



THE DANISH INSTITUTE FOR HUMAN RIGHTS
INSTITUT DANOIS DES DROITS DE L'HOMME

LEGAL AID IN RWANDA

A report on the legal assistance available in Rwanda

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Bureau du Rwanda de l'Institut Danois des Droits de l'Homme
Rwanda Office of the Danish Institute for Human Rights
B.P. 5225, Kigali:
Telephone (+250) 51 93 21/22/24; Fax (+250) 51 93 25

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Table of Contents

1	Introduction.....	5
1.1	Methodology.....	6
1.2	Terminology.....	7
1.2.1	Definition of legal aid.....	7
1.2.2	Jurists and lawyers.....	8
1.3	Delimitation.....	8
2	International standards on legal assistance.....	10
2.1	Criminal cases.....	10
2.2	Non-criminal cases.....	12
2.3	Regional standards – Africa.....	13
2.4	Constitutional provisions of other African countries.....	14
3	The Rwandan legal framework on legal aid.....	16
3.1	The Constitution.....	16
3.2	Relevant legislation.....	17
3.2.1	Provisions on representation before the courts.....	18
3.2.2	Assistance outside the courts.....	18
3.2.3	Fees of lawyers and judicial defenders.....	19
3.2.4	Representation of indigents.....	19
3.2.5	Eligibility for legal aid and exemption from court fees.....	21
4	Legal services providers in Rwanda - results of the survey.....	25
4.1	Genocide survivors groups:.....	25
4.1.1	Association des Veuves du Génocide Agahozo, Avega.....	25
4.1.2	Ibuka.....	26
4.2	Government initiatives.....	27
4.2.1	UNICEF and the Ministry of Justice and Institutional Relations, Rwanda.....	27
4.3	Human Rights organisations.....	28
4.3.1	Association Rwandaise pour la Défense de Droits de la Personne et des Libertés Publiques, A.D.L.....	28
4.3.2	Association Rwandaise pour la Défense des Droits de l’Homme, ARDHO... ..	29
4.3.3	Association de Volontaires de la Paix, A.V.P.....	30
4.3.4	Collectif des Ligues et Associations de Défense de Droits de l’Homme, Cladho.....	31
4.3.5	Ligue Rwandaise pour la Promotion et la Défense de Droits de l’Homme, LIPRODHOR.....	32
4.4	Specialised Organisations.....	33
4.4.1	Association de Coopération et de Recherche pour le Développement, ACORD.....	33
4.4.2	Avocats Sans Frontières – ASF Belgium.....	34
4.4.3	Haguruka.....	35
4.4.4	Norwegian People’s Aid, NPA.....	36
4.4.5	Rwanda Women’s Network.....	37
4.4.6	Youth Association for Human Rights Promotion and Development, AJPRODHO –JIJUKIRWA.....	38
4.5	Rwandan institutions.....	39
4.5.1	The Bar.....	39
4.5.2	The Corps of Judicial Defenders in cooperation with the Danish Centre for Human Rights, Rwanda.....	41

4.6	Religious organisations.....	43
4.6.1	Bureau Social Urbain/Caritas: Service Juridique, B.S.U	43
4.6.2	Commission de Justice et Paix, the Diocese of Nyundo, CDJP	44
4.7	Trade unions	45
4.7.1	Association des Syndicats Chrétiens, “Umurimo”, ASC	45
4.7.2	Centrale des Syndicats de Travailleurs du Rwanda, CESTRAR.....	46
4.7.3	Conseil National des Organisations Syndicat Libres au Rwanda, COSYLI...	47
4.8	University- and student organisations	49
4.8.1	Clinique Juridique de l’U.N.R/ Faculté de droit	49
5	Rwandan legal aid practices, the factual legal aid situation in Rwanda	52
5.1	Funding of legal aid – the problem of lack of means	52
5.2	Slowness of the administrative and judicial proceedings	53
5.3	Excessive delay or non-execution of judgments	55
5.4	The fees of the lawyers and defenders.....	55
5.5	Geographical/logistical problems	56
5.6	Vulnerability of the population, poverty and ignorance	57
5.7	Costs of court fees and judgments	58
6	Legal aid experiences from other Countries	59
6.1	Basic principles for design of legal aid programmes.....	59
6.2	Public vs. private funding	60
6.3	The relation of legal aid to the organization of the legal profession.....	61
6.4	Legal aid models	61
6.4.1	Charitable services	61
6.4.2	Salaried legal aid schemes	63
6.4.3	Judicare schemes	64
6.4.4	Other approaches	64
7	Seminar on legal aid in Rwanda	68
8	Conclusions	70

1 **Introduction**

Legal representation, assistance and advice by qualified counsel are important parts of any legal system. Providing these legal services to ordinary people is a challenge that all societies based on the rule of law face. In its own way it is almost as necessary as providing healthcare and education. These challenges are greatest for poor and developing countries.

Following the genocide and war in 1994, Rwanda has attracted the interest of many foreign donors. Many initiatives have aimed at supporting the government's objective of strengthening the rule of law and the legal system. The focus of many projects has been directed at solving the immediate problems faced by Rwanda's judicial system after 1994, mainly the immense task of processing the genocide cases.

In the area of legal aid, schemes have been put in place that are directed towards assisting people suspected and prosecuted for the crimes of genocide and crimes against humanity, as well as for the survivors/victims. As these programmes focus on short term, albeit important, problems, there has been less emphasis on legal aid in matters other than genocide related cases.

The Law Reform Commission has completed its study concerning the introduction of legal reforms in Rwanda. As legal aid is an important factor in realizing access to justice, reform of the legal system might constitute a welcome opportunity to examine how best to structure the provision of legal aid for the population, taking into account the limited resources available and the scale of the need. Indeed, a conference held to discuss the Law Reform Commission's proposals recommended that a study be made of access to justice and legal aid. For this purpose, it is necessary to identify the actors and stakeholders in legal aid and to study the present system to determine what legal and factual obstacles these actors experience in providing legal aid to the population.

The aim of this report is therefore to describe the availability of legal services free of charge in Rwanda, in law and in practice. The focus is on all cases, genocide cases as well as ordinary criminal and civil cases, known together as "*droit commun*" in Rwanda. The report will moreover briefly outline some legal aid models from other

countries, examining how cost efficient ways to improve access to justice applied in other countries could fit into a Rwandan context, including the introduction of a coherent legal aid system.

The report was commissioned by the Danish Institute (Danish Centre) for Human Rights¹ (the DCHR), which has since 1998 been managing a legal aid programme in cooperation with the Ministry of Justice and Institutional Relations and the Corps of Judicial Defenders.

1.1 Methodology

The approach taken was to first study the legal aid framework in place in Rwanda. Following this, field research aimed at identifying all organisations currently providing legal assistance in Rwanda and to describe the services provided by them was carried out. To this end, questionnaires in both English and French were written asking detailed questions, particularly about the services and experiences of the actors providing legal aid to the population. Then, the actors known by DCHR were contacted and asked to participate in the study. When the questionnaire had been filled in by each organisation, an interview was scheduled to clarify issues and for any additional questions.

All the requested actors responded and, though the process of collecting the material about the organisations took longer than expected², the interest shown by most of them was very positive. One of the last questions in the questionnaire asked whether the actor knew of any other actors in the field of legal aid. Most of them could point to a few other organisations, and it is thanks to these directions that most of the organisations participating in the survey were discovered. While many organisations knew of Haguruka and Ibuka, most of the interviewees were surprised to learn of the relatively large number of other organisations providing legal aid in Rwanda.

¹ Following some changes in Danish legislation in 2002, the Danish Centre for Human Rights saw its mandate widened and its name changed to the Danish Institute for Human Rights. The new name and status took effect in January 2003. As these changes were irrelevant to the work of the Institute in Rwanda, and because the “Centre Danois des Droits de l’Homme” or “CDDH” had become well-known in Rwanda, we provisionally continue to operate under this name in Rwanda.

Knowledge of the participating organisations has thus largely come about by word of mouth. If any organisations have been missed, it is highly regrettable and unintended.

1.2 Terminology

1.2.1 Definition of legal aid

People can be helped to solve their legal problems in many different ways. As the main objective of this report is to describe the existing interventions, we have chosen to use a broad definition. The terms “legal aid” or “legal assistance” are used in this report to cover all kinds of such help. It can consist of information, advice, written intervention and accompaniment vis-à-vis the judicial and administrative authorities or opposing private parties, and legal representation before the tribunals. It can also consist of financial help to pay court costs and transportation. The English terminology did not pose any specific problems since the one term “legal aid” can encompass all such forms of assistance. To avoid confusion however, the factual chapter on the legal aid organisations expressly states what types of legal aid are provided by the various organisations.

The French terminology did pose some problems and had to be changed during the process. In preparing the questionnaires, a definition of “assistance judiciaire” was used to cover legal aid in general as defined above, and “aide juridique” was used to mean legal representation by a lawyer before the tribunals³.

As the questionnaires came back from the organisations, it became clear that a majority of the people who had answered the questionnaires used quite the opposite definition. *Aide* or *assistance judiciaire* was interpreted as meaning legal representation before the courts, and *aide* or *assistance juridique* was interpreted as covering other types of legal assistance⁴. Since the majority of jurists and lawyers

² DCHR started to contact the various organisations in the beginning of 2003 and received the last replies in June 2003.

³ This definition was taken from the article “L’assistance judiciaire et l’aide juridique, R. De Baedemaeker in in the Belgian periodical, Journal des Tribunaux, Bruxelles, 19 June 1999 p. 467-469.

⁴ This could particularly be seen in the way question number 11 as to the financing of legal assistance was answered, either it would be answered as a question of whom the donors were (which was the

who answered the questionnaire used the latter definition, and since the word “*judiciaire*” in French refers to the judicial powers, being the courts, this report has adopted an operational definition in accordance with the use of the majority of the respondents. This definition is also in conformity with the definition reached at a seminar of the DCHR and the Corps of Judicial defenders⁵.

A broad definition of legal aid, which includes public education and awareness raising projects, has been adopted in order to emphasize that legal aid projects should include both since legal rights and aid will only be used if there is sufficient knowledge of them. However, due to restriction of time this approach has been subject to certain limitations.

1.2.2 Jurists and lawyers

The term “jurist” in both English and French is used for a person who holds a degree in law. In English the term “lawyer” is used for a person who is a member of the bar or law society, while in French such a person is called “*avocat*.”

1.3 **Delimitation**

The present study aims to describe the current framework, both legal and practical, in which legal services are provided to indigents in Rwanda today. It does not purport to be a study of access to justice in Rwanda, which would demand more time, resources, and a broader scope. It would have to include field research on such issues as ordinary Rwandans’ knowledge of the law, and the actual practice of various authorities and organisations. The latter would concern, for example, the issue of certificates of indigence by mayors in different districts of the country. How and according to what criteria are these certificates of indigence granted? What procedure is applicable when the mayors reject an application for the exemption of court fees? Apart from the certificate of indigence, linked to this question is the courts’ practice of requiring payment to copy dossiers in criminal cases for persons who are not indigents. While defendants are permitted to visit the court and view the dossier compiled by the

original intention) or it would be answered as a question of which costs are paid by the organisation with regard to legal representation; the latter option revealed a discrepancy with the intended definition.
⁵ Séminaire de Planification Stratégique, 20-22 March 2003.

parquet, they must pay a fee if they wish to have it copied (This is demanded over and above the actual photocopying costs – courts demand copying fees well in excess of ordinary commercial rates). What is the effect of this requirement? To what degree does it inhibit the accused and their counsel in preparing their defence? These questions, *inter alia*, are of vital importance for an understanding of access to justice in Rwanda. These issues are discussed only briefly below in chapter 3. It is our hope that these issues and others will be explored in depth in other studies.

2 International standards on legal assistance

2.1 Criminal cases

The Universal Declaration on Human Rights (UDHR) sets in general terms, as a common standard of achievement for all peoples and all nations, that everyone charged with a penal offence should be granted *all the guarantees necessary for his defence*⁶

The Universal Declaration of Human Rights does not define what these guarantees are, but the International Covenant on Civil and Political Rights (ICCPR), an internationally binding treaty⁷, defines a more precise set of guarantees. Thus, art. 14 3 d of the ICCPR asserts that in criminal matters one of the necessary guarantees is the right to defend oneself in person or *through legal assistance of one's own choosing*⁸. The article also asserts the right to have legal assistance “assigned to him, in any case where *the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it.*” These two criteria leave a margin of discretion for the state to decide when free legal representation should be given by the state, but the decision must be made in each individual case, and the discretion is not without limits.

The practice of the UN Human Rights Committee asserts that legal assistance must be assigned to the accused if he does not have the means to pay for it⁹ and that legal assistance must be effective¹⁰.

Some guidance as to the correct interpretation of the ICCPR may be sought in the decisions interpreting the European Convention of Human Rights, which in art. 6.3 (c)

⁶ The Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 10 December 1948 art. 11. While the Universal Declaration itself is not legally binding, some or all of the rights it mentions are considered to be binding in customary international law. See for example the case of *Filartiga vs. Pena Irala* (1980) ILM 966, US Circuit Court of Appeals, 2nd Circuit.

⁷ Rwanda ratified the International Covenant on Civil and Political Rights on the 6th April 1975.

⁸ However, this has been interpreted by the Human Rights Committee as not being an absolute right. The free choice of lawyer may be subject to certain limitations when free legal assistance is granted by the state, but the wishes of the accused have to be taken into account - *Antonio Viana Acosta v. Uruguay*, Communication No. 110/1981 (29 March 1984), U.N. Doc. CCPR/C/OP/2 at 148 (1990).

⁹ *Wright and Harvey vs. Jamaica* Communication No 459/1991, 27 October 1995.

¹⁰ *Reid vs. Jamaica*, Communication No 250/1987, 20 July 1990.

is similar to that of art. 14¹¹ of the ICCPR. According to the European Court of Human Rights, free legal assistance constitutes one aspect of the notion of a fair trial in criminal proceedings¹². The decisions of the European Court of Human Rights, without being directly binding for states other than those 42 parties to the European Convention of Human Rights, show a trend in the development of human rights standards in one region of the world that can be useful for the purpose of interpreting the provisions of the global human rights instruments.

The European Convention of Human Rights also requires respect of the right of free choice of a lawyer. While this right has been subject to limitations, regard must be had to the wishes of the accused¹³.

The European Court of Human Rights has also developed a practice concerning the elements that have to be taken into consideration in order to determine when the interests of justice require that free legal assistance be given. According to this practice, the granting of legal aid depends on the circumstances in each individual case. Thus, the severity of the penalty risked by the accused and the complexity of the case must be taken into consideration¹⁴ as well as the capability of the accused to defend himself.

In *Benham vs. United Kingdom*, the applicant risked a penalty of 3 months imprisonment. This was severe enough to require that legal aid free of charge be given; the European Court of Human Rights stated that if a deprivation of liberty is at stake, the interests of justice in principle call for legal representation¹⁵. The decision also showed that the capacity of the accused should be taken into consideration¹⁶.

In the case of children, the general rule is that they should have legal or other

¹¹ The European Convention on Human Rights art. 6.3 stipulates that “Everyone charged with a criminal offence has the following minimum rights: ... (c) to defend himself on person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”.

¹² *Artico vs. Italy*, 13 May 1980, Series A, no 37, p 15 para 32.

¹³ *Croissant vs. Germany*, 25/9 1992, and *Lagerblom vs. Sweden*, 14/01 2003.

¹⁴ *Case of Quaranta vs. Switzerland*, 24/05/1991, paragraphs 33 and 34.

¹⁵ *Benham*, paragraph 61.

¹⁶ “Law of the European Convention on Human Rights”, Harris, O’Boyle and Warbrick. Butterworths, 1995, p. 262.

appropriate assistance, unless it is considered not to be in their best interest. In establishing the best interests of the child, the age or situation of the child as well as the parents and legal guardians, have to be taken into consideration¹⁷.

