One (77,269 accused) concerns the planners, organisers, instigators, supervisors of the genocide and those who committed acts of rape and torture,
- Category Two (432,557 accused) concerns the persons accused of having killed or injured with an intention to kill,
- Category Three (308,738 accused) concerns the persons who committed crimes against property.

It is impossible for the normal courts to deal with such numbers.¹⁶ In the face of this reality Rwanda has established a system of transitional justice known as *gacaca*, which is based on traditional community-based mechanisms for conflict resolution. The principles of *gacaca* emphasise community participation and reconciliation, and encourage confessions in exchange for reduced sentences. For lesser categories of genocide crime community service sentences (*travail d'intérêt général* or TIG) are generally used instead of custodial sentences. The *gacaca* process began in 2002 in a pilot phase, and was then scaled up following the enactment of Organic Law n° 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of *gacaca* courts. The *gacaca* process has focussed exclusively on the second and third categories of genocide suspects, most of which were tried between mid 2006 and the end of 2007 (see table 2). The process had been due to finish in early 2008, but has been extended because of the need to hear appeals and to try new cases identified through earlier *gacaca* hearings. A new law that allows the transfer of certain sub-groups of Category One genocide suspects, who operated at the level of former *sous-prefectures*, to be transferred to *gacaca* jurisdiction has been promulgated.

¹⁵ UNHCR reports that 34,000 Rwandan refugees remain in Eastern DRC (see Briefing Note UNHCR Rwanda updated 8 January 2008). It is unclear whether or not this figure includes combatants,

¹⁶ According to the National Service of Gacaca Courts over a five year period the ordinary courts only tried 6,000 cases from around 120,000 detainees (mainly category one and two). At this rate it would take more than a century to try the detained suspects.

Table 2 – Completed gacaca trials

| Level | Number of trials | Pronounced judgements | Remaining cases |
|---|------------------|-----------------------|-----------------|
| Gacaca trials conducted from 10/03/2005 to 14/07/2006 | | | |
| All | 7,015 | 6,502 | Not available |
| Gacaca trials conducted from 15/07/2006 to 31/12/2007 | | | |
| Cell level (cat. 3 only) | 612,151 | 557,607 | 54,544 (9%) |
| Sector level | 444,455 | 434,827 | 9,628 (2.1%) |
| Appeal level | 71,100 | 66,864 | 4,236 (5.9%) |
| TOTAL | 1,127,706 | 1,059,298 | 68,408 (6%) |

Source: National Service of Genocide Courts (2008), *The Gacaca Courts Process: Implementation and Achievements*, Pamphlet published February 2008

The *gacaca* system is widely perceived as a step towards national reconciliation and appears to command popular legitimacy despite recognition of its shortcomings.¹⁷ In view of the overwhelming caseload, there was probably no viable alternative, and Rwanda deserves much credit for addressing a daunting challenge in an impressive, ordered and consensual manner.

In spite of the undoubted achievements of *gacaca*, it is important to recognise that the process has not been satisfactory to all parties, and genocide survivors in particular often view the *gacaca* process, verdicts and sentences as being inadequate. The system does not meet optimal legal standards: *gacaca* judges (*inyangamugayo*) have no formal legal training, suspects are provided with no legal defence, there are cases where survivors, witnesses and judges have been threatened or killed, and in some instances judges have been found to be corrupt or themselves implicated in genocide crimes.¹⁸ The difficult issue of the treatment of remaining category one genocide suspects will need careful consideration.¹⁹ Transfer to *gacaca* jurisdiction poses obvious risks relating in particular to the lack of experience of *gacaca* judges in hearing more complex and serious cases, arrangements for victim protection and the necessary safeguards required for rape cases to be tried in public.

Another important instrument in creating and promoting unity and reconciliation has been the establishment of the National Unity and Reconciliation Commission (NURC) in 1999. The Commission has a constitutional mandate to promote, coordinate, and monitor, all national and regional projects aiming to promote unity and reconciliation. Instruments used by the Commission include *Ingando* (residential solidarity camps/ retreats for ex-combatants, provisionally released

¹⁷ A recent NURC/IRC survey of public perceptions of *gacaca* found that 95% of survivors and 80% of detainees viewed that the *gacaca* system as being more efficient than ordinary courts. 81% of victims and 48% of defendants had confidence in the integrity of judges. The greatest problem identified by the survey was the high level of fear and insecurity experienced by judges (67%), victims (93%) and defendants (61%). *Social Cohesion in Rwanda: An Opinion Survey (2005-2007)*, National Unity and Reconciliation Commission (NURC).

¹⁸ Figures provided by Rwanda National Police indicate the killings of genocide survivors, witnesses and judges peaked in 2006 and have since declined. Reported figures are as follows: 2003 (1 case), 2004 (4 cases), 2005 (8 cases), 2006 (14 cases), 2007 (10 cases), 2008 (6 cases). Ibuka reports 16 killings of genocide survivors and witnesses for 2007.

¹⁹ It is difficult to obtain precise numbers on the remaining category one genocide cases and the effect of the proposed reclassification. Statistics from the Prisons Service indicate that there were 4,309 genocide suspects in pre-trial detention in April 2008. The ILAC report on Rwanda suggested that there were around 17,000 category one genocide suspects in September 2007, but this number will have fallen due to the ongoing release programme.

prisoners and other groups, such youth, students and teachers), incorporation of a civic education programme in the primary and secondary school curriculum, annual summits on reconciliation, training of community-based mediators (*Abunzi*) and reconciliation volunteers (*Abakangurambaga*), formation of reconciliation clubs, and funding of community initiatives. Faced with this challenging workload the NURC has limited resources, and has experienced downsizing from an original staff of about 100 to close to 35 at present.

Other initiatives also deserve emphasis for their positive impact on national unity and reconciliation. These include: participatory planning at local level, democratisation, transparency and accountability programmes, constitutional provisions on non-discrimination, the removal of ethnic labelling on identity cards, integration of armed forces within the RDF, progress on many land dispute and resettlement issues and the annual national mourning week for victims of the 1994 genocide. Trials of individual members of the RDF alleged to have been involved in the killings of some catholic clergy in Kabgayi in 1994 are ongoing. This is another example of the kind of investigations that address allegations of criminal violence on the part of the liberation forces. Such investigations should continue if any other cases come to light.

All of these activities point to a vigorous and home-grown programme to promote reconciliation. Very few studies of their impact have been undertaken, but most observers recognise that the process of reconciliation in Rwanda needs to go further. Although, much has been achieved, there is still an enormous challenge restoring trust within society. Preliminary results from the World Values Survey conducted in Rwanda in 2007 found lower levels of trust in Rwandan society than in 14 other countries included in the survey.²⁰ Even more seriously, apologists for and proponents of genocide continue to exist and a recent parliamentary probe found evidence that they were present and active in many secondary schools. These indicators point to the enormity of the challenge and the need for continued vigour in pursuing policies and programmes aimed at strengthening inclusiveness.

Monitoring Framework. Recommended indicators are shown in the matrix below. The first indicator covers completed and remaining genocide trials through the *gacaca* and traditional court systems. Although the *gacaca* process was intended to be completed this year, there is a need for continue monitoring because of the large number of remaining cases and appeals, as well as the possible transfer of some category one suspects to *gacaca* jurisdiction. The performance of the courts in trying the most serious genocide cases also requires scrutiny. The second recommended indicator is the number of killings of genocide survivors, witnesses and judges. In addition to these fact-based measures it is recommended to undertake perceptions based surveys on transitional justice and national reconciliation, in particular aspects of social trust. Such indicators would draw on the format of questions piloted in the NURC/IRC survey and the World Values Survey.

²⁰ 95% of respondents in Rwanda disagreed with the statement “most people can be trusted”, World Values Survey Rwanda, forthcoming. Countries included in the study include: Rwanda, Netherlands, France, Russia, Zambia, Ethiopia, Japan, Mali, Ghana, United States, Mexico, Great Britain, Burkina Faso, Zimbabwe, Indonesia.

| Monitoring Framework 3.2 – National reconciliation and transitional justice | | | | | |
|--|---|-------------------|--|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 4. Completed and remaining genocide trials through the gacaca and traditional court system | Disaggregate by category 1, 2 and 3 and by sub-categories | Annual | National Service of Gacaca Courts, Public Prosecutor | Available for gacaca trials. Uncertainty on number of remaining category one cases | End 2007 – 1) Number of completed gacaca cases 1,065,800 2) Remaining gacaca cases 68,408 |
| 5. Killings of genocide survivors, witnesses and judges | Disaggregate by circumstance of case, location, gender | Annual | Rwanda National Police Ibuka | Available | RNP records of killings of genocide survivors, witnesses and judges: 2003 (1 case), 2004 (4 cases), 2005 (8 cases), 2006 (14 cases), 2007 (10 cases), 2008 first half (6 cases) Ibuka reported 16 homicides for 2007 |
| 6. Measures of trust and reconciliation | Undertake perceptions surveys of trust in neighbours, community institutions and selected public bodies | Every three years | Perceptions survey | To be commissioned | Baseline studies & methodological ideas available from World Values Survey, NURC/IRC |

3.3 The rule of law

Principles and priorities. Restoration of the rule of law has been a key factor in promoting reconciliation and recovery in Rwanda. Where trust has been severely eroded in society, rebuilding confidence and resolving conflict requires the fair and equitable enforcement of rules by an impartial third party. The appropriate principles for the rule of law are relatively straightforward and universal. Crucially, law enforcement agencies and the judiciary require a high degree of independence and integrity to ensure impartiality and non-interference in cases. Access to justice is another vital objective, but is challenging in the context of low-income countries lacking infrastructure and well-developed legal aid systems. Effectiveness and efficiency are also key to deliver justice within a reasonable time span. This requires sufficient human and financial resources to create the necessary capacity in law enforcement, investigative and judicial processes.

Assessment. Rwanda had no real experience of a professional and independent judiciary prior to 1994. Furthermore, what did exist was virtually destroyed during the genocide when many judges and lawyers were murdered and others fled the country. Legal capacity had to be totally rebuilt at

the same time as the country has had to deal with massive numbers of genocide suspects awaiting trial.

In 2000-1 Rwanda began a programme of major judicial reform aiming to strengthen the independence of the judiciary, to improve the professionalism of the system, to reduce the case backlog and to ensure that judges and lawyers are appropriately qualified. The most important measures included the introduction of single-judge trials at lower levels (all trials had previously required three judges), minimum qualifications for judges, strict rules on *habeas corpus* (a 30 day limit on detention before charge), legal limitations on time period for delivering judgements (6 months after judges receive files), ending of the role of the Ministry of Justice in budgetary and recruitment decisions, creation of independent budgets for the Office of the Public Prosecutor and Supreme Court, and the creation of an independent Inspectorate General. At the same time as these reforms have taken place Rwanda has modernised its framework of laws, including a major revision to the Penal Code in 2004. Rwanda has progressively developed human resource capacity in the legal sector. The Rwandan Bar Association, which was established in 1997, now has 273 members, 54 of whom are women.²¹

The reforms in the legal sector have strengthened the formal independence of the judiciary and improved its quality. While there have been allegations of interference in particular cases in the past, these are now much less frequent. The judiciary appears to be held in high public regard. The forthcoming World Values Survey conducted in Rwanda in 2007 found that 78.6% of respondents expressed 'a great deal' or 'quite a lot' of confidence in the courts.

The principal challenge facing the justice sector is to reduce the enormous case backlog arising originally from the overhang of genocide cases. In this regard the impact of the reforms has been less clear. At the end of 2007 the case backlog (defined as cases waiting more than six months for a judgement) stood at 54,409 against an annual number of cases judged of 31,126.²² It is noticeable that genocide trials have slowed down since the reform, and in 2007 there were only 62 trials of genocide suspects (against a backlog of 1,097).²³ This is partly due to transfers to *gacaca* jurisdiction, but may also be an unintended consequence of the reforms, which require judges to meet monthly targets, creating an incentive to take on shorter and simpler trials.²⁴ The massive backlog across all categories of cases threatens the right of people to a fair and timely trial, and has a serious knock on effect on the prison population, national reconciliation and family life. However, the Government of Rwanda is committed to tackling the problem, which relates mainly to resource and capacity constraints rather than a lack of political will. A case backlog reduction programme is under preparation including the recruitment of additional judges.

Access to legal representation is another major challenge facing the justice sector in Rwanda. There are relatively few defence lawyers compared to the very high numbers of pending criminal cases. In addition, legal aid is generally not available, and pro-bono services are limited. In remoter rural areas, access to urban (and mainly Kigali-based) lawyers is also more difficult.

²¹ ILAC (2007) *Justice in Rwanda: An Assessment*, International Legal Assistance Consortium, November 2007.

²² Raporo y'urwego rw'ubucamanza, 2007 Annual Report of the Supreme Court, page 30 available at www.supremecourt.gov.rw (in Kinyarwanda). Reliable figures for previous years are difficult to obtain. The US State Department reports that there were around 40,000 pending cases in 2004 (Country Reports on Human Rights Practices 2004, Released by the Bureau of Democracy, Human Rights, and Labor, February 28, 2005)

²³ Raporo y'urwego rw'ubucamanza *op cit*.

²⁴ ILAC (2007) *op cit*.

Some further aspects of the justice system in Rwanda that need strengthening were noted by informants interviewed for this study. In some cases the enforcement of judgements may be inadequate, and this was reported to be particularly problematic in relation to the payment of financial compensation in civil cases. Strengthening commercial law institutions also stands out as a priority, and several initiatives are underway as discussed in chapter 5. Finally it is clear that civil society capacity for case monitoring is limited in Rwanda, and that there are opportunities to strengthen this role.

The judicial system requires more human and financial resources if it is to meet its obligations. This includes increasing the number and improving the quality of judges, lawyers, registrars, legal drafters, and support staff. A recent report by the International Legal Assistance Consortium (ILAC) makes a series of recommendations to strengthen the judicial system covering: basic legal education; practical and continuing legal education; support to the Bar Association, language and research training, further judicial training; adversarial and media training; legal aid, establishing a documentation centre; and access to digital and electronic equipment.

The sheer volume of new laws creates additional challenges. First, there is a need to strengthen capacity in legal drafting to ensure tightness of wording and accurate translation. Secondly, large scale efforts are required to raise public awareness of preparation and enactment of the new laws.

Monitoring Framework. The proposed indicators cover the principal issues of case backlogs, pre-trial detentions, human capacity constraints and access to justice. In addition, a perceptions based measure has been included to gain greater understanding of public views on the strength of the rule of law and the performance and independence of the judiciary.

| Monitoring Framework 3.3 – Rule of Law | | | | | |
|---|--|------------------|--|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 7. Backlog of court cases (Defined as dossiers awaiting judgement for more than 6 months), Number of prisoners awaiting trial (criminal cases only) | Disaggregate by type of crime Compare with number of cases tried Provide separate figure for genocide prisoners in pre-trial detention | Annual | Supreme Court Annual Report RCN Justice and Democracy, Director of Prisons, MININTER and other NGOs/CSOs that collect similar data or work with these populations | Available for 2007 (probably since 2004) | End 2007 54,409 backlogged cases against 31,126 cases tried in 2007 Total prisoners awaiting trial = 16,963 of which genocide = 4,309 |

| | | | | | |
|---|---|-------------------|---|---|---|
| 8. Number of qualified legal professionals | Disaggregate by gender, level of qualification, types of professional | Annual | Supreme Court Annual Report, Bar Association | Available for judges and support staff for 2007 | End 2007 257 judges (at all four levels), of which 162 men, 95 women. Bar Association Membership 273 (Nov 07) |
| 9. Access to legal aid | Size of funds, Number of beneficiaries, Gender | Annual | Legal Aid Forum and MINIJUST | Not available | Baseline study by UNDP and Danish Centre for Human Rights |
| 10. Public perception of rule of law and performance of judiciary | Gender | Every three years | Perceptions survey commissioned from independent source | Not available | Limited information available. World Values Survey found high degree of confidence in judiciary |

3.4 Human rights and civil liberties

Principles and priorities. The international instruments and regional conventions provide the basic architecture defining and defending human rights.²⁵ Signatories are expected to adhere to these instruments, and to ensure that rights are available through their national legal systems. Passing laws, and signing international covenants and conventions, is a necessary, but not a sufficient basis to ensure the protection of basic human rights. It is also important to provide the mechanisms and institutions to ensure the effective realisation of these rights. This responsibility cuts across many state and non-state organisations - the role of the judiciary and civil society oversight bodies being particularly crucial.

Assessment. Rwanda has ratified all of the main international human rights instruments (listed in footnote 25) with the exception of the 1990 Convention on Migrant Workers. Several additional protocols to UN human rights conventions have been ratified and, certain reserves that had been placed on the conventions have recently been removed. Rwanda is not a signatory to the Rome Statute of the International Criminal Court.

On the African regional level, Rwanda has ratified the African Charter on Human and Peoples' Rights. It has also ratified its two protocols on the establishment of an African Court on Human and Peoples' Rights and of the Court of Justice of the African Union. Moreover, Rwanda has ratified African Union conventions on terrorism, women, refugees, and children.

²⁵ The seven key international treaties are: (1) the 1965 Convention on the Elimination of All Forms of Racial Discrimination, (2) the 1966 International Covenant on Civil and Political Rights, (3) the 1966 International Covenant on Economic, Social and Cultural Rights, (4) the 1979 Convention on the Elimination of All form of Discrimination Against Women, (5) the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (6) the 1989 Convention on the Rights of the Child, and (7) the 1990 Convention on The Protection Of The Rights Of All Migrant Workers And Members Of Their Families

Although Rwanda has signed most of the international and regional human rights conventions, a priority is to strengthen reporting on implementation. The Government has acknowledged the need for more complete and timely reporting, and recently established a permanent inter-institutional team to strengthen the reporting processes and to ensure the regular transmission of reports.

The human rights situation in Rwanda has been intensely monitored by national human rights bodies and by Rwandan and international NGOs who operate freely in the country. The general pattern of these reports since 1998 indicates a substantial improvement in human rights, in particular in the period since 2004.²⁶ It must be emphasised that the reference period for this study (1998-2007) covers an enormous transformation in the security and governance situation facing Rwanda, and this is reflected in the content of human rights reports. Until 2001 human rights reports focussed heavily on rebel incursions from the DRC and the response from the Rwandan security services. It is also worth emphasising that until the new Constitution was introduced in 2003 Rwanda was governed under transition arrangements that limited political rights. After 2003 reports indicate a substantial improvement in all aspects of human rights and civil liberties.

Focussing solely on reports from the last three years (2005-2007) human rights organisations have raised concerns in the following areas relating to civil and political rights:

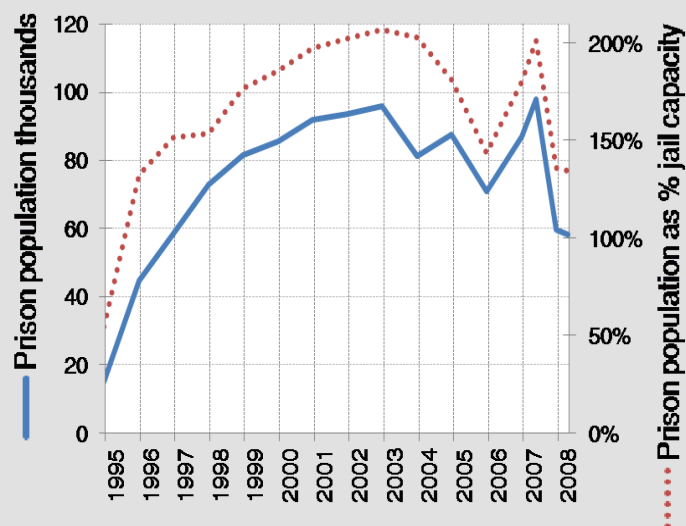
- Abuses and illegal killings perpetrated by members of the Local Defence. These incidents have become rarer since the LD were brought under police control in 2004. Action has been generally been taken against LD members who have been found to have broken the law.
- Deaths in police custody or during arrests have been highlighted by international human rights bodies and diplomats.²⁷ A police report details 10 incidents and 20 deaths from November 2006 to May 2007. The report described each incident as involving either an attempt by a criminal suspect to escape police custody or to disarm police officers and do them physical harm. At least one international human rights organisation disputes this report, but a National Human Rights Commission enquiry into the deaths drew the same conclusion. No further cases have been reported since May 2007.
- Murder of genocide survivors and *gacaca* witnesses. According to Ibuka, the genocide survivors' association, there were 16 such murders in 2007.
- Prison conditions. Prison overcrowding has eased over the past few years as a result of release programmes, but prisons are still operating well over the capacity they were designed for (see box 4).
- Detention of street children. Human rights organisations have expressed concern about conditions at rehabilitation centres and the reopened Gikondo transit centre.
- Laws against divisionism and genocide ideology have been criticised by human rights organisations, who point to the risks of abuse and imposing excessive constraints on freedom of expression. In the context of Rwanda the issue is particularly complex and requires a difficult balance discussed further in box 5.

²⁶ This assessment is based on the reading of human rights reports from several sources including : US State Department Country Reports on Human Rights Practices for the period 1998-2007, recent reports on Rwanda by Human Rights Watch, Amnesty International and Freedom House, the Rwanda National Human Rights Commission and the Ligue Rwandais pour la Promotion et la Défense des droits de l'homme (LIPRODHOR) *Rapports sur la situation des droits de la personne* 2002-2006.

²⁷ Human Rights Watch World Report 2008, Rwanda.

