



International
Legal Assistance
Consortium

JUSTICE IN RWANDA: AN ASSESSMENT

NOVEMBER 2007

Executive Summary

During the three-month period of the 1994 genocide between 800,000 and one million Rwandans were brutally slaughtered. The killings were to a large extent carried out by civilians, creating an extraordinary number of both victims and perpetrators. This sheer scale of violence laid disastrous effects on the entire Rwandan society, including the justice system.

Prison populations exploded and the judicial system was left in ruins with very few lawyers either alive or in country. The Rwandan government had to rebuild the system from the ground up. Rwanda's legal system originally derived from the Napoleonic Code but widespread judicial reforms in 2004/5 created a hybrid legal system of civil law and common law.

The genocide's large scale also led to various national and international justice responses. Domestically, the Rwandan government introduced an informal justice process known as gacaca, designed to foster community reconciliation and provide individual punishment. While there are valid concerns about the fairness of these proceedings, gacaca worked to drastically trim massive prison populations. Ordinary domestic courts also feel genocide's heavy burden with approximately 17,000 genocide cases still awaiting trial. This number will likely decrease, however, as additional legislative reforms redirect these court cases back to gacaca.

As an international justice response, the United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR). The ICTR sits in Arusha, Tanzania and has completed about 33 cases against Rwanda's most high-ranking perpetrators. In 2003, the Security Council called on the ICTR to complete all trials by 2008 and all appeals by 2010. As a consequence, the ICTR will need to transfer some of its indicted cases (less than fifteen) to domestic jurisdictions. Rwanda vigorously wants these cases and there are currently four requests pending for transfer to Rwanda. There are also a host of additional genocide cases residing in foreign countries with possible extradition proceedings underway.

The ICTR Rules of Procedure and Evidence (Rules) only permit a case transfer when the court is satisfied that the defendant will receive a fair trial without possibility of the death penalty. Both these Rules and domestic Rwandan law allow the ICTR to monitor any transfer trials and also revoke a transfer case that does not receive a fair trial.

In May 2007, the Rwandan government invited the International Legal Assistance Consortium (ILAC) to assess the needs of the Rwandan judicial system, both for longer-term, sustainable development and also for shorter-term, intensive development to potentially receive ICTR transfers or foreign extraditions. This assessment was also asked to provide specific, prioritized recommendations on ways to enhance and build the justice system. Following an additional endorsement from the ICTR, ILAC sent a six-

member assessment team to Rwanda and Arusha from 25 August – 7 September 2008.

Broadly speaking, the assessment found that despite impressive capacity building and effective legal and judicial reforms, Rwanda's judicial system still suffers under the shadow of the genocide. There is a very concrete, basic lack of qualified human and financial resources. Prison conditions are also particularly disconcerting. There is a need for in-depth legal training, a legal library, better trial monitoring, and other issues. While this assessment is discussed in greater detail below, it does not attempt to provide any conclusions to the ICTR or national jurisdictions on possible transfers and extraditions. These are determinations to be made by the respective judicial bodies.

The report does provide, however, specific capacity building recommendations that are targeted at identified needs. These recommendations are also prioritized to fit within Rwanda's short-term (2008) and medium-term (2009 – 2011) needs. Short-term needs are particularly aimed at creating the capacity to handle ICTR transfer cases or foreign extradition cases but are designed to be consistent with a longer-term approach that addresses the thousands of other court cases plaguing the justice system. For a quick and concise look at short-term and medium-term recommendations, please turn to *Section 7. Capacity Building Recommendations*.

Finally, this report proposes an estimated budget (see Annex 3) for implementing these recommendations. It is the intention that this report might also serve as the basis for a future donor's conference to enhance the Rwandan judicial system, to be held by early next year before Rwanda's needs become even more urgent.

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1. Introduction

1.1. Mission Background and Approach

The International Legal Assistance Consortium (ILAC) is a global consortium of Non-Governmental Organisations (NGOs) based in Stockholm, Sweden. Through its 37 member organisations, representing more than 3 million individual lawyers world-wide, it provides targeted expert teams to assess post-conflict justice systems, make key recommendations on what is needed to rebuild those systems, and then work with relevant stakeholders to help implement those recommendations.

From 25 August-7 September 2007, at the invitation of the Government of Rwanda and with the endorsement of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR), ILAC sent an expert team to assess the capacity of Rwanda's criminal justice system and make capacity enhancing recommendations. The team consisted of six legal experts from Africa, Europe and the United States, with experience in both common law and civil law systems (for the members of the team, see Annex 1). Funding for the mission was generously provided by the Humanity United Foundation, a nonprofit organisation based in California, USA. This report and its specific recommendations is the product of that mission. For the meetings and interviews, see Annex 2.

This report examines the criminal justice system of the Republic of Rwanda, including its legal framework and relevant institutions (prosecution and judiciary, detention facilities, investigation units, victims' assistance units, and defense counsel agencies) and recommends specific, concrete ways to enhance the system. The report highlights only identified areas of need rather than outlining the entire criminal justice system and covers non-international criminal offenses as well as war crimes, crimes against humanity, and genocide cases.

Successful judicial capacity building creates sustainable institutions and expertise. To this end, all recommendations in this report are consistent with creating a broader, lasting judicial capacity. However, this report also prioritizes these recommendations based on Rwanda's short and medium-term goals. This prioritization seeks to provide Rwanda, international donors, and NGOs with a more coordinated and staged approach to capacity building. While the report also addresses the specific capacity issues arising from the transfer requests before the ICTR and other jurisdictions, it does not provide any conclusions or recommendations to the ICTR or national jurisdictions on possible transfers and extraditions. These are determinations to be made by the respective judicial bodies.

1.2. A Brief Historical and Legal Background

Beginning in 1959, a series of violent and primarily ethnic-based conflicts in Rwanda

eventually lead to the horrific 1994 genocide where up to 1 million Tutsis and moderate Hutus perished in less than four months; countless more were raped, maimed, or otherwise abused. While the genocide unfolded internally, the international community failed to actively prevent or even halt the bloodshed. It was not until seven months later that the United Nations Security Council responded by creating the International Criminal Tribunal for Rwanda (ICTR) under Resolution 955 (1994).¹

The ICTR's stated purpose is to promote justice, reconciliation, and regional peace while trying those most responsible for the 1994 atrocities. Its jurisdiction covers genocide and other serious violations of international humanitarian law committed either in Rwanda's territory between 1 January 1994 and 31 December 1994 or by Rwandan citizens in neighbouring States during this same period.

Domestically, the Rwandan justice system also prosecutes individuals accused of genocide, war crimes, and crimes against humanity.² Rwanda has identified over 800,000 genocide suspects. This massive number places a daunting and continuing burden on the Rwandan criminal justice system. In an attempt to deal with this huge caseload, Rwanda instituted an alternative justice process in 2001, known as 'gacaca'.³

Gacaca is a more traditional, community-based justice designed to foster Rwandan reconciliation while still punishing those guilty of genocide. Gacaca judges have no formal legal training but must be Rwandese, literate, over 18 years-old, and persons of "integrity." While valid criticisms exist about the fairness of gacaca,⁴ it is a novel approach to an otherwise impenetrable caseload. Gacaca proceedings divide all genocide cases into three categories and transfer any "Category 1" defendants – those accused of leading or planning the genocide or of sexual violence – to the ordinary criminal courts.

While gacaca is not the focus of this report, it is important insofar as it impacts the ordinary criminal court system. Thus, the trial of large amounts of "Category 1" cases in the criminal courts (currently at 17,000⁵) places enormous pressure on the judicial system.

The Rwandan's originally based their legal system on the Belgian civil law model but more recent reforms created a hybrid system combining elements of common law (such

¹ See *United Nations Security Council Resolution 955 (1994)*, S/RES/955

² See *Organic Law No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity*.

³ Rwanda established gacaca in January 2001 by *Organic Law No. 40/2000 Creating 'Gacaca Tribunals' and Organizing Prosecutions of Offenses that Constitute the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994*. The pilot phase of gacaca began in June 2002 and lasted 18 months. Following gacaca revisions under *Organic Law No. 16/2004 of June 19, 2004*, the program was then rolled out nationwide. The Rwandan government continues to state the gacaca will complete its mandate by the end of 2007.

⁴ See Amnesty International, *Annual Report 2007*; Human Rights Watch, *Rwanda: Gacaca Trial Condemns Activist to Prison* (May 30, 2007).

⁵ The exact number of Category 1 gacaca cases in the domestic court system is difficult to ascertain due to inaccessible record-keeping and continuing reforms which reclassify gacaca offenses. This figure was current as of September 7, 2007.

as cross-examination) with traditional civil law practices (such as the participation of ‘parties civiles’). The genocide’s killing and fleeing of professionals, coupled with an already weak and now overburdened judicial system, meant that the Rwandan justice system had to practically rebuild itself post-genocide. As a result, many low and mid-level legal professionals are relatively inexperienced. However, many high-level leaders in the judicial sector possess strong vision and solid expertise.