2.2 Non-criminal cases

The ICCPR is silent on the matter of legal aid in civil cases. The practice of the European Court of Human Rights has extended the obligation of the state to provide legal aid in civil cases depending on the particular circumstances of the case¹⁸. In the Airey decision,¹⁹ the court held that art. 6.1 of the European Convention of Human Rights may sometimes compel the state to provide the assistance of a lawyer. This would be so when such assistance is indispensable for effective access to court, either because legal assistance is compulsory or because of the complexity of the procedure²⁰. The court further stated that while the convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature²¹. Naturally, we do not suppose or argue that the standards which have been found to be binding and applicable in Europe are necessarily so in the different circumstances of Africa. Nevertheless, they may be useful in showing the way. An interesting aspect of the Airey judgment is that the court makes it very clear that it is the state's responsibility to make legal remedies accessible and effective. The state can lessen its obligation to provide legal aid by ensuring that legal procedures are not unduly complex or intimidating to the poor and uneducated. This point is particularly relevant in relation to poorer countries, including those in Africa. Thus, a key question is whether legal systems and procedures are as simple, transparent and accessible as they can be.

¹⁷ Article 40.2 (iii), the Convention on the Rights of the Child.

¹⁸ Airey vs. Ireland, 9/10 1979.

¹⁹ Airey vs. Ireland.

²⁰ Airey vs. Ireland paragraph 26.

²¹ Airey vs. Ireland, paragraph 26.

2.3 Regional standards – Africa

The African Charter on Human and People's Rights²² contains a provision regarding fair trial in art. 7, which includes the *right to defence by a counsel of one's own choice*. Legal aid free of charge is not mentioned in the Charter, but the right to defence must entail a duty for the government to provide representation by a counsel if the person cannot afford it, because the right would otherwise remain theoretical. In the preamble of the African Charter, the parties also underline their duty to promote and protect human and people's rights and freedoms. As such, the right to defence in art. 7 c corresponds to the duty of the state to provide a defence if a person cannot afford his or her own defence. The right to life in art. 4 asserts that no one may arbitrarily be deprived of their right to life. If art. 4 is interpreted in connection with art. 7 c it must be a requisite that legal aid is given free of charge in all circumstances where the accused faces such a penalty, since the deprivation of life by death penalty would be arbitrary without the legal guarantees in art. 7. The government must, as a very minimum, provide a defence to indigent people in penal cases where the death penalty is a possibility.

The African Charter on the Rights and Welfare of the Child²³ entered into force on 29 November 1999. The Charter was ratified by Rwanda on 11 May 2001. Art. 17 1 and 2 (iii) determine that a child shall have the right to *special treatment* in penal cases and be afforded *legal and other appropriate assistance* in the preparation and presentation of his defence.

The draft protocol on the Rights of Women in Africa, which is not yet in force, also contains a provision on legal aid which obliges the states to *facilitate the access of women to legal aid services and support local, national, regional and continental initiatives directed at giving women access to legal aid services*. A prerequisite for this is of course that such services exist in the first place.

The African Commission on Human and People's Rights' Resolution on the Right to

²² Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, ratified by Rwanda 15 July 1983.

²³ OAU Doc. OAU/LEG/24.9/49 (1990).

a Fair Trial and Legal Assistance in Africa²⁴ emphasizes that access to justice is a paramount element of the right to a fair trial. It recognizes the fact that *most accused and aggrieved persons are unable to afford legal services* and that *it is the duty of the governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective*. Further, it recommends that the government should encourage the *contribution of the judiciary, human rights NGO's and professional organisations*. The reference not only to accused, but also to “aggrieved persons” indicates that a broader range of people than those accused are targeted. The inclusion of “aggrieved persons” potentially includes both victims of crimes and persons with civil claims.

The resolutions of the African Commission are considered “soft law”, as they have not been adhered to by any state and as such do not have binding legal force. However, the Resolution on the Right to a Fair Trial and Legal Assistance in Africa expresses the confirmation of the regional African Human Rights body of a principle of international law under development, and provides evidence of regional applicability of the right to legal aid as one aspect of the right to a fair trial.

2.4 Constitutional provisions of other African countries

While it was not possible for the purposes of the present paper to make an in-depth study of African constitutional law concerning legal aid, an examination of the provisions of some of the more recent African constitutions revealed an increasing tendency to take account of this human right.

The 1997 Constitution of South Africa provides in Section 35 that:

“(2) Everyone who is detained, including every sentenced prisoner, has the right - ... (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly”.

The Constitution of Malawi provides in Article 42. 2 f. (v) the right

“ to be represented by a legal practitioner of his or her choice or, where it is

²⁴ 26th Ordinary Session of the African Commission on Human and People's Rights, 1-15 November

required in the interests of justice, to be provided with legal representation at the expense of the State, and to be informed of these rights”.

The Constitution of Uganda guarantees in Article 28 (3) (e) the right to counsel at the expense of the state in death penalty cases or those where life imprisonment may be imposed (interestingly, this is not explicitly limited to indigent persons).

The Constitution of Zambia, while not providing an explicit guarantee of state funded legal assistance, refers in Article 18 (2) (d) to the law enacted by Parliament on provision of free legal aid.

Many of these constitutions also contain guarantees on fair administrative action. These have been key instruments of state reform in recent years.

More is said below on the actual practice of legal aid in selected African countries.

3 **The Rwandan legal framework on legal aid**

3.1 **The Constitution**

Article 19 of the new Rwandan Constitution contains a right to a public and fair hearing with *all the necessary guarantees of defence*, using language similar to that of the UDHR. It is not further elaborated what these guarantees include, so it will be up to the Rwandan legislature to give detail to this provision and to the courts to interpret it. The discretion of the courts will have to be exercised within the boundaries of international law. Point 9 of the preamble of the constitution reaffirms adherence to the principles of numerous international conventions²⁵ including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. Since Rwanda is a party to these instruments, the courts will be bound to interpret the constitution within their limits.

Furthermore, article 190 of the Constitution²⁶ establishes that ratified treaties or agreements have greater authority than laws as from the date of their publication. This is subject to a reservation concerning reciprocity, but the concept of reciprocity does not apply in terms of human rights treaties where the object of protection is the citizen, and the obligations imposed by them are owed to the community of states as such (obligations *erga omnes*), rather than to particular states²⁷. The wording “as from their date of publication” raises the question whether this only applies for new international law adopted after the entry into force of the constitution or whether the provision has a retrospective aspect and thus includes all international instruments ratified by Rwanda as well. In terms of granting rights there are no problems of applying retrospective legislation. An interpretation in the light of the purpose of the

²⁵ 9. Reaffirming our adherence to the principles of human rights enshrined in the United Nations Charter of 26 June 1945, the International Convention on Genocide of 9 December 1948, the Universal Declaration of Human Rights of 10 December 1948, the International Convention on Elimination of All Forms of Discrimination of 21 December 1965, the International Convention on Civil and Political Rights of 16 December 1966, the International Convention on Economic, Social and Cultural Rights of 16 December 1966, the International Convention on the Elimination of all forms of Discrimination against Women of 18 December 1979, the African Charter on Human and Peoples’ Rights of 18 June 1981 and the Convention on the Rights of the Child of 20 November 1989.

²⁶ Article 190: “Treaties or agreements, which have been regularly ratified or approved, have, as from the date of their publication, greater authority than laws, subject to the reservation, with respect to each treaty or agreement, of compliance by the other party”.

constitution, which is to protect human rights, invites for a broad interpretation of this provision to make it applicable retrospectively.

“All necessary guarantees” must therefore include, as a minimum, what international law stipulates.

3.2 Relevant legislation

The only provisions concerning free legal aid to be found in the present Rwandan legislation are articles 60-63 in the Law establishing the Bar²⁸. Article 61 provides for a legal aid fund, to finance legal representation at the courts for indigents. The law provides that the fund should primarily be financed by the state²⁹, which is in perfect accordance with the principle that the state, and the government as its representative, is responsible for providing legal aid free of charge to indigents³⁰. In 1998, a draft presidential decree establishing this fund was prepared³¹, according to which 50 million RWF would be provided for the purpose. The draft decree was never adopted. However, another draft proposal was prepared in 2003 that establishes the relevant organs responsible for the fund and the procedure for its use. It is interesting to note that no amount of money is provided for and the responsibility to oversee and manage the fund lies solely with the Bar. There is an inconsistency here in that the Bar law stipulates that the legal profession is exercised by two institutions: the Corps of Judicial Defenders and the Bar, thus, these two institutions should be made responsible for the legal aid fund. The draft proposal also contains a scheme of fees for lawyers which seems to be very costly, and not appropriate to the needs of the population, particularly the rural poor. It remains to be seen whether these impediment to legal aid will remain in the decree which is scheduled to be adopted in 2004. In the opinion of the authors of the present report, it might be better to follow a

²⁷ Barcelona Traction, Light and Power Co. Case, International Court of Justice Reports 1970, p.3.

²⁸ Loi No. 3/97 du 19/3/1997 Portant Création du Barreau au Rwanda (Law of the Bar), J.O. no. 8 du 15/4/1997.

²⁹ Law of the Bar, art. 62.

³⁰ As provided for in the African Commission on Human and People's Rights' Resolution on the Right to a Fair Trial and Legal Assistance in Africa, 26th Ordinary Session of the African Commission on Human and People's Rights, 1-15 November 1999, Kigali, Rwanda, Doc/OS(XXVI) INF.19.

³¹ Avant Project d'arrête présidentiel portant organisation du fond d'aide judiciaire.

suggestion from some members of the legal profession and use the resources of the fund to fund mainly expenses of lawyers and judicial defenders (travel, board etc.) and rely on a certain amount of pro bono work from the members of the two legal profession.

3.2.1 Provisions on representation before the courts

According to article 50 of the Law of the Bar, only lawyers have the right to represent people before the courts, except as otherwise provided by law. The first exception to this is found in article 94, which in some circumstances gives the same rights of representation to judicial defenders³². Secondly, article 50 itself confirms the right of the party to represent himself, his spouse, parent or relative, who is to present a written proxy which must be approved (“agrée”) by the judge, or by the guardian or legal representative of the person represented.

Article 50 and article 94 thus determine the criteria to represent people before the courts and tribunals. Article 2 (concerning lawyers) and article 94 (concerning judicial defenders) give the competence to act *outside* of the courts and tribunals³³. Article 50 contained in section 3, subsection 1, is the only section of the Law of the Bar that deals with the “prerogatives” of lawyers.

3.2.2 Assistance outside the courts

In contrast to the provision for legal representation before the courts, legal assistance outside the courts is unregulated by Rwandan law. Articles 2 and 94 of the law of the Bar, dealing with the competence of the lawyers and defenders outside the courts and tribunals, is contained in the first chapter of the law, dealing with “general provisions”. Article 2/94 describes competences, but it does not purport to establish a monopoly on the part of lawyers (and judicial defenders, by analogy and the operation

³² The judicial defenders can, however, only represent people in front of the 1st Instance Tribunals, Law of the Bar, article 96.

³³ The wording of the Law of the Bar article 5 and 94 are identical: “il peut consulter, conseiller, concilier, rédiger des actes sous seing privé, assister ou représenter les parties en dehors les juridictions.”

of Article 99 of the law). The authoritative French wording in Article 2 “*il peut*” makes this clear. Thus, outside the courts and tribunals, lawyers and defenders do not enjoy a monopoly on giving legal advice and information. This is also clear from the difference in wording between articles 2 and 94 on the one hand, and article 50 on the other, which grants lawyers and judicial defenders the exclusive right to plead³⁴, subject to the exceptions already mentioned.

3.2.3 Fees of lawyers and judicial defenders

Article 50 of the Law of the Bar makes no mention of the fees that lawyers may charge. Thus, there are no legislative provisions specifically dealing with fees in legal aid cases. However, chapter IV, section 4 of the law, articles 71-76, deal with lawyers fees more generally. Article 72 deals with the fee level set by the Bar Council (the “Conseil de l’Ordre”). The third sentence of article 72 clearly states that the fee established by the Bar Council is a maximum fee, and that lawyers are free to charge less, as long as they *inform* the Bar Council. The right to charge less includes the right to charge no fee at all. The law gives the Bar Council no right to intervene in the matter.

3.2.4 Representation of indigents

Article 60 of the Law of the Bar provides for the Bar Council (and by analogy, the Bureau of the Corps of Judicial Defenders) to establish a *Bureau de Consultation et de Defence* (BCD) for the purpose of assisting persons whose incomes are insufficient. Both the Bar and the Corps of Judicial Defenders have established their BCDs. However, as mentioned above, the legal aid fund provided for in Article 63 has not been established. The BCD of the Bar has in the past allocated cases on the basis of funding provided by Avocats Sans Frontières and UNDP. It is presently allocating cases without funding. Article 63 provides that the presidential decree should establish the conditions and tariff for payments from the fund. In order to receive assistance from the fund there would have to be a designation from the BCD³⁵. By

³⁴ Law of the Bar article 50: “seuls les avocats ont le droit de plaider”.

³⁵ Draft presidential decree, articles 18 and 19.

June 2002, the BCD of the Bar had suspended designations in genocide cases³⁶, but it still receives requests for representation. Cases of *droit commun* are occasionally represented on a “pro deo” (or pro bono) basis.

The BCD of the Corps of Judicial Defenders has been fully operational since late 2000. It designates cabinets of judicial defenders to represent accused and victims in genocide cases on a request basis. Payment of the defenders’ fees and expenses is based on a tripartite agreement between the Corps, the DCHR and the cabinet concerned.

As article 50 of the law makes clear, the law does not make an intervention by the BCD necessary in order to represent an indigent person: ‘*L’avocat comparaît comme fondé de pouvoirs sans avoir à justifier d’aucune procuration, sauf lorsque la loi exige un mandat special*³⁷.’” Thus, a lawyer or judicial defender may privately choose to represent any person who requests his or her services without any designation by the BCD. As discussed above, article 72 also makes it clear that the lawyer or defender is free to derogate from the standard fees recommended by the Bar Council / Bureau of the Corps of Judicial Defenders.

Thus, if a lawyer chooses to represent a client for free (pro deo / pro bono), without a designation by the BCD, the Law of the Bar presents no obstacle. There is no legal basis for treating Article 72 differently in cases of indigent persons. There have been reports that some senior members of the Bar had a different interpretation, whereby indigent persons could not be represented without a designation from the BCD. However, we have not found a written policy or instruction to this effect. Such an interpretation would seem to be a quite an unacceptable limitation on the exercise of a liberal profession, and the authors cannot imagine that the legislation would have sought to place such unnecessary obstacles in the way of poor peoples’ access to justice and protection of their constitutional rights.

³⁶ Me Vincent Karangwa, page 9 of speech at the Journées de Reflexion sur l’aide judiciaire, organised by the Bar of Kigali and A.S.F, Belgium, in Kigali, 3-4 June 2002.

³⁷ The English version reads “a lawyer who appears before a court is considered to be authorized to so appear without having a power of attorney unless the law requires one”. The French text is the original and authoritative one (art. 105).

3.2.5 Eligibility for legal aid and exemption from court fees

3.2.5.1 *Financial eligibility*

The draft presidential decree would limit eligibility for assistance from the fund to persons proven to be indigents. Thus, in order to receive assistance from the fund, the indigent person would have to present a certificate of indigence from the mayor of his or her district or habitual residence³⁸.

The certificate of indigence, which is granted to indigents by the mayor in civil and penal cases, is provided for under article 380 of the Civil Procedure Code and article 127 of the Criminal Penal Procedure Code. It exempts the holder from payment of court fees. In civil cases, the initial court fee is 4,000 RWF (if the case starts in the Tribunal of First Instance), is paid to the registrar of the court when a case is opened. The amount rises according to the number of pages used in the trial and can reach large sums, which is why the question of the court fees is of paramount importance to indigents³⁹. In criminal cases, a person who is found guilty, if not indigent, is liable to pay the court fees. The competence to give dispensation from paying court fees lies with the president of the court upon the presentation of a certificate of indigence issued by the mayor and is, for civil cases, subject to a free judicial review.

In interviews conducted with the three presidents of the first instance tribunals of Nyamirambo, Ruhengeri and Butare⁴⁰, the impression was given that in reality the decision by the mayor is always followed by the court. It was unclear whether a real review procedure is ever actually granted in civil cases; the impression was that if a person could not present a certificate of indigence, the case would stop at that. If this is the case, then in practicality the competence lies with the mayor.