Other issues raised by human rights organisations are discussed elsewhere in this report, for example shortcomings in the *gacaca* process (section 3.2), political freedoms (section 3.5) controls on non-governmental organisations (section 3.6) and press freedom (section 3.6).

Box 4 – The Prison Population in Rwanda



Rwanda's prison population (left axis) rose sharply after 1994 when tens of thousands of genocide suspects were incarcerated. The population peaked in 2003 when jails were filled to over twice their designed capacity (right axis). After a period of decline prisoner numbers rose sharply again during 2006 and the first half of 2007 as a result the *gacaca* trials which implicated new suspects. From mid-2007 the release programme brought about a rapid reduction in prisoner numbers. As of April 2008 the prison population stood at 58,313 (of whom 37,330 were accused or convicted of genocide crimes). The prisons are currently filled 35% beyond their designed capacity.

Source of data: Director of Prisons, MININTER

Social, cultural and economic rights. In addition to civil and political rights, it is important to acknowledge the progress that Rwanda has made in advancing social, cultural and economic rights as indicated by improvements in development indicators. In addition to good governance these rights relate to broader processes of development and service delivery, and hence are largely beyond the scope of the terms of reference of this study. However, many of the issues discussed in the section 4.4 on service delivery are pertinent to social cultural and economic rights.

Rights of women. Rwanda has made impressive progress in advancing the rights of women. Rwanda ranks third on the Social Watch's Gender Equity index for 2007, after Sweden and Finland.²⁸ A National Council of Women, which is a constitutional body, has been established to promote equal opportunities. In addition, a Gender Issues Monitoring Office is in place, to facilitate the participation of women in public life and to ensure that development initiatives are egalitarian in generating benefits for both sexes. The Ministry for Gender and Family Promotion has been established in the Office of the Prime Minister. Rwanda is committed to ensure that women play their full and responsible role in all areas of society. The Constitution (Art. 9) requires that at least 30% of posts in decision-making organs should be assigned to women. As a result of these changes, many women have entered public life as political leaders and in other positions of responsibility.

²⁸ *Gender Equity Index 2007: Progress or Regression*, A Social Watch report launched during the 51st Session of the UN Commission on the Status of Women March 2007.

Box 5 – Legislation on sectarianism and genocide ideology

Rwanda's history and the role of media propaganda in inciting and escalating the genocide of 1994 clearly establish the need to legislate and criminalise activities promoting sectarianism and genocide ideology. This principle is also recognised in international human rights law, which establishes the need for states to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Legislation prohibiting hate speech, however, must also take into account the right to freedom of opinion and expression.

Beyond the provisions in Rwanda's Constitution, the principal law on incitement, hate speech and sectarianism is *Law no 47/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism*. In recent months a private member's bill has been entered into the legislative process proposing a new law '*Relating to the Punishment of the Crime of Genocide Ideology*'. While recognising the need for such legislation, it is important to consider whether existing and proposed laws define the offence of genocide ideology with sufficient precision to combat acts of incitement and hate speech effectively, while minimising limitations on freedom of expression.

There are several problems with the 2001 law and the proposed new law. It is doubtful whether they fulfil the requirements of legal certainty meaning that the offence is sufficiently clearly drafted to allow a person to know whether or not their conduct would amount to a breach of the law. The absence of a requirement of intentionality (i.e. that the offender intended to cause harm) in the provisions adds to the problem of vagueness and leaves the provisions open to abuse and less effective in tackling the problem that they are designed for. In particular Article 3 of the proposed new law risks confusing the definition of genocide ideology to the extent that the law could be used where sanctions are not warranted or might fail to convict real acts of incitement. Other problems with the proposed legislation are the rigid specification of penalties that do not leave any judicial discretion in sentencing to reflect the facts of each case, and provisions on the sentencing of children. Given the gravity of the issue it is essential that laws against genocide ideology are as clearly formulated in order to ensure that the justice system can be brought to bear most effectively and to guard against the possibility of misuse.

Rwanda faces a particular challenge in addressing genocide ideology, and needs to develop its own laws striking a balance between the protecting freedom of expression and the rights of others that reflect the country's context and the risks it faces. However, there are examples of legislation from other countries that provide useful experience, elements of which could be applied in Rwanda. They include among others the EU *Council Framework Decision on combating certain forms of racism and xenophobia by means of criminal law* (Brussels 26 February 2008), and the UK 1986 *Public Order Act*, the UK 2006 *Racial and Religious Hatred Act*.

Key principles embodied in these good practice examples are: (1) offences should reflect intentionality, (2) offences should reflect the likelihood of inciting hatred or discrimination, (3) penalties should allow for judicial discretion to ensure that sentencing is proportionate to the circumstances of each case, and (4) direct reference within the law should be made to the application of the right to freedom of expression and freedom of association.

Reference: *EU Council Framework Decision on combating certain forms of racism and xenophobia by means of criminal law* available at <http://www.legislationline.org/legislation.php?tid=218&lid=7975&less=false>

At the end of 2007 women held 38 out of the 80 seats (48%) in the Chamber of Deputies, 9 out of 26 (35%) Senatorial positions, 9 out of 28 (32%) Cabinet positions, and 95 out of 257 (37%) judgeships. Women's participation appears to be less strong at lower levels of government, where for example very few district mayors are women. However, 45% of councillors at district level are women.

Women's participation in the business activities is also relatively strong in Rwanda, particularly for small enterprises. The 2008 Doing Business Report found that 41% of small businesses are run by women, a higher proportion than in neighbouring countries.²⁹

In spite of these important gains at the political level, cases of societal discrimination and domestic and sexual violence against women are still common in Rwanda. Gender disparities are evident in access to education, employment, and promotion despite government policies aiming to promote equality. The law on inheritance has been reformed to allow women to inherit property from their fathers and husbands, but it is reported that women in practice face more difficulty than men in exercising these rights, partly through lack of awareness and cultural inhibitions.³⁰

Rights of children. Many of Rwanda's children (who amount to over one-half of the total population) face major challenges related both to chronic and severe poverty, and to the specific history of the country: one in ten die before their first birthday³¹; there are an estimated one million orphans, one of the highest proportions in the world; and there are over 100,000 child-headed households. While the law prohibits children under 16 from working, child labour is widespread in Rwanda.³² There are an estimated 7,000 street children in Rwanda.

Rwanda is a signatory of the Convention on the Rights of the Child, and last prepared a comprehensive progress report in 2002.³³ A National Policy on Orphans and Other Vulnerable Children was adopted in 2003.³⁴ This document emphasizes child protection, access to healthcare, free primary education, psychosocial support, support to families caring for vulnerable children, and socioeconomic programmes for orphans. The document presents a strategy for assisting fifteen categories of vulnerable children. In relation to street children, the policy aims to promote reintegration through the use of rehabilitation centres, family tracing and reunification, and foster homes. The major concerns are about the implementation of this policy in practice, and the need to ensure adequate conditions in the rehabilitation centres and transit centre.

Rights of refugees. There are currently around 53,000 refugees living in Rwanda, mainly originating from DRC. In general terms Rwanda meets its international obligations towards refugees and asylum seekers, and cooperates fully with UNHCR. However, there are concerns that

²⁹ World Bank (2007) Doing Business in 2008, page 7.

³⁰ US State Department Country Reports on Human Rights Practices, Rwanda 2007

³¹ The infant mortality rate (deaths before first birthday per 1000 live births) was 98 in 2006. The under five mortality rate was 160 per 1000 live births. WHO (2008) Countdown to 2015, Maternal, newborn and child survival, <http://www.who.int/pmnch/Countdownto2015FINALREPORT-apr7.pdf>

³² The 2007 US State Department Country Report on Rwanda states that in mid 2007 "government indicated that approximately 450,000 children (approximately 9 percent of the country's four million children under 18) were engaged in child labour. However, a UN report released in 2006 suggested that 36 percent of children between the ages of five and 14 (approximately one million children) were engaged in child labour."

³³ MINALOC (2002) *Rapport initial sur la mise en oeuvre de la Convention relative aux droits de l'enfant*

³⁴ MINALOC (2003) National Policy for Orphans and Other Vulnerable Children

the process of refugee registration is unduly time consuming and delays access to assistance, and that the present lack of identity cards for refugees has restricted freedom of movement.

Role of the National Commission for Human Rights. The National Commission for Human Rights, established in 1999, is charged with investigating violations of human rights and taking appropriate legal action. The Commission has been granted formal independence and its Commissioners enjoy partial immunity from prosecution. Its annual reports have often taken a critical line, for example in 2005, where the Commission raised concerns about illegal detentions, police beatings and prison conditions. The Commission has also undertaken detailed enquiries, for instance its investigation into a breakout of fighting at Mulindi Military Prison in 2005, which called for legal proceedings against those held responsible. The Commission will need to further this kind of work to establish a stronger public image as a defender of human rights. While the present composition of the Commission appears well balanced and inclusive, it is not clear what mechanisms exist to guarantee such principles in future. At present Commissioners are proposed by the Cabinet and approved by the Senate. While maintaining these procedures for the final selection and appointment, it would be worth considering adding a more open and transparent mechanism for the initial identification of candidates, for example through the use of public job advertisements and inviting independent organisations to submit nominations.

Monitoring Framework. The human rights agenda covers a broad terrain that is impossible to adequately describe with a few indicators. The recommendations in the matrix below are therefore somewhat selective. They cover issues where Rwanda's progress has been widely acknowledged (e.g. women in positions of power), as well as more disputed issues, where the interpretations of government and human rights organisations have differed (e.g. deaths in police custody, juvenile detention). In regard to disputed subjects a key principle should be to draw on a range of governmental and non-governmental sources, including reports of international and domestic human rights organisations. Such triangulation should help to shed greater light on issues where informed discussion has been hampered by inadequate information and poor communication. The key principle in resolving disputed issues should be to enhance transparency, strengthen capacity for independent enquiry and to compare government and independent sources in a meaningful manner.

| Monitoring Framework 3.4 – Human Rights and Civil Liberties | | | | | |
|--|--|------------------|--|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 11. Deaths in police custody or during arrest | Detail circumstances for each incident | Annual | Rwanda National Police triangulated with reports from Human Rights Organisations | Available, but different sources dispute circumstances | Nov 2006 – May 2007 10 incidents, 20 deaths Source: RNP |
| 12. Total number of prisoners as% of planned jail capacity | | Annual | Director of Prisons, MININTER | Available | April 2008 Prison population as % of jail capacity = 135% |

| | | | | | |
|--|--|--------|---|----------------------------|--|
| 13. Number of juveniles in rehabilitation and transit centres. | By centre, gender Also measure length of detention | Annual | MIGEPROF, Kigali City Council (for Gikondo Transit Centre) triangulated with reports from local human rights organisations. | Availability to be checked | n/a |
| 14. Proportion of reports required under UN Human Rights instruments to which Rwanda is a signatory that are compiled and reported to treaty reporting bodies in a timely manner | | Annual | MINAFFET/ Rwanda National Human Rights Commission | Available | Needs to be checked |
| 15. Number of human rights cases reported to NHRC and the proportion of these that get resolved | Disaggregate by time taken to resolve human rights cases | Annual | Rwanda National Human Rights Commission | Need to check availability | |
| Indicator on civil liberties – see indicator 21: IREX Media Sustainability Index 'freedom of speech' sub-index | | | | | |
| 16. Women in positions of power | Deputies, Senators, Cabinet Ministers, Judges, Mayors, Councillors, civil service. | Annual | MINGEPROF and other agencies | Available | End 2007: Deputy (48%) Senators (35%) Cabinet (32%) Judges (37%) |

3.5 Political rights

Principles and priorities. Political rights refer to the right of citizens to engage in political processes and to change their government and elected representatives through democratic means. This creates a strong pressure on government to be responsive to the interests of the electorate and to demonstrate accountability for delivering on their electoral commitments.

The discussion of political rights in Rwanda must take into account the country's recent history, and the role of political parties in exacerbating social divisions and inciting hatred prior to the genocide. There is an understandable concern in Rwanda that the political system should never again be allowed to generate ethnic strife. The political system therefore needs to strike a difficult balance between on the one hand generating the competition required for accountability and on the other hand supporting the goal of bringing about greater unity and the restoration of trust.

Assessment. Over the past ten years there has been immense change in the political environment in Rwanda. Until 2003 Rwanda was governed under transition arrangements that suspended multiparty elections.³⁵ Following the agreement on the new Constitution, multiparty democracy was restored, and Presidential and legislative elections were held in August and September 2003. Local elections were held in 2006, and the next round of legislative elections will be held in September 2008.

Within the institutional framework of multiparty democracy set out in the Constitution there are several instruments that are intended to shape the nature of political competition by enabling a sharing of power between larger and smaller parties, and promoting inclusive rather than adversarial politics. First, no more than half of the positions in the Cabinet may be held by the political party gaining the majority of seats in the Chamber of Deputies (Article 116 of the Constitution). Secondly, there is a requirement that the President of the Republic and the Speaker of the Chamber of Deputies shall belong to different political organisations (Article 58). Thirdly, there are strict rules prohibiting political parties from promoting an ethnic or otherwise discriminatory agenda. Fourthly, by terms of the Constitution, political parties are, ‘without prejudice to their independence’, required to participate in the Consultative Forum of Political Organisations.³⁶ Fifthly, many important positions in public office are appointed or elected indirectly by electoral colleges rather than through direct popular vote.³⁷

As a result of these mechanisms the political system in Rwanda is characterised more by consensus building and power sharing than adversarial competition. There is little sense of opposition between political parties, whose agendas are broadly aligned. Some observers have criticised the apparent limitations to political competition.³⁸ However, these observations need to be viewed in context. Full democratic rights were only restored five years ago under the new Constitution, and it is reasonable to expect that they will develop over time. The rules governing competition have been endorsed by Rwandans through the referendum on the Constitution. While these rules encourage consensus politics, they do not preclude the emergence of a strong political opposition in future. There are also valid arguments that the present political configuration has served Rwanda well over the past five years where a degree of unity and consensus has been essential to promoting reconciliation and unity.

In the longer term it will be essential that political processes sustain the gains in good governance that have already been made by strengthening pressures for accountability and responsiveness. This will require more open competition of political ideas. While it is generally agreed in Rwanda that the process of democratisation should continue, there are valid debates about the desirable pace and sequencing of change. The priority for the present discussion is to consider whether the rules governing political competition in Rwanda will serve future needs and enable new political

³⁵ Local elections were held during this period in 1999 and 2001.

³⁶ “Without prejudice to the independence of each political organization and their collaboration, political organizations officially recognized in Rwanda shall organize themselves in a consultative forum.” Constitution of the Republic of Rwanda, Article 56.

³⁷ For example, District Mayors are indirectly elected by District Councils. Some Senators are appointees, whereas others are indirectly elected.

³⁸ The African Peer Review Mechanism report on Rwanda described political participation as “rehearsed”. “The Rwandese political system or culture is characterised by consensus rather than “voluntary participation” by political parties. This is the overarching issue under which any meaningful assessment of Rwanda’s current democratisation process can be made.” APRM Country Report on the Republic of Rwanda, November 2005, page 136

forces to emerge. Several issues are pertinent to this discussion and are discussed in the following paragraphs: (1) rules on political competition, (2) the management of elections, and (3) rules on party financing.

The **rules on political competition** are set out in the Constitution and the *Organic Law No 16/2003 Governing Political Organisations and Politicians*. The most important restriction is the prohibition on pursuing an ethnic or otherwise discriminatory agenda. Article 54 of the Constitution prevents parties “basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination”, and requires that “political organisations must constantly reflect the unity of the people of Rwanda.” Under this rule the MDR, was subject to a parliamentary commission in 2002 that identified 46 MDR members as divisionist. The MDR failed to register itself for the 2003 elections and therefore ceased operations. Article 56 of the Constitution establishes the Consultative Forum of Political Parties. Some have argued that the Forum reduces political pluralism, but its role in building the capacity of weaker parties and in ensuring the equitable distribution of public grants also deserves recognition.³⁹ Restrictions on parties establishing offices at local level were lifted in 2007, an important move enabling parties to build up their grassroots support base.⁴⁰ There is also room for debate about the need for more independent mechanisms for oversight of party registration, assembly and accounts, which are currently the responsibility of the Ministry of Local Government (MINALOC). Such functions might better reside with the independent electoral commission.

The **management of elections** has improved in recent years. The 2003 legislative and Presidential election were criticised by international observers, who reported irregularities during the vote and raised concerns about the fairness of competition during the campaign.⁴¹ Domestic observers of the 2003 Presidential elections, while stating the vote took place in conditions of transparency, also noted irregularities.⁴² The 2006 local elections were found to be satisfactory by most observers, although the absence of a secret ballot at cell and village level has been criticised.⁴³ Preparations for the 2008 legislative elections provide encouraging signs that stronger arrangements are being put in place to guarantee independent observation and other aspects of electoral good practice. The main priorities for the future will be to strengthen the Electoral Commission and civil society organisations providing independent oversight. The Electoral Commission has demonstrated its competence, but there is a case for strengthening its operational independence from government by making staffing and funding arrangements fully autonomous from regular public sector structures.

Political party financing is regulated by *Organic Law No 16/2003 Governing Political Organisations and Politicians*. There are few restrictions apart from a prohibition from foreign donations and donations from public enterprises or government parastatals (Article 22). The law requires that political parties must declare donations larger than one million Rwandan Francs

³⁹ The African Peer Review Mechanism was critical of the role of the Consultative Forum on Political Organisations

⁴⁰ Official Gazette of the Republic of Rwanda, 1 June 2007, Organic Law no 19/2007 of 04/05/2007 modifying and complementing Organic Law no 16/2003 of 27/06/2003 governing Political Organisations and Politicians

⁴¹ See *Mission d'observation électorale de l'Union européenne. Election Présidentielle 25 août 2003, élections législatives 29 et 30 septembre, 2 octobre 2003, rapport final*. See also Statement by the African Union Observation Observer/Monitoring Team on the August 25 2003 Presidential elections, Kigali 26 August 2003.

⁴² Programme observatoire des élections au Rwanda, Declaration to the Press, 27 August 2003, translated from French.

⁴³ Local elections at cell level require voters to line up behind their candidates of choice. While many argue that this practice is appropriate to community norms and capacity existing at cell level, the absence of a secret ballot does not protect citizens from the possibility of intimidation and other forms of undemocratic pressure.

(Article 22) and that parties must submit annual financial statements (including revenues and assets) to the Office of the Ombudsman, MINALOC and the Consultative Forum on Political Organisations. These reports are not public, although the Ombudsman has a duty to report transgressions of the rules. The law also allows for government grants to be provided during election years to political organisations and independent candidates who gain at least 5% of the vote. For the 2003 legislative elections the three qualifying parties shared total funding of 250 million Rwandan Francs.⁴⁴ In addition, all parties are provided with modest material and training support from the Consultative Forum on Political Organisations funded from the public budget.

The subject of political financing is hotly debated in most democracies, and it is evident that there is no single model of best practice that would apply universally.⁴⁵ Membership dues offer the most appealing source of financing because this most closely relates to grassroots political participation. However, political parties in all countries have difficulties raising enough funds from their members, and this problem is most acute in developing countries, where low incomes limit what parties can raise in subscriptions. Hence, parties often come to rely on other sources of income, most commonly public subsidies, large private donations and investment income. Each of these sources has their merits and drawbacks. The principal concerns are that these may generate conflicts of interest or gross inequalities in party finances that may skew election results.

Rwanda provides limited public funding to political parties to fight election campaigns. The sums involved for the 2003 elections provided a basis for campaigning, although funds were modest and the 5% threshold excluded all of the smaller parties. Consequently, the successful parties rely mainly on member contributions, donations and investment income.

The recent financial statements from the political parties make it clear that most parties operate under very tight budgets. Significant inequalities in declared income and assets can be observed between parties, but are within the range that would be expected to arise from the different size, popularity and effectiveness of the various parties. The main concern in studying the financial statements was late submissions, the varying quality of accounting and important omissions in certain reports.⁴⁶

Monitoring framework. In relation to the above analysis the following indicators are recommended for inclusion in the monitoring framework. The emphasis of all these indicators is on strengthening transparency, which is viewed as being crucial to enabling informed discussion on the appropriateness of rules governing political competition and their practical application.

⁴⁴ Government explains that the relatively modest level of public funding and the use of the 5% threshold reflects the concern that public funding should not create incentives for the proliferation of small parties, as well as speculation.

⁴⁵ See for example IDEA (2003) Funding of Political Parties and Election Campaigns, International Institute for Democracy and Electoral Assistance

⁴⁶ Some parties did not declare any assets and provided only copies of bank statements. No parties declared shareholdings.

| Monitoring Framework 3.5 – Political Rights | | | | | |
|---|---|-------------------|--|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 17. Elections declarations of independent observers | To be determined: sub-indicators could include existence of parallel vote tabulation, by political parties, independent observers | For each election | National Electoral Commission, Independent Observers | | Start with legislative elections 2008 |
| 18. Publishing of financial statements of political parties | Sources of revenue, asset holdings and donations above RwF 1mn | Annual | MINALOC | Available, but publication would need to be agreed | Financial statements submitted, but not public. |

3.6 Institutions of accountability

Principles and priorities. There are opportunities to strengthen accountability, by working with bodies that provide an oversight function monitoring government performance. This section examines institutions providing two types of accountability: horizontal accountability between governmental and Constitutional bodies (for example the role of parliament in monitoring the executive) and vertical accountability between government and organised groups of citizens (for example, civil society, private sector and media organisations).

Relevant principles in supporting the function of institutions of accountability are to ensure operational independence, to ensure appropriate separation of judicial, political and administrative functions when applying regulation, building integrity and ethical standards within the institutions, and strengthening capacity in research, advocacy and communications functions.