2. The Justice System and Related Government Agencies

2.1. Recent Judicial Reforms

Beginning in 2003, Rwanda has thoroughly transformed its justice system with multiple widespread reforms aimed at improving professionalism and judicial efficacy. These reforms included such measures as minimum legal qualifications for judges, lawyers and senior registrars and greater use of single judge trials to increase efficiency. During its mission, ILAC repeatedly sought court decisions and/or statistics for all domestic genocide cases *post*-reform, to be used as additional material in assessing Rwandan judicial capacity. However, for a variety of reasons, comprehensive data was exceedingly hard to obtain and was largely unavailable for this assessment.⁶ While it is still difficult to fully assess the impact of recent reforms, the importance and urgency given to addressing judicial shortcomings indicates a clear willingness to critically examine and enhance the system. ILAC also notes and supports the Ministry of Justice’s upcoming plans to host a conference on assessing and evaluating the impact of these reforms.

2.2. Rwandan Courts

The Rwandan judicial system has four levels: the Supreme Court (Cour Suprême), High Court (Haute Cour), Higher Courts (Tribunaux de Grande Instance), and Lower Instance Courts (Tribunaux de Base).

The Supreme Court is the highest court, hearing High Court appeals or appeals of any potential ICTR transfer cases and/or foreign extraditions. There are 8 registrars and 14 judges. The judges sit in benches of 3, 5 or 7 depending on a case’s complexity.

The High Court sits in Kigali and four regional cities, with a total of 26 judges and 19 registrars/clerks. In the first instance, a single judge hears particularly serious crimes and also any potential ICTR transfers and/or foreign extraditions. On appeals, it is the highest

⁶ ILAC requested data on all post-reform genocide cases from the Rwandan Ministry of Justice, Supreme Court, High Court, Prosecutor General as well as some diplomatic missions and NGOs. However, ILAC was given little data and few relevant decisions. One reason may be that few genocide cases have actually been tried since the reforms. It appears one unintended result of a new reform requiring judges to provide monthly progress reports is that judges’ may now avoid complex, time-consuming genocide cases in an effort to bolster their monthly numbers. Additionally, there are record-keeping hurdles and language barriers that complicate statistic gathering. However, since returning, additional figures from NGOs report that Rwandan domestic courts tried 207 genocide cases from 2005 – September 2007.

court for 90% of the cases and it hears all appeals with 3-judge panels.

There are 12 Higher Courts across the country with 6-10 judges in each. These are the courts of first instance for most ordinary criminal cases and for gacaca's Category 1 genocide cases. A single judge hears all first instance cases and Lower Instance appeals.

2.3. The Prosecutor General

The Prosecutor General's office has 146 prosecutors: Lower Instance Courts (60), Higher Instance Courts (72), and High Court and Court (14). Under new reforms, all prosecutors must have law degrees (currently 80% do, 8% do not, and 12% are training for one). The Ministry of the Interior has overall responsibility for the judicial police (Criminal Investigation Department – CID) though the Prosecutor General may initiate judicial investigations, supervise these investigations, and discipline police.

2.4. The Rwandan Bar Association

The Rwandan Bar Association (Bar) is rapidly growing. It began in 1997 with 32 lawyers but currently has 273 members, 54 of whom are women. Admission requirements include a law degree, two years professional internship, and passing a *conseil d'ordre* exam. Only Bar members have rights of audience in Rwandan courts, though international defense counsel are allowed to represent defendants in potential ICTR transfers or foreign extraditions. Seven Bar members are registered at the ICTR with three currently involved in cases there.

Bar members must represent indigent clients (both defendants and *parties civiles* in criminal cases) and the Bar, at the request of a judge, appoints lawyers to do so. A small and inadequate legal aid fund provides minimal remuneration. However, representation is often on a *pro bono* basis if there is no outside funding.

2.5. Law Faculties

There are currently two law faculties in Rwanda – the Rwandan National University in Butare (a public institution which graduates around 40 students a year) and the Free University of Kigali (a private university). An Institute of Legal Practice and Development will open shortly in Nyanza and provide targeted, practical training to multiple judicial sector actors.

2.6. Rwandan National Police

The current Rwandan National Police was formed in 2000 as a fully civilian police force. The former police structure was divided into a gendarmerie, judicial police and local police forces. There are currently around 6000 police officers total with 10% female. There are 5 police stations in Kigali and 116 country-wide.

The Criminal Investigation Department (CID) is responsible for investigations into

serious crimes. There is a Gender Desk within the CID, which focuses principally on domestic violence and child abuse. It could use more training and expertise on sexual violence.

2.7. Penitentiaries

The prison system in Rwanda is extremely overcrowded due, in large part, to the extraordinarily high number of genocide detainees convicted or awaiting trial. A new prison built to international standards in Mpanga – two hours drive from Kigali - provides some relief but much more is needed. Mpanga would also house defendants serving sentences from possible ICTR transferrees or foreign extraditions. However, its facilities are still not entirely complete.⁷ Rwanda also has building plans and land for an additional prison building near Kigali. It is attempting to secure funds to build this new prison.

2.8. Office of the Ombudsman

The Office of the Ombudsman was set up in 2004 to fight and prevent corruption, injustice and other malpractices; liaise between the state and citizens, and receive public servant's asset and income declarations. It has the power to request disciplinary measures and refer cases to the Prosecutor General, and also provides annual reports to Parliament on accountability. The Ombudsman is also a member of the Supreme Council governing the courts.

2.9. National Unity and Reconciliation Commission (NURC)

The NURC, created in 1999, coordinates, monitors, and promotes all national and regional projects toward unity and reconciliation. NURC outreach focuses heavily on civic education for former combatants, youth, women, teachers and faith-based organisations. It also examines issues of victim reparations, particularly alternative means of achieving compensation such as non-material support.

3. Other Relevant Institutions and Actors

3.1. Civil Society

National and international NGOs are heavily involved in capacity building and the provision of technical legal advice to the Rwandan criminal justice system.⁸ They provide training for Rwandan legal professionals, funding for indigent legal assistance,

⁷ Funding from The Netherlands to complete Mpanga is forthcoming but was still pending formal transfer as of the writing of this report.

⁸ The following is a non-exhaustive list of NGOs operating in Rwanda: League for the Promotion and Defense of Human Rights (Liprodhor), League of Human Rights in the Great Lakes Region (LDGL), Avega (a widow's organisation), Ibuka (a victim's organisation), Reseau des Citoyens (RCN) Justice & Democratie, Avocats Sans Frontières (ASF), Danish Institute for Human Rights, International Committee of the Red Cross (ICRC), Penal Reform International (PRI), Human Rights Watch (HRW), and Amnesty International (AI).

and trial and prison monitoring. Local NGOs are particularly adept as trial monitors and in providing victim advocacy and support services. However, trial monitoring currently lacks adequate funding and also requires sufficient political autonomy.

As recently as 2004, the Government of Rwanda released a report accusing local NGOs and others of “genocide ideology” and followed these accusations with individual prosecutions and NGO dissolutions. This effectively dismantled the local, independent NGO community. NGOs such as Liprodhor have since returned but civil society, and the criminal justice sector specifically, would clearly benefit from a more robust, active presence of local NGOs to monitor and improve the Rwandan judicial system.

3.2. Donor Countries

Many donor countries actively participate in building Rwanda’s judicial capacity such as Belgium, Canada, the European Union, The Netherlands, Norway, South Africa, Sweden, the United Kingdom, and the United States.⁹ Their assistance includes increased justice sector coordination, prison construction, providing investigative and police training, enhancing legislative drafting techniques, and renovating court room facilities. There is also increased donor interest from additional countries as recent arrests of alleged genocidaires in their own country raise the possibility of extraditions back to Rwanda.

Also, enhanced donor coordination across the entire justice sector and among all actors (i.e. not just bilaterally) would yield more efficiency and less duplication or competition. There are already appropriate mechanisms in place to facilitate this such as the Justice Sector Working Group (aka Cluster Group) co-chaired by Rwanda and the UNDP.

3.3. International Organisations

The ICTR currently maintains a close relationship with Rwanda. The ICTR’s Kigali office relies heavily on Rwandan cooperation to provide evidence, witnesses, witness protection and diplomatic support to its trials. The two parties also share Joint Task Forces on fugitive investigations and potential ICTR transfers. This collaboration has led to trainings and workshops by ICTR staff and a public Outreach Centre in Kigali that intends to expand this into rural areas with additional donor funding. Additionally, UNDP operates in Kigali and works directly with the Rwandan justice sector (see above).

4. ICTR Transfers

4.1. Background and Applicable Law

In 2003, the UN Security Council called on the ICTR to complete all trials by 2008 and all appeals by 2010, and to design a Completion Strategy to accomplish this mandate.¹⁰

⁹ This list is not exhaustive. It includes those donors found to be most active in the judicial sector.

¹⁰ See *United Nations Security Council Resolutions 1503 (2003), S/RES/1503* and *1534 (2004), S/RES/1534* for further details. These resolutions also gave the same deadlines and Completion Strategy requirements to the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Central to the ICTR's Completion Strategy is the need to transfer some of its indicted cases to domestic jurisdictions.¹¹ It has already transferred dozens of investigated but unindicted case files to Rwanda. Previous requests to transfer ICTR cases to Norway and The Netherlands failed¹² but a new request to transfer two ICTR cases to France was recently approved by the ICTR.¹³ There are currently four transfer requests to Rwanda still pending before the ICTR.¹⁴

Transfer requests are made pursuant to Rule 11*bis* of the ICTR Rules of Procedure and Evidence, which requires three elements: (1) the domestic court meets jurisdictional requirements, (2) it is willing and able to provide a fair trial, and (3) the death penalty will not be applied.¹⁵

Rwanda abolished the death penalty in all cases. Also, Rwanda meets jurisdictional requirements as a State "in whose territory the crime was committed." In relation to the right to a fair trial, there are two parts: domestic legislation guaranteeing a fair trial and the capacity and ability to provide one. Rwanda's *Organic Law No 11/2007 of 16/03/2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other states* (the Transfer Statute) governs all potential ICTR transfers and foreign extraditions. Parts of the Rwandan Constitution and Code of Criminal Procedure do also apply.