As far as could be ascertained, there exist neither substantive nor procedural guidelines for such decisions by mayors. The same is true of the procedure for review

³⁸ The draft presidential decree article 16.

³⁹ Even the amount of 4,000 is a large sum, at least for Rwandans leaving in the countryside as the average annual consumption per citizen in rural areas is 61,433 RWF, cf. note 80.

⁴⁰ Interviews with Fred Mulindwa, President of the 1st Instance Tribunal at Nyamirambo, with Eugène Higiyo, Vice- President of the 1st Instance Tribunal at Butare and with Freddy Ndizeye, President of the 1st Instance Tribunal at Ruhengeri and interview with prosecutor Gatambaye of the parquet of Kigali concerning the interpretation of this provision.

of such decisions by the courts. The criteria governing the taking of these decisions are therefore unknown. It is likewise unknown whether there is uniformity of practice in the multiple districts of Rwanda. Without guidelines, it is hard to see how such uniformity could be attained. Moreover, it was the impression from the actors in the field that it can take a long time, perhaps up to 6 months, to obtain a certificate of indigence.

This could explain why many of the participating organisations do not use this procedure to obtain exemption from court costs on behalf of their indigent clients, but choose to pay court costs and fees using project budgets.

The Code of Civil Procedure in article 391, and the Code of Criminal Procedure in article 136 provide for free copies of judgements in cases where the president of the jurisdiction establishes indigence. As is the case with the certificates of indigence, the possibility of asking for such judgements does not seem to be greatly used by projects providing legal representation. The courts do not seem to give copies of judgments free of charge to indigents represented under these projects, but rather seem to identify the economic situation of the client with that of their benefactor. Defenders and lawyers are thus required to pay for copies of judgments for their indigent clients. Many legal aid organisations do not require production of a certificate of indigence before providing free legal aid. ASF, the Bar and the Corps of Judicial Defenders (in cooperation with DCHR) effectively treat all accused in the genocide trials as indigent, without attempting to determine their means. As mentioned, they tend to view the official system for production of certificates of indigence as ineffective, and consider that it would be too demanding and economically inefficient to put their own systems of means testing in place.

Analysis

It is submitted that the burden of paying for judgments should not lie with the projects, but should be carried by the Rwandan state by exempting the costs as provided for in the law. If this were done, a greater amount of donor funding would be available for legal representation, thereby reaching more clients than is currently the

case⁴¹. The main problem with this seems to be at the level of the district administration. A uniform procedure and criteria should be applied nationally for obtaining a certificate of indigence. Such a procedure must be made simple and easy to execute. Delays in providing a certificate could negatively affect clients' rights in a variety of ways, including prescription of the legal claim and destruction or alienation of the subject of the litigation. Insofar as possible, the criteria for indigence should not be such as to prohibit poor people from asserting their legal claims. Finally, distinctions should be made between civil and penal cases. International and Rwandan standards on human rights require that all persons accused of a crime be given the means necessary to prepare their defence and their appeal against conviction. The criteria for indigence should not be such as to require, for example, that the family of an accused dispose of property vital to their survival or well-being in order that the accused be able to defend himself against criminal charges.

3.2.5.2 Eligibility on the merits

The other aspect of eligibility concerns the seriousness of the case and related issues (see section 2.1 above), including the well-foundedness of the legal claim. As will be examined below, most legal aid systems use certain criteria to decide which cases will be assisted, and to what degree. Article 18 of the draft presidential decree says that legal assistance may be refused where the evidence appears to be insufficient. No other criteria are discussed, such as the seriousness of the case, its legal and factual complexity, or the concrete situation of the accused (including factors making the accused particularly vulnerable).

Analysis

As the Ministry of Justice and Institutional Relations has made many efforts to address the particular needs of minors, it is to be expected that the text of the draft presidential decree will be modified in this respect before adoption. We would respectfully suggest that it be amended also to set priorities on the basis of the above

⁴¹ As an example a party in criminal case, be it the accused or a civil claimant, has to pay 400 RWF for the first two pages and 100 RWF for each subsequent page to obtain a copy of the case file; for a case with for example 800 pages, which is not unusual in genocide trials, the price thus reaches 80,200 RWF, a substantial amount when compared to e.g. the price paid for representation under the project of DCHR which is 12,000 RWF per day in court.

criteria, and moreover, that it addresses the question of the balance between civil, criminal and administrative cases. In addition, decisions on the well-foundedness of the legal claim should be subject to particular rigour, including perhaps a system of internal review within the body making the decision.

The decree does not deal with the very substantial amount of legal aid provided by members of the Corps of Judicial Defenders. The text would need to be modified in this respect. Mechanisms would need to be put in place to ensure coordination between the two BCDs, and to allocate funds between them.

As long as the decree has not been adopted, these questions remain academic. It is to be hoped that the recommendation of the Law Reform Commission's conference will give renewed impetus to the government's efforts to address this question.

4 **Legal services providers in Rwanda - results of the survey**

The following chapter contains the factual information about the organisations gathered in the survey. Since the survey was carried in 2003, its results reflect the situation of that time. The organisations have been listed according to type so as to provide a better overview. Within each subcategory the organisations are listed alphabetically.

4.1 **Genocide survivors groups :**

4.1.1 Association des Veuves du Génocide Agahozo, Avega

Among its different activities, Avega, the association for the widows of the genocide, has a program of advocacy, justice and information. Under this program, it seeks to help vulnerable groups in society, especially widows resulting from the genocide and orphans cared for by the members of Avega. Avega's legal service assists its members in genocide cases, in family cases and cases concerning issues of insecurity, mostly on an individual basis. It gives legal advice and information, and accompanies the members in their contact with the authorities and in the gacaca trials. It also helps members who are incapable of representing themselves, by writing submissions ("conclusions") to the court or by paying for a lawyer. Membership of Avega is a condition for obtaining help and can only be attained by a person who meets the definition of being a widow of the genocide: her husband had to have been killed during the genocide because of his beliefs or his ethnicity. Membership costs 100 RWF per month.

Avega receives around 1440 requests for assistance per year, but cannot help in all these cases, since there are only three people working on the legal programme in Kigali, one of them just finishing her law degree, and one paralegal in each of the two regional offices⁴². Roughly estimated Avega helps 120-180 people every year. Receiving the clients is time consuming, as it is not unusual for every client to take an hour to explain his or her problems. In order to receive the assistance of Avega, the

⁴² In Rwamagana (Règion Est) and Cyangugu (Région Sud); these paralegals have a secondary school education with a focus on legal and administrative matters.

members present themselves at the offices, which are open all day. Avega aspires to have decentralised offices all over the country. At the moment however, it only has 2 regional offices besides the main office in Kigali.

Avega also educates its members so that they can inform people in the communities, especially in the villages. This training and education takes place in conferences and meetings for the members, but because of the lack of time and personnel there is not much training at the present moment.

The project is funded by NOVIB, Cafod and the German Development Cooperation (G.T.Z.), but fundraising has become more difficult as the years have passed after the genocide.

4.1.2 Ibuka

The genocide survivor's umbrella organisation, Ibuka, gives legal assistance to survivors with their claims as civil parties in genocide cases at the courts. Ibuka helps survivors at all levels of their genocide trials, by accompaniment, writing letters and constituting their cases etc. Ibuka does not pay a lawyer or judicial defender to represent the victims except in extraordinary cases. However, Ibuka does assist the victims in making contact with a lawyer or a judicial defender. Indigence is not a criterion for assistance, but Ibuka tries to address its help to the poorest and most vulnerable persons. Ibuka assists people from all social categories, the elderly, widows, children and adults, but there is no statistical material available about its clients.

Ibuka also holds awareness campaigns for groups of victims of the genocide, generally by organising community meetings at the sector level. It uses various channels to communicate its activities to the population, ie. via the churches, mosques and the elected representatives of the population.

Ibuka also lobbies before different policy making authorities, including the gacaca department of the Supreme Court, and has made declarations in the area of legal assistance. These declarations were unfortunately not available for the purposes of this report.

Ibuka has 24 paralegals (“agents”) posted in the country, 2 in each province, who are involved in giving legal assistance to genocide victims. The main office in Kigali employs 9 people, 2 of whom are jurists and spend part of their time in matters related to legal assistance. In the “conseil d’administration”(the board) there are two lawyers and one jurist who work on a voluntary basis. The Netherlands, Germany, Johns Hopkins University, and G.T.Z. have supported Ibuka in the form of small projects.

4.2 **Government initiatives**

4.2.1 UNICEF and the Ministry of Justice and Institutional Relations, Rwanda

UNICEF is funding a project administered by the Ministry of Justice and Institutional Relations, which provides legal advice and representation for minors in genocide cases and in ordinary criminal cases involving rape. The project aims to give legal assistance to children in conflict with the law from the moment of their arrest, during possible detention, and throughout the trial.

The number of juveniles in prison who are in need of legal representation exceeds 5.000⁴³. The project received 20 requests for assistance in 2002, but was only able to help 8 children due to lack of funding. In 2001 no representation was granted due to lack of funds and in 2000 24 cases were accepted, but the demand was much higher than that. In principle, all cases should be accepted, but because of the lack of funds strict criteria have had to be applied. One criterion is that the least expensive cases are accepted (the cases geographically closest to Kigali).

The 8 cases accepted in 2002 were all rape cases because these cases cost less than genocide cases⁴⁴. All of them were in Kibungo; the President of the 1st Instance Tribunal there had delayed the 8 cases and contacted the Coordination Unit to arrange for legal representation. The Coordination Unit has used both lawyers and judicial defenders to represent the children; in 2000 there was a contract with 4 judicial defenders, in 2001 with 2 lawyers. The lawyers and defenders were respectively paid

⁴³ Statistics given by the Project Coordination Unit at the Ministry of Justice state that at the end of 2002 there were 1382 children imprisoned charged with ordinary (non-genocide related) crimes, 3541 who were accused of committing genocide and 1054 in solidarity camp according to the presidential communiqué of January 2003 releasing prisoners who confess the crimes of which they were accused.

3,000 and 1,800 RWF per hour. 8-17 hours were allocated to each case. Transportation costs and photocopies were also paid by the project. Court costs were paid by the lawyer and reimbursed by the Coordination Unit.

In order to be granted assistance, the children need to file a written request to the Coordination Unit. In some years the number of requests was low because the letters requesting assistance disappeared.

Every year, approximately 3 radio spots on children's rights are broadcasted and 1 visit to a prison is made in order to inform all the children of that prison of the project. The project was meant to continue until 2006 but will terminate before that date since UNICEF has little funding left.

4.3 **Human Rights organisations**

4.3.1 Association Rwandaise pour la Défense de Droits de la Personne et des Libertés Publiques, A.D.L.

A.D.L. gives legal advice and information after office hours to people who present themselves to the organisation at the office in Kigali. When necessary they make requests meet with the authorities, and visit prisons in search of missing persons. Sometimes the president writes the conclusions for court procedure where people represent themselves. This service is made possible by the Legal Commission of members consisting of 8 jurists and the president, who is a lawyer. They work on a voluntary basis. When people in need present themselves at the A.D.L. office in Kigali, the secretary contacts one of the member jurists and makes an appointment for advice. Sometimes the person is sent directly to the president of the organisation, whose practice is located near the office of A.D.L.

A.D.L. mostly receives cases of disappearances and arbitrary arrests, but also some cases on issues related to the rights to property. After the presidential decree of January 2003, it has received a number of requests for assistance from people imprisoned on accusations of genocide who plead not guilty. A.D.L. receives

⁴⁴ The Coordination Unit estimates that rape cases normally take one day, whereas the genocide cases take 5-10 days.

approximately 65 cases per year; all people who contact the organisation are given free advice and information.

A.D.L. also arranges seminars and conferences, but this activity has been diminished the last couple of years due to lack of funds. There has not been a big seminar since 2001, but A.D.L still holds 2 small ones every year.

The permanent staff consists of two people, a permanent secretary and a driver. The president and the commissioners all work on a voluntary basis. There used to be a permanently employed jurist at the office of A.D.L who received claimants and gave free legal advice during office hours. Since 1994 this has not been possible due to a lack of finances.

The association has 98 members of which 79 contribute actively to the work of the organisation. The annual membership fee is 5,000 RWF. At the moment there is no funding available for legal aid.

4.3.2 Association Rwandaise pour la Défense des Droits de l'Homme, ARDHO

ARDHO mainly provides education in human rights to the population, but does give legal advice and information to people who show up at the headquarters in Kigali. It is the intention of ARDHO to help all people who feel that their rights have been violated. ARDHO mainly receives property and arbitrary arrest cases. ARDHO receives about 180 people per year (15 per month), all of whom are assisted. In order to receive advice it is necessary to write a letter to the president of ARDHO, but the jurists often write this letter for people who cannot write. The only criterion for giving advice is that there is a violation of human rights. In order to inform the population of its services, ARDHO distributes brochures and its annual and quarterly narrative reports.

To achieve its main objective, ARDHO has developed teaching material for primary and secondary schools. The education takes place in human rights clubs, where the pupils are taught human rights so as to enable them to assist other pupils. When they encounter a problem which they do not know how to solve, they contact the jurists at ARDHO's main office in Kigali. The human rights clubs are a pilot project funded by

Trocaire. There are 8 such clubs in secondary schools, in the provinces of Kibuye and Cyangugu ,and 16 in the primary schools.

ARDHO is in the process of making a strategic plan for the next five years in which it is hoping to introduce a service, giving legal assistance to indigents, since the experience is that the people who receive legal advice and information ask to be accompanied to the tribunals. ARDHO wishes to be able to provide legal assistance for politically sensitive cases involving the most poor and vulnerable people who do not have the possibility of legal representation. The support envisioned includes payment of a lawyer or a judicial defender and court fees. As of yet there are no funds for the realisation of such a project.

ARDHO used to broadcast radio programmes in order to provide information to the public about their services, an activity which was financed by Oxfam, but has now stopped.

There are 8 people working full time in the ARDHO office in Kigali, two of which are jurists. Furthermore, many of its members are jurists and work for the organisation as volunteers in the educating and training program.

ARDHO has a long list of donors, with Trocaire and Christian Aid among their main contributors. Oxfam used to contribute a lot to the financing of ARDHO's projects, but they have stopped since they have changed their strategy and now focus more on economic and social rights than on civil and political rights.

4.3.3 Association de Volontaires de la Paix, A.V.P.

A.V.P. had a project from 1996-2000 which paid for one full time jurist, who worked at A.V.P. and gave legal advice and information. The project would pay for court representation by a lawyer and costs of transportation. Priority was given to persons without the financial means to pay for legal representation and with a low level of education, which impaired their ability to represent themselves in a court of law. The assistance was given in both droit commun cases and in genocide cases, and both groups (particularly in the genocide cases) and individuals benefited from the

assistance. Between 1996 and 1998, assistance in the form of payment for legal representation by a lawyer and transportation costs was given in 100 cases⁴⁵. In 1999-2000 the number dropped to 10 cases⁴⁶ because of lack of funding. Every year A.V.P. received more demands for assistance than it was able to respond to. Some of these cases were redirected to other organisations like Haguruka. Women and children were in majority among the clients to whom assistance was given, since they are considered by A.V.P to be the most vulnerable groups of the population.

A.V.P. would like to continue the project but the necessary funding has to be found. Among its activities, A.V.P. also holds seminars and conferences⁴⁷. It used to have a radio broadcast 15 minutes every week on Radio Rwanda, funded by the Netherlands, but this has terminated along with the funding.

A.V.P. has 130 members who pay a membership fee of 5,000 RWF per year. A lot of the members are actively working for the organisation in 5 commissions.

The donors of the project were CECI (Centre Canadien d'Etude et de Coopération Internationale), CIDPDD (Centre International des Droits de la Personne et du Développement Démocratique), Trocaire, and CEAR (Commission Espagnol d'Aide aux Réfugiés).