Assessment. In terms of **horizontal accountability**, the special Commissions established by the Constitution play an important role, and are described at relevant points throughout this report. They include the National Commission for Human Rights (section 3.4), the National Unity and Reconciliation Commission (section 3.2), the National Electoral Commission (3.5), the Office of the Ombudsman (section 4.2) and the Office of the Auditor-General of State Finances (section 4.1). All of these perform a vital function and have demonstrated their willingness to call other parts of government to account. In some specific cases identified in this report, there are opportunities to strengthen further their operational independence.

Parliamentary oversight provides an important source of horizontal accountability. The Senate and Chamber of Deputies maintain numerous standing committees, which can address issues of concern through oral questions, written questions, hearings and commissions of inquiry. These committees are for the most part active and committed to their duties. Ministers are called to answer Parliamentary questions on a weekly basis, and some have been sanctioned in the past by parliament. There are several examples where parliamentary committees have made a substantial or leading contribution to new legislative initiatives, for example the new media law and proposed legislation on combating genocide ideology. However, all of the committees complain of a high workload and limited capacity to fulfil their role. For example, the Political Committee in the Chamber of Deputies lacks access to a qualified lawyer. The Commission on Budget and Finances has only seven Deputies and one supporting consultant charged with scrutinising the budgets of all

public agencies, checking budgetary performance, responding to the Auditor General's report and other tasks essential to the oversight of public finances. Committees have very limited resources to undertake field visits or detailed research on particular aspects of policy and implementation. Addressing these capacity constraints by providing access to skilled support and research staff would appear to provide an important opportunity to enhance the effectiveness of parliamentary committees and the accountability that they bring.

In terms of institutions of **vertical accountability**, the principal challenge is to establish mechanisms to aggregate citizen's demands and articulate them upwards. There are examples of new and innovative institutions connected with the decentralisation process that are discussed in section 4.3, for example the Joint Action and Development Forum and the district planning and *imihigo* process, which have important potential for building upward accountability. In addition, public accountability days providing open public access to government offices and officials are organised quarterly across local government and the Ministry of Local Government. The following paragraphs will discuss two other sources of vertical accountability: civil society and the media.

There are numerous **civil society organisations** in Rwanda. The NURC/IRC survey on social cohesion found that there are over 37,000 associations of various types operating in Rwanda. More than 96% of these are community-based organisations.⁴⁷ There are also around 2,000 registered NGOs. The vast majority of these organisations were established after the genocide and are less than a decade old. Thus, while there is a proliferation of associations in Rwanda, most organisations lack depth and experience. The main focus is on service delivery and religion. Relatively few voluntary organisations are engaged in policy advocacy and the oversight of government, but there are important exceptions, in particular in the field of justice and human rights, and support to genocide survivors. In 2007 the Civil Society Platform was inaugurated bringing together 15 NGO umbrella organisations to provide a focal point for policy dialogue with government.

There are numerous areas where civil society could provide independent monitoring and analysis. The important needs would appear to be electoral monitoring, support to the judiciary in case monitoring, increased engagement in the preparation and monitoring of district level *imihigos*, scrutiny of the government budget and tracking of expenditure. Performing these functions will require significant capacity building and professionalisation on the part of NGOs. The relationships between government and civil society are evolving, for instance through civil society participation in Joint Action and Development Forum meetings at the district level.

In the past NGOs have been subject to government regulations that some organisations have found onerous, in particular the requirement for annual re-registration.⁴⁸ The government is in the process of preparing an improved legal framework, which, if passed, would allow NGOs to acquire

⁴⁷ *Social Cohesion in Rwanda: An Opinion Survey (2005-2007)*, National Unity and Reconciliation Commission (NURC).

⁴⁸ Over the past few years there have not been any cases of government restricting NGO operations, however two high profile cases in 2004 provoked considerable discussion. In 2004 a parliamentary commission called for the disbandment of the human rights organisation LIPRODHOR on the grounds that it was promoting divisionism, and the Minister of Justice refused to grant legal status to CAURWA, an organisation advocating on behalf of Rwanda's Batwa minority. In regard to the latter, legal status was refused on the grounds that CAURWA proposed to pursue an ethnic agenda prohibited under the Constitution. After agreeing to modify its statutes and accepting members from all ethnic groups the organisation gained legal status in 2007 as a professional potters' association under the name of COPORWA.

permanent legal status, while still requiring annual reporting of accounts and workplans to MINALOC.⁴⁹

The **media** has also been gaining importance as a source of accountability. The number of media outlets has grown rapidly in recent years, and there are now 62 newspapers (but only 15 are active and only one appears daily) and 16 registered radio stations, the majority of which are privately operated. Print media has a low circulation, and the majority of Rwandans access media through the radio.⁵⁰ While the popular independent radio stations have tended to focus on music and entertainment, their capacity to broadcast news is increasing, and programmes based on phone-in discussions of current affairs have become popular.

The extent of press freedom in Rwanda has been much discussed, and subject to criticism from international human rights and journalists groups. The recent IREX Media Sustainability Index Report on Rwanda, based on the perceptions of local journalists, rated 'freedom of speech' and 'plurality of news sources' more highly than other indicators (see box 6). There are many articles in the Kinyarwanda press that are critical of government, and in most cases such criticism is tolerated. While there have been numerous court proceedings against journalists brought by government and private individuals, judges have frequently ruled on the side of journalists.

While significant progress has been made, there remain some constraints to press freedom. These include outdated laws, limited access to information, and the effect of broadly drafted laws, such as the law on divisionism, which create legal uncertainty about the limitations to free speech.⁵¹ Under the penal code libel is still treated as a criminal offence. The Press Law of 2002 restricts media access to some public information and cabinet minutes. There are regular (monthly) press meetings with the President of the Republic of Rwanda, Minister for Information in the Prime Minister's Office; however some independent journalists complain that they find it much harder to gain interviews and access to government sources than state media or preferred private media.⁵² A new press law will be published shortly, which should give journalists much greater access to government information. The law is also intended to clarify rules on registration procedures for journalists and media outlets, and to specify more clearly grounds for refusal or removal of licences.

One challenge facing the media has been overcoming public distrust arising from the role of the media in orchestrating the genocide. However, the credibility of the profession has progressively been re-established, and journalists are expected to adhere to the 2005 Code of Conduct developed by the Rwanda Association of Journalists. There is still a need to raise professional standards in journalism, in particular to raise levels of objectivity, strengthen ethical standards and build capacity in quality, investigative journalism. The proposed new press law will include the phased introduction of a requirement for minimum training and qualifications for journalists.

⁴⁹ Draft Law governing national non governmental organizations.

⁵⁰ The forthcoming World Values Survey found that less than 10% of the population had read a newspaper in the previous week, whereas over 60% had listened to the radio. IREX reports that the three largest newspapers have a combined circulation of 23,000.

⁵¹ Laws on divisionism and genocide ideology are discussed fully in section 3.4 and box 5. The concern raised by this report relates to the loose drafting of present laws rather than the need for strict rules preventing incitement on the part of the media, which are a necessity in Rwanda.

⁵² Many ministries and public agencies also have public accountability days to which press are invited.

A key constraint in raising journalistic standards in Rwanda is the stretched finances of most media outlets, in particular in the print media. Concerns have been raised that excessive dependence on government and corporate advertising could compromise editorial standards.

Another issue of interest to strengthening the quality of the media is the role of supporting institutions. It is notable that this indicator scored lowest on the IREX Media Sustainability Index, suggesting that there are opportunities for improvement. The principal body is the High Council of the Press, which has representation from all media stakeholders, including the government, and is mandated with a dual responsibility to regulate and licence the media while defending press freedom. It is also charged with enforcing rules on balanced coverage of political parties during election campaigns, a task it has undertaken well. The High Council can propose disciplinary action against journalists, but also at times acts to defend journalists, for example its recent questioning of the refusal to grant a licence to the Weekly Post, and the legal support it provides to journalists in court. These are all important tasks, but stronger capacity is required and there are valid questions as to whether the two functions should be more clearly separated. Journalists' perceptions reported by IREX also suggest that more could be done to strengthen the Council's operational independence.

There are currently two professional organisations seeking to represent and defend the interests of journalists; the Rwanda Association of Journalists and the Rwandan Association of Independent Journalists. The former is planning to set up a Rwanda Media Monitoring Commission which it is proposed will provide a self-regulatory framework to supervise and improve professional and ethical standards.

Box 6 - The IREX Media Sustainability Index

The MSI assesses five objectives in shaping a successful media system: ① Legal and social norms protect and promote free speech and access to public information, ② Journalism meets professional standards of quality, ③ Multiple news sources provide citizens with reliable and objective news, ④ Independent media are well-managed businesses, allowing editorial independence, and ⑤ Supporting institutions function in the professional interests of independent media. Each of these objectives is assessed using 7-9 sub-indicators measured on a score of 0-4.

The indicator scores are based on the votes of a panel of 10 local journalists and on IREX staff assessments. The Rwanda survey was first conducted in 2006-7 (shown here) and will be updated annually.



Source: http://www.irex.org/programs/MSI_Africa/rwanda.asp

Monitoring framework. The following three indicators are recommended for inclusion in the Joint Governance Assessment to measure the strength of institutions of accountability. The IREX Media Sustainability Index has been proposed to assess press freedom and other aspects of the strength of the media because it is based primarily on the perceptions of local journalists, will regularly be updated and provides disaggregated information on a number of important variables. In addition to these indicators, a perception based measure on the extent to which civil society organisations feel they have a role in monitoring government and holding it accountable could also be considered.

| Monitoring Framework 3.6 – Institutions of accountability | | | | | |
|---|------------------------------------|------------------|------------------------------------|---------------------|--|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 19. Number of times Ministers get called to parliament – to be reviewed in future | By subject area | Annual | Secretariat of Chamber of Deputies | To be checked | n/a |
| 20. Number of NGOs refused registration and required to close | | Annual | MINALOC | Available | Figure to be requested |
| 21. IREX Media Sustainability Index | Include 5 sub-indices: (see box 6) | Annual | IREX | Available | 2006-7 Average score 2.29 out of 4 See box 6 for sub-indices |

4. Government Effectiveness

This chapter examines government effectiveness in terms of the accountability and responsiveness of public agencies in relation to the populations they serve. These factors depend for a large part on public participation in processes of policy making, implementation and monitoring based on broad inclusiveness. The chapter covers the following issues.

- ① Public financial management
- ② Corruption
- ③ Decentralisation
- ④ Service delivery
- ⑤ Public service reform

4.1 Public financial management

Principles and priorities. A sound public financial management (PFM) system includes robust procedures for authorising and accounting for public expenditure, collecting public revenue, establishing open and transparent public procurement, and managing public assets. It is appropriate to measure Rwanda's PFM performance against OECD/DAC agreed good practice, while taking account of Rwanda's starting point, and recognising that most developing countries still fall far short of these standards. In 2007 a Public Expenditure and Financial Assessment (PEFA) was undertaken for the first time in Rwanda. This has provided a detailed evaluation of Rwanda's PFM system, and a set of clear benchmarks against which future progress can be judged (see table 3).⁵³

Good Public Financial Management practice includes putting in place, *inter alia*:

- a long-term development strategy,
- a medium-term expenditure framework (MTEF) in support of this strategy,
- a transparent process for budget formulation covering all public funds including thorough scrutiny and approval by the legislature,
- sound inter-governmental fiscal relations based on transparent rules,
- an effective system of commitment control and internal audit,
- accurate and prompt accounting for all expenditure,
- clearly defined and transparent procurement rules inviting open competition as far as possible, and subject to public scrutiny, independent monitoring and audit. The membership of the tender boards should include representative and properly qualified persons unlikely to be improperly influenced,

⁵³ Rwanda Public Expenditure and Financial Accountability Assessment, Draft Final Report, August 2007

- a reliable system of public debt management,
- a thorough, prompt and independent system of external audit,
- an effective parliamentary review of the audit leading to recommendations for actions to address problems revealed by the audit,
- prompt actions taken by the executive to deal with the problems identified by the audit,
- clear and transparent rules governing tax collection, effective taxpayer registration, automated payment collection systems that obviate the need for tax agents to handle cash, professional and adequately remunerated staff, minimum discretion in tax assessment, limited contact between tax officials and taxpayers, and a transparent, impartial appeals mechanism,
- adequate controls in the management of public assets to avoid the possibility of waste and theft,
- enforceable sanctions specified in law and applied in practice in the case of fraud, corruption, misappropriation or negligence.
- full transparency in expenditure management and the budget process. The government's MTEF, budget, accounts and the external audit should all be posted promptly on the government's website.
- adequate legislation to enforce all of the above.

Assessment. A decade ago Rwanda did not possess a properly articulated public financial management system, and there were few qualified staff, especially public accountants. Since then the government put in place many of the elements required for a sound system of public financial management. Some weaknesses remain, in particular in relation to local accounting capacity, but the Government of Rwanda appears firmly committed to establishing a modern, efficient, transparent and accountable system. In 2006 the Government of Rwanda put in place a PFM Action Plan aiming to strengthen several aspects of good public financial management, in particular strengthened accounting capacity, an improved audit function, more robust financial controls and reporting procedures, new rules on fiscal and financial decentralisation, and procurement reforms. A comprehensive medium term PFM strategy was finalised by the Government in June 2008.

Five aspects of PFM are discussed in the paragraphs below: public expenditure management, external audit, public procurement, revenue management, and the management of public assets. The findings of the 2007 PEFA assessment in relation to these areas are shown in table 2.

Public expenditure management. Over the period 1998-2007 the Government of Rwanda has established many of the essential elements of the policy and strategic framework for sound public expenditure management. It has an agreed 2020 Vision Statement, an Economic Development and Poverty Reduction Strategy with a five year horizon, and an MTEF -- all drafted through a process of wide consultation. Taken together the documents set out a comprehensive and well articulated set of objectives and priorities to guide the budgeting process.

Table 3 –Rwanda 2007 Public Expenditure and Financial Accountability Assessment

| Performance indicator (PI) | Score | Comment |
|--|-----------|--|
| 1 Expenditure out-turn compared to original approved budget | B | Close relationship between total expenditure out-turn and budget, although 10% overspend in two out of last three years. |
| 2 Composition of expenditure out-turn compared to original approved budget | D | Considerable variation between budget and out-turn for line ministry expenditure in two out of last three years. |
| 3 Aggregate revenue out-turn compared to original approved budget | A | Aggregate revenue out-turn has exceeded budget for last three years. |
| 4 Stock and monitoring of expenditure payment arrears | D+ | The stock of arrears exceeds 10% of expenditure. Data on arrears provided annually |
| 5 Classification of the budget | A | Budget formulation and execution based on functional, administrative, economic and programme classification. |
| 6 Comprehensiveness of information included in budget documentation | D | Low score mainly due to the lack of Budget Framework Paper (BFP) in '07 and deficiencies in '06. '05 BFP rated 'B'. |
| 7 Extent of unreported government operations | B | All loan financed projects and at least 50% of grants on budget. Extra-budgetary revenue = 4% of total expenditure in 2006. |
| 8 Transparency of inter-governmental fiscal relations | B | Districts receive transfers according to transparent rule-based system. They do yet not report spending on a sectoral basis. |
| 9 Oversight of aggregate fiscal risk from other public sector entities | D+ | Incomplete monitoring of fiscal/ financial position of district gov'ts, public enterprises and autonomous gov't agencies. |
| 10 Public access to key fiscal information | C | Two out of six types of fiscal information specified by PEFA provided to public. |
| 11 Orderliness and participation in the annual budget process | B+ | Clear budget calendar exists - generally respected, but some slippage in 2007. Timely approval of budget by legislature. |
| 12 Multi-year perspective in fiscal planning, expenditure policy and budgeting | C+ | MTEF and debt sustainability analysis carried out, sector strategies exist for health and education only, recurrent and capital spending budgeted separately, BFP not prepared in '07. |
| 13 Transparency of taxpayer obligations and liabilities | A | Clear legislation, full information available to taxpayers, tax appeals system in place, rules adhered to in tax assessment. |
| 14 Effectiveness of measures for taxpayer registration and tax assessment | B+ | Registration databases not fully linked, penalties for non-compliance effective, regular tax audits & fraud investigations. |
| 15 Effectiveness in collection of tax payments | D+ | Significant tax arrears, debt collection ratio below 60%, tax paid directly into treasury accounts, monthly reconciliation. |
| 16 Predictability in the availability of funds for commitment of expenditures | B+ | Cash flow forecast updated quarterly, commitment ceilings established, only one budget reallocation during year. |
| 17 Recording and management of cash balances, debt and guarantees | B | Debt record complete, but some gaps in data quality, consolidated cash balances calculated daily, clearer rules needed on borrowing. |
| 18 Effectiveness of payroll controls | D+ | No payroll audits over past 3 yrs (one has since taken place). Payroll data well documented, but updates to payroll take 3 mths. |
| 19 Competition, value for money and controls in procurement | B | 73% of contracts (by value) above threshold awarded by open competitive tendering in '06, justification for use of less competitive methods not clear, appeals mechanism exists. |
| 20 Effectiveness of internal controls for non-salary expenditure | D+ | Frequent non-compliance with established internal financial controls, and routine use of simplified/emergency procedures. |
| 21 Effectiveness of internal audit | C+ | Internal audit function recently established - likely to become more effective and reliable with time. |
| 22 Timeliness and regularity of accounts reconciliation | B+ | Reconciliation of all Treasury managed bank accounts occurs monthly. |
| 23 Availability of information on resources received by service delivery units | D | No comprehensive data on resources delivered to service delivery units has been collected in past three years. |
| 24 Quality and timeliness of in-year budget reports | D+ | Regular quarterly reports not prepared. |
| 25 Quality and timeliness of annual financial statements | C+ | First consolidated financial statement only available in 2006, external audit applied. |
| 26 Scope, nature and follow-up of external audit | D+ | Audits cover less than 50% of gov't spending, parliament receives report by October of following year, limited follow-up. |
| 27 Legislative scrutiny of the annual budget law | C+ | Absence of background to budget document in '07, legislature has two months to review budget. |
| 28 Legislative scrutiny of external audit reports | D+ | Parliament responds within 6 months. Lack of in-depth parliamentary hearings with spending bodies criticised in audit. |

Regarding budget management, the legal framework is also now in place with the Organic Budget Law (OBL) passed in September 2006 that clearly assigns the powers, roles and responsibilities of different actors in the public expenditure management system, and makes clear the separation of powers between the legislature and the executive.⁵⁴

The budget is prepared through a transparent set of procedures and following international classification standards. The OBL defines the documentation to be provided to parliament in support of the proposed budget including the macroeconomic assumptions, MTEF, revenue projections and proposed spending, together with information on the progress made in the implementation of the current budget. The OBL also requires public institutions not covered by the government's budget to submit financial reports and proposals covering their activities. The law prohibits government incurring extra-budgetary expenditures whatever their source.

The 2007 PEFA assessment has noted various strengths and weaknesses in public expenditure management. Overall expenditure controls are strong and budget out-turns are usually close to original approved budget in aggregate terms (PI-1), although greater variations can be observed for spending allocations at line ministry level (PI-2). The process of budget preparation works well, and is based on a robust classification scheme (PI-5) and a clear calendar that is generally respected (PI-11).

There are shortcomings noted in the PEFA report in terms of the public availability of budgetary information (PI-10). However, with the exception of 2007, parliament receives a complete package of budgetary information, and is able to review the budget within two months (PI-27). There is an active Committee on Budget and National Assets in the Chamber of Deputies, although its limited capacity is stretched by a heavy workload.

Debt management and debt sustainability analysis has generally been satisfactory (PI-12, PI-17), but there is a significant stock of payment arrears carried over from year to year (PI-4).

The low scores on some of the indicators reflect problems experienced in 2007 when MINECOFIN was unable to provide complete budget documentation in contrast to the two previous years (PI-6, PI-12). This deterioration is explained by the turnover of a few key people involved in the budget process thus indicating the fragility of improvements in PFM. Steps have been taken since then to reinforce the MINECOFIN team, and the 2008 budget preparation marked a clear improvement.

Another weakness in public expenditure management highlighted by the PEFA has been the inability in previous years to produce a consolidated financial statement for central government expenditure and revenue (PI-25).⁵⁵ The first consolidated accounts were only produced in 2006 with technical assistance from an international accounting firm. Government has recognised that

⁵⁴ The Minister of Finance has overall responsibility for all aspects of the PFM system including for the decentralised entities. The law also makes clear the separation of powers between the Legislature and the Executive; the Chamber of Deputies and, in the case of local authorities, the District Councils, alone can authorise public expenditure through an Annual Finance Law, except in the case of statutory bodies and state-owned enterprises where expenditure is authorised by their respective governing boards. Parliamentary oversight is provided for in the organic law pertaining to the Chamber of Deputies and Senate.

⁵⁵ The Minister of Finance is required to submit a consolidated financial statement for general government expenditure and revenue to the Cabinet and Auditor-General by 31 March each year.

the scarcity of trained accountants remains the over-riding constraint to accountable PFM. A number of training initiatives are underway, but there are still major capacity building needs.

Public Financial Management conforms to the Organic Budget Law, which requires that all public expenditure should be included in the central government accounts (PI-7). For aid funded expenditures more than 50% of grant-funded projects are included in fiscal reports and information on loan-funded projects is captured through CEPEX systems. There are a number of small extra-budgetary funds operated by central Government, including the National AIDS Commission, National Roads Fund and public hospitals, which operate their own bank accounts and have sources of finance in addition to transfers from the budget (including funds from donor agencies). MINECOFIN data show such extra-budgetary revenue to be around 4% of total expenditure.⁵⁶

Weaknesses have also been reported expenditure controls. The payroll is generally well documented and a payroll audit has been carried out over the past year (PI-18). In regard to non-salary expenditure, internal and external audits have reported widespread non-compliance with established financial controls and routine recourse to simplified or emergency procedures (PI-20).