¹¹ The ICTY has already transferred some of its cases to domestic jurisdictions where the crimes occurred, including Bosnia-Herzegovina (6 cases), Serbia (1 case), and Croatia (1 case).

¹² On February 15, 2006, ICTR Prosecutor Hassan B. Jallow requested to transfer the case of Michel Bagaragaza to Norway. Bagaragaza is accused of three genocide-related counts. The ICTR chamber denied the request "on the ground that Norway did not have jurisdiction over the crimes alleged in the original indictment" (i.e. Norway does not have any domestic law provision against genocide). A subsequent request on April 13, 2007 to transfer Bagaragaza to The Netherlands was initially granted but then later revoked on the same lack of jurisdictional basis as Norway. See *Decision on the Defence Application for Modification of Detention Conditions of the Accused Rules 19 and 64 of the Rules of Procedure and Evidence*.

¹³ On November 20, 2007, the ICTR chamber approved the transfer of two cases to France: Laurent Bucyibaruta and Wenceslas Munyeshyaka. These two individuals were arrested in France in July 2007.

¹⁴ These four transfer requests include one defendant currently still at-large (Fulgence Kayishema) and three defendants in ICTR custody (Yussuf Munyakazi, Ildephonse Hategekimana, and Gaspard Kanyarukiga).

¹⁵ Rule 11*bis* of the *ICTR Rules of Procedure and Evidence* reads in pertinent part:

- (A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:
 - (i) in whose territory the crime was committed; or
 - (ii) in which the accused was arrested; or
 - (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.
- (B) The Trial Chamber may order such referral proprio motu or at the request of the Prosecutor, after having given to the Prosecutor and, where the accused is in the custody of the Tribunal, the accused, the opportunity to be heard.
- (C) In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out.

Article 13 of the Transfer Statute enumerates the rights of an accused and is based on Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Rwanda is a party. Article 15 of the Transfer Statute allows foreign defense counsel and guarantees their (and their staff's) free movement within Rwanda without risk of search, seizure, arrest, or detention. Also, Rwanda has ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* but it has not ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Being a party to an international treaty or having fair trial standards in domestic law do not alone create actual compliance – there must be both a willingness and ability to deliver on these guarantees. While this report does not make a final determination on Rwanda's ability to hold fair trials for genocide suspects, it does cover specific practical, capacity-based aspects of the right to a fair trial below.

5. Capacity Building Approach

5.1 A Coordinated, Staged Approach to Capacity Building

While impressive development efforts continue in the Rwandan justice system, it is still dogged by an overwhelming caseload and a lack of human and financial resources to address this. As stated before, judicial development is a long-term process. At the same time, the pending requests for ICTR transfers and potential foreign extraditions present particular, short-term needs that are still consonant with a longer-term capacity approach.

The ICTR's imminent closure also provides a rare opportunity to leverage international attention and resources to directly build Rwanda's judicial capacity. Yet, this opportunity may be short-lived. Once the ICTR closes, international attention may shift away from Rwanda to new or emerging needs, making fewer resources available for significant judicial capacity building. Therefore, a staged but comprehensive capacity building approach would work best to address Rwanda's broad development goals. On the one hand, it is important to Rwanda, and for justice and reconciliation, to try high-level ICTR suspects in domestic courts. On the other hand, assistance to prepare the system for these possible trials must not occur at the expense of broader needs, but must instead be done in concert with them.

Some critics believe that short-term capacity building for transfer or extradition cases can only come at the cost of longer-term strategies. This is not the case. A staged approach will sequentially address Rwanda's evolving needs while capitalizing on international resources and political momentum. There is also a criticism that transferring ICTR cases to Rwanda risks creating a "two tiered" justice system: one for ICTR transfers and one for the broader population. While such a scenario is not ideal, this is an inherent risk when working with less wealthy countries and should be used to bridge other capacity gaps, not exacerbate them.¹⁶ Additionally, it should be recalled that Rwanda was

¹⁶ There is always a risk of creating "two tiers" of justice when courts of the international community prosecute gross human rights violators from impoverished or less wealthy countries. We see this risk in

devastated and decimated by a genocide which the international community largely ignored. It deserves sustained and sufficient assistance in rebuilding its country, including its justice sector.

The remaining report falls into two parts:

- A detailed, issue-based assessment of the judicial system
- Capacity building recommendations for short-term and medium-term goals with associated costs

6. Assessment of Rwanda's Judicial Needs

6.1. Justice Sector Coordination

Rwanda's judicial sector needs improved coordination both within the donor community and with and among Rwandan government institutions. While there may be some strong bilateral cooperation, this is not always found system-wide on a multilateral basis. Coordination appears generally ad hoc and without a systematic structure. Certain coordination groups already exist such as the Justice Sector Working Group (aka Justice Sector Cluster Group), the Steering Committee, and Technical Committees. These groups should be better utilized and the Ministry of Justice and its Secretariat should drive this process, with donor support, to avoid politicization. The Working Group in particular, which links donors, needs increased support and participation to avoid donor duplication or waste. Even informal but inclusive meetings among relevant donor partners would create awareness and better alignment of donor efforts. Also, the emerging Institute for Legal Practice and Development should serve as an additional coordination locus and as a favourable entry point for future training of legal practitioners (see Section 6.2.4. for additional discussion).

6.2. Human and Resource Capacity

6.2.1. Human Capacity and Caseload Size

The requirement for increased human and financial resources is likely the most pressing need in the Rwandan criminal justice system. While numbers or bodies alone will not solve capacity issues, they are prerequisites to doing so and there are simply not enough physical and human resources to adequately handle the current caseload.¹⁷ The need for increased legal education is addressed below but even with gacaca's contribution and recent reclassification of some Category 1 cases into Category 2 cases (for trial in

the International Criminal Court's prosecution of Thomas Lubanga Dyilo from the Democratic Republic of the Congo (DRC) or in the Special Court for Sierra Leone's prosecution of Charles Taylor from Liberia. These trials must meet international standards that are not always financially or realistically possible in countries with large resource constraints. This is an unfortunate reality but one that we must recognize as self-created and use to bridge a capacity gap, not exacerbate or punish it.

¹⁷ Quantity alone (monetary and human capital) will not solve Rwanda's burdensome caseload. It must be done in conjunction with an enhanced technical capacity and possible new prison or judicial reforms. However, the very basic need for additional legal professionals and the resources to support them is critical to a capacity enhancement strategy.

gacaca), there are still 17,000¹⁸ Category 1 cases slated for domestic court trials. Additional expected reforms¹⁹ would leave roughly 5000-10,000 genocide cases pending in the domestic courts – a daunting amount for any judicial system, particularly one the size of Rwanda’s.²⁰ In addition, ordinary criminal, civil, and administrative cases continue to pressure these same capacity resources. The High Court alone has 5000 pending cases, with approximately 100 new cases arriving every month, but only about 50 cases completed. Clearly, without additional resources, this system will not meet its caseload.

While the human resource gap exists broadly, the needs in certain areas of legal expertise are particularly urgent. The Rwandan Ministry of Justice needs legislative drafters, preferably fluent in all official languages,²¹ to address emerging areas like technology and financial crimes. The United Kingdom provided two English-language drafters and other countries should continue this service after it expires. The registries require additional support staff as they have little to none and must sometimes rely on under-qualified former registrars (known as *groupes mobiles*) for assistance. Qualified court reporters and stenographers are also urgently needed. Moreover, many genocide and non-genocide cases involve sexual violence crimes and training in investigating, prosecuting, and adjudicating these crimes is urgently needed for police, prosecutors, and court personnel. Such specialised skill sets would serve a continuing need in the justice system and efforts should be made to attract permanent, public employees. Current or recently graduated law students should also be given internships to fill immediate gaps in the registry, in legal research, or elsewhere.

6.2.2. Statistics and Record-Keeping

Past, similar performance is one helpful predictor of future performance. To this end, ILAC repeatedly sought statistics and judgments from domestic genocide trials held after the 2003/04 reforms but was largely unsuccessful (see Section 2.1.). One likely culprit is the lack of consistent, accessible, and easily retrievable records and statistics and the resources that provide this. Virtually all judicial proceedings are hand-recorded by overworked registrars and clerks and manually filed with little electronic or digital support. This complicates legal research and decision writing which both rely on accessing judicial precedence. It also jeopardizes a record’s accuracy, adversely impacting a litigant’s potential appeal and the integrity of judicial records more broadly. Electronic court recording and reporting would enhance judicial efficiency and accuracy. A more digitized, searchable record system would increase case management and court transparency while enhancing the public’s access to justice. However, an increased technical capacity must also be accompanied by relevant training in its effective use (see Section 6.2.5.).

¹⁸ See Footnotes 5 and 23 for further details on number of Category 1 cases.