4.3.4 Collectif des Ligues et Associations de Défense de Droits de l'Homme, Cladho

Cladho, the Collective of Leagues and Associations for Human Rights in Rwanda, is an umbrella organisation consisting of 5 member organisations, being A.D.L, ARDHO, A.V.P., LIPRODHOR and KANYARWANDA. Cladho gives legal advice and information to people who request legal assistance. If need be, it will help contact authorities that allegedly violated the clients' rights and try to reach a settlement. At present Cladho is not able to pay for legal assistance if a case continues into the court system due to a lack of financial means, but it would like to expand its services to include this type of assistance. It receives requests for assistance in civil cases as well

⁴⁵ In Kibungo, Butare, Ruhengeri and Kigali Ville.

⁴⁶ In Gitarama and Kibuye.

⁴⁷ Around 3 per year.

as in penal cases and, since its services are not limited to any particular target group, it gives assistance in any type of case having a human rights dimension.

Cladho has previously given assistance in cases involving questions of inheritance, property (expropriation), torture and the right to life. Indigence is not a criterion for assistance. The clients come from different layers of society. Cladho receives around 20 requests for legal assistance per year, some of which are directed to its specialised member organisations. The legal assistance provided by Cladho is financed by its member organisations, but this financing is very limited and Cladho has been looking for new financing in the year 2003.

4.3.5 Ligue Rwandaise pour la Promotion et la Défense de Droits de l'Homme, LIPRODHOR

The human rights organisation Liprodhor gives legal advice and intervenes in administrative matters on behalf of people who contact them for assistance without regard to their income, gender or education. The only criterion for this assistance is that there is a human rights violation. Liprodhor receives around 500 demands for assistance countrywide per year and gives some form of assistance in practically all these cases. The assistance is provided by 2 jurists who work at the main office in Kigali, and by one person working in each provincial office⁴⁸. Since none of the provincial office staff are jurists by education, Liprodhor conducts training sessions for them every six months, thus enabling them to advise the population. Liprodhor has in total 46 permanent personnel, 13 of whom provide legal aid.

In August 2003, a new project begun where legal representation by a lawyer was offered to indigents whose rights have been violated. This project focuses mainly on torture victims. In 2003, Liprodhor has paid the fees for representation by a lawyer in 4 cases, at an amount of 300,000 frw per case. The project, financed by the Netherlands, is scheduled to last a year but could be extended.

⁴⁸ Liprodhor has an office in each province except Umutara.

Liprodhor undertakes to provide education and awareness raising campaign for the authorities working with the population, at cell, sector and district level and for the judges of the cantonal tribunals.

Trocaire and the Netherlands finance the costs of the paralegals.

4.4 **Specialised Organisations**

4.4.1 Association de Coopération et de Recherche pour le Développement, ACORD

ACORD has a 3 year legal aid project, scheduled to run from 2002-2005. The purpose of this project is to give legal assistance to women and female children, who are head of their households⁴⁹, in all cases except those related to the genocide (with the exception of succession cases). ACORD gives assistance ranging from legal advice, work place inspections, interventions and accompaniment to payment of legal representation in court. ACORD assists with all types of legal or economic problems encountered by women and female children, who are heads of their households (i.e. pension cases and bank matters often faced by widows) with the limitations set out above.

The project is limited to the zone of activities of ACORD⁵⁰. It is a criterion for obtaining help that the woman or girl child has passed through the lower levels of administration being cell, sector and district levels.

ACORD has 14 permanent staff members, including one jurist hired to be responsible for legal assistance. The jurist works with a “Committee Technique” in the district, consisting of district officers, who direct cases to ACORD. ACORD in turn has a contract with three judicial defenders, who cover 2 districts each. In accordance with these contracts, they are each obliged to represent 40 people per year (except one defender, who is also contracted to represent 16 children in the district of Guamyco,

⁴⁹ “Femmes et Filles Chef de Ménage” meaning households where there is no man, either because he died/is in prison or exile/or because the woman/girl child never married.

⁵⁰ Acord operates in 6 districts: Budaha (Province of Kibuye), Kamyoni (Province of Gitarama), Gashora (Province of Kigali Ngali), Murambi (Province of Umutara), Mutobu (Province of Ruhengeri) and Rusumo (Province of Kibungo).

Byumba). The defenders are paid 15,000 RWF per stage of the trial; consisting of 4 stages⁵¹.

After the end of the project it is intended that the legal representation will terminate and that the 35 paralegals assume the role of giving legal advice to the target group. ACORD trains the paralegals, but no detailed information was made available as to their education. The project is funded by the Community Fund and NOVIB.

4.4.2 Avocats Sans Frontières – ASF Belgium

Avocats Sans Frontières ran a project from late 1996 to August 2002 called “Justice Pour Tous” under which it gave legal assistance in genocide cases by providing financing of foreign and (later) Rwandan lawyers. At the time this project began, neither the Bar nor the Corps of Judicial Defenders had been established.

During the project, around 200-300 foreign lawyers, the majority of which were from African country or of African origin, took part in the task of defending the accused and representing the victims. The lawyers spent around one month each in Rwanda. There were at any given time on average 10-11 foreign lawyers working on the genocide cases. From the beginning of 1997 until mid 2001, 2,913 accused and 6,154 civil claimants (victims) had been represented by these foreign lawyers. As of mid 2002, there are no statistics on the total amount of cases in which assistance was given during the project. The Rwandan lawyers were paid a fixed rate, whereas the short-term foreign lawyers worked on a pro bono basis. The lawyers were obliged to have one meeting with their clients before the proceedings began.

Indigence as such was not a criterion for providing assistance as all prisoners accused of genocide were considered indigent.

At the very beginning of the project ASF ran information campaigns in the prisons on the advantages of pleading guilty and the organic law of 1996 in general. ASF cooperated with the paralegals at victims’ organisations like Ibuka.

⁵¹ The stages being: 1) The first meeting with the client, 2) Research and gathering of documents and information, 3) Introduction of the cases at the judiciary and 4) The public hearing.

The project was temporary and was to work until Rwandan institutions could take over the task of representation in the genocide cases. Today, it has left this task to the two local institutions, which have come to existence in the meantime: the Bar and the Corps of Judicial Defenders, in whose training ASF has taken an active part.

Justice Pour Tous was financed by different donors throughout its duration. The European Union, the Netherlands and Belgium were among the main donors.

4.4.3 Haguruka

Haguruka, the Organisation for the Defence of the Rights of the Woman and the Child, assists in all types of cases of violations of the rights of women and children. It has 3 regional offices in the country where women and children are received and given legal advice during office hours⁵². When the cases require further assistance, Haguruka helps with contact to the administrative authorities as well as before the courts. The support in court cases covers legal representation, various court fees and travel expenses. During the period between 1997 and 2001, Haguruka rendered legal assistance to more than 6.000 women and children, mostly in family related matters.

The clients of Haguruka are women and children from different educational and social backgrounds. Indigence is not a criterion for accepting cases. It accepts all the cases it receives, which amount to more than 4,000 per year. Haguruka pays for legal representation by a lawyer before the courts in about 30 cases per year. In cases where Haguruka deems the client capable of defending herself, jurists of Haguruka help in preparing the case and the conclusions. Thus, the total amount of cases reaching the court system is around 1,500 per year.

In 2001, the permanent staff of Haguruka amounted to 24 persons, 7 of whom were lawyers⁵³. This number has increased slightly in 2003 and is now at 30. Besides the permanent staff, in December 2000 Haguruka had over 316 volunteer paralegals

⁵² The office in Kigali covers the provinces of Kigali and Kigali Rural, as well as “légèrement” Gisenyi, Ruhengeri, Byumba, Unutara and Kibungo, the office in Butare covers Butare, Cyangugu and Gikongoro and the office in Gitarama covers Gitarama and Kibuye.

⁵³ 14 were based at the office in Kigali and the rest in the 2 regional offices (5 persons, including 1 lawyer and 1 legal assistant, at the Secrétariat Régional, région centre-ouest, covering the Gitarama-Kibuye region and 4 persons, including 1 lawyer and 1 legal assistant, at Secrétariat Régional, région sud, covering Butare, Gikongoro and Cyangugu).

educated by the organisation itself. The paralegals are people in the community who are given training by Haguruka so that they can assist the local population and help raise awareness about human rights in general, and women and children's rights in particular. There is at least one such paralegal in each of Rwanda's 94 districts.

Haguruka's activities include, among others, educating and informing women and children of their rights. Thus more than 12,000 persons, all over the country, have benefited from education by Haguruka in the period between 1997-2000. Haguruka also has projects creating human rights clubs in the schools, teaching both teachers and pupils about human rights and giving legal advice to the children. The idea of the human rights club is to educate teachers who can continue to be a resource within the school. These teachers are supported by 4 mobile legal aid clinics operated by the paralegals and jurists of Haguruka.

Haguruka's finances are made up of both internal and external sources, the former being member's contributions, the latter contributions from its partner organisations. The contributions from its partner organisations, both national and international, make up 95 % of the Haguruka's budget and thus finance most of its activities, including the legal aid services.

The partners who have supported Haguruka consistently in the period between 1996 and 2000 were, among others, TROCAIRE, Canada, the Swiss Cooperation, NOVIB, HCR and CCFD. Other organisations that have sporadically given support to Haguruka include USAID, Save the Children, and FASTNOPPER⁵⁴.

4.4.4 Norwegian People's Aid, NPA

The main goal of the Norwegian People's Aid legal project is to assist the judicial system in general by providing office supplies, fuel and maintenance for the courts, prosecutors and gacaca system. It also provides education in secondary schools, training of selected people, mainly professionals (trainers), and information to the public in general. Their project mainly focus on issues of family law, human rights in general and the protection of the child specifically, and cooperative associations.

Legal aid is a secondary component of the project. NPA has been opening its three regional offices⁵⁵ twice a week for the public to seek free legal advice from the jurists working there. There is at least one jurist in each of these offices. NPA has no specific criteria for accepting cases, but has experienced that very few people come to seek legal advice at the offices. However, after their information sessions, people normally come to ask a lot of questions. NPA employs 6 jurists in a staff of 50-60 people. In 2003, NPA has decided to expand its programme to give not only legal advice but also pay the initial court fees for starting a case at the courts⁵⁶. There have as of yet not been any cases under this new approach. NPA was, at the time of the interview, considering supporting a local NGO that already has its structures in place instead of trying to build up new legal aid clinics.

The main financing comes from the Norwegian International Development Agency and the Swiss Cooperation funds the office in Kibuye.

4.4.5 Rwanda Women's Network

Rwanda Women's Network is an organisation that gives legal advice and information free of charge to women who are victims of human rights abuse or have other legal grievances since 1995. Their cases are mostly genocide related cases and cases of rape where the victim has been infected by HIV/AIDS, but they have also assisted women in property cases.

The jurist who works for Rwandan Women's Network attends to 3 groups of women which meet weekly at the two network clinics in Kigali, the Polyclinic of Hope and the Village of Hope. The clinics also have medical staff and a Home Care service where HIV infected women help other women in the same situation. The jurist of Rwandan Women's Network attends these sessions and sometimes experts from other organisations are also invited and give advice as well. The jurist assists the women by compiling a case file where all the facts and arguments of the case are written down for the women to represent themselves. If the woman is illiterate, the jurist goes over the case file with her orally. Women in need of further help are

⁵⁴ See for further detail "Haguruka – 10 ans d'existence, 16 juillet 1991 – 16 juillet 2001, Bilan et perspectives" p.19.

⁵⁵ In Kibuye, Gisenyi and Umutara.

referred to other organisations, which can provide legal representation before the tribunals, in particular Haguruka. The women who are given assistance are generally poor, but indigence is not a criteria.

Rwanda Women's Network annually receives around 40 cases. There is currently no limit to the number of cases that can be received because Rwanda Women Network mainly offers advice and referrals to other institutions. It does not provide funding for legal representation.

Rwanda Women's Network has one office in Kigali, two clinics and 6 provincial focal points where the Network last year provided information sessions on gender based violence and the law on the protection of the rights of the child against violence.

The legal services of Rwanda Women's Network are financed by GTZ (Germany), UN volunteers, and USAID.

4.4.6 Youth Association for Human Rights Promotion and Development, AJPRODHO –JIJUKIRWA

The youth organisation AJPRODHO provides legal advice, information, accompaniment before administrative instances, and conclusions for court procedures. These services are provided free of charge, by volunteers, to people who do not have the financial means or knowledge of legal matters at the offices in Butare and Kibuye. AJPRODHO assists in a variety of cases including arbitrary arrest, succession, property- and social rights. Many different people seek the advice of AJPRODHO but the majority of its clients are made up of children and widows who live in rural areas with a level of education which generally does not exceed 3 years of secondary school and without a regular monthly income.

The two offices receive in total approximately 200 demands for assistance per year, but are only capable of helping in some 50 cases per year. Both individuals and groups may be assisted, but most commonly it assists on an individual basis. When the claimants arrive at the office of AJPRODHO they are either assisted by one of the

⁵⁶ 4,000-5,000 RWF.

permanent jurists or given an appointment with one of the 6 members of the Legal Affairs Commission of the organisation.

The criterion for accepting cases is that there is an infringement of the law.

AJPRODHO also participates in community education by arranging seminars and conferences, conducting awareness raising campaigns in the districts and in 15 human rights clubs in secondary schools in the province of Kibuye.

4.5 **Rwandan institutions**

4.5.1 The Bar

The lawyers of the Bar have been involved in two projects, one financed by Danida (the Danish development agency) via UNDP⁵⁷ and one financed by Avocats sans Frontières⁵⁸, both of which paid for legal representation before the courts in genocide cases all around the country. In 2002, the BCD of the Bar suspended its designations in genocide cases due to the termination of funding. As for cases of “droit commun”, the BCD continues to designate lawyers who are obliged to provide legal representation upon request by the Bâtonnier⁵⁹ according to article 89 of the Internal Rules for the Bar (“Le Règlement d’Ordre Intérieur”). Mostly junior lawyer (“stagiaires”) are used for this purpose, since they are considered to have fewer cases and therefore more time to perform the “pro deo” work. Members of the BCD are only designated in cases with political implications.

At the very beginning, the Bar used to fund travel expenses and costs of accommodation through its own meagre fund. This support has come to an end and the lawyers now pay for this themselves, awaiting the presidential decree provided for in article 63 of the Law of the Bar, which is to establish the governmental fund. When the fund comes into existence, the Bar hopes to continue providing pro deo representation and use the government fund only to pay for travel expenses and

⁵⁷ The UNDP/Danida project financed legal representation in 174 cases, 105 of which are still in process.

⁵⁸ Of the cases financed by the ASF project 395 were not closed when the project terminated in august 2002. The Bar has agreed to terminate these cases for an amount of 120,000 Euro, which it asserts is an insufficient amount, however, the Bar has stated that its members will work for free in order to be able to follow all the cases to an end.

⁵⁹ The elected president of the Bar.

accommodation. However, the BCD interprets article 84 of the Règlement d'Ordre Intérieur as to provide for a maximum and a minimum fee and answered the question of whether a lawyer who chooses to represent an indigent person for free can do so in the negative. It is believed that there has to be a designation by the BCD for a lawyer to represent an indigent, and that article 88 of the interior rules, which gives the Batonnier the right to order a lawyer to take on a case, only applies if the person has money and can pay for the representation himself. If an indigent chooses a lawyer, the lawyer has to request a designation from the BCD.

The BCD receives around 45 demands for legal representation per year and accepts to handle 35 of these on a pro deo basis. The cases refused by the bar are cases where the mayor has issued a certificate of indigence, but where the bar estimates that the person is not indigent, either because he or she arrives with their own car and mobile telephone, or where the subject matter of the case is very valuable.

The legal representation is granted on the basis of a certificate of indigence provided by the mayor of the place of habitation. The BCD only accepts cases upon presentation of a certificate of indigence issued by the mayor; if the applicant has not obtained such a certificate the lawyers of the Bar write a letter to the mayor. The experience is that it only takes a few days to obtain the certificate upon request from the lawyers of the Bar. There are no examples of the certificate of indigence being granted by the presidents of the court or tribunals, nor of any use of the recourse procedure.