The procedures and requirements for the management of District Council funds are set out in a manual, including the preparation of a District/City MTEF and a budget framework paper guided by 5 Year District Development Plans. As discussed in section 4.3, a transparent set of rules governs transfers from central to local government (PI-8). In practice there are some shortcomings in fiscal and financial management at sub-national level, but given that the local administrations have only assumed these responsibilities very recently, it is remarkable how much progress has been made. Most of the weaknesses are the result of capacity constraints, most importantly in the preparation of accounts in a consolidated format consistent with central government fiscal reporting. According to the PEFA assessment, incomplete reporting from district governments and public enterprises has led to a situation of weak oversight of aggregate fiscal risk (PI-9).

One final instrument to help achieve financial accountability is the tracking of public expenditure from the central budget through to the front-line service provider. This activity is not undertaken in Rwanda (PI-23) where there is no provision for issuing public information regarding the resources available to a primary service unit. However, there are numerous examples of good practice from other countries that could be followed based on monitoring by public or non-governmental bodies.

External audit. Audit reports have been produced and submitted to parliament since 2000, and their quality has gradually improved. A fully qualified and experienced Auditor-General was appointed in August 2004. The 1998 law establishing the Office of the Auditor-General (OAG) is being revised during 2008 to conform to the Constitution. A new structure for the OAG has been agreed with MIFOTRA providing for a staff of 100, 85 of which are currently in post, though few are professionally qualified.

External audit received a low score in the PEFA Assessment (PI-26), due to the limited coverage of audits (less than 50% of central government spending) and the lack of follow-up on recommendations. However, full credit needs to be given to the achievements that have been made so far in setting up an external audit function in the space of a few years. The Office of the

⁵⁶ Rwanda Public Expenditure and Financial Accountability Assessment, Draft Final Report, August 2007

Auditor-General has already become a source of considerable pressure for improved accountability in PFM. The report on the 2006 fiscal year (released in early 2008) raised many critical points and has been much discussed publicly, in government and by the press. The report identified expenditure of over RwF 5.3 billion that was not supported by verifiable documents. Given that the audit covered less than half of central government Ministries and administrative units, this is indicative of a significant level of unsupported expenditure across government, a weakness in financial control that creates potential for fraud and corruption.⁵⁷ The 2005 Auditor-General's report also highlights several weaknesses with the PFM system.⁵⁸

The Chamber of Deputies' Committee on Budget and National Assets (CBNA) discusses and prepares a formal response to the Auditor-General's report. Parliamentary investigations are hampered by a lack of resources. For example the PEFA assessment notes a lack of in-depth parliamentary hearings with spending bodies criticised in the Auditor-General's report. To enhance the parliament's oversight role it is intended to create a Public Accounts Committee, which will specialise in ex-post financial control.

There is a responsibility on the part of spending agencies to follow up on recommendations made by the Auditor-General or parliament. However, many previous recommendations have been unimplemented. As stated in the Auditor General's report "many institutions had put in remarkable efforts to implement previous audit recommendations, but significant irregularities still persisted."⁵⁹

Public Procurement. Prior to 2002 Rwanda had no sound legal framework governing public procurement. A National Tender Board (NTB) was established in 1997.⁶⁰ Government ministries and agencies are required to establish Tender Board Committees to prepare tender documents, handle the opening and evaluation of bids and award contracts based on guidelines based on a model provided by the multilateral development banks. A new Public Procurement Law (Law 12/2007) was enacted in April 2007 and legislation was passed in February 2008 to establish a Public Procurement Agency (PPA) to replace the NTB. The intention is to fully decentralise procurement to operational units, while leaving the PPA with a policy and oversight role.

The law requires that procurement over RwF500,000 should be by open competitive tender. During 2006, 82 percent of contracts were awarded on the basis of open competition, equal to 73 percent of the total value of contracts above the procurement threshold (PI-19).⁶¹ It is notable that this is below the 80% target set out in the Procurement Action Plan in the Rwanda Country Procurement

⁵⁷ Report of the Auditor-General of State Finances for the year ended 31 December 2006. Summary available at www.oag.gov.rw

⁵⁸ The 2005 Auditor-General's report noted a long list of serious PFM deficiencies including: (1) the non-preparation of financial statements; (2) poor management of bank accounts; (3) poor management of fixed assets; (4) absence of title deeds for government properties; (5) lack of segregation of duties; (6) inadequate supervision of implementation of funded activities; (7) non-compliance with contractual terms; (8) ineffectiveness of internal audit functions; (9) poor construction work; and (10) ineffectiveness of Directors of Finance and Administration in most institutions.

⁵⁹ Report of the Auditor-General of State Finances for the year ended 31 December 2006, page 20.

⁶⁰ Subsequently reinforced by the Prime Minister's Order of December 31 2002, and again in July 2004 by Presidential Order No. 28/01.

⁶¹ Source NTB Annual Report. These figures represent a decline since 2005 in use of open competitive tendering relative to less competitive forms of tendering. In 2005 89% of contracts by value (84% by number) were awarded by open competitive tender.

Issues Paper.⁶² The Report of the Auditor-General for 2006 raises concerns about non-adherence to tender rules. The report details over RwF 3.8 billion in tenders awarded without the approval of the National Tender Board, and over RwF 7.8 billion awarded without the approval of respective internal tender committees. Many tenders were offered to suppliers whose bids were more expensive than those of other bidders without proper record or explanation of this decision.⁶³

The shortcomings in public procurement need to be viewed in the context of relatively new institutions, rapid change and improving procedures. Much has been achieved, and opportunities for corruption have been greatly reduced. However, it is clear that there remains important work to be done to further strengthen the way procurement is handled to achieve greater transparency, more competitiveness, and to reduce further the scope for corruption or preferment. It would be useful to commission an in depth assessment of procurement systems and practice once the new PPA is well established and to consider the progress that has been made in implementing the Action Plan of the 2004 Country Procurement Issues Paper.

Revenue Management. The main agency for collecting government revenue is the Rwanda Revenue Authority (RRA) established as an autonomous body in 1998. The 2007 PEFA, while noting a number of weaknesses, gave the Rwanda Revenue Authority a highly favourable overall rating (PI-13, PI-14).⁶⁴ Over the past five years the RRA has achieved a fourfold increase in tax revenues. It has carried out a broad range of important measures to strengthen its organisation which, taken together, represent cutting-edge best practice.⁶⁵ As a result, corruption and abuses within the service are believed to be minimal; those found abusing their position have been rapidly disciplined or dismissed. The evident success of the RRA can be attributed to strong political support, effective capacity building and solid, sustained and substantial donor support. It will be important for the OAG to carry out an external audit in 2008, and for an independent organisation to survey of the experiences of taxpayers to provide management feedback.

In terms of accountability, for reasons of equity and fairness, taxpayers should have access to an independent tax appeals process. Promptness in the handling of cases is crucial if justice is to be done. At present tax complaints are first dealt with by the Rwanda Revenue Authority, and, if they cannot be resolved, are passed on to MINECOFIN and finally the courts. There would be merit in establishing a fully independent tax tribunal to streamline this process and to separate the appeals process from regular tax assessment.

Management of Public Assets. In many countries considerable waste and theft occurs in the management of public assets. The topic covers the management of state property (land, buildings, vehicles and other equipment) and the management of government stores. Given the potential risks, it is a concern that well developed systems for the management of public assets are not in

⁶² World Bank and Republic of Rwanda, Country Procurement Issues Paper June 24, 2004. Other targets in the Action Plan include the promulgation of a new procurement law, creation of an independent appeals body for aggrieved bidders and stronger procedures for ex-post reviews/ audits. These conditions have largely been met with the promulgation of the new procurement law (12/2007).

⁶³ Report of the Auditor-General of State Finances *op cit.*, page 8.

⁶⁴ One of the main weaknesses noted in the PEFA report was the high level of tax arrears (PI-15).

⁶⁵ Measures introduced by the RRA include: self-assessment for income-tax, VAT and customs and excise duties, a hotline for whistleblowers and informant protection, post-declaration audits using teams of two tax inspectors, over-audits (i.e. audits of audits), random surprise checks and reverse-onus proof requiring tax-payers to explain how they acquired assets that are deemed to exceed their means. Interview with Kieran Holmes, RRA

place in Rwanda. It would be worthwhile to commission a special study on stores and public asset management in order to develop such systems.

Overall assessment of the PFM System. The Government of Rwanda is strongly committed to putting in place a sound PFM system. Given the almost complete absence of a modern PFM system in 1995, impressive steps have been taken towards this objective demonstrating substantial political commitment to establishing accountable public finance management. An appropriate legal and institutional framework is largely in place, and many of the missing elements are under active consideration.

Progress in implementing the system is handicapped owing to the chronic shortage of trained accountants and qualified and experienced financial managers. The result has been the absence of individual and consolidated financial statements before 2006. In 2006 it has only been possible to produce a consolidated set of accounts by bringing in an international audit firm. Thus, the highest priority needs to be given to: (1) a crash program of training, and (2) where necessary hiring experienced accountants from abroad to cover the interim period.

Monitoring Framework. The proposed monitoring framework for public financial management is shown in the matrix below. It has been agreed that these should serve as 'placeholders', for review once the PFM strategy and action plan have been finalised and approved. The first set of indicators are based on the PEFA assessments, which has established a proven and useful methodology. In addition to the PEFA, the JGA monitoring framework should include indicators measuring the publication of comprehensive and consolidated accounts, accounting and tender irregularities reported by the Auditor-General, the percentage of tenders awarded through open competition, and the use of expenditure tracking surveys. All indicators in this area should be considered for verification and/or joint monitoring by independent civil society organisations.

| Monitoring Framework 4.1 – Public Financial Management | | | | | |
|--|--|-------------------|-------------------------------------|-------------------------|--|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 22. Improvement in Public Expenditure and Financial Accountability Assessment (PEFA) scores | Disaggregate by 28 performance indicators shown in table 2 | Every three years | Commissioned reports | Baseline 2007 available | See table 2. Average score for 2007: C+ |
| 23. Comprehensive and consolidated accounts produced within 3 months of end of each year and published on MINECOFIN website. | Simple yes/no indicator | Annual | Accountant-General | Available | First consolidated accounts available for 2006, public accounts not yet online |
| 24. % of tenders exceeding threshold awarded by competitive bidding | by % of total value and by % of total number of contracts | Annual | National Tender Board Annual Report | Available | 2006: 73% by value, 82% by number 2005: 89% by value, 84% by number |

| | | | | | |
|---|-----------------------------|----------------------------|-------------------------------|---------------|---|
| 25. Value of tenders awarded without approval of internal tender committees | As % of audited expenditure | Annual | Office of the Auditor-General | Available | For FY 2006 tender irregularities FrW 7.86bn Total audited expenditure to be established |
| 26. Number of public expenditure tracking surveys undertaken | | Annual rolling assessments | MINECOFIN | Not available | n/a |

4.2 Anti-corruption

Principles and priorities. A robust national integrity system contains many elements cutting across the public and private sectors. The general principal should be to enhance the institutional framework to ensure that corruption is more likely to be discovered and addressed, and to strengthen citizen awareness of corruption and independent oversight of public bodies. Some important element are discussed elsewhere in this report, for example sound Public Financial Management, an independent judiciary, an efficient court system, transparent political party funding and good corporate governance. The other main features discussed in this section include measures to prevent conflict of interest, track asset accumulation by public officials, provide whistleblower protection, ensure transparency and access to public information, put in place codes of ethics and encourage civil society oversight. Measures to promote integrity need to be built into all public and private bodies, for example through codes of conduct and disciplinary procedures to address misconduct.

Assessment. Prior to 1994, the Rwandan public administration had a reputation for pervasive corruption. Today, all the available evidence indicates that the level of corruption is far lower than in neighbouring countries and Rwanda is among the least corrupt countries in Africa.⁶⁶ This improvement reflects the strong lead the President has given to fighting corruption, and the vigour in which the policy of zero tolerance is applied. Government officials, who have been found to be corrupt have been dismissed. This principle applies at all levels of public service. In 2007, for example, 62 police officers were dismissed for soliciting bribes.⁶⁷

Sustaining the progress that has been made will depend on continued political will, public awareness and strengthening of public institutions leading the fight against corruption. A wide range of public institutions are now paying closer attention to internal corruption, including the judiciary, the parliament, the police and the Office of the Auditor-General. All public institutions are required to put in place internal regulations to guard against malpractice. In addition, the new Leadership Code of Conduct is currently passing through the legislative process, and is expected to become law in mid 2008.

⁶⁶ Rwanda's progress is indicated in a large improvement in the 'control of corruption' index in the World Governance Indicators over the period 1996 to 2007. In 2007 the control of corruption index (a composite of 7 sources) ranked Rwanda amongst all countries at 58.5 out 100 (0=bottom rank, 100 = top rank). Control of corruption was the strongest of all six indicators included in the World Governance Indicators. See box 3. Source www.govindicators.org

⁶⁷ US State Department Country Reports on Human Rights Practices, Rwanda 2007

The main coordinating structure is the Office of the Ombudsman, which was established in 2004 to take action against injustice and corruption. The functions of the Office of the Ombudsman are to: (1) receive, examine and resolve complaints from individuals and associations relating to acts of civil servants, state organs, and private institutions, (2) sensitise the population in the fight against corruption, (3) prevent and fight against injustice, corruption and other related offences in public and private administration, (4) receive asset declarations from individuals required to submit these by law, and (5) to advise on improvements in service delivery. In many respects the Office of the Ombudsman operates according to the model of an Anti-Corruption Office, except that its mandate is broader, and it does not have its own powers of prosecution. A new law strengthening the role of the Office of the Ombudsman has recently been passed by the Senate and will soon be promulgated.

Like other high level officials, the Chief Ombudsman and the two deputies are appointed by Presidential Order for a four year renewable term following a proposal by Cabinet and approval by the Senate. This process is based on the usual international practice of appointment and confirmation through the legislature.⁶⁸ During the initial stages of identifying candidates there are opportunities to strengthen transparency further and to increase public participation, for example by advertising the post publicly, inviting nominations from independent organisations and inviting public comment on proposed candidates.

The workload of the Office of the Ombudsman reflects the nature of demands and complaints received. It is clear that cases of injustice brought to the attention of the Ombudsman (mainly administrative and employment issues, land disputes, and legal cases) take up much more of the resources of the Office than corruption cases. During 2007 the Office of the Ombudsman handled 1099 cases of injustice and 42 corruption.⁶⁹ For 2007 more than half of the cases concerned complaints of corruption in the judiciary and local administration. The Ombudsman is not empowered to prosecute cases, and must depend on the Prosecutor-General to bring cases to court. Information is not readily available on the outcome of these referrals. A stronger system to monitor prosecutions in cases brought by the Ombudsman would help to bridge this gap.

In addition to investigations of specific cases of corruption, the Ombudsman also undertakes several activities aimed at preventing corruption. The office is responsible for distributing, receiving, processing and verifying asset declarations, which are required by law from 4,023 individuals. The Office of the Ombudsman has asked for disciplinary measures to be taken against the more than 300 individuals, who have not submitted asset declarations as required. The Office also verifies a sample of declarations each year, but few cases of financial wrongdoing have been uncovered. In Rwanda asset declarations are considered confidential, and are not accessible to the public.⁷⁰ Other

⁶⁸ For a comprehensive review of international practice see Gregory, R and Giddings, P. (2000) *Righting Wrongs, The Ombudsman in Six Continents*, International Institute of Administrative Sciences, IOS Press

⁶⁹ Summary Report of the Activities of the Office of the Ombudsman in 2007, Office of the Ombudsman of the Republic of Rwanda, January 2008. Figures on number of corruption cases investigated in previous years are as follows: 2006 (36 cases of corruption, 961 cases of injustice) and 2005 (35 cases of corruption, 3056 cases of injustice). Annual reports for the Office of the Ombudsman are available at www.ombudsman.gov.rw It should be noted that in addition to handling the corruption cases reported in its annual report, the Office of the Ombudsman also forwards other cases to the Police, Prosecutor General and Auditor General, where their specialised capacities are required.

⁷⁰ Different countries have different approached in regard to confidentiality or public access to asset declarations. See World Bank website on Administrative and Civil Service Reform for an analysis of assets declaration legislation in 18 countries <http://www1.worldbank.org/publicsector/civilservice/AssetsSummary.htm>

important activities undertaken by the Office of the Ombudsman aimed at preventing corruption include public education on the fight against corruption, and service delivery assessments that have helped to identify systemic weaknesses creating potential for malpractice and corruption.

In order to strengthen the anti-corruption focus of the Office of the Ombudsman, it will be important to strengthen its capacity particularly in relation to investigating corruption and performing its policy coordination role in anti-corruption across government. Beyond the measures already taken to increase outreach (such as mobile staff teams, anti-corruption clubs in schools), it would also be worth considering decentralising the services of the Office of the Ombudsman in order to increase access outside of the capital city.

There are several other aspects of the institutional framework on anti-corruption that require strengthening, including legislation dealing with conflicts of interest and protecting whistleblowers, as well as Codes of Ethics/Conduct covering all public agencies, institutions and organisations.

The role of independent civil society as a watchdog, advocate, monitor and contributor to policy development in the fight against corruption needs to be strengthened, for example by supporting investigative journalism and educating the public and training officials on the need to fight corruption.⁷¹ At present, the only active civil society organisation that is dedicated to fighting corruption is Transparency Rwanda, relatively new organisation that is just finding its feet. It has recently completed a study of Rwanda's national integrity system and has tabled a number of useful conclusions and recommendations.⁷²

In summary, Rwanda has an impressive record in combating corruption, and benefits from levels of corruption that are markedly lower than in neighbouring countries. There is a strong political resolve to continue the policy of zero tolerance. However, while political will is strong, there is an urgent need to strengthen the institutional framework that is required to guarantee sustained progress in fighting corruption.

Monitoring Framework. For the monitoring of corruption two indicators are proposed. The first relates to the number of successful prosecutions as a percentage of cases reported to the police and/or Ombudsman. Because there is limited hard evidence on the extent and nature of corruption in Rwanda it is recommended to develop a second indicator based on an independent, comprehensive survey of corruption in Rwanda to reveal people's actual experience of corruption stratified across various socio-economic and occupational groups.⁷³ This would extend and complement information provided by well known international perception-based measures of corruption.

⁷¹ The Office of the Ombudsman already provides training to journalists on anti-corruption every six months.

⁷² These recommendations include: (1) the legal framework dealing with corruption should be strengthened by passing a law on the freedom of information and by introducing codes of conduct and citizen charters in all public agencies, (2) the process of law making should be professionalized to avoid inconsistencies and ensure clarity, (3) anti-corruption activities should be more effectively coordinated, with the imposition of sanctions were justified, (4) all public appointments, including Secretary-Generals, should be on the basis of competitive tests, (5) parliament should have a system for registering lobbyists and should report contacts with lobbies and interest groups, and (6) the Office of the Ombudsman should have a presence in each district. Source: *Rwanda: Etude du système national d'intégrité*, Transparency Rwanda, January 2008.

⁷³ The Office of the Ombudsman is intending to undertake a study of corruption during 2008.

| Monitoring Framework 4.2 – Anti-corruption | | | | | |
|--|---|-------------------|---|--|-----------------|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 27. No. of successful prosecutions as a % of cases reported to police and/or ombudsman | by organisation | Annual | Prosecutor General's annual report posted on government website | Not available, need to establish monitoring system | n/a |
| 28. Comprehensive survey of incidence of corruption | Stratified sample including different socio-economic and occupational groups. | Every three years | Independent research body or CSO | Not available, need to establish monitoring system | n/a |

4.3 Decentralisation

Principles and priorities. Decentralisation is intended to bring government closer to citizens, in order to strengthen voice and accountability, and make policy and service delivery more responsive to local needs. These principles are clearly emphasised in the National Decentralisation Policy of 2000, which includes the following objectives:

- To enable and encourage local people to participate in initiating, devising, implementing and monitoring decisions and plans that consider their local needs, priorities, capacities and resources by transferring power, authority and resources from central to local government and lower levels.
- To strengthen accountability and transparency in Rwanda by making local leaders directly accountable to the communities they serve and by establishing a clear linkage between the taxes people pay and the services financed through these taxes.
- To enhance the sensitivity and responsiveness of public administration to the local environment by placing the planning, financing, management and control of service provision at the point where services are provided and by enabling local leadership to develop organization structures and capacities that take into consideration the local environment and needs.
- To develop sustainable economic planning and management capacity at local levels that will serve as the driving motor for planning, mobilization and implementation of social, political and economic development to alleviate poverty.
- To enhance effectiveness and efficiency in the planning, monitoring and delivery of services by reducing the burden from central government officials who are distanced from the point where needs are felt and services delivered.

These objectives combine elements of *deconcentration* (the transfer of administrative functions) and *devolution* (transfer of decision-making making power to the local level). They are based on a

combination of *administrative decentralisation* (transfer of operational responsibilities), *fiscal decentralisation* (transfer of taxation and spending responsibilities) and *political decentralisation* (transfer of power to elected local councils).