¹⁹ Rwandan authorities anticipate passing additional gacaca reforms or reclassifications that would further diminish the size of Category 1.

²⁰ For specific numbers, please see Sections 2.2. on Rwandan Courts, 2.3. on the Prosecutor General, and 2.4. on the Rwandan Bar Association.

²¹ There are three: Kinyarwanda, French, and English.

6.2.3. Basic Legal Education

As mentioned above, recent judicial reforms now require law degrees for judges, senior registrars, prosecutors, and Bar Association members. Experienced, practicing law professionals who did not meet this requirement were given a grace period in which to earn their degree (those that did not had to step down). While this new standard is a positive advancement, the overall dearth of qualified legal professionals must be addressed through increased public access to legal education.

There are two Rwandan law faculties: National University in Butare and Kigali Independent University. Access to basic legal education requires adequate resources for both the faculty and the student. In a society where over half the population lives below the poverty line,²² increased education opportunity requires additional scholarships and study grants for students. The faculties themselves also need additional adequate facilities and qualified staff to address a larger student body. Steps should also be taken to enhance onward employment opportunities through career mentorships, job placement assistance, and enhancing the legal job market. For instance, an increased legal aid fund not only benefits indigent clients but also provides better job opportunities for graduating law students who may enter the defense Bar.

6.2.4. Practical and Continuing Legal Education: The Institute for Legal Practice and Development

Preparations are currently underway to open a major legal training center in Nyanza called the Institute for Legal Practice and Development (ILPD). The Rwandan government sees ILPD as the centralized entry point for all continuing legal education and legal skills training in Rwanda. It is slated to open by mid-January and will first focus on practical training for recent law graduates and move toward continuing legal education later on. The core of the training programme will focus on practical skill enhancement through either year-long courses or shortened training modules on specific subjects. The institute could provide immediate, targeted capacity building while also having the flexibility to address emergent capacity needs. The Institute could also serve to better coordinate and centralize judicial capacity building in Rwanda – currently a major need.

It is likely, though, that this large, centralized approach will encounter growing pains and criticisms as it solicits money, recruits human resources, and seeks political buy-in from NGOs, the donor community, and other stakeholders. It also risks undermining or co-opting preexisting projects already operating successfully. However, we believe the value of its potential deliverables – coordination, targeted training, institutionalization of capacity building – outweigh the current risks and should be supported. Donor countries, bar associations, legal practitioner groups, and other organisations could supply ILPD with relevant legal trainers for either specific courses or for a host of subjects over a more sustained period. ILPD also needs additional donor funding for operating costs during its

²² See United Nations Development Programme, *Turning Vision 2020 into Reality: From Recovery to Sustainable Human Development, National Human Development Report, Rwanda 2007*, page 15.

start-up phase and also over the longer-term. Concurrently, the Rwandan government must also be open to outside suggestions on ways to enhance or refine ILPD to better meet its objectives.

6.2.5. Language and Research Training

Most domestic court proceedings occur in Kinyarwanda which is the language common to all Rwandans. However, many legal professionals speak only one of the other two official languages, English or French, which creates challenges to effective legal practice. There is a need for English and French training to improve communication among parties and enhance their legal research skills. This is particularly true in relation to court registries and the Bar Association who predominantly speak French and Kinyarwanda only. Also, if foreign lawyers provide future representation, there will be an increased need for legal interpreters and translators.

The ability to conduct thorough legal research is central to sound judgments and strong precedents. Legal research suffers in Rwanda due to a lack in human and judicial resources, hard to access records, and the ability to leverage these tools together. There is often a single judge researching and manually writing all his or her own decisions with no support. There is also little access (and relevant training) to the multitude of online legal resources. Legal research training should focus on leveraging print, digital, and online legal resources to include both international and domestic law principles. Also, donors should further support the ICTR librarian in providing ongoing legal research trainings and coordination.

6.2.6. Further Judiciary Training

Most continuing legal education for judges seems aimed at the Supreme Court and the High Court, due to possible ICTR transfers. While this is valuable in the short-term, future judicial training must also focus on judges in the lower instance courts, who will hear far more genocide cases. By hearing the bulk of all first instance cases, lower courts also determine evidence admissibility, build precedent, create an appeal record, and are seen by the public as the frontline (and sometimes final arbiter) of justice and judicial remedy.

Capacity building here must be staged but fully inclusive or else it creates a lopsided judiciary. Capacity builders should look to the judges themselves for guidance on what is needed. For instance, many Rwandan judges support mentoring schemes, study visits, and knowledge exchanges with their judicial peers in other legal systems, including the ICTR. Also, the lower court judges hear sexual violence crimes in many Category 1 genocide cases and need training on adjudicating these crimes. We also found a need for broad training in case management, calendar flow, and procedural elements of the adversarial system such as cross-examination.

6.2.7. Adversarial and Media Training

The possible transfer or extradition of foreign cases may also pose new challenges to the Rwandan courts. The use of cross-examination and other elements of adversarial court systems are relatively new in Rwanda. Counsel for transferred or extradited cases may use tactics and court styles that are challenging to both trial judges and opponents in the Rwandan courts. To ensure equality of arms and efficient courtroom management, training in techniques for adversarial hearings should be provided for judges, prosecutors and defense counsel. Also, any transfer or extradition cases are likely to receive intense international media coverage. This may increase pressure on judges and other court staff and could raise issues relating to appropriate restrictions on media coverage which may affect the fairness of proceedings. Training, sensitisation, and support in handling the media in the context of criminal proceedings should be provided to judges, court staff, prosecutors, and Bar members to prepare them for this challenge.

6.2.8. The Bar Association

The Rwandan Bar Association quickly grew from very modest beginnings in 1997 to over 270 current lawyers, all with standardized legal qualifications. The Bar wishes to double its size in the next two years but must also ensure that its resources and capacities increase in tandem. This is particularly urgent for those who may represent potential ICTR transfers or foreign extradition cases under intense public scrutiny. While some members have defended Category 1 cases in domestic courts, most have not and do not have experience with international crimes. There is a need for training in defending these crimes and in the procedural aspects of a mixed common law/civil law system. The Bar's expansion also outpaces its resources, creating a deficit in legal reference sources, facility space, and front office staff which must be met if it wishes to grow successfully. Effective 'twinning' agreements with other national Bar associations would provide assistance in organizational capacity building, provide increased resources and allow mentoring and exchange of best practices.

6.2.9. A Legal Research Centre

As discussed above, the capacity to perform meaningful legal research is central to an effective judicial system. This requires a legal resource center with print and digital sources that are both comprehensive and easily accessible. This should include at least books, journals, internet-access, legal databases, national court records, and related equipment and support. While digital equipment and online access require a heavier initial investment in infrastructure, training, and equipment, its longer-term payout is substantially greater: efficiency, breadth, and quality. A new legal research centre (also referred to as "documentation centre") is currently under construction and will cater to the Supreme Court, General Prosecutor's Office, Ministry of Justice, and legal practitioners. Additional funding and resource support, including from foreign universities or businesses, would bolster this centre. Also, with the ICTR's upcoming closure, its massive archives and legal databases must be made accessible to Rwanda for its own domestic trials, and in support of localized justice and public outreach.

6.2.10. Digital and Electronic Equipment

The Legal Research Centre discussed above covers some modernization gaps but there is a clear need for broader digital and electronic capacity. Courts lack basic court recorders and stenographer equipment which slows proceedings and risks inaccurate records. The Ministry of Justice and related courts have few computers or internet servers. Providing equipment and enhanced connectivity would increase communication among judicial sector actors and provide a more efficient judicial process.

6.3. Fair Trial Issues

6.3.1. Generally

As discussed above (see Section 4.1.), the right to a fair trial exists in the Rwandan Constitution, Rwandan Criminal Code, Transfer Statute (for possible ICTR transfers or foreign extraditions), and Rwanda's international treaty commitments. However, the practical enjoyment of these rights is threatened by the massive case backlog and resource shortages.

6.3.2. Length of Proceedings

The accused's right to a fair and timely trial is fundamental. However, Rwanda's excessive criminal case backlog means that some cases genocide related cases, have been ongoing for many years and often with the accused remaining in exceptionally long pre-trial detention. This not only violates the right to a speedy trial but also fuels prison overcrowding and delays judgments in civil cases. Additional judicial or legislative reforms are likely necessary to trim the daunting amount of genocide cases currently besieging domestic courts.²³ Additional court personnel such as registrars, clerks, and court reporters would expedite proceedings (see Section 6.2.1.), as would greater use of provisional liberty (bail) and better case management. Also, interim measures such as temporarily expanding the number of first instance judges with *ad litem* judges (from other countries and/or perhaps recruited from the Bar) would help ease the immediate numbers crisis. Lastly, the Belgian NGO *RCN Justice and Democratie* developed a backlog elimination plan whose pilot phase ends this year.²⁴ It will then roll out nationally over the next 3-4 years and donors should provide funding for this massive reduction effort. Assistance is urgent, as many genocide defendants have been in pre-trial detention for over 12 years.

²³ The number of Category 1 gacaca cases pending before the domestic court system continues to shift as further reclassifications occur and the justice system continues to hear new cases. This makes accurate, up-to-date numbers very difficult to gather. The 17,000 Category 1 cases still pending before domestic courts was accurate as of September 7, 2007.