The Bar is giving free advice and information at their office, La Maison des Avocats, in Kigali since mid June 2002. This service will be established without funding, on a voluntary basis, and provide free advice three times per week when one lawyer of the bar will be at the service of the public in the morning and another in the afternoon.

Since all the lawyers live in Kigali, the Bar is planning a project of mobile Legal Caravans, as used in Niger, in order to reach the whole country. As part of this project, a scheme providing information to the public about these services will be introduced, including information on the radio, television and in the newspapers. The project proposal has not yet been finalised and funding still has to be found.

4.5.2 The Corps of Judicial Defenders in cooperation with the Danish Centre for Human Rights, Rwanda

Like the Bar, the Corps of Judicial Defenders has a legal mandate to provide legal assistance to indigents. The Corps does this in close partnership with the Danish Centre for Human Rights (DCHR), which has provided financial and technical support to the work of many members of the Corps in this domain since 1998. As a result, the work of the Corps and the work of DCHR are presented together for the purposes of this study.

The main aim of the cooperation between the Corps of Judicial Defenders (represented by its BCD) and DCHR is to provide free legal representation to indigent accused and civil claimants in trials for genocide and crimes against humanity. The Corps of Judicial Defenders was established in 1997. While it was initially composed of 12 senior defenders, in 1998-1999, with foreign funding for training by DCHR, the number was boosted to 87 judicial defenders. The graduates of this training started working in 1999 by giving advice and information. They took their professional oath in November and December 1999, and in 2000 they started representing accused and victims in genocide trials, joining their senior colleagues who were already practising law. These defenders were later joined by other new members of the profession, including those holding bachelor's degrees in law.

Today, the joint project sustains approximately 100 defenders working in 15 cabinets nationwide. DCHR is still assisting members of the Corps of Defenders by providing continuous training and paying them to represent accused and civil parties in genocide related cases before the courts of first instance. The defenders are contractually obligated to have at least two meetings with their clients before going to court and they are supposed to attend all court hearings. One defender is generally expected to represent 5 accused or 10 civil claimants in any one case. The representation is in principle individual, although civil parties are more likely to be represented in groups, as there are fewer instances of conflicts of interest among civil parties.

Until now DCHR and the BCD have never refused to finance legal representation for persons who meet the criteria set out. These criteria are that the person is an accused or a victim in a genocide trial tried before a court of first instance, that the person has applied to the BCD of the Corps of the Judicial Defenders for assistance, and that the BCD has designated a cabinet of defenders to represent the person. In the past three years the number of people represented by the defenders has been on the increase⁶⁰:

Year	2000	2001	2002 ⁶¹	2003
Accused	682	1,102	1,121	1197
Civil claimants	1,845 ⁶²	2,500 ⁶³	2,861 ⁶⁴	3978 ⁶⁵

After the introduction of the Gacaca system in 2001, only category 1 cases (cases involving the most serious offences such as planning of the genocide) and the cases already transferred to the courts by the prosecution at the date of adoption of the Gacaca law remain with the ordinary courts, but it is estimated that at least for some years to come there will still be a large number of people being tried in the ordinary tribunals.

DCHR only keeps statistics on geographical location and results of the cases, not on income, gender etc⁶⁶. The statistics reflect that the 15 cabinets, which cover almost all of the regions of the country⁶⁷, have a different caseload and that there are some disparities between the regions in the number of cases conducted.

⁶⁰ The table only contains the number of cases terminated in the indicated periods; many cases start in one year and end in another meaning that at any given time the judicial defenders will have been involved in representing more people than indicated in the table.

⁶¹ From January to July there was no designations made by the BCD due to ongoing negotiations between DCHR and the Corps of Judicial Defenders

⁶² Of the 682 accused the defence of 305 was secured in cooperation with lawyers, either Rwandan or foreign. Similarly, the representation of 751 civil claimants was secured in cooperation with lawyers.

⁶³ Of the 1,102 accused the defence of 3 was secured in cooperation with lawyers. Similarly, lawyers took part in the representation of 173 civil claimants.

⁶⁴ Of the 1,121 accused the defence of 11 was secured in cooperation with lawyers. Similarly, lawyers took part in the representation of 247 civil claimants.

⁶⁵ Lawyers took part in the representation of 243 civil claimants.

⁶⁶ Of course, as is well known, the majority of the accused in genocide cases are men.

⁶⁷ Only Umutara, Gikongoro and Kigali Ngali do not have a cabinet.

The defenders have previously taken part in information campaigns in the prisons and among the population in general and it is intended that this should be continued in the future. Furthermore, it is the intention of DCHR and the Corps to start legal clinics in 2004, where individuals will be able to obtain free legal advice, even on subjects not directly related to the genocide.

The DCHR project is dependent on external funding and has benefited from the support of various donors, including Danida through its main grant to the Danish Institute for Human Rights (the mother organisation in Denmark), the Netherlands, and the European Union. In the past, the project also received funding from DFID (UK), SIDA (Sweden), CIDA (Canada), Irish Aid (Ireland Aid), Trocaire and GTZ.

4.6 **Religious organisations**

4.6.1 Bureau Social Urbain/Caritas: Service Juridique, B.S.U

The legal service of B.S.U. was suspended in October 2002 due to lack of financing. This section describes the services in the form in which they operated from 1996-2002.

The services of the B.S.U aim to give a wide range of legal services to vulnerable indigents of the diocese without discrimination. The assistance included any useful measure that could restore the legitimate rights of poor people, in particular legal advice, information, mediation, assistance before the tribunals and help in pursuing execution of decisions. In 2002 B.S.U. assisted 33 people: normally it receives around 20 demands for assistance per year. Practically all of these were granted some form of assistance by B.S.U. Several of the cases never reached the judicial system because the advice given resulted in amicable settlements or were set aside because the trial was suspended in order to accumulate more evidence. Indigence is a criterion for assistance, and only the most vulnerable people are assisted. The demand for assistance is made through the priest and the social assistant of the parish who in turn, submit an identification form to B.S.U. requesting assistance. This contains the necessary information, reference number and place of residence.

The assistance rendered to people with cases before the courts includes the payment of photocopies of the file and the judgement, transportation costs (gasoline) and vehicle maintenance, but not legal representation by a lawyer or a defender. However, prior to the genocide B.S.U. did give legal assistance through legal counsel.

B.S.U. does not provide education or distribute information about its services due to lack of financial means.

4.6.2 Commission de Justice et Paix, the Diocese of Nyundo, CDJP

The Commission de Justice et Paix in Nyundo runs a legal aid project under which people living in the area of the diocese can receive assistance from any one of 90 facilitators (essentially fulfilling a paralegal function) working in the parishes of Nyundo. The assistance is limited to advice, information, interventions and accompaniment before the authorities from cell level to district level, but there have also been examples of accompaniment before the judiciary. They provide legal assistance in human rights matters in general, but among the most frequent cases are questions of succession and detention. The target group is people of the lowest incomes whose rights are violated due to their inability to afford legal assistance. However, indigence as such is not a criterion for the assistance. Many of the clients are widows and orphans. A total of 2,122 conflicts have been handled under the project's mediation and facilitation, 1,617 of these were solved and 83 referred to other bodies or authorities. Of the 494 conflicts of human rights violations (individual vs. government) handled, 399 were solved and 33 were referred to other bodies or authorities.

The facilitators are volunteers and work once or twice a week and sometimes more. They are available to the population at any time. They are trained under the project and their role is to promote human rights by educating and raising awareness in the population as well as to assist in individual and group cases before the authorities. The 90 facilitators consist of 48 church elders⁶⁸ and 33 paralegals⁶⁹. Their training takes place 8 days per year, divided in two sessions of 4 days per year. They are taught law

⁶⁸ The French term “parroissiaux” is translated throughout as “church elders”.

⁶⁹ The numbers are from 29 March 2003 concerning the church elders and 9 January 2003 concerning the paralegals, they stem from statistics provided by the CDJP.

2 days and teaching methods 2 days in each of these sessions. The church elders do not have much education, but they can read and write and they work with the population. The paralegals have all completed their secondary education. They are also used for the purposes of teaching in primary schools.

The legal aid and education project began in 1999. The project has three phases; the objective of the first one was to educate the population (1999-2001), the second to teach it to defend and protect its rights (2002-2005) and the third and last phase is one of reconciliation (2005-2008). As the first phase is over there is an increasing need to facilitate legal representation before the courts. There is currently, however, no funding available for such a project.

The funding comes from Trocaire and Missio. These donors have supported the project in two periods, the first one running from 1999-2002 and the second from 2003-2005.

The CDJP has one main office in Gisenyi with 4 employees and an office in each of the 20 parishes, with 4-5 presenters working in each, normally two church elders and two paralegals, one of which usually is a woman.

A similar project has started in Ruhengeri, but has not yet reached the phase of handling conflicts.

4.7 Trade unions

4.7.1 Association des Syndicats Chrétiens, “Umurimo”, ASC

ASC, the Christian Trade Union Confederation, assists workers by means of legal advice and information, provides intervention before the public administration, and cooperates with human rights organisations. The legal assistance covers payment of 75 % of the costs of the legal representation, - the clients are required to bear 25% of the costs themselves - but there are no cases at the moment due to a lack of funds. Membership of ASC or l'ARTC (Association Rwandaise des Travailleurs Chrétiens) is a condition of assistance.

ASC focuses mostly on assisting workers from the informal sector, such as small street vendors etc., who are reportedly occasionally subjected to harassment, beatings and confiscation of goods by the police. It also assists in cases of violations of workers' rights and dismissals in breach of contract. It does not represent office workers. ASC has compiled useful statistics on its clients. These indicate that all the clients of ASC have had some form of school education. 35 % of them had a secondary school education, 50 % had been to primary school and 15 % had a university education. 85 % of the clients have a monthly income between 15,000-100,000 RWF, and 15 % earn more than 100,000 RWF. 75 % of the clients are male. ASC has perhaps the most detailed set of statistics on its beneficiaries of all the organisations surveyed.

ASC receives about 1,500 demands for assistance per year, 50 of which are accepted and assisted by the organisation.

ASC also conducts information/education sessions on the national and international working standards every 3 months in work places all over the country.

The activities of ASC are financed by Trocaire and the Netherlands and Canada.

4.7.2 Centrale des Syndicats de Travailleurs du Rwanda, CESTRAR

The Rwandan union, Centrale de Syndicats de Travailleurs, gives assistance in all types of cases concerning the relationship between worker and employer. The assistance is offered to the workers. At the moment, CESTRAR helps members and non-members alike, but intends to limit its assistance to members in the future. Assistance may vary from advice and information to support in negotiations with the employer on the side of the worker and legal assistance before the courts. The typical cases dealt with are cases of unlawful dismissal and collective dismissals without payment of compensation. The clients come from different economic and educational backgrounds, but mostly from the cities and urban centres of Rwanda.

CESTRAR receives annually around 1,500-2,000 requests for assistance per year, but the number may vary depending on the frequency of closing down of businesses and the resulting collective dismissals. All types of case are accepted, but means are insufficient and the staff numbering 35 in total, 4 of whom are working in the legal

department (including one lawyer, who represents the clients before the courts), cannot respond to all requests for assistance. CESTRAR takes a maximum of 5 cases to the courts per year. At the moment, it is lobbying for a labour court to respond to the large need for a speedy process in such cases.

4.7.3 Conseil National des Organisations Syndicat Libres au Rwanda, COSYLI

COSYLI is a trade union confederation with 10 member organisations that have approximately 10,000 members in total. COSYLI conducted a project providing legal assistance to workers from 2000-2002⁷⁰, the object of which was to assist workers in their problems with employers.

Under the project COSYLI provided services to workers ranging from information on legal matters and intervention in amicable negotiations with employers to payment of legal representation by a lawyer before the courts. If the worker was indigent, COSYLI also paid court fees.⁷¹ The main criteria for assistance were that enough papers to assess the case had been provided, the case was well founded, the applicant was a member of COSYLI⁷² or had been accepted to become a member in the future, and a contract with COSYLI was signed in which the worker agreed to pay 15% of the costs. The cases COSYLI undertook under the program were all cases of violations of workers' rights, concerning civil matters such as unlawful dismissals, harassment of women workers by their employers, pensioners' rights to receive an amount of their pension from the employer, dismissal of domestic workers and unlawful dismissals of women or reduction of their salary as a result of pregnancy. Due to lack of personnel and resources, COSYLI does not keep further statistics on its clients.

COSYLI employs one jurist on a salaried basis, who receives the workers individually or in groups at the office of COSYLI in Kigali. The jurist interviews the client and assesses whether the case is well founded. If it seems so, the worker is asked to bring all relevant materials. The jurist then writes a letter to the employer asking for a negotiation/mediation meeting which is attended by a delegation from COSYLI

⁷⁰ Project appui juridique aux travailleurs salariés.

⁷¹ COSYLI's criteria for indigence is that the person has been out of work for a prolonged period of time, at least one year, and that this unemployment has been caused by an unlawful dismissal.

consisting of its four persons: the president, the executive secretary⁷³, a member of the executive committee and its public information officer. If this meeting fails to produce a result the case is filed in court.

During the years 2000-20002 COSYLI received 1820 cases and assisted all of them, 955 through friendly settlement. 87 cases were filed in the courts, because no friendly settlement could be reached and a lawyer was paid to represent them. Due to many and long delays at the courts, only 8 of these cases have finished at the time of writing this report.

COSYLI also provides education for its members on topics like equality between men and women and the rights of children, all in terms of a working perspective, international norms, and small projects' management. This education takes place in cities and villages all over the country. The frequency of this education depends of the financial means available but it usually takes place around 3 times per quarter.

COSYLI provides information on their services via television and radio, on average 1-2 times per quarter and also by holding days of reflection for the members.

The total number of staff of COSYLI is 4 people working full time and a voluntary executive committee consisting of 7 persons. COSYLI has 4 regional offices⁷⁴; and its aim is to have an office in all of the provinces of the country.

The Netherlands financed the legal aid project, but since the project finished, COSYLI has been looking for new donors in order to continue the legal aid scheme. The Canadian Cooperation has supported the making of a booklet on female workers rights and the Irish ICTU supports the bimonthly newspaper "Revue des travailleurs Rwandais".

⁷² Membership of COSYLI costs 1,000 RWF per year.

⁷³ Who is also the one full time paid jurist of the organisation.

⁷⁴ In Kibungo, Gikongoro, Ruhengeri and Kigali.

4.8 University- and student organisations

4.8.1 Clinique Juridique de l'U.N.R/ Faculté de droit

The legal aid clinic at the University of Butare has open consultations 3 hours every Wednesday afternoon all year round in the “Salle Polyvalente de la Province de Butare”. Here, the 3rd year law students receive clients as part of a one-month mandatory practical training course. They give legal advice, prepare legal opinions and, when necessary, assist clients in contact with the authorities. Some cases are referred to the court system and in a few of these the clients are granted representation by a lawyer or a judicial defender. The students are obliged to follow their cases to the end, an obligation that exceeds the one-month duration of the course. The criteria for accepting cases are the complexity of the case, the injustice in question, and the financial situation of the client.

The clinic mostly receives claimants in civil cases; especially women and children. All of the clients in the cases that went to court were farmers.

In total, the clinic received 149 applications for legal advice in 2002. It received more than 10 applications for legal assistance in court cases, but due to a lack of funding the clinic was only able to finance legal representation by a judicial defender in one of these. 3 cases were referred to the Bar. The previous year the clinic financed legal representation in 3 cases and 24 cases in total were referred to the courts and tribunals. All the clients who were supported by the clinic won their cases at the court of 1st instance; one case has been appealed and the clinic is now paying a lawyer to represent the client in the court of appeal.

During the academic year 2001/2002 the students visited 9 secondary schools to teach the law on the protection of the rights of the child against violence.

The clinic functions with one full time jurist and two professors of the university who assist the students. It is supported financially by the head office of the Danish Institute (formerly Danish Centre) for Human Rights in Denmark.