Assessment. Rwanda has made great progress in implementing the principles of its decentralisation policy. Perhaps more than any other area of reform, decentralisation has the greatest potential to transform the nature of governance in Rwanda. Prior to the genocide Rwanda was governed in a centralised manner and there were few genuine participatory forms of development. After 1994 the principle challenge facing the new government was to build a new administration and re-establish central authority. However, since 2000 the government has pursued a far reaching programme of decentralisation implemented in three phases.

The first phase (2000-2005) sought to put in place the legal, institutional and policy reforms to reconfigure the administrative entities of Rwanda, reinforce the role of the District as the core Local Government Authority and provide for local elections.⁷⁴ The current phase (2006-2010) aims to deepen the decentralisation process by enhancing service delivery, building local administrative capacity, strengthening planning processes and promoting community participation in the planning and management of local affairs. The third phase of implementation (2011-2015) will further reduce the number of administrative layers and strengthen partnership between state and non-state actors. The policy of decentralisation is presented in several documents including the Decentralisation Strategic Framework issued in August 2007, and the related Decentralisation Implementation Program issued as a final draft in February 2008.

The decentralisation programme has already brought about far reaching administrative change. The District Council has become the key institution mediating between the central government and the citizen. Local government elections were successfully held in 2006, and substantial numbers of staff were transferred from central government to the local administrations, demonstrating a strong political commitment to decentralised government. Local planning functions have been transferred to the District, which is responsible for preparing a District Development Plan. In principle the District Development Plan is based on a process of planning that starts with discussions of development priorities at the village (*umudugudu*) level and proceeds through a process of sifting through and aggregating project proposals at the cell, sector and district levels. The plans incorporate, and in the process approve, national programmes to be delivered through the District administration. Because the process is new and rapidly evolving it is too early to judge the extent to which ordinary citizens perceive their views, interests and priorities as being taken into account in the District Development Plans. However, this is clearly a question that should be a priority for ongoing research and monitoring.

In practice decentralisation has achieved most in terms of political and administrative decentralisation, but further progress is required on fiscal decentralisation. The Decentralisation Strategic Framework includes as one of its five strategic objectives the need to strengthen citizen

⁷⁴ The new policy has established two layers of government (central and local) and six administrative entities: Central Government, the Province, the District, the Sector the Cell and village. The Cell regroups on average 7 villages or Umudugudu with an average population of 4,000. The Sector covers approximately 5 Cells with an average population of around 20,000 and the Districts with an average of 14 Sectors and a population of 280,000. Each level has an elected council; in the case of the Cells the elections are not secret as the electors line up behind their preferred candidate. At the Sector and District levels the elections are secret, but indirect with the Cell and Sector councillors acting as an electoral college.

participation, transparency and accountability.⁷⁵ As the decentralisation proceeds such processes will need to be strengthened. Many good examples already exist that can be built on and extended, for example the Joint Action and Development Forum (JADF), *umudugudu* meetings, *ubudehe* village level participatory planning programmes, *abunzi* mediation, service satisfaction surveys, citizen report cards, Youth and Women's Councils, *mutuelles de santé* Committees, Parents-Teachers Associations (PTAs), Water Committees and Management Boards in hospitals. Survey evidence suggests a high and increasing level of public participation in local affairs. The percentage of citizens claiming to have been consulted by local decision makers increased from 85% in 2004 to 93% in 2006. The percentage of citizens participating, at least once a month, in the management of social, cultural and political affairs has increased slightly from 34% in 2004 to 37% in 2006.⁷⁶

Fiscal decentralisation is recognised as being a key element of strengthening local decision making powers, and is emphasised as one of the strategic objectives of the Decentralisation Strategic Framework. While the present rules provide for predictable and transparent transfers from central to local government, there is always a question of the balance to be struck between central government earmarking funds and leaving spending to the discretion of local government. At present, there is relatively little local discretion because nearly all of the resources transferred to local government are earmarked in the national budget for specific sector activities. Non-earmarked transfers under the direct control of District government, such as the Local Area Budget Support Fund (LABSF) and Community Development Fund (CDF) make up a small portion of resources spent on local services.⁷⁷ Furthermore, the capacity of the districts to raise their own revenues (through taxes and fees) is generally low, and over 90 per cent of district government revenues come from central government transfers. The scope for local identification development priorities is thus constrained, but there is some latitude in how local government decides to implement national programmes within the framework of the District Development Plan. The EDPRS recognises that "fiscal decentralisation [has been] moving more slowly than the institutional framework" (paragraph 2.64). However, there is an intention to introduce greater fiscal decentralisation. All districts have ambitious targets for local revenue raising, but not necessarily clear plans or taxation authority adequate to meet districts' expectations or needs.

A key challenge in decentralisation is to build planning and implementation capacities at local level amongst state and non-state actors. Progress has been made. For example, most District Mayors are committed, energetic, and well qualified. All are now required to possess a university degree. However, acute capacity constraints remain in local government, in particular in terms of administrative and financial management experience.

The effectiveness of local government depends above all on accountability to citizens. In this regard Rwanda has put in place a well developed system of monitoring and evaluation based on the custom of *Imihigo*. Traditionally this was a public pledge made in front of local leaders to perform a brave act or other public spirited accomplishment. This practice has been adopted as an instrument

⁷⁵ Rwanda Decentralization Strategic Framework, Ministry of Local Government (MINALOC) August 2007

⁷⁶ *Social Cohesion in Rwanda: An Opinion Survey (2005-2007)*, National Unity and Reconciliation Commission (NURC).

⁷⁷ Currently 3-5 percent of total government revenue is allocated as a block grant to local administrations for recurrent expenditure (Local Area Budget Support Fund) the use of which is decided by District and City Councils. A further 10 percent is made available to District Councils through a Common Development Fund (CDF) for capital investment. Various donors contribute additional funds to the CDF. The bulk of local government resources are provided by central government as sectorally earmarked grants, based on clearly defined formulae, for the delivery of specific public services.

to boost public accountability and performance in local government. Since 2006 all District Mayors have entered into *imihigos*, which are intended to instill a strong sense of accountability for achieving stated commitments. *Imihigos* are formalised as a performance contract proclaimed publicly and signed with the President, and are based on detailed monitoring frameworks and a quarterly review process. The government intends to strengthen the accountability of local government officials towards citizens through participatory planning and monitoring processes, as well as through *imihigos*.

It is difficult to judge the impact of *Imihigos* at this early stage in their introduction. However, it is clear that they have already become a powerful instrument for strengthening accountability, monitoring local government effectiveness and fostering results-based management. The system of *Imihigos* has been replicated at lower tiers of government and reaches down to the level of the household.

In assessing the experience of the first round of *Imihigos* and considering how they will be implemented in future, a number of challenges are evident. *Imihigos* have already established a strong sense of accountability between local and central government. They are also intended to make officials more accountable towards citizens. To strengthen this critical element of the accountability framework there is a need for greater citizen participation in the preparation and monitoring of *Imihigo* contracts. In addition, greater citizen participation and input in local government decision-making is required, for example around issues such as planning, budgeting, and service delivery. Linkages to the district planning process will need to be enhanced in order to ensure an appropriate balance in the content of *Imihigos* between national and local priorities.⁷⁸ Monitoring frameworks need to include national priorities, but also locally defined targets that are established and monitored in a participatory manner, for example in the context of open town hall meetings or using feedback from Citizen Report Cards and Community Score Cards. A number of promising initiatives are underway to strengthen these mechanisms. While recognising the government's and public enthusiasm for the *Imihigo* system and the benefits it brings, it will be essential to avoid two things: overloading the monitoring and evaluation system, and creating perverse incentives among local authorities eager to meet their targets. Heavy reporting and verification requirements risk diverting resources away from client-focused service delivery and participatory planning processes.

Monitoring Framework. The recommended indicators for the monitoring of progress in implementing decentralisation policy include measures of transparency and autonomy in local public finance, and survey-based perception measures of local government responsiveness and citizen participation in local political affairs. The use of Citizen Report Cards and Community Scorecards (see section 4.4) is recommended as an appropriate means to gain quantitative and qualitative data on the extent and quality of local participation and consultation.

⁷⁸ Examination of the *Imihigos* for the five districts visited by the JGA showed that most of the targets (around three quarters) relate to national policies and programmes. However, there was evidence that some of the targets reflected locally defined priorities.

| Monitoring Framework 4.3 – Decentralisation | | | | | |
|--|--------------------------------|--|---|--|-----------------|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 29. District government expenditures published and available | By sector, programme | Annual | MINALOC with civil society verification | District spending available in aggregate terms. Greater sectoral and programme based disaggregation needed | n/a |
| 30. % central transfers unearmarked | By district | Annual | MINALOC MINECOFIN | Availability to be checked | n/a |
| 31. % of district revenues locally generated | By district | Annual | MINALOC | Availability to be checked | n/a |
| 32. % of citizens in target districts who feel they participate actively in local decision making and that local government is listening to and addressing priority concerns | By gender, district, by sector | Every three years in selected districts/ sectors | Commission survey from independent organisation based on Citizen Report Cards, Community Scorecards | n/a | n/a |

4.4 Public Service Delivery

Principles and priorities. This section is concerned with accountability, responsiveness and transparency in the delivery of public services. The matters that are central to good governance include inclusion, participation, fairness, and responsiveness in relation to service users. Several principles may assist in promoting these goals: first by finding ways to enhance users' voice and participation in the delivery and monitoring of services (accountability between users and service providers), secondly by strengthening democratic processes to hold political leaders more accountable for the quality of service delivery (accountability between citizens and government), and thirdly by putting in place management arrangements ("compacts") between decision makers in government and service providers that create stronger incentives rewarding good performance (accountability between government and service providers).⁷⁹ The decentralisation of service delivery can help to strengthen these three channels of accountability, but this very much depends on aspects of good local governance discussed in section 4.3.

⁷⁹ See World Development Report (2004) *Making services work for poor people* for a discussion of this three way accountability framework. A similar framework is presented in the Government Policy Note, *Making Decentralized Service Delivery Work in Rwanda, Putting the People at the Center of Service Provision*, MINALOC 2005

Assessment. Before assessing these aspects of accountability it is worth explaining the context by briefly reviewing the progress that has been made in Rwanda in regard to service provision in relation to two key sectors: health and education.

Under a policy of free primary education for all, the net primary enrolment rate increased from 74% to 86% between 2000/01 and 2005/06.⁸⁰ Rwanda had achieved gender parity in net primary enrolment rates as early as 2000/01. Hence, it is well on track to achieve MDGs number two and three on universal primary education and eliminating gender disparities at all levels of education. Survey evidence suggests that there is a high level of satisfaction with primary schools. The challenges for the future will be to increase secondary enrolment (currently only 10%), and to raise enrolment and completion rates for the poorest children. The EDPRS notes that primary enrolment rates increase with household income, but that this disparity has reduced with time. At secondary level the disparity in enrolment between the poorest and richest households is greater than at the primary level, and, worryingly, this gap has increased over time.⁸¹ The gap appears to be explained by the cost of education rather than any other barrier to access. The evidence suggests that access to the secondary and tertiary levels is fair and transparent. Selection is based strictly on merit as measured by exam results (using numbered exam papers). The disparities that are observed would suggest that, while the system is non-discriminatory and fair, special measures are required to support access to secondary education amongst disadvantaged groups. In addition to this issue of equity and inclusiveness, there is also a need to improve the quality of education and retention rates. These challenges relate in particular to the shortage of well trained and motivated teachers, the low salaries that can be afforded, the absence of key inputs, problems of teacher absenteeism, and the shortage of school inspectors to help improve teaching standards.

While Rwandan primary education compares favourably with other African countries, the country's health services lag behind. A particular challenge will be to improve indicators of maternal and child health, which remain low, and are not improving rapidly enough to achieve MDGs number four and five.⁸² While most health indicators are slowly improving, there are important variations between indicators and between different parts of the country. Access to, and use of health and health-related services has improved in some areas, but not in others. 75% of people now live within 5 km of a health centre and 56% of nurses are in rural areas. Around three quarters of the population are now covered by the health insurance scheme, *mutuelles de santé*, and this proportion is expected to grow. Survey evidence points to an increasing frequency of consultation with medical practitioners amongst all income groups, although the richest income quintile enjoys greatest access.⁸³

⁸⁰ Figure quoted in the EDPRS paragraph 2.47 originating from the EICV survey (Enquête intégrale sur les conditions de vie des ménages). MINEDUC report higher net enrolment rates.

⁸¹ In 2005/06, net secondary school enrolment among children from the highest consumption quintile was ten times higher (26%) than among children from the lowest quintile (2.6%). EDPRS paragraph 2.55

⁸² Rwanda has achieved a gradual improvement in the under five mortality rate, but this is not occurring sufficiently rapidly to achieve a two-thirds reduction between 1990 and 2015 as required by MDG number 4. The U5MR fell from 176 per 1000 live births in 1990 to 160 in 2006. The maternal mortality ratio was 1,300 per 100,000 live births in 2005. World Health Organisation (2008) Countdown to 2015, Maternal, newborn and child survival, <http://www.who.int/pmnch/Countdownto2015FINALREPORT-apr7.pdf>

⁸³ Figure quoted in the EDPRS paragraph 2.43 originating from the EICV2 survey (Enquête intégrale sur les conditions de vie des ménages)

Government policy towards service provision emphasises objectives of access, quality, equity and inclusiveness, and is framed within the overall strategy for decentralisation. Hence most education, health, agricultural, infrastructure and social services are delivered by local government with the district being responsible for coordination and planning and the sector being responsible for delivery. The participatory planning instruments described in section 4.3 all have a strong focus on service delivery issues, and aim to strengthen citizen voice in the formulation of policy towards service delivery. There are also a number of mechanisms to promote user participation in the management of services, an important example being the increasing role of Parent Teachers Associations in the management of schools. Water Committees and Hospital Management Boards are intended to perform a similar role in their respective sectors. The main challenge for the future will be to increase the autonomy and decision making power of these bodies, and to build their capacity to take on these new responsibilities.

As an additional element of accountability towards users, Rwanda has piloted the use of participatory evaluation tools, including *citizen report cards* based on user surveys and structured questionnaires and *community scorecards* based on focus groups of users and service providers. These seek the views of intended beneficiaries on how effective, inclusive, participatory and accountable government programmes and actions are, how knowledgeable citizens are about their rights, and how responsive officials and service providers are to the expressed views and needs of ordinary citizens (see box 7). The government is committed to expand the use of citizen report cards and community scorecards. However, the slow pace of scaling up points to significant challenges in mobilising resources and developing the necessary technical and facilitation skills.

In the context of the ongoing decentralisation strategy, the government intends to transfer greater decision making and financial responsibilities for service provision from central to local levels and to service providers themselves. For example, in the education sector government intends to decentralise financial management (including the payroll) to district level, put the district in charge of monitoring contractual performance indicators for schools, and make schools fully responsible for recruitment and monitoring of staff performance.⁸⁴ Where appropriate and feasible there is also an intention to out-contract service provision to NGOs and the private sector using performance contracts. All of these proposals represent sound principles for service delivery. However, given the relative lack of experience in Rwanda with decentralised models of service delivery, the implementation and capacity building challenges should not be underestimated.

A key requirement for increasing accountability in service delivery is the provision of information on policy priorities, budgets, targets and performance indicators. In this regard Rwanda has made some initial progress, for example in announcing open days for public agencies. However, much remains to be achieved to improve information flows. There are opportunities to publicise such information at the point of service delivery and by using radio and other media. The internet, while only accessible to a minority, could also be used more actively. There are many government websites, but these are generally poorly maintained and are mostly not up-to-date. Work has started on “Service Delivery Directories”, “Citizens’ Guides” and “Citizen Charters”, but this approach could be applied more systematically. This would entail developing service standards across government at all levels, making service users aware of their entitlements, and putting monitoring tools in place.

⁸⁴ *Making Decentralized Service Delivery Work in Rwanda, Putting the People at the Center of Service Provision*, MINALOC 2005

Box 7 – Experience in Rwanda with Citizen Report Cards and Community Scorecards

Citizen Report Cards (CRC) have been piloted in Rwanda twice, first in 2004 on services provided by MINALOC for the registration of births, deaths and marriages, and then in 2005 on health and education services. The second study included the use of Community Scorecards. Both were conducted by a team of researchers belonging to a network of social science researchers in Eastern and Southern Africa (OSSREA), whose Rwandan Chapter is based at the National University of Rwanda. The information gathered on the registration services showed that overall performance was good and that staff were dedicated. Nonetheless, it was noted that there were weaknesses such as the lack of awareness by the population about the necessity of registration and the procedures involved, inadequately trained staff, insufficient material resources for effective service delivery, particularly in data collection and record keeping, and long distances involved in seeking the services. In relation to health and education both surveys revealed a lack of knowledge by service users and providers on the entitlements to primary schooling and health service provision. The community scorecard exercise indicated an eagerness amongst communities and service users to discuss both positive and negative aspects of service provision.

The information obtained in the two pilot surveys discussed above has been used to initiate changes in their respective ministries. For example, the CRC on registration services supported the idea of transferring some services from the district to the sector level. The reports have also fed into policy documents, such as the EDPRS.

Following these pilots a larger scale study of ten sectors based on citizen report cards was undertaken in 2007 and the report is expected soon.

Monitoring framework. The monitoring framework for service delivery centres on the increased use of citizen report cards and community scorecards, which are a promising tool to gauge citizens' experience and participation in service delivery. The other indicators relate to increasing transparency and public information on service delivery. This includes measuring the number of government agencies with service delivery standards in place assessing the extent to which public agencies make available full information to the public about the services they are responsible for providing.

| Monitoring Framework 4.4 – Public Service Delivery | | | | | |
|---|---|----------------------------|---|--|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 33. Citizens' experience of and participation in service delivery | For key sectors: health, education, water and sanitation, policing etc. | Annual cycle of five years | Commission survey based on Citizen Report Cards, Community Scorecards | Not yet available – pilot studies undertaken | 2005 CRC/CSC survey of health education 2007 MINALOC study |

| | | | | | |
|--|---|-------------------|-------------------------------|--|-----|
| 34. Number of government agencies having developed service delivery standards. | | Every three years | Service providers | Not available. | n/a |
| 35. % of departments/public agencies providing full information to the public about their services, and disseminating citizens guides to their services. | Consider websites, publications and other broadcast information | Annual | Ministry of information, RITA | Not available, would need to establish monitoring system | n/a |

4.5 Public Service Reform

Principles and priorities. Good governance depends on effective public administration. This may be assessed on several criteria: (1) whether government is performing functions consistent with its legal responsibilities and policy objectives, (2) whether government is organised in such a way as to discharge its responsibilities most efficiently, (3) whether administrative procedures are effective, adhered to and understood, (4) whether the human and financial resources available to government are adequate to perform required tasks, (5) whether staff have the appropriate skills and experience to perform their duties, and (6) whether staff are sufficiently motivated and remunerated. Public service reform may act on any of these areas, for example through organisational restructuring, introduction of new procedures and controls, reform to recruitment and promotion practices, skills enhancement and pay reform. Public service reform therefore covers a very broad set of issues, not all of which can be adequately assessed within the resources available to this study. Fortunately, there are other assessment processes underway that provide insight into the progress that has been made and the remaining challenges. These include the functional reviews and institutional audits that have been completed for 6 ministries, and are currently being extended to cover 22 ministries and public agencies.⁸⁵

Assessment. Since 1997 the Government of Rwanda has implemented far reaching public service reforms that have transformed the nature of the public sector. There have been several phases to the reform. Between 1997 and 1999 government underwent rapid downsizing with the dismissal of 6,000 employees who were not adequately qualified, and the removal of 6,500 ghost workers. At the same time benefits were monetised and salaries increased substantially. From 2002 with the start of the decentralisation policy there has been a major shift in personnel from central to local government. Since 2005 there has been greater focus on pay reform, improved human resource management and capacity building. The latest reform has been the creation of the Public Service Commission, which, as envisaged in the Constitution, will oversee recruitment and human resource management. The detailed regulations governing the PSC are still being drafted and are expected to be finalised by the end of September 2008.

The government's vision is that of a small, cost effective and responsive public sector built on the principles of decentralisation and delegation of authority. Some important elements of this vision have been achieved. The administration is modelled along the lines of small central ministries responsible for policy formulation, specialised agencies performing regulatory functions and local

⁸⁵ A report on the first six functional reviews is available. See *Functional Reviews and Institutional Audit of Six Public Sector Institutions to Assess the Impact of Ongoing Public Sector Reforms*, Oxford Policy Management, February 2008

government delivering services. These principles adhere to best practice that has guided successful public service reforms in many countries.

Much has been achieved over the period of reform. The size of the public sector has been reduced by about two thirds, new and capable specialised agencies have been created, functions have been transferred from central to local government, new laws and orders governing the public service have been enacted, new organigrams have been established for each ministry, department and unit, more specific job descriptions are being prepared, recruitment has become more merit-based, corruption is rare, staff are generally well motivated, and there is an increased emphasis on responsibility and results.

In recognising the achievements, it is also important to acknowledge the scale of the remaining challenges. The functional reviews that are underway have highlighted numerous problems that will need to be addressed. Overall, they indicate that capacity is highly stretched with very few staff charged with performing major responsibilities. More specific findings of these and other studies include:

- There is a need for public service legislation setting the basis for political impartiality, probity, prohibition of patronage and nepotism, professionalism, stability and homogeneity in the civil service. A clearer distinction is needed between the political and the administrative levels of government. Recruitment principles need to be defined by law.
- Human resource management policies need strengthening to guarantee transparency and merit-based appointment. More realistic and better defined job descriptions are required. Training needs assessments should be undertaken systematically. A clearer structure for career progression and promotion needs to be put in place backed by a robust performance assessment system.
- The problem of high staff turnover needs to be addressed. The reliance on contract staff and consultants needs to be reduced.⁸⁶
- Management Information Systems and the use of ICTs needs to be strengthened across government, for example by computerising the payroll. More effective information systems are required to strengthen the oversight and monitoring roles of central ministries to support the decentralisation process.