²⁴ The pilot phase was directed toward eliminating the roughly 20,000 cases backlogged since before 2004 (5,000 – 10,000 of these were genocide). The national phase will address the post-2004 backlog.

6.3.3. Inadequate Time and Facilities to Prepare a Defence

Although periods on remand may be long, defendants and their legal representatives often first see their file upon arrival at court. This delay - particularly in relation to serious criminal offences and genocide cases where files may be extensive and complex - may not provide adequate time and facilities to prepare a defence (a key element of the right to a fair trial), and may lead to additional delays through the need for adjournments.

This problem results from a basic lack of court resources to provide advance file copies to indigent defendants. Genocide case files may involve hundreds of pages and multiple defendants or *parties civiles*,²⁵ all of whom may be indigent and require file access. Quite simply, court registries do not have the financial, human, or technical resources to provide large-scale copying for free and need these resources.

6.3.4. Obstacles to Legal Representation

Access to meaningful legal advice and assistance is the bedrock to a fair trial and to protection of human rights. If people do not know or understand their rights, they have little chance of defending them.

There are currently serious obstacles to acquiring immediate and effective legal representation in criminal cases. There are relatively few defence lawyers compared to the very high numbers of pending criminal cases, making shortages inevitable. Also, while Bar members must represent indigent persons under risk of sanction, there is no adequate legal aid fund with which to reimburse them. It is unrealistic to expect constant pro bono representation and also a danger that pro bono clients may receive less attention than paying clients. There is also a geographic concern. Most lawyers are Kigali-based and yet there is a large rural population in need of legal counsel. Travel distances and transportation expenses may hinder such representation.²⁶ Lastly, there are some reports of restrictions on a detainee's right to visit and consult with counsel.

6.3.5. Indigent Legal Aid Fund

In order to ensure effective access to legal assistance, a governmental legal aid fund should be created for fees and expenses of lawyers representing indigent suspects, defendants, and *parties civiles*. The fund must be sustainable as a formal part of Rwanda's yearly budget and also through setting realistic and affordable tariffs (legal fees) appropriate to Rwanda. Related to possible ICTR transfers or foreign extraditions, the Transfer Statute's Article 13 guarantees that a defendant "shall be entitled to counsel

²⁵ Under French law, a *partie civile* (plural *parties civiles*) is a person who claims compensation for being subjected to a crime under public prosecution. Such claims can be considered by the court within the framework of the criminal trial.

²⁶ External donors or organisations, such as *Avocats Sans Frontières* (ASF), do provide some funding for transportation and related travel expenses for cases involving minors and genocide suspects, but more is needed.

of his choice...[i]n case he or she has no means to pay, he or she or she shall be entitled to legal representation.” Virtually all ICTR defendants claim indigent status. However, Rwandan law does not ensure defence counsel remuneration for indigent representation and pro bono service must not be expected or relied on. Therefore, a short-term, ad hoc solution may be necessary for these cases while pursuing a longer-term national legal aid system. The Bar, Belgian Technical Cooperation (BTC), and Avocats sans Frontières (ASF) administer an unofficial and modest legal aid fund that is likely not sufficient for these cases but supplementary contributions to this fund could provide short-term resources for an ICTR transfer or foreign extradition defence.

6.3.6. Additional Sources of Legal Representation

Defendants in transfer or extradition cases may request foreign lawyers, especially where there is already an existing client-lawyer relationship. In indigent cases, Rwanda should avoid publicly remunerating a foreign lawyer far above his/her Rwandan counterpart. This skews the national fee system and may breed resentment. If higher remuneration is necessary, it should derive from an independent source and not a central, national legal aid fund. Also, lump sum payments for an entire defence case may be more cost effective than hourly payments and is already in use at the ICTR.

Paralegals and legal advisers in private employment, such as those working for NGO's, could also provide additional legal advice and support, e.g. so called legal literacy programs, in which the public are informed of their rights and how to enforce them. Ways in which such work can be enhanced and harnessed to support the workload of the Bar should be explored and it may be useful to look at examples of other countries, such as South Africa, for ideas about how paralegals can complement the work of the Bar in improving access to justice.

6.3.7. Judicial Independence

The concept of an independent judiciary is relatively new in Rwanda. Legislative reforms gave the judiciary formal independence and improved its quality but these must be followed by a corollary shift in judicial culture towards greater independence. This takes experience and time. Intense media scrutiny will follow any ICTR transfers or foreign extraditions and steps should be taken to avoid even the appearance of partiality, particularly when the genocide's mass scale left virtually no one unaffected, including judges. There are also allegations of continuing political pressure on the judicial process. An additional independence concern is the small number of prosecutions against individuals in the Rwandan Patriotic Front (the ruling party since 1994), particularly those at a higher-level, who committed war crimes or crimes against humanity in 1994.²⁷

²⁷ For reports detailing atrocities committed by the RPF see Alison Des Forges, *Leave None to the Tell the Story* (1999); United Nations Commission of Experts, *Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994)*, S/1994/1125; Amnesty International, *Rwanda: Dealing with the truth - Amnesty International's concerns in Rwanda*, AFR 47/019/1998.

The Rwandan government must publicly condemn instances of political pressure and fully prosecute any offenders. There should be media scrutiny and coverage of cases of impropriety and courts should internally discipline judges if they act illegally. Rwanda must also foster a diversity of judges (economic, geographic, and ethnic) to counter the appearances of bias or partiality. This can be done generally through broader access to legal education but also directly by the Superior Council of the Judiciary in its appointments. Additional, prosecutions of high-level RPF soldiers, who committed atrocities would further demonstrate Rwanda's commitment to a balanced and independent judiciary.

6.4. Witness and Victim Issues

6.4.1. Witness and Victim Protection

A number of reports document the harassment, threats, and occasional murders of victims and witnesses for their participation in gacaca, national courts, or the ICTR proceedings.²⁸ Threats are not only physical but may also be psychological, involving intimidation, humiliation, or reputational loss.²⁹ The Rwandan National Police are the primary government body responsible for witness and victim protection. They must provide adequate police resources to rural areas and should focus particularly on highly vulnerable populations such as genocide survivors and female rape victims. Discussions with local NGOs suggested that some rape victims feel comfortable cooperating with police and would actually prefer testifying in a Rwandan court, among their own people, than at the ICTR.

The Rwandan government also relies heavily on community-based protection – making entire communities responsible and liable for the protection of their own inhabitants. This likely derives from recognition of limited police resources and the strength of community action within Rwandan society. However, this model must not supplant the State's own role and a system that makes entire villages liable to collective punishment could be troubling.

Traditional witness protection methods such as internal relocation or closed testimony can be ineffective in Rwanda. The small size and intimacy of Rwandan society make anonymous relocations or testimony extremely challenging and funding shortages hamper internal or external relocation efforts. Since many witnesses and victims are impoverished, even basic security steps such as a house door or perimeter fence fall out of financial reach. Funding assistance for such basic protection would help victims and witnesses feel, and be, safer.

²⁸ See U.S. Department of State, *Country Report on Human Rights Practice 2006 (Rwanda)*; HRW Report, *Killings in Eastern Rwanda* (January 2007)

²⁹ One frequently employed threat involves lobbing stones onto the corrugated tin roofs of victims and witnesses. The loud sound not only frightens and unnerves the targeted victim but literally echoes throughout the village, sending a village-wide message of intimidation.

6.4.2. Witness and Victim Support

Many genocide victims still suffer the effects of genocide through the loss of their, home, property, livelihood, spouse, family or health. Recognition and compensation for a victim's suffering is an important part of justice and reconciliation. The Rwandan government currently provides small-scale education opportunities to genocide survivors and also keeps a genocide compensation fund. However, both are heavily under funded. While massive monetary compensation is unrealistic, other compensation such as basic food goods, housing assistance, small business loans, medical support, HIV/AIDS medication or more educational opportunities, could offer real or even symbolic compensation for their losses. The international community should consider helping Rwanda support such projects.

Those victims and witnesses that choose to testify often relive the horror and trauma of the genocide and risk community retribution. Without their participation, however, truth telling and criminal justice would be impossible. The ICTR recognizes this sacrifice and, through its Witness and Victim Support Section (WVSS), provides its witnesses with medical, psychological, and material support both during and after trial.³⁰ Rwanda, with its constrained resources, is not able to provide such robust support to all witnesses. While such support should be encouraged system-wide in Rwanda, in the case of potential ICTR transfers or extraditions, the international community will likely demand this type of support (for a discussion of a “two tiered” justice system see Section 5.1.).

WVSS operates at both the ICTR headquarters and in a satellite Kigali office. There should be a system in place that allows an exchange of best practices between WVSS and Rwanda and also provides for transfer of WVSS's institutional knowledge, services, and witness relationships to Rwanda, including to its relevant local NGOs. Certain local NGOs, such as the widowers' organisation Avega and the survivors' organisation Ibuka, already possess immense experience in providing key types of witness and victim support. Additional funding should be used to enhance and increase local NGO's capacity to provide these types of support services.