4.8.2 Law Students Association (LSA), Urumuli

The law students association in Butare gives legal advice free of charge to the University Community in particular and to the population in general. The students provide their assistance on a voluntary basis by writing conclusions for court proceedings as well as providing legal advice, mediation, negotiation and conciliation. LSA receives around 100 cases per year and accepts to handle around 60-80 of these (15-20 per trimester). It does not distinguish between indigent and non-indigent people; the only criterion for giving its assistance is that there is a problem of a legal nature. An estimated 60% of cases involve disputes among relatives, on issues like field cultivation and succession. LSA seeks to find a solution by mediation in these cases. 40 % of the cases are already before the courts when the LSA gets involved.

The people who seek advice and other assistance from LSA come mostly from Butare and neighbouring regions, and most among them are indigent, female and illiterate.

Once per semester, LSA invites professors, people from the authorities and lawyers to hold conferences, debates and seminars for the education of the community at the law faculty for the students. Furthermore, its members teach human rights issues in secondary schools at least once a month, depending on the financing.

In order to inform the public about human rights issues LSA has performed a theatre play in the “Salle Polyvalente” of the province of Butare.

LSA is a non-profit organisation that finances its assistance, especially transportation, legal opinions and other documents, solely through the member fees of its 200 members. The member fee is 200 RWF per month.

Analysis

The scope of the present study did not permit a detailed analysis of the results of the study. Nevertheless, certain general observations can be made from the foregoing. The main thematic areas covered by the projects surveyed are:

- I. Genocide related criminal cases:
- II. Labour related cases;
- III. Cases related to the rights of women and children.

Concerning geographical distribution of the projects, it can be said that the areas best served are Kigali (Ville) and Butare, with Gisenyi also being relatively well-covered.

Most of the organisations surveyed operate alone and are highly dependent on foreign funding.

5 **Rwandan legal aid practices, the factual legal aid situation in Rwanda**

This chapter focuses on the results of the survey and pinpoints the most commonly perceived problems of the organisations. A quantitative table showing the problems identified by the organisations is contained in Annexe 3. Beyond this, it provides a reflection on steps that could be considered in finding a coherent approach to the legal aid situation in Rwanda.

Although this chapter focuses on aspects of legal aid in Rwanda that need improvement, it is important to emphasise that this is not in any way to disparage the work already being done. The authors of the report have been greatly impressed to find so many initiatives, people and organisations actively working with legal aid in Rwanda. Despite the huge challenges, there is a real practical spirit shown by the attempts to get to grips with the real problems of the people. It is likewise very important to emphasise that coordination and increased coherence should never be achieved at the expense of initiative. In the area of legal aid, as with civil society initiatives in general, a multiplicity of players is the inevitable and desirable state of affairs. Thus, government, donors, and the actors themselves should not seek to create an arbitrary “order” in this seeming chaos. An overly restrictive “order” could have a suffocating effect. Government and donors will never be able to anticipate all needs and provide for them. They should instead aim at creating an environment that facilitates initiative and a “natural” process of rationalisation, where the actors themselves see the value of coming together and cooperating and in some cases recognising where their mandates differ.

5.1 **Funding of legal aid – the problem of lack of means**

The problem most often referred to by the organisations that of a lack of means. 21 of the 25 participating organisations have stated this as an obstacle in providing legal aid. This may be due to a lack of funds, personnel or time to perform the tasks the organisations wish to take upon themselves to meet the popular demand for legal aid. Lack of money, including the drying up of donor funding as the years pass after the genocide, is the major reason why some projects have terminated. One pattern is that a donor funds a project for a period of time, perhaps paying a jurist to give legal

advice and information, but when the project comes to an end, the person hired loses his job and the organisation is again without capacity to provide legal services. Donor funding has been concentrated mostly on genocide cases and has taken the form of ad hoc approaches supporting different organisations without a concerted plan. This approach strengthens civil society for a time, but does not leave sustainable structures when most projects end with the funding. Thus, projects dependent on donor funding in a weak institutional framework may often be unsustainable.

The presence of the many organisations that provide advice and information to the public is proof of a desire on the part of civil society to be able to provide legal aid to the population, and to indigents in particular. The strength of the non-governmental and community based organisations lies in that they are present in the whole country and thus seem to be nearer the population than the lawyers. The judicial defenders share this advantage of presence in provincial areas. The initiation of “legal caravans” by the Bar could also be a welcome initiative in the same direction⁷⁵.

Most organisations try to provide alternative means of conflict resolution, which are considerably less expensive and quicker than resorting to the court system. The initiatives of such organisations should be encouraged (See further below under 5.2 concerning the official initiatives on alternative dispute resolution).

A coherent plan for legal aid in Rwanda should include the extended civil society structure that is already actively working in the field of legal aid and thereby maximise the use of resources already existent in the country.

5.2 Slowness of the administrative and judicial proceedings

As slowness of the administrative and judicial proceedings has been mentioned as the second most often cited obstacle to providing legal aid, it is necessary to say a few words about it. Many organisations cite the slowness of the courts and administration as a reason why people give up pursuing their rights, especially people infected with HIV/AIDS (often rape victims) who cannot wait years and years for compensation,

⁷⁵ We would however suggest that such an initiative be tried on a pilot basis and evaluated before implementation on a large scale. Such programmes have been well adapted to countries such as Niger, with large, sparsely populated territories. It is not certain that they respond equally well to the different geography of Rwanda.

but this also occurs in other civil cases if the process is too lengthy. In penal cases, where possibly (and in principle) innocent people wait for their trials for years in prison, the question of the speed of the trial is no less important. Ways of addressing these problems should include initiatives that would reduce the caseload before the courts and Gacaca tribunals. In doing so, the use of mediation and other alternative dispute resolution should be considered in both penal and civil cases.

Article 159 of the Constitution provides for the establishment of Mediation Committees in each sector, to work in relation to certain conflicts. This approach solves both the geographical/logistical problems because of its decentralised character and will hopefully reduce the workload of the tribunals by solving more conflicts outside the court system.

Article 54 of the draft Act for the Organisation and Jurisdiction of the Courts provides for alternative dispute resolution by sector councils in criminal proceedings in cases of alteration of land boundaries, theft of crops, destruction of crops, libel and causing bodily harm⁷⁶. Article 56 of the same law provides for a mandatory mediation procedure in the administrative council of the sector prior to court proceedings in civil disputes - this applies to monetary disputes not exceeding an amount of 3 million RWF, disputes over immovable property, land, domestic animals and inheritance to such property⁷⁷.

The draft Act for the Organisation and Jurisdiction of the Courts thus seems to provide detailed information on the mediation committees mentioned in the constitution with its provisions on sector councils. These formal arrangements for alternative dispute resolution may prove to help increase the speed of cases and reduce the workload before the tribunals if a simple and quick procedure is adopted.

The establishment of specialised courts, such as a labour court, and reinforcement and extension of the competences of the cantonal courts⁷⁸ are other methods that can contribute to reducing the workload of the tribunals, secure the efficiency of a legal aid scheme, and accessibility of the court system.

⁷⁶ Draft Act of 30/06 2002 for the Organisation and Jurisdiction of the Courts, art. 54

⁷⁷ Draft Act of 30/06 2002 for the Organisation and Jurisdiction of the Courts, art. 56.

⁷⁸ The cantonal courts are the lowest court in the Rwandan court system.

5.3 Excessive delay or non-execution of judgments

The problem of delay or non-execution of judgments is, like the problem of the slowness of court procedures, not directly related to legal aid, but does, as the survey shows, have an impact for the beneficiaries of legal aid. As an in-depth analysis of this problem is outside the scope of this report, reference is made to the USAID/Rwanda and Ministry of Justice and Institutional Relations report on the *Assessment of the Judicial Sector in Rwanda*, from November 2002, which covers the problems of the justice sector extensively.

The execution of judgments is fundamental to the rule of law and access to justice. Without guarantees that administrative and judicial decisions will be carried out, even the most perfect legal aid scheme will remain without effect for the population. Therefore, this problem must be addressed and effective and rapid execution of judgments must be guaranteed. The Law Reform Commission has proposed that the execution of judgements can be enforced by a penalty on one party to a civil case on the demand of the other party⁷⁹. However, there are no enforcement measures connected to the execution of judgments in penal cases, where the prosecutor and other authorities are responsible for the execution of the judgement.

5.4 The fees of the lawyers and defenders

Almost all the organisations that provide legal representation for their clients, by paying the costs of lawyers, state that the fees of the lawyers are very high compared to the general standard of living in Rwanda.

Much has been said of the social role and responsibility of the lawyer in society and the premise that lawyers need to live as well as all other people. However, the main purpose of legal aid, as provided for in the Law of the Bar, is to help indigents in their cases before the courts⁸⁰. Thus, the provisions on legal aid in the Law of the Bar are narrow and deal only with legal representation before the courts, not with legal aid more generally.

⁷⁹ Title 5, article 209-215 in the Draft Law on Civil and Administrative Procedure.

⁸⁰ Article 60.

However, initiatives of the Bar and Corps of Judicial Defenders, with the support of donors, providing for *pro bono* work and legal caravans providing services free of charge should be welcomed as projects aimed at meeting the needs of the poor population.

In so far as there is talk of a social responsibility on the part of lawyers and judicial defenders to provide legal representation to indigents, this responsibility increases proportionally with the extent to which these professionals enjoy a monopoly. In some countries, lawyers exercise a prerogative on legal representation but this is not a nature given privilege. In other countries, there is no prerogative on assisting people before the tribunals; the rights of audience before these courts are much more flexible⁸¹. As the situation in Rwanda is one where lawyers and defenders do enjoy such a prerogative, the institution of *pro bono* work should be encouraged even further and perhaps even made mandatory for lawyers, defenders, and their stagiaires (see below under 6 concerning the American experiences with *pro bono* systems).

5.5 Geographical/logistical problems

Some of the organisations point to problems of physical access to the legal system for people living in the countryside since the courts are all placed in the towns. The logistical problems of transporting the parties and their legal representatives to the courts constitute a great practical impediment to the accessibility of the court system. The experience with assizes (trials *en itinérance*) in genocide trials has of course been positive in relation to bringing justice closer to the people, but is costly and probably unsustainable in the long run. Paired with the many delays on the part of both the courts and the lawyers, this means that the parties often spend time and money going to the courts in vain. Some organisations pointed to this as a reason why some people give up seeking justice in the court system. This problem must be considered when creating a coherent system of legal aid. Initiatives aimed at expanding the capacities and jurisdiction of lower courts, and conflict resolution at lower levels of the system and outside the system would help rectify this situation.

⁸¹ Mauritania, Denmark, Sweden and the United Kingdom are examples of countries where there is a flexible approach.

The fact that practically all the lawyers live in Kigali poses a particular obstacle in terms of geography/logistics. It makes legal representation by lawyers in the provinces exceedingly expensive since the claims of remuneration of transportation and per diem compensation add considerably to the already high fees of the lawyers. If lawyers are engaged⁸², this results in the unfortunate situation where justice costs more the further away from the capital the client is. This is particularly unfortunate considering the monopoly held by the lawyers on legal representation in the appeal courts.

The Bar is considering the use of legal caravans, as used in Niger⁸³. The only problem with this approach is that it would have to be permanently available in the country in order not to have the character of the current ad hoc approaches to legal aid. Other ways to comply with this problem would be to reinforce the role of other actors, already placed around in the provinces, and include existing civil society structures in a coherent legal aid scheme. Members of the Corps of the Judicial Defenders already have offices countrywide and, since they are the only ones apart from the lawyers who can represent people before the tribunals, they should be taken into account in any efforts to provide a coherent system of legal services to indigents. An all-inclusive approach is necessary to meet the demand.

5.6 Vulnerability of the population, poverty and ignorance

The vulnerability of the population has been mentioned as a problem constituting an impediment to providing legal aid. The great number of people who do not know their rights, nor to read or write, as well as the immense poverty prevent most of the population from pursuing their rights. The need of the population is great. The introduction of a legal aid fund alone cannot meet the need for representation for all requiring it, nor that for other types of legal aid.

⁸² Notwithstanding that the income of the population in rural areas is already lower than the income of people in the Kigali, cf. Ministry of Finance and Economic Planning, A profile of poverty in Rwanda, February 2002, annex 3, table 3.1 showing the average annual consumption per capita in Kigali to be 229,563 RWF as compared to an average annual consumption of 61,433 RWF for the rural population.

⁸³ Journees de Reflexion de l'aide Judiciaire 3-4 June 2002, speech by Me Moussa Coulibaly, lawyer from the Nigerian Bar, written summary p.17.

5.7 **Costs of court fees and judgments**

The cost of court fees is a problem that has already been dealt with extensively above in chapter 3. As a result the question is not re-examined in this chapter. Nevertheless, the subject belongs in the catalogue of problems identified.

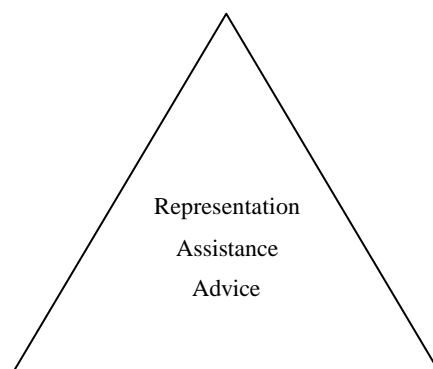
6 Legal aid experiences from other Countries

This chapter will attempt to provide some brief comparative information on legal aid. It will do so by first looking at some issues of a general nature, such as principles for design of legal aid systems, public vs. private funding of legal aid, and the relationship between the organization of legal aid and the legal system generally. It will briefly set out various models of legal aid, and examine some innovative approaches to tackling provision of legal services with which the authors are familiar on the African continent.

6.1 **Basic principles for design of legal aid programmes**

Legal aid aims at making justice accessible to poor people. Any attempt to design a legal aid systems must keep this broad goal in mind. Inadequate funding is a problem that faces legal aid even in the wealthiest countries with the most well-developed social security systems. Thus, it is vital that legal aid programmes be designed to give poor people the greatest possibilities to access their rights for the limited money available. Lawyers and courts are expensive. Programmes aiming to provide access to justice should aim to solve legal problems at the lowest and simplest level possible.

In our view, this can best be expressed by means of the pyramid figure below.



Access to justice starts with giving people knowledge that they have rights under the law and how to exercise them. If people can be armed with knowledge and confidence to solve their legal problems themselves, this will be a far more cost-effective (and empowering) strategy than providing lawyers to represent them in court. Providing legal information (telling what the law says) is the cheapest and simplest form of legal

aid. Thus, this is where the greatest resources should be used. Providing advice (telling what the law means in relation to a concrete problem) is cheaper than providing assistance (understood as helping a person to take legal steps to protect their rights). Representation in court is the most expensive, and is thus placed at the top of the pyramid. There are occasions where the more expensive forms of legal aid are absolutely necessary, but these should not be used if the problem could be solved with simpler and cheaper interventions. An access to justice strategy should seek to reduce the need for representation whenever possible by providing the other forms of help.

Thus, if a legal problem can be solved by simply providing legal information, this will reduce the need for the more demanding and expensive advice service. Assisting a client to write a letter demanding that her employer, landlord etc., respect her rights may force him to comply and avoid the need to go to court.

The greatest effort should therefore be made at the simplest possible level.

These considerations make it very clear how vital the services of the NGOs are in providing legal advice and assistance. Likewise, public information campaigns, providing brochures and leaflets etc., can all be very useful (subject obviously to people's ability to access the materials and read the brochures).

There are also clear benefits in having cooperative links between those providing legal services at the various levels.

6.2 Public vs. private funding

Legal aid is always likely to be funded through a variety of channels. Privately funded initiatives are more likely to be limited to a particular target group or set of legal problems. As mentioned above, international human rights standards demand a minimum guarantee of legal aid in the most serious criminal cases. Firstly, there is the question of whether the state will pay for legal aid, and if so, in which kinds of case. Here, questions of overall social and economic philosophy as well as of economic resources come into play.

6.3 **The relation of legal aid to the organization of the legal profession**

In Rwanda, as in many civil law systems, lawyers are generally not permitted by the legislation on the legal profession to be salaried employees⁸⁴. In common law countries with adversarial systems, there is no such prohibition. Thus, legal aid offices, like other employers, can hire lawyers to provide services on a full-time basis. This permits, for example, the use of public defenders, which has become more and more widespread over the past decades in many countries. Countries which do not allow this rely on so-called “judicare” systems, where the state and others financing legal aid draw on the services of members of the Bar.