Several of these issues are being addressed. For example, a system is being put in place to introduce an annual staff evaluation based on performance contracts. The staff payroll is in the process of being computerized. A proposed code of ethics for civil servants is under preparation. The Public Service Commission will also play the leading role in strengthening recruitment and human resource management procedures.

⁸⁶ In view of the high staff turnover in public service, estimated at around 30% over two years, a study was commissioned to assess reasons for leaving and to compare pay levels between the public and private sector. This found significant disparities in remuneration when all benefits were considered. Pay disparities were greatest in certain sectors where labour market demand is particular high, such as legal professionals, accountant and audit staff. A rough breakdown of reasons for leaving the public sector in a survey of 46 "leavers", in order of importance, is as follows: Salary and benefit levels (about 50% of responses), management problems (about 45% of responses) and lack of career prospects and possibilities for promotion (about 40% of responses). Source: Comparative Study for Salaries in Public and Private Sectors, MIFOTRA October 2007

This progress notwithstanding, it is clear that public service reform has much further to go to address the numerous remaining challenges. It is recommended that the current functional review process should lead to the development of action plans with specific implementation arrangements.

Monitoring Framework. The indicator for the ongoing monitoring of public service reform is the preparation and implementation of action plans based *inter alia* on the findings of the functional reviews for 22 ministries.

| Monitoring Framework 4.5 – Public Service Reform | | | | | |
|---|-----------------------|------------------|---|--|-----------------|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 36. Preparation and implementation of Action Plans for public service reform based <i>inter alia</i> on the findings of the functional reviews for 22 ministries. | For each ministry | Annual report | Ministries or reforms steering committee. | Reporting system needs to be established | |

5. Investment climate and corporate governance

This component of the Joint Governance Assessment addresses four sets of issues:

- ① the ease of doing business,
- ② corporate law and governance,
- ③ private sector advocacy, and
- ④ state-business relations.

The focus of the assessment is solely on governance issues that affect the investment climate. Broader economic factors influencing private sector development are not considered. The analysis is concerned with the two-way relationship between government and business: how government affects business by imposing formal and informal rules, and how business may influence government through processes of lobbying and advocacy. The chapter also covers corporate governance issues, which are defined as the internal rules governing companies in order to protect the interests of investors and other stakeholders.

5.1 Ease of doing business










































Principles and priorities. Government regulation of business activities is necessary to correct market failures, ensure competition, safeguard the environment and protect health and safety. However, such regulation also imposes costs and risks on businesses, especially in conditions where regulation is applied in an unpredictable, arbitrary and untransparent manner. Good governance requires governments to apply essential regulation, while attempting to minimise the costs and risks to business.

This section considers the ease of doing business in relation to a broad set of factors connected with government regulation and tax administration. It is important to consider both formal regulatory practices, and the informal ways by which public officials may frustrate business activities, including corruption.

Assessment. The starting point for this assessment has been the analysis of indicators contained in the World Bank/IFC's *Doing Business* reports for the period 2004 until 2008 (see table 4). It must be emphasised, however, that while *Doing Business* provides an assessment that is valuable for Rwanda, it measures only a limited part of the business environment in the country, and there are important issues that are excluded.⁸⁷ There are many features of the investment climate in Rwanda that make the country an attractive place to do business that are not captured in the *Doing Business* ranking, for example low rates of crime and corruption. The rules regulating foreign investment are liberal: 100% foreign ownership of business and repatriation of profits is permitted. As will be suggested below, the *Doing Business* reports need to be supplemented by further Rwanda-specific material.

⁸⁷ For example, the dealing with licences measure considers only the time and cost incurred in obtaining a construction permit for a warehouse. The enforcing contracts indicator considers only one particular type of business dispute.

Table 4 – Doing Business Indicators for Rwanda 2004-2008

| Indicator | Trend | Doing business reporting year | | | | |
|---|---|-------------------------------|-------------|-------------|-------------|-------------|
| | | 2004 | 2005 | 2006 | 2007 | 2008 |
| Overall rank (no. of countries assessed) |  | n/a (133) | n/a (145) | 139 (155) | 150(175) | 150(178) |
| Starting a Business | | | | | | |
| Rank |  | - | - | - | 55 | 63 |
| Procedures (number) |  | 9 | 9 | 9 | 9 | 9 |
| Duration (days) |  | 43 | 21 | 18 | 16 | 16 |
| Cost (% GNI per capita) |  | 232.3 | 316.9 | 200.1 | 188.3 | 171.5 |
| Paid in Min. Capital (% of GNI per cap.) |  | 457.3 | 0 | 0 | 0 | 0 |
| Dealing with Licences | | | | | | |
| Rank |  | - | - | - | 132 | 124 |
| Procedures (number) |  | - | - | 16 | 16 | 16 |
| Duration (days) |  | - | - | 275 | 275 | 227 |
| Cost (% GNI per capita) |  | - | - | 976.8 | 871.8 | 822.1 |
| Employing Workers | | | | | | |
| Rank |  | - | - | - | 95 | 95 |
| Rigidity of Employment Index |  | - | 76 | 42 | 42 | 42 |
| Nonwage labour cost (% of salary) |  | - | - | 5 | 5 | 5 |
| Firing costs (weeks of wages) |  | - | 54 | 26 | 26 | 26 |
| Registering Property | | | | | | |
| Rank |  | - | - | - | 134 | 137 |
| Procedures (number) |  | - | 5 | 5 | 5 | 5 |
| Duration (days) |  | - | 354 | 371 | 371 | 371 |
| Cost (% property value) |  | - | 9.5 | 9.8 | 9.6 | 9.4 |
| Getting Credit | | | | | | |
| Rank |  | - | - | - | 156 | 158 |
| Legal Rights Index |  | - | - | 1 | 1 | 1 |
| Public registry coverage (% adults) |  | 0.1 | 0.1 | 0.1 | 0.2 | 0.2 |
| Private registry coverage (% adults) |  | 0 | 0 | 0 | 0 | 0 |
| Protecting Investors | | | | | | |
| Rank |  | - | - | - | 165 | 165 |
| Investor Protection Index |  | - | 1 | 2.7 | 2.7 | 2.7 |
| Paying taxes | | | | | | |
| Rank |  | - | - | - | 52 | 50 |
| Time (hours) |  | - | - | 168 | 168 | 168 |
| Total tax rate (% profit) |  | - | - | 37.2 | 37.2 | 33.8 |
| Payments (number) |  | - | - | 34 | 34 | 34 |
| Trading Across Borders | | | | | | |
| Rank |  | - | - | - | 178 | 166 |
| Documents for export (number) |  | - | - | 14 | 14 | 9 |
| Time for export (days) |  | - | - | 63 | 60 | 47 |
| Cost to export (US\$ per container) |  | - | - | 3840 | 3840 | 2975 |
| Documents for import (number) |  | - | - | 19 | 20 | 9 |
| Time for import (days) |  | - | - | 92 | 95 | 69 |
| Cost to import (US\$ per container) |  | - | - | 4080 | 4080 | 4970 |
| Enforcing Contracts | | | | | | |
| Rank |  | - | - | - | 44 | 44 |
| Procedures (number) |  | - | 29 | 24 | 24 | 24 |
| Duration (days) |  | - | 395 | 310 | 310 | 310 |
| Cost (% of claim) |  | - | 49.5 | 78.7 | 78.7 | 78.7 |
| Closing a business | | | | | | |
| Rank |  | - | - | - | 178 | 178 |
| Time (years) / cost (% of estate) |  | No practice | No practice | No practice | No practice | No practice |

Trend arrows: Rising arrows refer to improvements in the indicator. Falling arrows refer to a worsening trend.

Sources: World Bank, Doing Business reports and website: www.doingbusiness.org

Rwanda's overall ranking in the 2008 *Doing Business* report was 150 out of 178 countries. Examining the rankings for each topic, Rwanda compares well internationally on the *ease of starting a business*, *paying taxes* and *enforcing contracts*, but scores less well on *dealing with licences*, *registering a property*, *trading across borders* and *closing a business*.⁸⁸ These rankings indicate that there are significant opportunities to strengthen the investment climate in Rwanda through regulatory reform, strengthening the commercial legal framework, and improving public administration and governance more generally.

In addition to examining Rwanda's position in the rankings, it is important to consider indicators of trend and the commitment of government to further reform. In this regard the business climate in Rwanda provides positive signals for investors. The trend indicators shown in table 3 point to a significant improvement in most aspects of the investment climate since 2004, including the overall ranking when the increasing number of countries included in the assessment is taken into account. There have been particularly significant improvements in relation to *trading across borders*, *starting a business* and *dealing with licences*. Table 3 shows that nearly all indicators have improved or remained the same. A worsening in the ease of doing business is only evident for three indicators. One area of slow progress relates to land registration, where in spite of the introduction of the new land law in 2005, administrative procedures to obtain land titles are slow moving.

In the 2006 *Doing Business* report Rwanda was praised as one of the top 12 reformers, mentioned in particular for its progress in streamlining customs procedures, improving the credit registry and expediting contract enforcement. The 2008 report showed that Rwanda had made greatest progress in two main areas: *dealing with licences* and *trading across borders*.

Looking towards future trends there is a strong commitment on the part of the Government of Rwanda to improve the business environment. There is a focus both on improving the *Doing Business* rankings and on addressing broader aspects of the business climate. The Rwanda Investment and Export Promotion Agency (RIEPA) has established a Doing Business Task Force to spearhead reforms. Key reforms that have been recently implemented or will be implemented shortly include:

- **Starting a business.** Rwanda is in the process of establishing the Rwanda Commercial Registry Services Agency, and has just appointed a Registrar General. The agency will act as a one stop shop for business startup, company incorporation and registration of secured transactions and intellectual property rights.
- **Dealing with licences.** Kigali districts have merged and simplified procedures for applying for construction permits/licences. Applications for electricity and water connections have been merged. Property and mortgage registration fees (previously 6% and 2.5% of the property value respectively) have been replaced by low flat fee of RwF 20,000.
- **Trading across borders.** Broad customs reforms have been implemented (e.g. single bank payment point for customs, RBS and MAGERWA, computer systems improved, introduction

⁸⁸ In relation to "closing a business" Rwanda is classified as a "no practice" country because of the absence of an effective bankruptcy law and the very low number of cases reaching court. Bankruptcy is almost non-existent as a method to deal with insolvency. Under the Doing Business classification Rwanda automatically receives the bottom ranking as a no practice country.

of ASYCUDA ++ at major border posts, remote connection of clearing agents, special desk handling goods imported under RIEPA certificate.)

- **Protecting investors.** The draft company law addresses issues such as disclosure, rights of shareholders to sue and director liabilities.
- **Paying taxes.** Various measures are underway to reduce tax compliance costs.
- **Enforcing contracts.** Commercial courts have been established this year and expatriate judges have been contracted.
- **Closing a business.** A draft law on insolvency is ready for the legislative process.

One of the shortcomings with the *Doing Business* indicators is that they reflect the assessment of a few key informants on the formal requirements of dealing with regulatory authorities. As such, they may not be representative of the actual experience of firms, may not adequately measure informal practice, and may not capture variations in the ease of doing business experienced by different types of firm. Enterprise level surveys can provide additional useful information in this regard. The most recent firm level survey to be conducted in Rwanda is the World Bank/IFC Enterprise Survey of 2006. The findings are broadly consistent with the Doing Business indicators. However, other interesting findings are revealed as shown in box 8 below.

Box 8 – Rwanda Enterprise Survey 2006

In 2006 the World Bank/ IFC commissioned a survey of 212 firms in Rwanda based on its standard enterprise survey questionnaire. This found that the most commonly cited business obstacles related to non-governance factors, most importantly electricity supply, rates of taxation and access to finance. Governance related problems featured to a lesser degree, but were still a significant concern. The regulatory and tax administrative burden were identified as problems, whereas confidence in the court system appears to be a strongly positive factor. The survey provides mixed messages on corruption and security. While few firms identified these as a major problems, the percentage of firms making informal payments (“to get things done”) was quite significant, and losses through theft appear relatively high. Some of the key governance related indicators are reported below:

| | |
|--|-------|
| % Senior management time dealing with government regulations | 5.9% |
| % of firms identifying business licensing and permits as major constraint | 8.6% |
| % of firms identifying tax administration as major constraint | 21.6% |
| % of firms identifying corruption as a major constraint | 4.4% |
| % Firms making unofficial payments to get things done | 20.0% |
| % of firms expected to give gifts to secure a government contract | 14.4% |
| % Firms believe court system is fair/impartial/uncorrupted | 67.1% |
| % of firms identifying legal system/conflict resolution as a major constraint | 5.9% |
| % of firms identifying crime, theft and disorder as a major constraint | 4.1% |
| Losses due to theft, robbery, vandalism, and arson against the firm (% of sales) | 7.14% |

The survey results can be disaggregated by firm size, sector and foreign/ domestic ownership. The data shows that smaller firms face longer delays in obtaining licences, have a higher tendency to make informal payments,, have slightly less confidence in the courts and suffer higher losses due to crime. Foreign firms experienced lower delays in obtaining licences than domestic firms, but viewed corruption as a more serious problem. (NB the statistical significance of these comparisons has not been tested).

Source www.enterprisesurveys.org

significant business cost. An IFC team have recently undertaken an inventory that lists a total of 189 licences and permits administered by 31 institutions. While many forms of regulation are socially desirable, there is general view in Rwanda (confirmed by initial results from IFC standardised cost models) that heavy licensing requirements impose significant time delays on firms and measurable economic costs. In addition, there are overlapping and confusing jurisdictions. In the worst cases inappropriate application of licensing rules has halted or severely delayed business operations. A recent report by the Private Sector Federation documents six cases where major investment projects have been halted or abandoned as a result of the actions of by three regulatory agencies, the Rwanda Environmental Management Agency, the Rwandan Bureau of Standards and Kigali City Council.⁸⁹ These cases point to a number of weaknesses with some regulatory agencies, including lack of procedure, insufficient transparency and clarity on the rules, weak communication to service users, slow decision making and a lack of service culture.

For small businesses in Rwanda the main point of interaction with government is the District, which collects local taxes and applies formal and informal licensing requirements on where and when firms may operate. Businesses have complained that District governments have introduced new and unsatisfactory taxation arrangements under pressure to meet their local revenue targets. A Presidential Order has recently been issued to address these problems, which intends to introduce a clearer set of rules to protect small businesses from excessive and arbitrary tax demands.⁹⁰

These examples illustrate an important challenge in strengthening the business environment in Rwanda. While the formal regulatory framework is broadly appropriate to Rwanda's needs, the regulations are often applied differently in practice. The Government of Rwanda recognises this problem, stating in the EDPRS that "whereas Rwanda enjoys a good regulatory environment (including tax) and low incidence of corruption, it suffers from poor records in regulatory, and tax, enforcement, excessive bureaucratic hurdles, and poor understanding of business requirements in lower levels of public administration" (paragraph 4.16). This weakness indicates the need to build capacity and a service culture amongst regulatory agencies. Above all it points to the need to establish independent mechanisms to deal effectively with business complaints and appeals against regulatory and tax collecting agencies. In many regulatory fields it is presently not clear how a decision may be appealed and challenged. There would be merit in considering establishing an independent complaints office, such as an Ombudsman for business.

In recent years Rwanda has made considerable efforts to attract foreign investment through the strengthening of the Rwanda Investment and Export Promotion Agency. Levels of Foreign Direct Investment have been increasing and amounted to 1.2% of GDP in 2006.⁹¹ While this is somewhat lower than for other EAC countries, FDI has been increasing, and new commitments recorded by RIEPA indicate the potential for significant increases over the next few years.⁹² Rwanda has been making progress in attracting foreign investment, but the experience has not been easy. Over the past few years several major FDI projects have been terminated or withdrawn. There is a need to develop understanding on how such cases can be avoided in future, for example by strengthening government capacity to negotiate large investment deals, putting in place more effective dispute

⁸⁹ *The Regulatory Environment in Rwanda and its Impact on the Rwandan Private Sector Development and Economic Growth*, Private Sector Federation Position Paper No. 001/2007

⁹⁰ Presidential Order N° 02/01 of 31/03/2008 Establishing the list of fees charged by Districts and determining their limits.

⁹¹ Balance of payments figures provided by MINECOFIN. By way of comparison UNCTAD figures for FDI flows to Uganda and Tanzania for 2006 are 3.3% and 2.9% of GDP respectively

⁹² See Investment and Export Performance Report 2007, Rwanda Investment and Export Promotion Agency.

resolution arrangements, and following up the red carpet welcome provided to new investors with longer-term support. Such measures will be essential to improving investor perceptions.

Monitoring Framework. For the assessment of the ease of doing business the starting point for analysis are the existing World Bank Doing Business indicators that have been published annually since 2004. These indicators, being designed primarily for the purpose of international comparison, will need to be complemented by a country survey of the business climate that reports the views of different types of firm of the specific business constraints they experience. There are several possible sources for this indicator, including the World Bank/ IFC Enterprise Surveys, a firm level survey being undertaken during 2008 by the Private Sector Federation, and planned RIEPA surveys of foreign investor perceptions. The proposed JGA monitoring framework includes an indicator measuring the number of licences and their cost to businesses, and an indicator tracking the resolution of business complaints.

| Monitoring Framework 5.1 – Ease of Doing Business | | | | | |
|---|--|-------------------|--|---|--|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 37. World Bank Doing Business Indicators | All indicators except 'getting credit' and 'employing workers', which are less connected to governance | Annual | World Bank/ IFC | Available since 2004 | 2004-2008 see table 4 |
| 38. Investor perceptions of regulatory issues, licensing burden, corruption, dispute resolution | Data on business constraints disaggregated by firm size/ local investor/ foreign investor | Every three years | World Bank/ IFC Enterprise Surveys, Private Sector Federation, RIEPA | Every three years | Enterprise survey 2006, see box 8 |
| 39. Reduction in no. of licences and simplification of bureaucratic requirements | Inventory of licences, steps, days and cost required to obtain licences. | Annual | IFC inventory and standardised cost model | Initial work on inventory and costing nearly complete | IFC inventory for 2008 includes 189 licences covering 31 institutions. |
| 40. % of business related complaints resolved | Track tax appeals, complaints against key regulatory agencies (e.g. REMA, RBS) | Annual | Private Sector Federation | Not available, monitoring system would need to be established | n/a |

5.2 Corporate law and governance

Principles and priorities. Corporate governance refers to the rules by which companies are governed in order to protect the interests of investors and other stakeholders, including workers, customers, suppliers, local communities and environmental users. Some of the most important aspects of corporate governance are the disclosure of audited accounts, director liability, adequate oversight by the board of directors, avoidance of anti-competitive behaviour and compliance with legal and regulatory requirements.

Assessment. Until recently good corporate governance has not been a major concern in Rwanda. This reflects the small size of the private sector, the historical dominance of the state in business, the structure of companies, which are mostly family owned, and the absence of a capital market where shares are traded. In a small economy like Rwanda, there are simply not many large companies in respect of which issues of shareholder rights and director liability are applicable. However, with the shift towards a more market-based economy both the government and the private sector are placing greater emphasis on principles of good corporate governance, and there are now a large number of new initiatives underway to improve them.

In terms of the legal framework there are at least 14 new bills relevant to corporate governance that are at various stages of drafting (see box 9). The most important of these is the new Companies Act, but there are other significant items of legislation covering insolvency and bankruptcy, contracts, alternative modes of commercial dispute resolution, banking and insurance law, accounting, labour, competition and consumer protection.

Box 9 – New commercial laws

At the latest count there are at least 14 new laws relevant to corporate governance that are in draft or have been adopted over the past 12 months:

- Draft Company Law
- Draft Law on Business Registration
- Draft Law of Competition and Consumer Protection
- Draft Law on the Competition and Consumer Protection Commission.
- Draft Labour Code
- Draft Mortgage Law
- Draft Law on the Protection of Intellectual Property
- Draft Law on Traders and Trade Licensing
- Draft Contract Law
- Draft Insolvency Law
- Law on arbitration and conciliation in commercial matters (gazetted 12/02/2008)
- Organic Law Establishing the Commercial Courts and Determining their Organisation, Functioning and Jurisdiction (gazetted 16/12/2007)
- Law establishing the Rwanda Registration Services Agency (gazetted December 2007)
- Law on the Accountancy Profession (gazetted December 2007).

The new laws are generally considered to reflect international good practice (including OECD and Commonwealth principles of good corporate governance), and were designed on the basis of stakeholder participation, including organisations such as the Bar Association and Private Sector Federation. However, the draft Company Law, running at over 700 articles is a long and complex document that appears most relevant to large companies rather than small firms which make up the majority of the private sector.

New institutions have recently been established to implement the laws including a Commercial Court (staffed initially by 4 Mauritian Judges) and a Business Registry. In addition, Rwanda has just opened a capital market, allowing the trade in debt instruments and basic over-the-counter share transactions, which should reinforce demand for good corporate governance. There is as yet no overarching Code of Conduct for the private sector in Rwanda. However, the Private Sector Federation has a project to develop such a code through a proposed Rwanda Centre for Corporate Governance.

A key weakness in corporate governance in Rwanda is the limited compliance with international financial reporting standards. A law regulating the accounting profession was passed in parliament in December 2007. The law also creates the Institute for Chartered Public Accountants in Rwanda (ICPAR) with the responsibility for establishing national accounting and auditing standards, to build capacity in the profession and to act as a self-regulating body.