6.4.3. Availability of Witnesses

The availability of witnesses is an important component of the right to a fair trial. Some potential defence witnesses living outside of Rwanda will not testify in Rwandan proceedings for fear of harassment, arrest, prosecution, or loss of refugee status in their country of residence. Without addressing the merits of those fears, the practical effect is a risk of unfair proceedings. This issue is particularly pressing and critical for potential ICTR or extradition cases because, as we now see at the ICTR, most defence witnesses

³⁰ The ICTR Witness and Victim Support Section (WVSS) provides a myriad of support and protection services to witnesses who testify. Where necessary, these services include transportation, security, clothing, food supplements, medications (particularly HIV+ antiretroviral drugs), hospital care, childcare, burial services, compensation for loss of wages during testimony, psychological treatment, etc. Since some ICTR witnesses receive ongoing support after the trial, such as protection or antiretroviral medications, the ICTR operates a WVSS office in Kigali to better serve the witness.

live outside Rwanda.

Rwanda must legally, politically, and practically guarantee the witness' security and immunity from prosecution. For potential ICTR transfers or foreign extraditions, the Transfer Statute's Article 14 grants all witnesses "immunity from search, seizure, arrest, or detention" during testimony in Rwanda. The Rwandan government expressed commitment to effectively implement this law and is also open to further protection measures if necessary. On the potential loss of refugee status, Rwanda-based testimony by out-of-country witnesses could jeopardize their refugee status in another country if this status hinges on a fear of return to Rwanda. Additional measures should be taken to encourage and facilitate testimony by out-of-country witnesses, e.g by electronic means.

6.4.4. Legal Representation of a *Partie Civile*

The Rwandan criminal justice system, like many civil law systems, permits a victim to join proceedings as a *partie civile*. Many indigent victims, however, cannot afford counsel and must instead rely on an already overburdened Bar Association for their representation. One solution may be to amend Rwandan law and allow legally qualified advisers in civil society organisations to represent *partie civile*.³¹ Groups like Ibuka and Avega would be strong candidates as they already provide legal advice and support to victims, accompany them to trial, and possess a client trust relationship. An amendment of Rwandan law coupled with additional funding to appropriate NGOs would improve access to justice for *partie civile*.

6.5. Detention Facilities and Secure Transportation

6.5.1. Detention Conditions and Rwandan Responses

Prison overcrowding is a serious concern in Rwanda despite recent declines in prison populations. The size of Rwanda's prison populations is difficult to determine, as it seems to shift dramatically on a near monthly basis. The majority of current prisoners, however, are those either convicted of genocide or awaiting trial on genocide. Population numbers are further exacerbated as courts do not grant bail in genocide cases (the majority of cases) and rarely in other criminal cases.³² Some prisoners accused of genocide wait extremely long periods to face trial, even a decade or more. There is also no separation between those convicted and those awaiting trial, though minors and women are kept together in separate facilities.

Recent steps by the Rwandan government have reduced prison populations. Sentencing reforms allow community service (*travaux d'interet general* – TIG) and suspended sentences to be used either alone or in combination with prison terms. Further, judges

³¹ Current Rwandan law only gives members of the Rwandan Bar Association rights of audience before the Rwandan courts.

³² Article 90 of *Organic Law No. 13/2004 of 17/5/2004 Relating to the Code of Criminal Procedure* (Rwandan Criminal Procedure Code) only permits bail "when the offence a person is charged of is a misdemeanor or a felony."

may adjust the timing and order of sentencing penalties to ease crowding (e.g. a suspended sentence first, then TIG, then an actual prison term). Also, recent releases of some Category 1 suspects for confessions as well as the recategorization of some Category 1 cases to Category 2 cases, have helped ease Rwandan prison populations.

While some critics feel these measures provide a degree of impunity, particularly serving a prison sentence last, the ILAC team considers these reforms a creative response to a severe and chronic prison crisis. It strikes a critical balance between system-wide accountability versus the need to provide trials swiftly while promoting reconciliation within communities. Prison overcrowding and conditions require a twin track approach of improving prison facilities while reducing the population in the longer-term.

6.5.2. The Rwandan Central Prison System

ILAC was only able to personally visit the Kigali Central Prison (“1930”) and Mpanga prison but did discuss system-wide prison issues with multiple parties. 1930 prison is perhaps the most manifest example of overcrowding with the prison at nearly double its capacity. Yet, despite these conditions, ILAC was surprised with the calmness and self-regulation within the prison and also the management’s professionalism under very difficult conditions. However, a system-wide solution is clearly needed.

There are intentions to build a new, larger prison outside Kigali to replace 1930. Related construction plans exist and appropriate lands were procured, though construction costs remain unfunded. The Ministry for Internal Security estimates a \$500,000 budget with a four month construction timeline. If done in conjunction with further prison reforms, this may offer a longer-term solution.

6.5.3. Mpanga Prison

Mpanga prison is a modern facility near Nyanza (two hours from Kigali) built with Dutch funding to international standards and with a capacity to hold 7,500 inmates. Construction is complete except for a forty cell wing designated for possible ICTR transferees or foreign extradition suspects to serve their sentences. This wing still requires:

- Partitioning of the cells;
- Construction of segregated courtyard for outside visits;
- Construction of segregated medical facilities;
- Provision of kitchen equipment and facilities;
- Provision of furnishings (beds, bedding, reading tables, chairs, etc.);.
- Enhanced security with electronic surveillance equipment.

Additional Dutch funding to finish this separate wing is apparently forthcoming but awaits a formal, signed contract between Rwanda and a building contractor. Once fully finished, Mpanga would provide adequate detention facilities for all convicts.

6.5.4. Temporary Holding Facility

Given Mpanga's two-hour distance from Kigali (where possible ICTR transfers or foreign extraditions would be heard), it is not secure, efficient, or fiscally responsible to house detainees in Mpanga and transport them back and forth to Kigali while their proceedings are underway. Rwanda needs a temporary holding facility for this purpose.

Since ILAC's mission to Rwanda, certain donors and the ICTR report that construction of a temporary holding facility for these possible cases is nearly finished. It is adjacent to the 1930 prison and has eight cells with furnishings, adequate bathrooms, an exercise yard, and other features. ILAC could not independently examine these cells but welcomes this as a critical step in the potential transfer process. Should these cells prove inadequate, other interim solutions should be considered such as using a private house equipped with security systems and security staff, as previously utilized by the ICTR in Arusha.

6.5.5. Secure Transportation

Potential high-level ICTR transfers or foreign extraditions require secure transportation upon arrival and within Rwanda during or after trial. While external threats to defendant security are perhaps less likely today, all security breaches must be adequately guarded against. Rwanda needs a secure vehicle to transport such prisoners and also proper training of a transport team. Armoured vehicles would be the best solution.

6.6. Rwandan National Police (RNP)

6.6.1. General Capacity

The current number of police officers in the Rwandan National Police (RNP) is around 6000, with the RNP estimating a target size of approximately 8,700 police officers. The bulk of criminal investigations are carried out by judicial police officers in the RNP, in particular the Criminal Investigation Department (CID). The CID has experience investigating domestic genocide cases and also in assisting the ICTR to investigate their cases. However, despite some officers' lengthy experience in investigating complex cases such as genocide, the RNP is still overall a young and inexperienced police force and many investigators lack training in evidentiary matters such as collection, preservation, and admissibility. The RNP, like other Rwandan institutions, also suffers from a small budget.

There are plenty of potential police officer recruits but RNP lacks enough funding to hire and appropriately train them. Serious expansion of the police force would significantly improve community outreach and protection programs while enhancing the CID's investigative resources and capacity. General professionalism training is also required, as are more specialized capacity trainings in areas such as complex criminal investigations, sexual violence, personnel management, and police accountability. Sweden and South Africa, as part of a tripartite agreement, provide highly effective trainings in these specialized areas. Their approach is long-term institutional building and they often train

local trainers to encourage self-sustaining capacity building.³³ Their main substantive focus is criminal investigative training including complex crimes, child abuse, gender and domestic violence. Also, a coordinated transfer of ICTR investigative capacity to Rwandan CID would be a welcome step. As the ICTR winds and trims down, and particularly at its satellite Kigali office, it should examine ways to redeploy a small group of its investigators into Rwanda's police force to allow a more seamless transfer of best practices.

While the tripartite courses include the requisite technical equipment, equipment is still broadly limited and the RNP needs additional items such as transport vehicles, communication equipment, file cabinets, computers, copying machines, and paper. Farther down the line, a forensics laboratory, and the necessary related training, would be an important next step in creating sophisticated investigative capacity

6.6.2. Police Accountability

Police accountability is central to a well functioning judicial system and public faith in that system. The tri-partite training programme involving Swedish and South African Police Forces is currently examining the RNP accountability structure for strengths and gaps. While the Rwandan Prosecutor General may evaluate and discipline CID officers (see above, Section 2.3.), it seems that there is no public, independent accountability mechanism for investigations into deaths in police custody and/or allegations of ill treatment. Even if internal police inquiries are made public, an actual public mechanism would provide procedural due process rights while adding to the transparency and credibility of the police as a whole. This is particularly important in the light of some recent allegations of killings and serious mistreatment of persons in the custody of the police.

6.6.3. Gender Issues

Gender diversity is a key element to an effective police body. It shows a government commitment to serve an entire population, increases public confidence in the system, and allows for nuanced responses to gender-based crimes, particularly in Rwanda where rape was a form of genocide. While Rwanda has strong gender diversity in other government sectors,³⁴ women make up only 10% of the police force. This is due in part to unfavorable responses from women to recruitment drives. There is also a gender desk in the CID but its capacities and specific roles were not entirely clear, possibly an indication that it needs further development and growth.