6.4 **Legal aid models**

Professor Alan Paterson⁸⁵ divides legal aid models broadly into three types: the charitable model, the judicare model and the salaried model. In addition to these three main variants, mention should be made of contracting for large scale purchase of legal services and of legal expenses insurance. We will not deal significantly with these last two in this paper. In many countries, elements of the three models exist alongside one another.

6.4.1 Charitable services

Charitable services refer to systems that rely primarily on services provided through private charitable initiative. While they provide vital services to millions of people, a weakness of relying on these initiatives is that they cannot provide more than patchy coverage of the needs. No one provider is usually big enough to cover all legal or geographical areas, and the aid given depends on the goodwill of the giver. Legal aid is not a legal right under such schemes, but a charitable donation from the rich to the poor. All legal aid currently provided in Rwanda falls into this category. Charities or donors providing legal aid can do so either through salaried or judicare schemes.

⁸⁴ Though this is by no means true of all civil law systems. Germany, Holland, Denmark and South Africa permit lawyers to receive salaries, finding other means of preserving the independence of the legal profession.

⁸⁵ Alan Paterson, *Legal Aid at the Crossroads*, (1991) 10 *Civil Justice Quarterly* 124.

6.4.1.1 *Pro bono / pro deo schemes*

Charitable legal aid can of course be provided by lawyers and bar organisations through pro bono schemes.

Pro bono (often called *pro deo* in Rwanda) obligations are well entrenched in the United States of America. The American Bar Association's Model Rule 6.1 calls for a minimum of 50 hours of pro bono work annually. However, many state Bars impose a lower requirement (the Massachusetts Bar calls for 25 hours, the New York Bar 20). It is important to observe that such rules are of a so-called "aspirational" or voluntary character there is no penalty or sanction for not complying with them. However, this should not be taken to mean that they are not taken seriously. Many American lawyers and law firms agree that the pro bono obligation is an important element in the meaning and identity of the legal profession. It is what distinguishes the practice of law from a mere business and makes it a calling. Some lawyers and law firms significantly exceed the "aspirational" requirement⁸⁶.

A pro bono requirement is also seen as vitally important in ensuring a "window to socio-economic reality" among often well-heeled lawyers, making sure that they do not completely lose touch with their society. Pro bono schemes are an important element in the provision of *civil* legal aid in the USA, especially because the U.S. Supreme Court has not considered that civil legal aid is a constitutional right⁸⁷. Legal aid in serious criminal cases is required by the United States constitution⁸⁸, and is thus funded by the various levels of government according to a variety of schemes⁸⁹.

Pro bono obligations are less significant in the provision of indigent legal services in Europe. This is somewhat linked to the more progressive stance of the European Court of Human Rights, which considered that civil legal aid can be obligatory under the provisions of the European Convention in some instances. While many lawyers

⁸⁶ Nevertheless, most providers of legal services in the USA, including practicing lawyers, are critical of the low level of public funding of legal aid in the country, pointing to the more generous provision of civil legal aid in other developed countries.

⁸⁷ *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981). The supreme court, while considering that the due process clause of the U.S. Constitution could in some instances demand that legal aid be provided in non-penal cases, ruled that there was a presumption against such a necessity.

⁸⁸ *Gideon v. Wainwright*, 372 U.S. 335 (1963), and a number of subsequent cases expanding the scope of the Gideon ruling.

give of their time and expertise, for example in free legal aid clinics, they do so mostly on a voluntarily basis⁹⁰. Lawyers in many civil law countries are however legally enjoined to take on cases assigned to them by the judicial authorities. Refusal or failure to do so is a disciplinary offence. This appears to be the case irrespective of the prospects of a fee. Because of the far higher levels of public legal aid funding in Europe however, complete non-payment is perhaps less of a danger than this would be in the USA.

Similar rules appear to apply in criminal cases for judicial defenders in Rwanda. Articles 88 and 89 of the *Règlement d'Ordre Intérieur* of the Corps of Judicial Defenders provide that the Syndic may, *ex officio*, order a defender to take on a case. The defender may not refuse (though s/he may seek to be excused for reasons of conscience.). Article 88 and 89 of the *Règlement d'Ordre Intérieur* of the Bar are identical.

An increased use of *pro deo* obligations could contribute to increased availability of legal services in Rwanda. However, it would probably be best to begin by ascertaining the current level of *pro deo* services actually provided by lawyers and judicial defenders.

6.4.2 Salaried legal aid schemes

Many countries (including notably South Africa and the United Kingdom) have in recent years moved from a *judicare* legal aid systems to a salaried one. The primary reason for this is that salaried schemes were considered to be more economical⁹¹. In criminal work, this means the employment of full-time lawyers whose job it is to take all cases assigned to them in exchange for a fixed salary. In many parts of the U.S.A, the office of public defender is established by law, thus ensuring independence from the prosecution and judiciary. In South Africa, public defenders are paid directly or

⁸⁹ While *judicare* schemes are probably the most widespread, a great variety of models exists. In general, such models are administered by the courts.

⁹⁰ Trainee (*stagiaire*) lawyers are obliged to do *pro bono* work as part of their *stage* in Belgium.

⁹¹ The South African Legal Aid Board reported in 2003 that the shift away from *judicare* to justice centres with salaried employees enabled it to double the number of cases handled and return to financial solvency. See ANC Daily News briefing Tuesday 4 February 2003, <http://www.anc.org.za/anc/newsbrief/2003/news0204.txt>.

indirectly by the independent Legal Aid Board. Salaried schemes also exist in the East African countries to which Rwanda is a neighbour.

6.4.3 Judicare schemes

Under such schemes, the funding agency (whether the state or a private agency) pays privately practicing lawyers to represent a particular accused person or civil claimant. The lawyer will usually be paid for the actual work done, usually on a case by case basis (though subscription contracts are also a possibility). Such schemes can be administered by a variety of actors, including the Bar or Corps of Judicial Defenders as in Rwanda or Belgium, the court as in many rural districts in the USA, or a legal aid board or other government agency. From an administrative point of view, such schemes can be more difficult to manage than salaried schemes, as there is the necessity of calculating fees and expenses for each individual case. However, even in jurisdictions that rely mostly on salaried lawyers, it is usually necessary to maintain some element of judicare, especially where conflicts of interest may arise or to guarantee the right of legal assistance of one's own choosing. Salaried schemes allow NGOs to hire their own lawyers, who can thus litigate on areas of special concern to the organization. Legal aid in Rwanda is based exclusively on the judicare model.

6.4.4 Other approaches

On a worldwide scale, there are a number of methods used to secure legal representation besides the models discussed above. These include the use of contingency fees, where a lawyer agrees to forego a set fee in return for an agreement with the client whereby the lawyer will receive a percentage of any damages awarded by the court. They are widely used in the USA. Article 72 of the Rwandan Law of the Bar expressly forbids such arrangements.⁹² Mechanisms such as this do have certain benefits: they place the responsibility to assess the merits of the case on the person bearing the risk – this is a powerful incentive for the lawyer to make a very careful assessment of the claim. They also provide legal assistance that might otherwise be unavailable. However, there are also criticisms of such arrangements: they arguably promote litigiousness, especially against the wealthy and corporations. They lead to

⁹² As is the case in several other countries, such as Denmark.

inflated damages claims. In addition, they do not address cases not likely to yield monetary damages awards where some other issue is at stake. Thus, they will be of little use in cases where one relatively poor person is up against another (this could include such issues as domestic violence). Some lawyers also feel that contingency fees bring the legal profession into disrepute by encouraging “ambulance chasing”.

Another mechanism in use is that of legal expenses insurance. Insurance of this kind is common in many European countries, especially in home ownership policies. Many trade unions offer insurance that includes such coverage for the eventuality of labour disputes.

Another mechanism, especially where court fees are concerned, is seen in the use of cost shifting rules. These basically amount to a “loser pays” system. They are common in Europe. In some European countries, there are mechanisms available whereby a public authority can cover trial expenses in cases where important principles are at issue.

Not to be forgotten of in this discussion of course are the many ways in which disputes can be diverted away from the courts. Such efforts can make justice more accessible not only economically, but also culturally, as the less well-educated and well-off members of society are often intimidated by court rituals and procedures. Western countries have resorted more and more to the use of quasi-judicial tribunals to settle all kinds of civil and administrative disputes. Such tribunals, while satisfying the basic demands of independence from the executive and impartiality between the parties, apply less rigorous rules of procedure and evidence than the courts. In Denmark, many administrative boards and quasi-judicial tribunals are headed by judges, with representatives of organisations representing stakeholders on the issue in question. Litigants are entitled to be represented by lawyers but frequently do not need them.

Such tribunals answer to a need to simplify legal procedures so as to reduce the necessity for lawyers. This principle can also be used by the courts themselves to the extent that this is compatible with the legal questions at issue.

Ombudsman and National human rights institutions can play a similar role. While these bodies usually issue only non-binding recommendations, the particular legal and

governmental culture may be such as that these recommendations will have great weight and are routinely followed by the authority in question.

6.4.4.1 Paralegals

In addition to the above, there are some attempts that are of particular relevance to poor countries. Many countries in Africa and Asia have drawn great benefit from employing paralegals who have the following advantages over lawyers:

- a) they are often closer to the communities which they serve, culturally, geographically and economically;
- b) they can have highly specialized knowledge of particular areas with which lawyers may be unfamiliar.

Indeed today, these advantages are apparent not only in developing countries but also in western ones where paralegals play an important role in advising on legal matters. Advice on social welfare law, for example, is most often given by social workers, not lawyers. The same can be true of labour law, where trade union representatives are often non-lawyers. In such fields as asylum law, political scientists or historians may be more useful in advising on the merits of a claim than lawyers. The same can be true of health related legal claims where medical professionals may be better placed, etc.

The authors are aware of the innovative use of paralegals in at least two countries in Africa. Paralegals played a vital role in securing legal assistance to poor and marginalized communities in South Africa during the anti-apartheid struggle. The local “advice offices” led to a nationwide network of community-based paralegals, who still today are often the only source of legal assistance to poor people. These paralegals are known and trusted by their client communities and have gained great expertise in such areas as tenancy, labour law, family law etc. Efforts to draft a new legal practice bill in the country include recognition of the importance of their role.

In Malawi, paralegals have come to play a key role in the country’s criminal justice system. The legal aid department of the department of justice employs its own paralegals to assist in criminal cases. An NGO project (the Paralegal Advisory

Service), with official blessing, assists in ensuring that individual prisoners and detainees are not forgotten by the system by informing the police, prisons authorities and courts of cases that “fall through the cracks”. In addition to this, the paralegals conduct legal training in the prisons to assist prisoners to understand the basic concepts and procedures of a criminal trial, thus helping the prisoners to conduct their own defence when no legal assistance, or very little of it, will be available.

Beyond these initiatives, paralegals play a key role in providing access to justice all over Africa, in the same kinds of roles as described in many of the projects mentioned above. Their work is essential and will remain so for a long time. As such, it deserves recognition by the state.

7 Seminar on legal aid in Rwanda

On 11 and 12 December 2003, DCHR held a two day seminar to present the findings of this report and to discuss different aspects of the issue of legal aid in Rwanda. All the organisations mentioned under section 4 were invited, as well as donors and relevant Rwandan authorities (the Ministry of Justice unfortunately did not attend). The draft report was presented and the experiences of 4 different organisations in providing legal aid to the Rwandan population were also presented. Half a day was also given to present the various difficulties relating to providing legal aid as well as the role of legal aid in poverty reduction. These presentations were then followed by group discussions. The topics discussed were:

- sustainable cooperation between relevant actors involved in access to justice,
- how to finance and sustain legal aid in Rwanda
- how to overcome the obstacles to access to justice
- how to use resources other than those of legal professionals such as lawyers and judicial defenders.

The objective of the seminar was to discuss in an open forum the different ways in which legal aid is being dealt with and to examine how the different problems encountered by the organisations providing legal aid can be resolved. The discussions were interesting and fruitful, not least because information relating to legal aid work was provided to all the organisations. The participants found the gathering, the first of its kind in Rwanda, very useful.

While it is not possible to have all comments and a transcription of all the debates in this report, the discussions can be summarised as follows:

There is an evident need for information. The different organisations expressed their need for more information and to share it between them. Most did not know the extent to which other organisations were also working in legal aid and they expressed a need for a coordination of their work. It was proposed that this could be done by a steering committee established and run by the participants that could coordinate and channel information (This is among the final recommendations). There was a clear message

towards making all actors accountable and creating a national sense of ownership in legal culture and rights. In relation to this, the Rwandan government was asked to take a stand on the issue and to commit itself financially and strategically.

On a more practical level, it was also discussed how requests for representation could be channelled in a coherent and organized process. Right now, requests for representation can reach two institutions, namely the Corps of Judicial Defenders and the Bar. A structure where requests could be channelled would benefit the indigent and the organisations involved. It was also noted that the BCD of the Bar and of the Corps should work together and cooperate in their work. It was also suggested that organisations exchange information about their work and exchange pamphlets about their work. There was also a discussion concerning the use of paralegals where education and training was pointed out as being of great importance for their effective use. Training and competent services were also mentioned as being important in developing a coherent legal aid framework.

The seminar ended by the adoption of a list of recommendations which are reported in annexe 4

8 Conclusions

Many private actors are currently making sure that some legal aid is available to the population of Rwanda. Seeing the extent of the existing structures has been a welcome surprise, because it shows that there are many people in Rwanda who are concerned about the rights of the poor. Without these initiatives, often based on the voluntary contribution of the individual, there would currently be very little legal aid available in Rwanda.

Most organisations face a lack of funds, which impairs their ability to address the needs of the population. The strength of the civil organisations lies in that they are situated around the country, among the population, and are therefore easily accessible. In some places they provide the only available legal aid, especially for the poor in rural areas. Their services are free of charge and everyone may benefit from their help; few projects are limited to assisting indigents. In practice, most of the organisations function as screening organs for the Bar and the judicial defenders, as many of them refer difficult legal problems to them. This element of cooperation should be encouraged but will not function optimally until a public legal aid fund can ensure legal representation.

Most of the projects are funded by international donors. There are as of now not many publicly funded initiatives even though legal aid is an obligation of the state. The draft presidential decree on legal aid still has to be adopted and this will be a welcome addition to a legal aid system as continuous and permanent support by the government is a condition for a coherent legal aid system.

As this study confirmed, the donor approach has been one of supporting ad hoc, short-term programs, rather than adopting a coherent approach aimed at establishing a permanent legal aid structure. Stronger donor coordination and cooperation could prove efficient to this end.

Legal representation before the courts is only one type of legal aid. The draft presidential decree provides for legal representation by the Bar, but there is a lack of lawyers compared to the immense need for legal aid and no geographical dispersal of the lawyers. Since the Corps of Defenders is entitled to provide legal representation before the (1st Instance) courts and are present in most of the country, they should be

given a role in a coherent approach to legal aid. Indeed, it might well be impossible to provide legal representation for all those in need unless both the lawyers and the defenders are included.

Organisations that provide legal aid in the form of advice and information should be encouraged since they are vital for the population to reach the justice system and they perform a screening of the cases, so the Bar and the Corps of Judicial Defenders can concentrate on the cases which require legal representation before the tribunals. The services of these organisations should be included in a coherent approach to legal aid.

Mediation as a means of alternative dispute resolution is encouraged by the proposal of the law reform commission, both in civil and penal cases. An adoption of such measures will presumably provide cheaper and quicker resolutions to conflicts and be accessible to the population on sector level. It must be ensured, however, that the rules of procedure for the mediation committees/sector councils are few and simple.

An overall solution to legal aid will thus benefit by the involvement of all actors and resources already existing in the field. *Pro bono* work by lawyers and defenders is one element in a system of providing legal aid. It should be encouraged as a voluntary service and perhaps even considered as a mandatory obligation for everyone in the profession.