Improvements in corporate governance will depend on the success in implementing of the new legal framework. The major challenges will be to raise awareness and understanding of new laws within the business community, to ensure that new institutions function well, and to develop specialist capacities in country, including legal professionals versed in commercial law, accountants and insolvency practitioners. In this regard the recent establishment of the Institute for Legal Practice and Development will strengthen training in commercial law, in addition to courses provided at the National University of Rwanda. There is no lack of ambition to strengthen commercial law and governance in Rwanda. Perhaps the greatest risk relates to attempting to do too much too soon, resulting in incomplete implementation and legal uncertainty. A priority should be to raise awareness and understanding of the new legal framework.

Monitoring Framework. For the assessment of corporate governance the indicators will track the passage of new legislation, the number of cases completed by the new commercial court, and the percentage of large companies submitting audited accounts.

| Monitoring Framework 5.2 – Corporate Law and Governance | | | | | |
|---|--|------------------|---------------------|--|--|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 41. Passing of new commercial laws. | Track progress of the 16 new bills in draft/ preparation | Annual | Ministry of Justice | Available | Mid 2008. 14 bills. of which 4 adopted |
| 42. Number of cases completed by newly established Commercial Courts | Also measure backlog of cases if this arises | Annual | Commercial court | Will be available once cases start to be heard | Not yet started |
| 43. % of large companies (10 employees +) submitting audited accounts | | Annual | RRA | Check availability | n/a |

5.3 Private sector advocacy

Principles and priorities. Private sector voice is essential to apply pressure on policymakers to improve the business environment. Experience indicates that better outcomes are likely to emerge where this influence operates through formal business associations and organised structures of consultation between business and government agencies, rather than lobbying and informal contacts between individual businesspeople and politicians.

Assessment. The private sector in Rwanda is organised under a single apex structure, the Private Sector Federation (PSF), which was reorganised in 2006 to group together 9 sectoral and thematic chambers and 55 constituent associations. In the past consultations between the Private Sector and Government took place through the Public-Private Partnership Forum. However, this mechanism is now defunct and will be replaced by the Rwanda Economic and Social Council (RESC).⁹³ A Round Table meeting between the President of Rwanda and selected CEOs of large companies has recently been established and will take place annually. This is likely to be complemented with an annual Round Table meeting for foreign investors. As part of this process the President visits selected Rwandan companies once a year during “economic week”. At the district level the Private Sector Federation is establishing a network of Business Development Centres, and participates in local decision making bodies, such as the Joint Action and Development Forum and, when invited, in District Council meetings.

The influence of the Private Sector Federation has been modest, but its voice has strengthened since its reorganisation in 2006. Private sector influence is limited by a number of factors, including the history of state dominance of commercial activities which may have affected the emergence of a strong business-minded culture. Capacity within the Private Sector Federation is limited by skills and resource constraints, in particular within the Chambers and the newly established Business Development Centres at district level. The Private Sector Federation has a limited paying membership base, and derives only 13% of its income from member subscriptions. The continued dependence on government and donor funding creates a challenge in strengthening the independence of the organisation and maintaining a critical stance on sensitive policy issues.

The recent Round Table meetings indicate a high level of engagement by the President with the concerns of business. However, it is equally important to establish stronger contacts with operational levels of government, in particular the key regulatory agencies. The Public-Private Partnership Forum was poorly attended and did not perform well mainly because of the lack of an effective secretariat. The proposed successor arrangement, the Rwanda Economic and Social Council may succeed in overcoming these problems, but it will be important to ensure that within the broad social and economic agenda covered by the forum, there is sufficient focus on issues of specific concern to business.

Despite these limitations, the role of the Private Sector Federation is increasing, and there are notable examples of its growing voice and influence. The Federation comments on the government's budget, and has begun to produce critical position papers, on subjects such as cross border trade and regulatory abuses. There are several examples of policy changes that appear to have resulted from advocacy work by the Private Sector Federation. These include the abolition of

⁹³ Presidential Order N° 64/01 of 31/12/2007 on the establishment and functioning of Rwanda Economic and Social Development Council (RESC)

high charges at the customs bonded warehouse (a 4% tax based on c.i.f. values) and replacement with a much lower handling fee (7.5 FRW per kg), the considerable reduction in land registration fees and the scrapping of minimum capital requirements to register a new company.

Monitoring Framework. The indicators on private sector advocacy relate closely to the activities of the Private Sector Federation, in particular its financial independence as measured by its member contributions, and its influence as measured by publication of policy papers and policy changes resulting from its advocacy work.

| Monitoring Framework 5.3 – Private Sector Advocacy | | | | | |
|--|-----------------------|------------------|---|---------------------|---|
| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
| 44. % of budget of Private Sector Federation covered by from member contributions | | Annual | Private Sector Federation Annual Report | Available | 2006: 13.2% (incl. Regular subscriptions and the VIC scheme) 2005: 23.0% |
| 45. Number of position papers prepared by Private Sector Federation on issues of concern | | Annual | Private Sector Federation | Available | Information requested from PSF |

5.4 State-business relations

Principles and priorities. With a view to minimising conflicts of interest, promoting market efficiency and competition, and providing a stable and transparent environment for investment, there needs to be clarity on what are the appropriate roles of, and interactions between, public and private sectors, as well as political entities. Two sets of issues are crucial to this discussion: (i) the level of state ownership in the economy, and (ii) links between political parties and business.

Assessment. The level of state ownership in the economy has fallen markedly as a result of the vigorous privatisation programme that has taken place since 2005. The EDPRS reports that by the end of 2006 a total of 70 enterprises had been privatised and fourteen were in the process of privatisation. However, a few state-owned companies remain, such as the utilities monopoly Electrogaz and some tea estates. The government retains holdings in many other large companies, typically in the range of 10-20% of their equity.⁹⁴ Assessments of the privatisation process in Rwanda find that it has been well managed, transparent and successful.

As in all countries there are links between political parties and business in Rwanda. Politicians across all parties have private business interests. Political parties also use income from investments as an important source of funding. The ownership of investments by individual political figures and political parties is legal in Rwanda, and is subject to legislation on disclosure of individual assets and party financing. However, shortcomings in the financial reporting of political parties discussed in section 3.5 prevent a proper assessment of the scale of these investments.

The reasons for business activities of political parties can be readily understood, especially in the context where other sources of party funding are limited. However, it is important to consider the risks that this creates. The potential for conflict of interest and favoured treatment exists, especially where businesses connected to political parties are also subject to government regulations including payment of tax and competition for government tenders. There is also a danger of creating negative perceptions about the fairness and openness of the business climate in Rwanda, which could be discouraging to new investors. In view of these concerns further debate on regulating political involvement in business would be warranted. An important initial step would be to increase transparency by making public the financial declarations of political parties and ensuring that they include a full disclosure of business and investment positions held. Other recommendations in this report for raising standards of corporate governance and strengthening anti-corruption measures are also relevant to reducing the risk of conflict of interest. As discussed in section 3.5 the issue of political financing poses difficult questions in all countries, and in particular in low income countries where sources of funds are scarce. While there are no simple answers, further efforts to promote transparency and cross-party debate should be encouraged.

Monitoring Framework. It is not proposed to monitor specific indicators under the heading state-business relationships. In addressing the issue of political party involvement in business the key principle will be to enhance transparency to guard against potential conflicts of interests and promote discussion of the complex issue of political financing. In this regard the issue would be well covered by indicator number 18 under monitoring framework 3.5 on political rights. This requires public disclosure and full transparency in the financial declarations of political parties and should include complete documentation on investment positions held.

⁹⁴ Some examples of companies where the government retains partial ownership are the Bralirwa brewing monopoly, MTN Rwandacell and the Banque Commerciale du Rwanda.

6. Recommendations

The Joint Governance Assessment has covered a very broad set of issues that are critical for Rwanda's future development, peace and stability, and has provided a generally positive view of the progress that has been made in strengthening governance. However, it is important to recognise the enormity of the remaining challenges. As a basis for future discussion and detailed planning of programmes of action, this final chapter highlights some of the most important recommendations arising from each section of the report. These are consistent with policy statements already in existence in Rwanda that adhere to many of the principles discussed in this report.

Chapter Two, which grounded the analysis in Rwanda's own realities, provides a basis of the strategic challenges facing the country: to consolidate peace and security, promote inclusive governance, strengthen the rule of law, enhance accountability and recognise that sustained improvements in governance will depend on broader processes of socio-economic development, especially continuing, urgent efforts to reduce poverty in rural areas.

There are three broad tasks that need to be given greatest attention:

- institutions need to be further strengthened and rules-based governance more rigorously enforced;
- vertical accountability between government and citizens needs to be strengthened, in particular by enabling constructive state-society engagement around participatory processes such as budgeting, planning and monitoring;
- transparency and access to reliable information are essential to nearly all aspects of good governance.

An approach to strengthening governance needs to be ambitious, in recognition both of the scale of the challenges, and Rwanda's experience so far that a good deal can in practice be achieved. It will need to recognise that there are many linkages between different areas of governance, such that progress in any one area is influenced by progress in others. Given resource limitations, the prioritisation and sequencing of interventions will be essential. In the light of these considerations, the following areas for future action are limited to three to four in any one area of governance – although when aggregated they amount to a substantial agenda.

A selection of the recommendations arising from each section of the report is provided below. In most if not all areas, government will be in the lead role, but often with support from development partners. It will also be important to design monitoring mechanisms that are public, transparent, and involve citizens' organisations in gathering and evaluating data. Both government and donors have a role in ensuring that these mechanisms are properly funded.

On a highly selective basis, some capacity-building priorities have been identified:

Establishing and maintaining security

- Strengthen mechanisms for democratic oversight of the security forces by building the capacity of the Committee on Security and Territorial Integrity in the Chamber of Deputies and the Senate Committee on Foreign Affairs Cooperation and Security.

National reconciliation and transitional justice

- Complete the *gacaca* process, and give careful consideration to the risks relating to the proposal to transfer some category one suspects to *gacaca* jurisdiction.
- Give greater attention to research on the level of trust in Rwandan society and the impact of reconciliation programmes.

The rule of law

- Implement programmes to reduce the case backlog.
- Consider means of increasing access to justice and expand legal aid programmes.
- Address human resource constraints in the judiciary, and build capacity in legal drafting.

Human Rights and Civil Liberties

- Strengthen fora for stakeholders (including government and human rights organisations) to engage in more constructive discussion on contested human rights issues. Access to impartial sources of information is critical in this respect.
- While maintaining the role of Cabinet and the Senate in final selection of Commissioners in the National Commission of Human Rights, consider ways of opening up nominations or publicly advertising the posts.
- Re-examine the draft law on genocide ideology, paying attention to the quality of drafting, in particular in relation to specifying more clearly the principles of legality, intentionality and supporting freedom of expression.

Political rights

- Consider the need for more independent mechanisms for oversight of party registration, assembly and accounts.
- Maintain progress in improving electoral conduct.
- Engage in debate on political party financing. Require the publication of financial statements for all political parties including full disclosure of revenues and assets.

Institutions of accountability

- Address capacity constraints affecting parliamentary committees.
- Support the advocacy role of civil society organisations.
- Provide media training, in particular to raise standards of investigative journalism.
- Find ways to ensuring a clearer distinction between the regulatory function of the High Council of the Press and its role in defending press freedom. Support capacity building in equal regard to both functions.
- Encourage greater openness in government's provision of information to the press through the implementation of the Information Act.

Public financial management

- Give high priority to the training and retention of accountants in the public sector. Recruit accountants from abroad in the interim where necessary.
- Commission an in-depth assessment of procurement systems and practice once the new PPA is well established and press ahead with full implementation of the Action Plan of the 2004 Country Procurement Issues Paper.
- Establish the Public Accounts Committee and strengthen Parliament's role in overseeing the audit.
- Increase the number of public agencies covered each year in the report of the Auditor-General.
- Introduce expenditure tracking to verify that funds reach front-line service providers.
- Provide continued support for tax reform building on the progress that has been made at central level, applying good practice in local taxation and seeking to encourage greater public debate around the use of taxpayer resources.

Anti-corruption

- Give priority to measures aiming to strengthen the institutions underpinning the fight against corruption.
- Build specialist capacity in the Office of the Ombudsman to investigate corruption cases. Encourage more active monitoring of the follow-up to cases referred by the Ombudsman.
- While maintaining the role of Cabinet and the Senate in final selection of the Ombudsman, consider ways of opening up nominations or publicly advertising the post.

Decentralisation

- Continue progress in transferring responsibilities and resources to local government

- Strengthen downwards accountability from local government to citizens by strengthening participatory planning, budgeting and monitoring processes.
- Strengthen citizen participation in the design and monitoring of *imihigo* performance contracts

Public Service Delivery

- Engage in more proactive efforts to overcome the barriers of the poor to education
- Scale up the use of participatory evaluation tools including citizen report cards and community scorecards
- Require all government agencies to develop and publicise service delivery standards.
- Encourage all government departments/public agencies to provide full information to the public about their services, using a wide range of media.

Public Service Reform

- Undertake an independent survey of the fairness of the recruitment system.
- Enhance public service legislation setting the basis for political impartiality, probity, prohibition of patronage and nepotism, professionalism, stability and homogeneity in the civil service.
- Strengthen human resource management policies. Maintain and strengthen guarantees of transparency in recruitment and merit-based appointment. More realistic and better defined job descriptions are required. Training needs assessments should be undertaken systematically. A clearer structure for career progression and promotion needs to be put in place backed by a robust performance assessment system.
- Strengthen Management Information Systems and the use of ICTs across government.

Ease of Doing Business

- Give attention to the simplification of licensing requirements and improving the performance of key regulatory agencies.
- Establish stronger procedures to address business complaints against regulatory and tax agencies.
- In regard to foreign investment, strengthen government capacity to negotiate large investment deals, put in place more effective dispute resolution arrangements, and follow up the red carpet welcome provided to new investors with longer-term support.

Corporate law and governance

- Focus on building the capacity of institutions charged with implementing the new commercial laws
- Strengthen awareness in the private sector of the requirements of the new commercial laws
- Encourage the development of codes of conduct for good corporate governance

Private sector advocacy

- Strengthen the capacity and financial autonomy of the Private Sector Federation.
- Implement the Rwanda Economic and Social Council, and ensure that discussions focus sufficiently on business issues.

Aid relationships

This report has not focussed on the role of development partners, but it will be worth considering how the ways in which aid is delivered influence some of the above processes. Aid modalities have a part to play in efforts to build trust between state and citizens, for example by providing funding in transparent, predictable ways, and supporting the development of rules based budget and planning processes (including at local level), as well as the production of better quality public information.

Annex 1 –Monitoring Framework

REVISED VERSION 23/07/08

Information is not readily available for all indicators in this framework. An action plan for gathering this information will be agreed shortly. This plan will be costed, prioritised and timebound.

Government and partners will commission, annually, a review of progress against this framework, and against the recommendations of the narrative report. There will be opportunity at each annual review for government and partners to agree amendments to the framework, and also to agree new recommendations for tracking. It is anticipated that the annual review process will provide opportunities to more closely integrate this framework with the sectoral and comprehensive results matrices of Rwanda's Economic Development and Poverty Reduction Strategy and the Common Performance Assessment Framework (CPAF).

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|---|---|-------------------|------------------------|--|---|
| Ruling Justly | | | | | |
| 3.1 Establishing and maintaining security | | | | | |
| 1. % of respondents expressing confidence in the performance and conduct of security organs (a score of 3 or 4 on a scale of 4) | Ask separate questions for (1) Rwanda Defence Forces, (2) Rwanda National Police and (3) Local Defence. Disaggregate by gender, district if feasible. | Every three years | Perceptions survey | Survey to be commissioned from independent source. | 2007 estimate for Police – 85.6% (World Values Survey, forthcoming) |
| 2. % of respondents expressing a high level of satisfaction in their personal security (a score of 3 or 4 on a scale of 4) | Ask separate question for (1) personal and (2) property security. Disaggregate by gender, district if feasible. | Every three years | Perceptions survey | Survey to be commissioned from independent source. | 2007 estimate for Kigali – 87% personal security, 84% property security (EDPRS security baseline) |
| 3. Number of homicides per 100,000 | Disaggregate by gender, district, categories of crime. | Annual | Rwanda National Police | Available | RNP figures (homicides per 100,000 includes: 'ubwicanyi', 'ubuhoto -zi' and 'kwihekura'): 2002: 7.2 2003: 8.0 2004: 6.6 2005: 5.9 2006: 7.2 2007: 6.1 |

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|---|--|-------------------|--|--|--|
| 3.2 National reconciliation and transitional justice | | | | | |
| 4. Completed and remaining genocide trials through the gacaca and formal court system | Disaggregate by category 1, 2 and 3 and by sub-categories | Annual | National Service of Gacaca Courts, Public Prosecutor | Available for gacaca trials. Uncertainty on number of remaining cat. 1 cases | End 2007 – 1) Number of completed gacaca cases 1,065,800 2) Remaining gacaca cases 68,408 |
| 5. Killings of genocide survivors, witnesses and judges | Disaggregate by circumstance of case, location, gender | Annual | Rwanda National Police Ibuka | Available | 2003 (1 case), 2004 (4 cases), 2005 (8 cases), 2006 (14 cases), 2007 (10 cases), 2008 first half (6 cases) Ibuka reported 16 homicides for 2007 |
| 6. Measures of trust and reconciliation | Undertake perceptions surveys of trust in neighbours, community institutions and selected public bodies | Every three years | Perceptions survey | To be commissioned | Baseline studies & methodological ideas available from World Values Survey, NURC/IRC |
| 3.3 Rule of Law⁹⁵ | | | | | |
| 7. Backlog of court cases (Defined as dossiers awaiting judgement for more than 6 months), Number of prisoners awaiting trial (criminal cases only) | Disaggregate by type of crime Compare with number of cases tried Provide separate figure for genocide prisoners in pre-trial detention | Annual | Supreme Court Annual Report RCN Justice & Democracy Director of Prisons, MININTER, Other NGOs/CSOs that collect similar data or work with these populations | Available for 2007 (probably since 2004) | End 2007 54,409 backlogged cases against 31,126 cases tried in 2007 April 2008 Total prisoners awaiting trial = 16,963 of which genocide = 4,309 |
| 8. Number of qualified legal professionals | Disaggregate by gender, level of qualification, types of professional | Annual | Supreme Court Annual Report, Kigali Bar Association | Available for judges and support staff for 2007 | End 2007 257 judges (at all four levels), of which 162 men, 95 women. Bar Association Membership 273 (Nov 07) |

⁹⁵ There is a recognised need to incorporate in due course a dedicated indicator to measure independence of the judiciary.

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|--|--|----------------------|---|---|--|
| 9. Access to legal aid | Size of funds, Number of beneficiaries Gender | Annual | Legal Aid Forum and MINIJUST | Not available | Baseline study by UNDP and Danish Centre for Human Rights |
| 10. Public perception of rule of law and performance of judiciary | Gender | Every three years | Perceptions survey commissioned from independent source | Not available | Limited information available. World Values Survey found high degree of confidence in judiciary |
| 3.4 Human Rights and Civil Liberties | | | | | |
| 11. Deaths in police custody or during arrest | Detail circumstances for each incident | Annual | Rwanda National Police triangulated with reports from Human Rights Organisations | Available, but different sources dispute circumstances | Nov 2006 – May 2007 10 incidents, 20 deaths Source: RNP |
| 12. Total number of prisoners as% of planned jail capacity | | Annual | Director of Prisons, MININTER | Available | April 2008 Prison population as % of jail capacity = 135% |
| 13. Number of juveniles in rehabilitation and transit centres. | By centre, gender Also measure length of detention | Annual | MINGEPFOP, Kigali City Council (for Gikondo Transit Centre) triangulated with reports from local human rights organisations. | Availability to be checked | n/a |
| 14. Proportion of reports required under UN Human Rights instruments to which Rwanda is a signatory, that are compiled and submitted to treaty reporting bodies in a timely manner | | Annual | MINAFFET, Rwanda Human Rights Commission | Available | Needs to be checked |
| 15. Number of Human Rights cases reported to NHRC and proportion of these that get resolved. | Disaggregate by time taken to resolve human rights cases | Annual | Rwanda National Human Rights Commission | Need to check availability | |
| Indicator on civil liberties – see indicator 21: IREX Media Sustainability Index: 'freedom of speech' sub-index | | | | | |

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|--|--|-------------------|--|--|--|
| 16. Women in positions of power | Deputies, Senators, Cabinet Ministers, Judges, Mayors and Councillors, civil service | Annual | MINGEPROF and other agencies | Available | End 2007: Deputies (48%) Senators (35%) Cabinet (32%) Judges (37%) |
| 3.5 Political Rights | | | | | |
| 17. Elections declarations of independent observers | To be determined: sub-indicators could include existence of parallel vote tabulation, by political parties, by independent observers | For each election | National Electoral Commission, Independent Observers | | Start with legislative elections 2008 |
| 18. Publishing of financial statements of political parties | Sources of revenue, asset holdings and donations above RwF 1mn | Annual | MINALOC | Available, but publication would need to be agreed | Financial statements submitted, but not public. |
| 3.6 Institutions of accountability | | | | | |
| 19. Number of times ministers get called to parliament (to be reviewed in the future) | By subject area | Annual | Secretariat of Chamber of Deputies | To be checked | n/a |
| 20. Number of NGOs refused registration and required to close | | Annual | MINALOC | Available | Figure to be requested |
| 21. IREX Media Sustainability Index | Include 5 sub-indices: (see box 5) | Annual | IREX | Available | 2006-7 Average score 2.29 out of 4 See box 5 for sub-indices |
| 4 Government effectiveness | | | | | |
| 4.1 Public Financial Management⁹⁶ | | | | | |
| 22. Improvement in Public Expenditure and Financial Accountability Assessment (PEFA) scores | Disaggregate by 28 performance indicators shown in table 2 | Every three years | Commissioned reports | Baseline 2007 available | See table 2. Average score for 2007: C+ |
| 23. Comprehensive and consolidated accounts produced within 3 months of end of each year and published on MINECOFIN website. | Simple yes/no indicator | Annual | Accountant-General | Available | First consolidated accounts available for 2006, public accounts not yet online |
| 24. % of tenders exceeding threshold awarded by competitive bidding | by % of total value and by % of total number of contracts | Annual | National Tender Board Annual Report | Available | 2006: 73% by value, 82% by number 2005: 89% by value, 84% by number |

⁹⁶ It is agreed that the indicators in this section should serve as 'placeholders', for review once the PFM strategy and action plan has been finalised and approved.