To help increase female recruitment, South African police have shared their own

³³ There are an estimated 12 CID officers now capable of providing their own investigative training courses.

³⁴ Rwanda's creation in 2003 of constitutionally mandated female quotas led to a near doubling of the number of women in Rwanda's National Assembly. Since that year, Rwanda has consistently been rated Number 1 in the global ranking of women in national parliaments with 48.8% of assembly seats filled by women. See *Women Achieving More Politically* by Robin Hindery (Boston Globe, June 26, 2006) and the Inter-Parliamentary Union, *Data on Women in Parliaments*, at <http://www.ipu.org>.

recruitment strategies on attracting higher numbers of women. Recruitment campaigns must address why gender diversity is critical and direct this message at both the individual female recruit and her family and community more broadly. Funding is needed for these campaigns, recruits' salaries, and their initial trainings. Also, internal police policies should reflect gender issues and sensitivities. The gender desk's role must be clarified along with additional training on proper handling of sexual violence cases.

6.7. Role of Civil Society

6.7.1. Generally

A key pillar of a strong judicial system is a vibrant and robust civil society. NGOs, community groups, issue-based or professional associations, and others help fill critical capacity gaps unmet by a State and work across sectors to strengthen the judicial system. They also raise citizens' expectations and realizations of justice through enhanced public access to justice or provision of legal services. Further, trial monitoring plays a vital role in encouraging transparency and accountability in courts and is addressed below.

As mentioned before (see Section 3.1.), a 2004 government report called for the dissolution and prosecution of a number of NGOs and their members; a move which nearly paralyzed the local NGO community.³⁵ Since then, civil society organisations have bounced back but there may still be a sense of vulnerability within this community and a hesitancy to speak openly and critically of the government.³⁶ Yet, these organisations, along with their international partners, are needed to provide critical services to witnesses and victims while also building technical legal capacity.

To further protect local NGOs, one recommendation would be to more closely partner them with international NGOs or donor states through enhanced financial, political, or resource ties. This partnering would provide added political and diplomatic cover to a critical but sometimes vulnerable sector.

6.7.2. Trial and Prison Monitoring

There appeared to be little effective criminal trial monitoring due largely to civil society resource shortages. This, coupled with the difficulty in accessing accurate statistics on genocide cases (see Section 2.1.), made trial assessments more challenging. The international community will be particularly vocal on the need for monitoring trials of any ICTR transfer or foreign extradition cases. On prison monitoring, the International Committee of the Red Cross (ICRC) seemed to have adequate and unhindered access to all prisons in Rwanda and they conducted periodic reviews of this system.

Additional funding is needed to support local NGOs in monitoring criminal trials both

³⁵ See U.S. Department of State, *Human Rights Report on Rwanda*, at Section 4 (2004); Amnesty International, *Rwanda: Human Rights Organisation Forced to Close Down* (January 10, 2005), AFR 47/001/2005.

³⁶ See U.S. Department of State, *Human Rights Report on Rwanda*, at Section 4 (2006).

inside and outside Kigali. This funding should specifically go toward hiring additional trial monitors and training them in monitoring techniques and relevant legal issues. In the event of an ICTR transfer case, the ICTR reports that the African Commission on Human and Peoples rights will provide independent monitoring. This is a welcome development but must be met with adequate funding and unhindered access to the trials and detention facilities, as granted by Rwandan domestic law.

7. Capacity Building Recommendations

7.1. General

The previous part of this report has assessed the needs of the Rwandan judicial system. This next part will lay out a plan with recommendations to address those needs. It will identify capacity building steps along with their associated costs. This approach will also prioritize the recommendations and provide a timeline linking them directly to Rwanda's short and medium term needs. It is important that short-term capacity building not be done at the expense of longer term goals. A sequential but comprehensive approach will remain consistent with the interests of all stakeholders in building a sustainable judicial system in Rwanda.

7.2. Recommendations to Meet Short Term Needs – Related to Transfer Cases

7.2.1. To be implemented by the Government of Rwanda:

- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.

7.2.2. To be implemented by the Government of Rwanda with outside financial assistance:

- Immediately complete remaining works in Mpanga prison;
- Construct a new prison facility and transit centre situated in or near Kigali;
- Prepare a secure temporary holding facility in or near Kigali, equipped with security systems and staff;
- Provide secure prisoner transport vehicles.

7.2.3. To be implemented by outside experts with outside financial assistance:

- Provide training for judges, court staff, prosecutors and members of the Bar in the elements of adversarial criminal procedure and media awareness;
- Provide training and study visits in international criminal law to judges, court staff, prosecutors and members of the Bar;
- Provide training and sharing of best practices from the ICTR Witness and Victim Support Section (WVSS) to the Rwandan authorities;

- Provide sufficient resources to the legal aid fund of the Bar Association to finance adequate legal assistance to indigent defendants as well as to witnesses and “parties civiles”;
- Establish a fund to ensure continued medical, including psychological, care and support for witnesses;
- Explore alternative means of involving witnesses in proceedings from outside Rwanda including, potentially, technological support to facilitate this.

7.3. Recommendations to Meet Medium Term Needs

7.3.1. To be implemented by the Government of Rwanda, with outside financial assistance:

- Provide legal assistants to judges of Supreme and High Court (six for each court) ;
- Provide language training to court staff ;
- Provide training and funding for court interpreters and translators;
- Encourage recruitment to the judiciary from all sectors of society through facilitating access to legal education;
- Initiate a campaign to recruit more women police officers.

7.3.2. To be implemented by outside experts with outside financial assistance:

- Supply foreign legal experts as trainers at the Institute of Legal Practice and Development (IPLD);
- Provide the IPLD with a library and other necessary equipment;
- Provide on-the-job training to Rwandan judges by bringing in foreign judges;
- Provide training in international criminal law to judges, prosecutors, court staff, and members of the Bar;
- Provide training in international human rights law to judges, court staff, prosecutors and members of the Bar;
- Provide exchange programs for judges to international war crimes tribunals;
- Establish a government legal aid fund for representation of indigent defendants and ‘parties civiles’, for transportation and expenses for legal representation in rural areas and for copying of criminal files for indigent parties;
- Train court recorders and stenographers;
- Establish the documentation centre with books, journals, internet access, legal databases and equipment;
- Given the extensive case backlog, assist the court system in developing a case prioritization system based on clear-cut, well-articulated, objective criteria;
- Provide training in court administration - including case management, record-keeping and statistics - to court staff;
- Provide training for legislative draftsmen;
- Establish and fund “twinning agreements” between the Rwandan Bar and foreign Bars;

- Explore the possibility of using paralegals, NGO lawyers and foreign lawyers to support the work of the Bar;
- Recruit *ad litem* judges to expand court capacity as an interim measure to help clear the backlog of cases;.
- Establish an independent scrutiny mechanism to ensure public accountability of the police;
- Establish and train a specific unit to deal with investigation and prosecution of sexual violence cases;
- Provide funding and expertise training for criminal trial monitoring by local NGOs;
- Encourage local NGOs independent functioning through diplomatic and political means, such as partnering them with appropriate international NGOs for cover;
- Assist ICTR witness support unit in sharing its experience and best practices with national authorities;
- Provide financial and other support to civil society victims' organisations to enable them to continue and expand their work to ensure continued medical, including psychological, care and support for victims and witnesses;
- Efforts to protect witnesses, including internal relocation and basic home security, should be fostered and funded;
- Provide funding for the procurement of stenography equipment to Higher Instance Courts, High Court and Supreme Court;
- Furnish computers and network equipment to Higher Instance Courts, High Court, Supreme Court and prosecution departments;
- Provide funds for logistics and communications equipment, the construction and equipment of a forensic laboratory, as well as for training of staff.

7.4. The Next Step: A Donors Conference

In this report's Terms of Reference, and in discussions with judicial sector actors prior to this mission, a follow-on donors conference was envisioned after this report's release. The recommendations contained here are designed to provide the Government of Rwanda and related donors with a cohesive, prioritized checklist for such a conference. Also, given the urgency surrounding many of these issues, holding a conference by early 2008 is recommended.

Annex 3 of this report presents an estimated budget for a donor's conference by attaching monetary figures to the recommendations. This budget also suggests an implementation timeline of short and/or medium-term. Short-term means implementation during 2008 while medium-term indicates a need to start implementation as soon as is practically possible and continue over a three-year period.