The authors feel sure that a better use of existing resources can be achieved through coordination among the various existing legal service providers. Clients can be referred to another organization with a mandate and resources to deal with the client's specific problem if one's own organization cannot help; a network of lawyers and judicial defenders may be helpful in locating either paid or *pro bono* legal representation. Better contacts can improve the quality of legal representation by ensuring that lawyers or defenders have sufficient time to read the case file and meet their clients before trials.

Recommendations

Uniform criteria for the issuance of certificates of indigence should be issued by the Ministry Responsible for Local Government;

The state should not demand payment of court fees or payment to obtain judgments where indigents are concerned;

Organisations providing legal assistance should find means to communicate with each other and cooperate to achieve the best results for their target groups and to promote ordinary Rwandans' access to justice (including efforts to influence current and future processes of legal reform);

The draft Presidential Decree on the establishment of a legal representation fund should be amended in several key respects before its adoption is considered. Among the amendments to be considered are:

- inclusion of criteria related to the seriousness and complexity of the case;
- recognition of the role of the BCD of the Corps of Judicial Defenders in providing legal aid;
- recognition of the importance of collaboration by the BCDs with non-governmental organizations and state agencies in promoting access to the legal services provided by the BCDs;

Government and donor efforts to promote access to justice should take a holistic view of both access to justice in general, and legal aid in particular. In the domain of legal aid, support and recognition should be given not only to the provision of court representation, but also to the provision of legal information, advice and assistance. The roles and contributions of all actors should be taken into account in developing strategies in this area.

Annexe 1

List of participants to the 11 and 12 December 2003 Seminar on Legal Aid in Rwanda

- Mr Olivier Rulundakuvuga, Clinique Juridique de la Faculté de Droit Université Nationale du Rwanda
- Ms Tine Lehmann, UNDP
- Mr De Valensart, Belgium Embassy
- Ms Margot Kokke, Embassy of the Kingdom of the Netherlands
- Ms Nathalie Tulak, French Cooperation
- Ms Hilarie Mukamazimraka, Association de Coopération et de Recherche pour le Développement
- Representative of the Commission de Justice et Paix, Diocèse de Nyundo
- Mr Sylvère Bugilimfura, Association des Syndicats Chrétiens
- Ms Anne-Sofie Oger, Avocats sans Frontières
- Ms Marame, Bureau Social Urbain/Cartas
- Mr Francois Butera, Central des Syndicats de Travailleurs du Rwanda
- Mr Kurt Neudek, Collectif des Liges et Associations de Défense des Droits de l'Homme
- Mr the Representative, Conseil National des Organisations Syndicats Libres au Rwanda
- Mr Dieter Magsam, Technical advisor GTZ
- Mr Benoit Kaboyi, IBUKA
- Mr Jean de Dieu Ndanzurwimo, Law Students Association Urumuli
- Ms Alice Karindanyi, Norwegian Peoples Aid
- Mr Jean Charles Paras, Penal Reform International
- Ms Marguerite Murukatete, Réseau de Citoyens/Citizens Network
- Ms Peninah Abatoni, Rwanda Women's Network
- Mr Modeste Sigomana, Trocaire
- Mr Oscar Niyongabo, Université Libre de Kigali

- Ms Kati Leinonen, Head of Unit Ministry of Justice, Project Management Unit, Project « Support for the rule of law and for the promotion of individual rights and national reconciliation »
- Ms Kim Pease, Governance Unit – USAID
- Mr Telesphore Kagaba, United States Embassy
- Mr Dirk Deprez, Belgian Technical Cooperation
- Mr Ruben Niyibizi, Liprodhor
- Maître Simon Ndimubanzi, Corps de Défenseurs Judiciaires
- Maître Vincent Karangwa, Barreau de Kigali
- Ms Christine Tuyisenge, Haguruka
- Ms Auréa KayiganwaMs Rose Uwimana, AVP
- Mr Jean Pierre Mujiyambere, AJPRODHO

Annexe 2

Tables of legal assistance by target group

Table 1. Genocide survivors

	Ibuka	Bar	Corps of Judicial Defenders with DCHR	ASF (ended)
Information/education	Yes	No	Yes	Yes
Advice, counselling	Yes	Yes	Will begin	No
Practical assistance	Yes	No	No	No
Court representation	Rarely	Yes	Yes	Yes
Regions	Throughout country	Send lawyers from Kigali	Throughout country	From Kigali
Requests for assistance (year 2002)	NA	45 (all together)	2,861 (civil parties only)	
People represented (year)	NA	35	2,861	
Legal fields	Genocide and other	Genocide and other	Genocide and other	Genocide
Contribution requested ?	No	No	No	No
Indigence ?	Not strictly	Yes, but not in Genocide trials	Not in Genocide trials	Not in Genocide trials
Cooperation	Avega, Bar, le CJD and DCHR	Avega, Ibuka	Ibuka	Avega, Ibuka
Jurists	2	100 (lawyers)	117 Judicial Defenders + 4 jurists	Yes
Paralegals	24	No	No	Yes
Volunteers	Yes	No	Yes	No

Table 2 Widow and Orphans

	Avega (W.and O of genocide)	Acord (women girl child chief of household	Bar	Corps of Judicial Defenders with DCHR	ASF
Information/education	Oui	Training of paralegals	See table 1	See table 1	See table 1
Advice, counselling	Yes	Yes	See table 1	See table 1	See table 1
Practical assistance	Yes	Yes	See table 1	See table 1	See table 1
Court representation	Yes (limited– 10 per year)	Yes (100 per year)	See table 1	See table 1	See table 1
Regions	Kigali, Rwamagana, Cyangugu	Kigali. -Budaha (Kibuye) -Kamyoni (Gitarama) -Gashora (Kigali Ngali) -Murambi (Umutara) -Mutobu (Ruhengeri) -Rusumo (Kibungo	See table 1	See table 1	See table 1
Requests for assistance (year)	1440	100	See table 1	See table 1	See table 1
People represented (year)	120 – 180	100	See table 1	See table 1	See table 1
Legal fields	Genocide, family law, economic related	Civil law, economical cases	See table 1	See table 1	See table 1

	problems				
Contribution requested?	Members	No	See table 1	See table 1	See table 1
Indigence ?	No	Not strictly	See table 1	See table 1	See table 1
Cooperation	Bar, Ibuka	Judicial Defenders (3), local authorities	See table 1	See table 1	See table 1
Paralegals	3	Yes – 35	See table 1	See table 1	See table 1
Jurists	1	1	See table 1	See table 1	See table 1

Table 3 Genocide defendants

	Minijust and UNICEF (minors)	Bar	Corps of J.D. and DCHR	ASF (ended)
Information/education	Yes	No	Yes(before)	No
Advice, counselling	Only for cases taken up	Only for cases taken up	Only for cases taken up	Only for cases taken up
Practical assistance				
Court representation	Yes	Yes	Yes	Yes (before)
Regions	Covers the country from Kigali In 2002 – Kibungo only	Covers the country from Kigali	Present throughout the country (15 cabinets)	Covers the country from Kigali
Requests for assistance (year 2002)	20	45 (all)	1,121	
People represented (year)	8	35 (all)	1,121	
Legal fields	Genocide and other criminal	Criminal law	Criminal and Genocide	Criminal and Genocide

	law			
Contribution requested	No	No	No	No
Indigence ?	No	No	No	No
Cooperation	Lawyers and Judicial Defenders	Minijust, UNDP, ASF	Minijust	Minijust, the Bar and DCHR
Paralegals	Public workers	No	No	Yes
Jurists	Public workers	100 lawyers	4	Yes
Volunteers	No	No	Students	Yes

Table 4 Victims f Human Rights violations

	C.N.D.H	ARDHO	ADL	AVP ended	CLADH O	LIPRODHOR
Information/education	Yes	Yes	Yes	Yes	Yes	Yes
Advice and counselling	Yes	Yes	Yes	Yes	Yes	Yes
Practical assistance (including mediation)	Yes	Yes	Yes	Yes	Yes	Yes
Court representation	No	No	No	2000 : 10	No	Will start
Regions	Througho ut the country	Kigali, Kibungo & Cyangugu (info./ed.)	Kigali	Kigali	Kigali	All provinces except Umutara
Requests for assistance (year – 2002)	NA	c. 180	65	NA	c. 20	500
People represented (year- 2002)	NA	c. 180	65	NA	NA	500
Legal fields	Human Rights	Civil (property) and criminal	Criminal and civil	Various	Various – related to HR	Various – related to HR
Contribution requested?	No	No	No	No	No	No
Indigence ?	No	No	No	No	No	No

Cooperation	NA	?	?	Haguruka (request s for assistan ce transmit ted)	Org. Member s	Other NGOs
Paralegals	NA	?	2	Oui	NA	13
Jurists	NA	2	?	Before	NA	2
Volunteers	NA	Oui	Oui	Oui	NA	Oui

Table 5 Women and Children

	Haguruka	Rwanda Women's' Network
Information/education	Yes	Yes
Advice, counselling	Yes	Yes
Practical assistance	Yes	Yes
Court representation	Yes: 30	Transmitted to other organisations
Regions	All the provinces except Gisenyi, Ruhengeri, Byumba and Umutara	Kigali
Requests for assistance (year- 2002)	4000	38
People represented (year- 2002)	1997 – 2001 : 6000	38
Legal fields	Violations of women's and children's rights – various	Human Rights violations and other problems
Contribution requested ?	No	No
Indigence ?	No	No
Cooperation	Local authorities	Yes (whom ?)
Paralegals	316 (volunteers)	1
Jurists	7	

Volunteers	316	
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Table 6 Workers

	ASC /Umurimo	CESTRAR	COSYLI
Information/education	Yes	Yes	Yes
Advice, counselling	Yes	Yes	Yes
Practical assistance	Yes	Yes	Yes
Court representation	Yes, in principle, but not at the current time	Yes : 7 files/ 41 people in 2002	Yes . 2002- 87
Regions	Mainly in Kigali	Throughout the country from Kigali	Kigali, Butare, Ruhengeri, Kibungo
Requests for assistance (year – 2002)	1500	1500 – 2000	NA for 2002. 2000 – 2002 : 1820 complaints
People represented (year 2002)	50	140 amicable solutions, 41 inspections, 7 court cases	2000 – 2002 : 1820, 955 off court settlement
Legal fields	Labour law	Labour law	Labour law
Contribution requested?	To be a member	In the future, members only	Be a member & pay 15% of the costs
Indigence ?	No	No	Yes, in order to pay legal fees and to be without work for at least a year
Cooperation	?	?	?
Paralegals	5 (volunteers)	2	3
Jurists	?	1	1
Volunteers	5		7

Table 7 Students

	LSA Law Students Association
Information/education	No
Advice, counselling	Yes
Practical assistance	Yes (including off court settlement)
Court representation	No
Regions	Butare
Requests for assistance (year)	100
People represented (year)	60 – 80
Legal fields	Civil
Contribution requested ?	No
Indigence ?	No
Cooperation	
Paralegals	Students
Jurists	Students
Volunteers	Students

Tableau 8 The poor

	Commis sion Justice et Paix Nyundo	Commis sion Justice et Paix Ruhenge ri	Clinique jur. de l'UNR	Norwegian People's Aid	Bureau Social Caritas (Kigali) (ended 2002)	Jjukirwa/ AJEPROD HO
Information/edu cation	Yes	Starting, similar to Nyundo	Yes (mainly sexual violence)	Yes	Yes	Yes
Advice counselling	Yes		Yes	Yes	Yes	Yes
Practical assistance	Yes		Yes	Yes	Yes	Yes
Court	No	No	Sometimes 2002	No	Rarely	No

representation			- 1 2001 – 3			
Regions	Nyundo (Gisenyi)	Ruhengeri	Butare	Kibuye, Gisenyi, Umutara	Kigali Ville	Butare, Kibuye
Requests for assistance (year – 2002)	Unknown	Unknown	149	30 – 36	33	c. 200
People assisted (year)	2616	Unknown	149	30 – 36	33	50
Legal fields	Various	Various	Civil – property and family law	Civil	Civil	Various
Contribution requested?	No	No	No	No	No	No
Indigence ?	No	No	No	No	Yes, but without a certificate	No
Cooperation	Unknown	Unknown	Local authorities	Local authorities	Local authorities	?
Paralegals	90 (volunteers) 4 employees	Unknown	Students	No	1	6 (volunteers)
Jurists	Unknown	Unknown	1 student & 2 professors	6	No	2
Volunteers	90	Unknown	Students	No	1	6

The Bar and the Corps of Judicial Defenders assist indigents sometimes.

Annexe 3

Quantitative table of problems identified by the organisations

Problems identified by the organisations	Identified by number of organisations
Lack of means	21
Slowness of the administrative and judicial proceedings	8
The fees of the lawyers	7
Excessive delay or non-execution of judgments	7
Geographical/logistical problems in bringing defenders/victims to the tribunals, problems of transportation	5
Vulnerability of the population, poverty and ignorance	5
Limited number of lawyers, there are too few	3
Absence of legal aid fund	2
Non-existence of a labour court	2
Resistance of employers	2
Not enough services within the (human rights) organisations which give legal representation before the courts, only limited groups are targeted	2
Difficulties in receiving certificates of indigence	2
Lack of cooperation	2
Lack of information to the population/persons subject to be tried of their rights	2
The costs of the justice system	1
Other areas than genocide have been set aside	1
The lawyers who are members of the bar association do not do pro bono work	1
Multiple delays by the lawyers	1
The BCD continues to receive requests for assistance after the funding has ended in both genocide cases and other cases	1
Bar law has too many constraints	1
Inability to help all persons they want to	1
Donor money drying up	1
Only about half of the accused are represented by a defender	1
Defenders must pay the full price of copies of the files/ judgments at the court although their clients are considered indigent	1
Designations of the BCD of the Corps of Judicial Defenders are made only shortly before the case starts or even after the case has started	1
Defenders cannot appear before the appeal courts	1
Genocide cases should be processed in regular trials because the civil parties have the	1

opportunity of legal representation	
Sometimes defenders do not show up at hearings	1
Defenders can only assist the indigents who are involved in genocide, not other indigents	1
Incoherence and contradictions in the decisions of the judiciary caused by interference by the executive power in the judiciary	1
Corruption at court level	1
Incompetence of the judges	1
Low comprehension of women's problems in some canton courts	1
Non-regulation of the informal sector	1

Annexe 4

Recommendations from the Legal Aid Seminar of 11, 12 December 2003

The participants of the seminar adopted a list of recommendations stemming from their discussions:

- Need for coordination in Civil Society: set up of a following committee (DCHR should organise the next meeting);
- Exchange sensitisation materials of all the organisations in order to get an ensemble of coherent information and do an inventory;
- Better cooperation between organisations and the two BCDs (In 2004, DCHR will examine the possibilities of taking some files coming from various NGOs);
- Ask the Rwandan Government to state clearly its position on legal assistance in Rwanda;
- It is essential that the Rwandan Government makes available the legal aid fund and mechanisms for its use;
- Make a study of the needs of legal assistance through legal aid clinics and other pilot projects;
- The participation of foreign donors remains essential;
- Participation of all actors is essential;
- There is a need to develop criteria or guide lines to issue the certificate of indigence;
- Pro bono work should be encourage on a voluntary basis and there should also be ways to pay for transport and accommodation in order not to discourage pro bono work;
- The role of paralegals and their training should be encouraged;
- Since the majority of the population does not know its rights: study the needs of the population concerning the need for sensitisation in certain fields
 - Share the information material and continue sensitisation

- Get together to discuss different sensitisation strategies
- The cost of legal assistance is too high:
 - Encourage the creation of the establishment of a legal aid fund
 - Encourage pro bono work
 - Coordination and cooperation between organisations ; create a forum to meet regularly
 - The costs in order to obtain files and judgements are too high: ask the state to pay the costs for indigents, in civil and criminal matters
- Length of procedures:
 - Encourage the government initiative in this field (single judge system, specialised courts, mediation) and examine the purpose of administrative tribunals
 - Encourage the Bar and Corps of Judicial Defenders to use disciplinary measures on lawyers or defenders that postpone cases without reason
 - Encourage the tightness of rules enabling postponement of cases and encourage more severe consequences for frivolous postponements of cases (example: judgement *in abstentia*).