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|--|---|--|---|--|---|
| 25. Value of tenders awarded without approval of internal tender committees | As % of audited expenditure | Annual | Office of the Auditor-General | Available | For FY 2006 tender irregularities FrW 7.86bn Total audited expenditure to be established |
| 26. Number of public expenditure tracking surveys undertaken | | Annual rolling assessments | MINECOFIN | Not available | n/a |
| 4.2 Anti-corruption | | | | | |
| 27. No. of successful prosecutions as a % of cases reported to police and/or ombudsman | by organisation | Annual | Prosecutor General's annual report posted on government website | Not available, need to establish monitoring system | n/a |
| 28. Comprehensive survey of incidence of corruption | Stratified sample including different socio-economic and occupational groups. | Every three years | Independent research body or CSO | Not available, need to establish monitoring system | n/a |
| 4.3 Decentralisation | | | | | |
| 29. District government expenditures published and available | By sector, programme, | Annual | MINALOC MINECOFIN with civil society verification | District spending available in aggregate terms. Greater sectoral and programme based disaggregation needed | n/a |
| 30. % of central transfers unearmarked | By district | Annual | MINALOC MINECOFIN | Availability to be checked | n/a |
| 31. % of district revenues locally generated | By district | Annual | MINALOC | Availability to be checked | n/a |
| 32. % of citizens in target districts who feel they participate actively in local decision making and that local government is listening to and addressing priority concerns | By gender, district, by sector | Every three years in selected districts/ sectors | Commission survey from independent organisation based on Citizen Report Cards, Community Scorecards | n/a | n/a |

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|---|--|----------------------------|---|--|--|
| 4.4 Public Service Delivery | | | | | |
| 33. Citizens' experience of and participation in service delivery | For key sectors: health, education, water and sanitation, policing etc. | Annual cycle of five years | Commission survey based on Citizen Report Cards, Community Scorecards | Not yet available – pilot studies undertaken | 2005 CRC/CSC survey of health education 2007 MINALOC study |
| 34. Number of government agencies having developed service delivery standards. | | Every three years | Service providers | Not available. | n/a |
| 35. % of ministries/public agencies providing full information to the public about their services, and disseminating citizens guides to their services. | Consider websites, publications and other broadcast information | Annual | Ministry of information, RITA | Not available, would need to establish monitoring system | n/a |
| 4.5 Public Service Reform | | | | | |
| 36. Preparation and implementation of Action Plans for public service reform based <i>inter alia</i> on the findings of the functional reviews for 22 ministries. | For each ministry | Annual report | Ministries or reforms steering committee. | Reporting system needs to be established | |
| 5 Investment Climate and Corporate Governance | | | | | |
| 5.1 Ease of Doing Business | | | | | |
| 37. World Bank Doing Business Indicators | All indicators except 'getting credit' and 'employing workers', which are less connected to governance | Annual | World Bank/ IFC | Available since 2004 | 2004-2008 see table 3 |
| 38. Investor perceptions of regulatory issues, licensing burden, corruption, dispute resolution | Data on business constraints disaggregated by firm size/ local investor/ foreign investor | Every three years | World Bank/ IFC Enterprise Surveys, Private Sector Federation, RIEPA | Every three years | Enterprise survey 2006, see box 6 |
| 39. Reduction in no. of licences and simplification of bureaucratic requirements | Inventory of licences, steps, days and cost required to obtain licences. | Annual | IFC inventory and standardised cost model | Initial work on inventory and costing nearly complete | IFC inventory for 2008 includes 189 licences covering 31 institutions. |
| 40. % of business related complaints resolved | Track tax appeals, complaints against key regulatory agencies (e.g. REMA, RBS) | Annual | Private Sector Federation | Not available, monitoring system needs to be established | n/a |

| Indicator | Disaggregation | Frequency | Source | Availability | Baseline |
|--|---|-----------|---|--|---|
| 5.2 Corporate Law and Governance | | | | | |
| 41. Passing of new commercial laws. | Track progress of the 16 new bills in draft/preparation | Annual | Ministry of Justice | Available | Mid 2008. 14 bills. of which 4 adopted, 10 in draft (check) |
| 42. Number of cases completed by newly established Commercial Courts | Also measure backlog of cases if this arises | Annual | Commercial court | Will be available once cases start to be heard | Not yet started |
| 43. % of large companies (10 employees +) submitting audited accounts | | Annual | RRA | Check availability | n/a |
| 5.3 Private Sector Advocacy | | | | | |
| 44. % of budget of Private Sector Federation covered by from member contributions | | Annual | Private Sector Federation Annual Report | Available | 2006: 13.2% (incl. Regular subscriptions and the VIC scheme) 2005: 23.0% |
| 45. Number of position papers prepared by Private Sector Federation on issues of concern | | Annual | Private Sector Federation | Available | Information requested from PSF |

Annex 2 – Terms of reference

(Jointly issued by MINALOC and UNDP)

International Consultancy

Joint Governance Assessment

1. OBJECTIVE

The main objective of this assignment is to establish jointly agreed benchmarks for assessing governance in Rwanda, to formulate and agree a methodology for assessment and to present an independent assessment against the benchmarks.

The assessment shall elaborate on the existing status of governance matters and issues across sectors of the economy and provide an analytical assessment to inform policy enhancement and implementation in addressing existing shortcomings. It shall be based on clearly defined benchmarks which take account of international practice as well as Rwanda's specific governance context and initiatives. The assessment will also propose a monitoring mechanism and tools for future governance trend assessments.

2. BACKGROUND

Rwanda's post genocide reconstruction, reconciliation and economic development processes have been anchored on a fundamental change in governance and on measures to enhance competitive performance in the economy.

Over the past decade, the Government of Rwanda has been pre-occupied with the implementation of reforms in public, corporate and civic sectors, introducing new laws and new governance institutions while revamping old ones to consolidate democratic governance, promote security and peace-building, strengthen economic management including fighting corruption and ultimately improving service delivery.

In addition to internationally accepted standards of governance, the Government's efforts to entrench good governance in Rwanda have also sought to incorporate traditional principles and norms that have served Rwandan society well in the past. These have been recalled to complement existing mechanisms in enhancing unity and reconciliation, delivering justice, building consensus in decision making to resolve conflict and enhancing peace and security. These traditional institutions/processes including the GACACA courts, The Commission for Unity and Reconciliation, and the IMIHIGO are key and relevant to the Rwandan social setting considering the recent past characterized by conflict, strife and genocide. The appendix attached to this TORs, provides further information on these governance mechanisms specific to Rwanda.

The Government of Rwanda and its Development Partners have agreed to jointly carry out a governance assessment exercise within a shared mechanism called the Joint Governance Assessment Framework to elaborate on the status of governance using appropriate indicators and

adhering to international standards of assessment while also integrating the traditional community-based initiatives mentioned above to assess their contribution to governance of Rwandan society.

The Government of Rwanda and its Development Partners are looking for consultancy services to carry out this assessment.

3. SCOPE OF WORK

- 3.1 Under the guidance of the Joint Governance Steering Committee (comprising of representatives of the government and development partners), the Joint Governance Technical Committee (also comprised of representatives from the government and development partners) shall manage the assessment process with Rwanda Governance Advisory Council (RGAC) taking on the co-ordination role. The consultant will be answerable and report to the Joint Steering Committee,**
- 3.2 The main focus of governance for this exercise is defined over the three sectors of the economy namely the public, corporate and civic domains using indicators that subscribe to internationally recognized norms, in particular actionable indicators that attempt to measure performance, leading to improvements in governance. The assessment shall cover governance in Rwanda over a period from 1998 to 2007.**

An initial task for the consultant shall be to establish sharply defined governance benchmarks against which the assessment is to be made.

Equally important and particular to Rwanda, the assessment shall take into consideration the society-based traditional governance institutions and mechanisms defined in the Appendix to the TOR, that are rooted in Rwandan tradition and culture, including special concerns of governance in bringing about peace, unity and reconciliation among the peoples of Rwanda. A thorough and rigorous analysis of existing institutions, laws and practice with regard to governance issues is expected to bring out the areas that need special attention for improvement. The consultant shall also establish benchmarks on which future governance monitoring shall be based. The assessment methodology will identify relevant international and national data sources, outline the data collection methodology and develop data collection tools, define a framework for presenting the data and analysis and define a framework for validation of the final assessment. Quality control of data collection, its reliability and accuracy and information analysis shall adhere to international standards.

The assessment shall take into consideration previous work on governance conducted nationally and internationally and make a judgment of their usefulness for the exercise on the basis of accuracy and quality standards. The African Peer Review Mechanism (APRM) report, governance reviews conducted by Development Partners and Government policy papers among other sources may benefit the consultant as background knowledge to the assignment.

The following three categories of governance shall be assessed:

a) Ruling Justly,

- (i) The existence of Political Rights and checks, Political stability, Absence of violence, the role of Unity and Reconciliation Commission

The consultant shall assess the existing political system including the extent of competitive election to the executive and legislature, checks and balances to eliminate excesses and ensure separation of powers, inclusive politics to allow for free participation by all citizens in achieving peace and political stability. The role of Unity and Reconciliation Commission and the use of INGANDO and ABUNZI initiatives to bring about political stability, reconciliation and sustainable security are of high interest.

- (ii) Human Rights and Civil Liberties

The review will assess the institutional framework including laws governing human rights and the activities of civil society organizations.⁹⁷ It will assess the degree of civil society organisations freedom to operate, their capacity, strengths and weaknesses to contribute towards policy formulation and implementation and their ability to provide interventions complementing government action. The assessment on human rights and civil liberties shall also expound on existing laws and regulations relating to the media, access to public information, the freedom of expression and belief of individuals, equal opportunities, gender equality and discrimination among others.

- (iii) Control of Corruption and integrity

The assessment shall examine, in terms of strengths and weaknesses, existing institutions, laws and regulations in practice that attempt to fight corruption and promote integrity. A thorough assessment shall cover among others corruption in personnel management, corruption in budget management, in contracts, state capture and administrative corruption. Existing institutions in the fight against corruption include, but not limited to, the Office of the Ombudsman, the Office of the Auditor General, the National Tender Board and its decentralized affiliates, including police and other mechanisms. There is need to assess impacts of such institutions on curbing corruption.

- (iv) Rule of Law

The rule of law is about the extent to which the public has confidence in and abides by the rules of society, effectiveness and predictability of the judiciary, as well as enforceability of contracts. It also refers to the magnitude, levels and incidences of crime in society and the ability of the legal system to deal with such crimes. The degree of adherence to laws, rules and regulations by institutions including the police shall be examined. Equality and effectiveness of access of citizens to justice, including traditional legal systems where

⁹⁷ Civil Society Organisations includes the full range of non-governmental not-for-profit civil associations including faith based organisations and professional associations

appropriate and, in particular, consideration of the GACACA courts and their role in expediting justice with respect to the backlog of genocide cases is expected in this assessment.

(v) Voice and Accountability (political, administrative and financial accountability)

Voice refers to the extent of freedom of expression. It also refers to the extent to which the citizens of a country are able to participate in the policy development and monitoring process, election of government, feedback and complaint mechanisms.

Accountability is of three categories namely; political accountability, administrative and financial accountability.

For political accountability the following is considered:

Checks and balances among the branches of government, interaction between elected public officials and the electorate at national and local levels the powers of the legislature to initiate, scrutinize and amend laws; the powers of the legislature to scrutinize the executive and hold it to account; rigorous procedures to supervise taxation and approval of public expenditure among others.

For administrative and financial accountability reference is made to:

The citizen's contribution and access to government information with regard to: public procurement process, effectiveness of public procurement system, fiscal transparency and maintenance of planning and budgetary discipline among others.

b) Government Effectiveness

Government effectiveness is about the extent to which the Government is able to implement sound and consistent socioeconomic policies for development and deliver services. The independence of the civil service and the degree of non-interference by the political arm of government, political influence in promotion and rewarding systems, meritocracy and capacity to perform, the efficiency and effectiveness of the civil service and levels of its bureaucracy are of high interest for the assessment. Including in the analysis the role of IMIHIGO (performance based contracts described in Appendix) in contributing to Government effectiveness is essential. Government effectiveness shall be assessed over the following aspects:

- (i) Macroeconomic management
- (ii) Regulatory Quality
- (iii) Service delivery
- (iv) Decentralization

The assessment will take account of the structure, staffing and operating systems of Government. It will pay special attention to decentralization; consider the level of autonomy of local governments, the extent of devolution from the centre of planning, administrative

activities and management of resources and the extent and mechanisms for local government accountability to local populations

c) Investment climate and Corporate governance

The investment climate relates to the laws and regulations that govern both foreign and domestic investment and the business environment. Corporate governance entails private sector compliance to ethics, laws, regulations and professional standards. The integrity of financial and managerial discipline in the private sector, effectiveness of regulatory systems and policies and practices in fighting corruption in business management are among considerations in corporate governance assessment. It will assess the extent to which the Rwandan private sector conforms to international norms in these areas in carrying out their activities.

3.3 Methodology and Quality Control:

- 3.3.1 Quality Control: Throughout the assessment exercise, the consultant shall provide for quality control to ensure a high degree of accuracy and reliability of data and its analysis. The consultant shall suggest and agree with the stakeholders on the quality of data to be used in the assessment. Quality control to ensure adherence to standards and best practices shall be achieved through active participation of representatives from the government, the development partners, civil society and the private sector. Throughout the assessment ensure a high degree of accuracy and reliability of data and its analysis.
- 3.3.2 The client shall subject the draft report before its approval to an independent and internationally accredited peer group for review.

4. DELIVERABLES

4.1 During the Assignment, the Consultant will deliver:

For each of the given indicators in categories 3.2a), 3.2b) and 3.2c), the consultant shall provide the following:

- 4.1.1 An Inception Report that shows the approach and methods of assessment to be presented to the Joint Steering Committee workshop;
- 4.1.2 A draft report reflecting actionable indicators on the findings regarding the overall status on governance in relation to existing institutions, laws and practice over the period 1998 - 2007 to be presented to the Joint Steering Committee workshop;
- 4.1.3 A final report, not later than two (2) weeks after receiving comments, reflecting actionable indicators on trends of development in good governance in relation to institutions, legal frameworks and practice over the period 1998 -2007. The report should show strengths and weaknesses, areas of urgent intervention leading to policy review, programmes of activities (both in short and medium term) to enhance and promote good governance in each area of

concern. This report shall be organised in four chapters produced separately as sub-reports as follows:

- a) A summary of the main findings over the three categories of governance namely Ruling justly, Government Effectiveness, Investment Climate and Corporate Governance;
 - b) A detailed sub-report on Ruling Justly
 - c) A detailed sub-report on Government Effectiveness
 - d) A detailed Report on Investment Climate and Corporate Governance.
- 4.1.4 Tools for assessment and monitoring future governance trends including both qualitative and quantitative analytical approaches and methodologies employed;
- 4.1.5 Training for RGAC staff (6 staff) on the use of governance assessment tools.

4.2 Specific Milestones will be:

- 4.2.1 Inception Report;
- 4.2.2 Draft Report with actionable indicators on trends of development in good governance;
- 4.2.3 Final Report consisting four chapters on the focused categories with in-depth analysis of existing practices, policy and activities, and details of plan of action to enhance good governance in each area of concern ;
- 4.2.4 Monitoring tools for assessing future governance trends;
- 4.2.5 Training for RGAC staff.

4.3 Reporting details:

- 4.3.1 All written submissions and reports (Two reports) must be in separate English and French versions
- 4 3.2 All submissions must be in both hard and soft formats (CD ROM)

5. QUALIFICATIONS

5.1 Submissions are invited from Firms with a Lead Consultant and 6 supporting consultants. Candidates must demonstrate the following qualifications and experience:

5.2 Lead Consultant

- 5.2.1 One Lead Consultant
- 5.2.2 Advanced degree in Law, Economics, Political Science or public policy and management;
- 5 2.3 Ten (10) years of demonstrated work experience in similar assignments;
- 2.4 Fluency in English or French and a working capability of both is an added advantage.

5.3 Team members

- 5.3.1 At a maximum of six (6) consultants including local participants to support the Lead Consultant;

- 5.3.2 Minimum Bachelor's degree in Law, Economics, Political Science or Business Administration. A professional qualification such as ACCA, CIMA, CPA from a recognised institution will also accepted. Higher qualifications shall be an added advantage;
- 5.3.3 Minimum five (5) years of demonstrated work experience in a similar domain of work;
- 5.3.4 Fluency in English or French.

6. REMUNERATION AND OTHER CONSIDERATIONS

The successful consultants will start their assignment as soon as possible following the completion of the recruitment process.

6.1 Submissions will be accepted from Firms only.

6.2 The Successful Result of this Process will be a Contract for Professional Services:

- 6.2.1 Defining an overall period of three (3) months
- 6.2.2 Requiring in-country presence and dedicated work
- 6.2.3 Based on local availability
- 6.2.2 With Milestone-based Terms of Payment for:
 - a) Mobilization;
 - b) Inception Report;
 - c) Final Report;
 - d) Monitoring tools development;
 - e) Training of RGAC staff and demobilization.
- 6.3 Only for information, interested parties should be aware that:
 - 6.3.1 The current UN Daily Subsistence Allowance (DSA) for short-term assignments in Kigali is USD 168.00 per day;
 - 6.3.2 Although Rwanda is a developing country, Kigali is a well-developed, safe and clean city with a commensurate cost of living

7. SUBMISSIONS

7.1 Qualified International firm with experience in the area of governance are invited to submit:

- 7.1.1 A written proposal (maximum 15 pages) is requested that provides details of the proposed approach and methodology. The proposal should also indicate details of similar assignments performed earlier, preferably in Sub-Saharan Africa and the level of effort made to the assignment.
- 7.1.2 CV of the Lead Consultants and of the supporting consultants along with required documents,
- 7.1.3 Other information which demonstrates your qualifications for this specific assignment,
- 7.1.4 The Lump-Sum Fee which you propose. This Fee should be inclusive of ALL considerations including travel, local cost of living, out-of-pocket expenses, etc. Please see ANNEX IV and ANNEX V of this RFP

7.1.5 The Submissions should be made in two separate envelopes or attachments (if submitted via email) for Technical Offer and Financial Offer (Indicating : DO NOT OPEN IN ADVANCE). Offers that are not submitted separately will be deemed as disqualified and will not be assessed further.

7.2 Please note that Submissions by E-mail WILL BE ACCEPTED (see ANNEX I)

8. SELECTION PROCESS

8.1 Submissions will be evaluated in consideration of the following Evaluation Criteria

8.1.1 Evaluation Criteria

- a) Methodology and work-plan [25 points];
- b) Experience in similar assignments and conditions [10 points];
- c) Qualifications of Lead Consultant [25 points];
- d) Qualifications of the team [30 points];
- e) Participation of the Local Rwandans in the assessment [10 points].

8.1.2 In order to qualify for further consideration the Individual Consultant must accomplish a minimum score of 70 points in the Evaluation of Technical Offer.

8.2 The Basis of Award will be to the or Individual or Firm who qualifies for further consideration and proposes the lowest total Lump-Sum Fee.

8.3 This Opportunity is open to male and female candidates. Applications from qualified female candidates are encouraged.

APPENDIX TO THE TOR:

Special Initiatives for Good Governance rooted in Rwandan Traditions and Norms

i GACACA Courts

GACACA, a community-based legal system, was perceived to complement existing formal legal system in expediting backlog genocide court cases and to bring about justice through community participation.

ii The Commission for Unity and Reconciliation

The Commission's main objective is to promote peace, unity and reconciliation among the peoples of Rwanda and to ensure that tendencies to social unrest, conflict and war are diminished. INGANDO as one of the main instruments used in this endeavour is an initiative with a mission to create awareness of Government programs and priorities in bringing about national development. It addresses groups such as ex-combatants and returning refugees by updating them on development strategies and helps to bridge the gap in the understanding of the more important and overarching issues. It strives to ensure that the Government policy of inclusiveness wins their hearts and minds. This in turn creates trust and consequently peace and a violence-free society.

The Commission for Unity and Reconciliation also uses another traditional mechanism known as ABUNZI, designed to defuse social disputes and tensions in contributing to peace building.

iv IMIHIGO

IMIHIGO as an aspect of good governance directly relates to Government effectiveness as well as administrative accountability. It refers to contractual engagement whereby performance contracts are signed between the mayors of districts and the President of the Republic on the basis of measurable indicators. This enhances efficiency and effectiveness in services delivery and helps keep development initiatives on track. It also ensures accountability in relation to performance