The ILAC Rwanda Delegation – Members

- **Mr Christian Åhlund**
ILAC Executive Director; team leader

- **Mr Rodger Chongwe**
Former Minister of Justice of Zambia, former President of the African Bar Association, member of the ILAC Executive Committee

- **Ms Mary Davis**
Former Justice of the Supreme Court of New York

- **Ms Unity Dow**
Justice of the High Court of Botswana, member of the Executive Committee of the International Commission of Jurists

- **Ms Joaquine de Mello**
President of the Bar Association of Tanzania

- **Report Writer: Ms Susie Alegre**
Member of the Bar Council of England and Wales

Annex 2

Meetings – ILAC Needs Assessment Mission 25 August – 7 September

Day 1

President of the **High Court of the Republic** – Johnston BUSINGYE

ICTR – Commander/ Acting Chief of Investigations – Office of the Prosecutor – Alfred A KWENDE

Day 2

National Service of Gacaca Courts

Executive Secretary – Domitilla MUKANTAGANZWA

Legal Officer – Andrews KANANGA

National Prosecution Service

Prosecutor General of the Republic – Martin NGOGA

Inspector of the Prosecutor General of the Republic – Eric M NKWAYA

Government Representative to the ICTR – Alloys MUTABINGWA

ICTR – Registrar – Adama DIENG

UK Embassy – Ambassador Jeremy MACADIE

UK Investigator – Ron LUMSDEN

Finnish Investigator

Day 3

Swedish International Development Cooperation Agency (Sida)/Embassy of Sweden – Second Secretary Development Cooperation – Malin ERICSSON

Supreme Court of the Republic of Rwanda

Deputy Chief Justice – Justice Sam RUGEGE

Secretary General – Anne GAHONGAYIRE
Justice Fabien HATANGIMBABAZI
Justice Immaculée NYIRINKWAYA
Registrar Vénantie TUGIREYEZU

Day 4

National Unity and Reconciliation Commission
Executive Secretary - Fatuma NDANGIZA
Legal Officer – Frank KOBUCYEYE

Avega
Executive Secretary - Assumpta UMURUNGI
Legal Adviser - Sabine UWASE

Rwandan National Police – Police Superintendent Jimmy HODARI

Delegation of the European Commission in Rwanda
Ambassador - David MACRAE
Attachée – Véronique GEOFFROY

Ministry of Internal Security
Secretary General – Ambassador Joseph MUTABOBA
Director National Prisons Service – ACP Steven BALINDA

1930 Kigali Prison
Director of the Kigali Central Prison – Dativa M NYANGEZI NGABOYISONGA

Day 5

Belgian Embassy
First Secretary – Sibille DE CARTIER D’YVES
Cooperation Attaché – Dirk BREMS

Ibuka
Executive Secretary – Benoit KABOYI

High Court – Registrar – Olivier RUKUNDAKUVUGA

United States Embassy
Ambassador - Michael R. ARIETTI
First Secretary - Richard Kaminski

Day 6

Office of the Ombudsman

Ombudsman – Tito RUTAREMARA

Deputy Ombudsman - Augustin NZINDUKIYIMANA

Public Finance and administration Officer – Olivier GAKWAYA

Permanent Secretary - François Xavier MBARUBUKEYE

RCN – Justice et Democratie

Programme Coordinator – Karol LIMONDIN

ICTR

Co-ordinator, Witnesses and Victims Support Section (WVSS) – Sera Ameso Attika

Rwanda National Police

Commissioner General – Andrew RWIGAMBA

Chief Superintendent – Director CID - Joseph Costa HABYARA

Chief Inspector Superintendent – Director Legal Services - Azarias UWIMANA

Staff Officer Superintendent - Charles KAYIHURA

Rwanda Bar Association

President of the Bar – Maitre GATERA GASHABANA

Advocate – Maitre Athanase RUTABINGWA

(at SC) Advocate – Maitre Natacha BUGONDO

Day 7

ICRC

Delegate – Mamadou SOW

UNDP

Head of Gender Justice Unit – Christine UMUTONI

Ministry of Justice

Attorney General / Minister of Justice – Tharcisse KARUGARAMA

Coordinator – Alphonsine MIREMBE

Liprodhor

Executive Secretary - Jean Baptiste NTIBAGORORWA

Mpanga Prison

Embassy of the Netherlands

Deputy Head of Mission – Gertjan Tempelman

First Secretary – Quirine A.J. Timmerman

ICTR

Chief, Legal Library and Reference Section – Angeline DJAMPOU

Registry

Registrar – Adama DIENG

Spokesperson – Legal Adviser in charge of enforcement of sentences - Roland Kouassi G
AMOUSSOUGA

Deputy Registrar – Everard ODONNELL

Office of the Prosecutor

Under Secretary-General/ Chief Prosecutor – Hassan Bubacar JALLOW

Chief of Prosecutions – Silvana ARBIA

Deputy Prosecutor – Bongani C. MAJOLA

Policy Coordinator – Murtaza JAFFER

Defence Counsel – Gershom Otachi BW’OMANWA

Capacity Building Task Force

Senior Legal Advisor, Chief, Court Management Section - Jean-Pelé FOMETÉ

Legal Officer – Patrick ENOW

Resource Mobilization and Outreach Programme Officer – Straton MUSONERA

Office of the Prosecutor - Frederick NYITI

Senior Advocacy and External Relations Officer, OIC, Conference and Protocol Services
– Alessandro CALDARONE

President of the Court – Judge Charles Michael Dennis BYRON

Attempted Meetings in Rwanda:

Avocats sans Frontières

Penal Reform International

LDLG

SUGGESTED BUDGET FOR IMPLEMENTATION OF RECOMMENDATIONS

Figures are in USD

“K” means 1000 USD

1. Judicial Training at the Institute of Legal Practice and Development/Support for Judicial Independence (\$2.250mil)

Short and medium term:

- Provide training in international criminal law to judges, prosecutors, court staff, and members of the Bar (3 one-week courses with 50 participants in each course) **450K**
- Provide training in international human rights law and adversarial criminal procedure to judges, prosecutors and members of the Bar (3 one-week courses with 50 participants in each course) **450 K**
- Provide exchange programs to international war crimes tribunals for judges, prosecutors and members of the Bar; **100K**
- Provide legal assistants to judges of Supreme and High Court (six for each court); **200K**
- Provide the IPLD with a library and other necessary equipment **100K**
- Establish the documentation centre with books, journals, internet access, legal databases and equipment **200K**

Medium term:

- Supply foreign legal experts as trainers at the Institute of Legal Practice and Development (IPLD) **200K**
- Provide on-the-job training to Rwandan judges by bringing in foreign judges **300K**
- Provide language training to judges and court staff **100K**
- Provide technical assistance to the judiciary to improve its capacity to govern itself independently, including financial, budget, personnel and other management skills and processes. **150K**

2. Improvements in Court Administration and Management (\$3.1 mil)

Short and medium term:

- Provide training and funding for court interpreters and translators **200K**
- Furnish computers and network equipment to Higher Instance Courts and prosecution departments **500K**

- Given the extensive case backlog, provide funding for *ad litem* judges **300K**

Medium term:

- Assist the court system in developing a case prioritization system based on clear-cut, well-articulated, objective criteria **500K**
- Provide training in court administration - including case management, record-keeping and statistics - to court staff **300K**
- Develop integrated case management systems linking courts, prosecutors and corrections to enhance the efficiency of court operations **800K**
- Train court recorders and stenographers **200K**
- Provide funding for the procurement of stenography equipment to Higher Instance Courts, High Court and Supreme Court **300K**

3. Legal Assistance (\$1.65 mil)

Short and medium term:

- Provide resources to the legal aid fund of the Bar Association to finance adequate legal assistance to indigent defendants as well as to witnesses and “parties civiles” **450K**

Medium term:

- Establish a government legal aid fund for representation of indigent defendants and ‘parties civiles’, for transportation and expenses for legal representation in rural areas and for copying of criminal files for indigent parties **450K**
- Establish and fund “twinning agreements” between the Rwandan Bar and foreign Bars **200K**
- Support NGOs, the Bar Association and law schools to provide legal aid, through financial support, training and capacity building **300K**
- Explore the possibility of using paralegals, NGO lawyers and foreign lawyers to support the work of the Bar **250K**

4. Victims and Witness Support (\$750K)

Short and medium term:

- Provide financial and other support to civil society victims’ organisations to enable them to continue and expand their work to ensure continued medical, including psychological, care and support for victims and witnesses **250K**
- Establish a fund to ensure continued medical and psychological care and support for witnesses and victims, including internal relocation and basic home security **400K**
- Assist ICTR witness support unit in sharing its experience and best practices with national authorities **50K**
- Explore alternative means of involving witnesses in proceedings from outside Rwanda including, potentially, technological support to facilitate this **50K**

5. Legislative Reform (\$200K)

Medium term:

- Provide training for legislative draftsmen **200K**

6. Public Awareness Raising (\$900K)

Short and medium term:

- Provide funding and expertise training for criminal trial monitoring by local NGOs **100K**
- Encourage local NGOs independent functioning through diplomatic and political means, such as partnering them with appropriate international NGOs for cover **100K**

Medium term:

- Support paralegal and legal literacy programs **400K**
- Encourage recruitment to the judiciary from all sectors of society through facilitating access to legal education **300K**

7. Police and Investigations (\$2.5mil)

Medium term:

- Provide funds for logistics and communications equipment, the construction and equipment of a forensic laboratory, as well as for training of staff **1600K**
- Provide continued training for developing investigative capacity **200K**
- Establish an independent scrutiny mechanism to ensure public accountability of the police **300K**
- Initiate a campaign to recruit more women police officers. **200K**
- Establish and train a specific unit to deal with investigation and prosecution of sexual violence cases **200K**

8. Corrections and Detention (\$1.4mil)

Short term:

- Remaining works in Mpanga prison should be completed immediately **300K**
- A new prison facility and transit centre situated in or near Kigali should be constructed **500K**
- A secure temporary holding facility (“safe house”) in or near Kigali should be identified and adequately equipped with security systems and staff **300K**
- Secure vehicles for transporting prisoners should be provided **300K**

GRAND TOTAL

\$12 750 000