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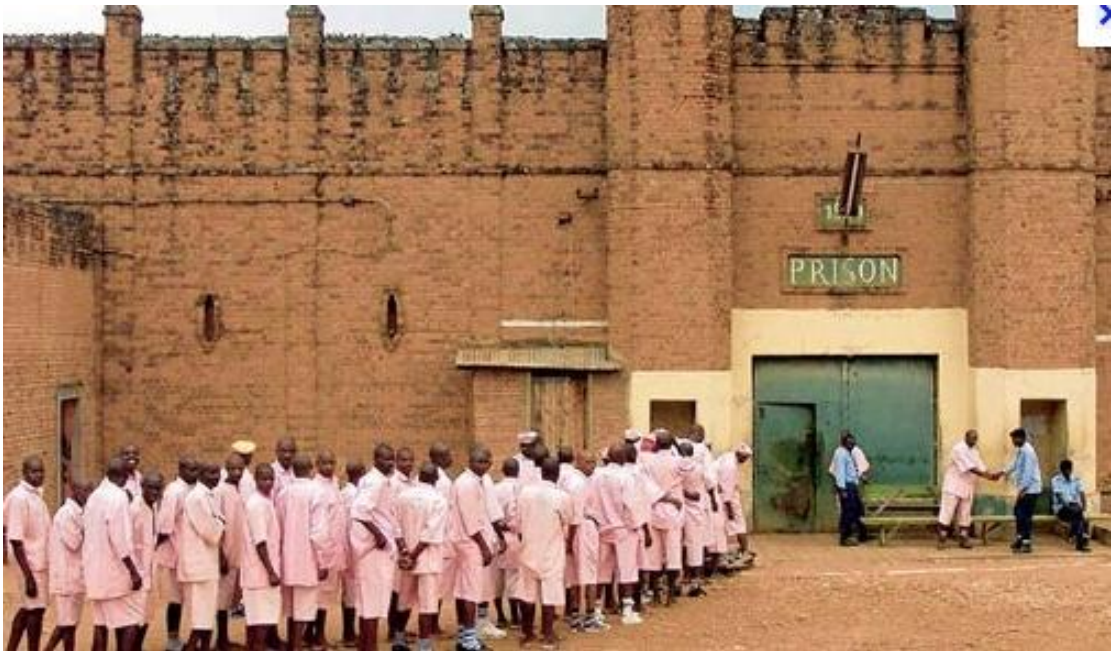

IMPROVING THE PERFORMANCE OF THE CRIMINAL JUSTICE SYSTEM THROUGH IMPROVED PRETRIAL JUSTICE

The Impact of Pretrial Detention on Access to Justice in Rwanda

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Foreword

The contribution of the Legal Aid Forum (LAF) in the Rwandan Justice Sector cannot be overstated. For the last six years, LAF has made a contribution in terms of research and analysis aimed not only to establish sector baselines on gaps and capacities but also to inform sector policies.

As articulated by the Justice, Reconciliation, Law and Order Sector Strategy, a key component of the Economic Development and Poverty Reduction Strategy, Rule of law, accountability and Human Rights promotion is an important output that both the Government of Rwanda and Civil Society Organisations as members of the Legal Aid Forum are trying to promote.

The commissioning of this study by LAF is exactly in line with the above aspirations.

Furthermore, the Government of Rwanda recognizes that successful implementation of its goals and objectives will involve partnership with other stakeholders such as COS and their participation is critical in a number of ways:

1. As providers of services to users of the justice system such as legal aid, human rights education, trainings and capacity building, awareness raising etc;
2. As providers of feedback on policy proposals, NGO are well placed to provide grassroots feedback about the acceptability and appropriateness of government policies;
3. As promoters of change, lobbyists and advocates for improvements in the delivery of justice;
4. As representative of particular groups of citizens, especially those who do not appear to have a "voice" in influencing decisions, such as women, children, people with disabilities, prisoners etc;
5. As monitors and evaluators, sector strategies require robust monitoring and evaluation in order to ensure proper accountability and CSO has a key role in this respect.

Andrews Kananga
Executive Director

Acknowledgement

The Legal Aid Forum is grateful to many individuals and institutions who provided the needed information in the study. The Legal Aid Forum is particularly grateful to Mr. Joss Ticehurst who was the lead researcher on this project. The Legal Aid Forum is also thankful to several Justice Sector Institutions particularly, the National Public Prosecution Authority, Rwanda Correctional Service and Rwanda National Police who granted the Legal Aid Forum permission to conduct interviews.

Me Nkeza Clement,
Chair of the Administrative Council & Legal Representative

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Executive summary

The arrest and detention of a citizen is one of the most significant legitimate powers a government has with respect to those it governs. It is a necessary power that the government is required to exercise in order to maintain order within a country. However, if that power is abused or inadequately implemented, citizens' human rights are violated and the economic prosperity of the country suffers.

The Government of Rwanda recognizes the need to ensure that the way in which its citizens are dealt with in the criminal justice system inspires confidence in the justice system as a whole. The Government has set targets which aim to increase the efficiency of the justice sector; reduce human rights abuses; and ensure prisons operate within their planned capacity.

The "snap-shot" research of the situation of pre-trial justice in Rwanda and its impact on access to Justice was designed to gauge the way in which those accused of crimes are dealt with from arrest until trial. The report provides an analysis of the legislative provisions governing matters of pre-trial justice in Rwanda before seeking to obtain an understanding of the *de facto* situation. What is clear is that the problems in dealing with those accused of crimes does not stem from an absence of legislative provisions but from a justice system with limited coordination and no built-in oversight mechanisms. It is also clear that the system requires intervention to reduce the case backlog. The results of the research highlight problems which need to be tackled as a matter of urgency:

- Limited safe-guard by way of independent oversight of the actions of the Police, Prosecution, Prison Service; or Courts;
- The agents within the criminal justice system fail to communicate and over-see the actions of the other agents leading to significant delays for those who are accused of crimes;
- Those arrested are liable to be subjected to abuse at the hands of the police.
- Those arrested are not informed of their rights upon arrest and those rights are not adhered to;

- There is significant delay in the processing of a person through the Court process and there is a failure to adequately identify those cases in which a person accepts guilt and may be processed swiftly and those which require a trial. This delay leads to people serving greater periods of time in prison than they ultimately receive as a sentence for their crimes. This exacerbates the backlog in the system;
- Some of the detained persons have become "lost" within the prison system and there does not appear to be a robust mechanism for identifying such people. Such detained persons within the system contribute enormously to overcrowding in prisons.
- The provision of the information forming the basis of the prosecution's case to those accused of crimes is woefully inadequate and is likely to mean that the Rwandan Government is failing to meet the standards for a fair trial laid down in the African Fair Trial Guidelines.
- The prison population contains many people who ought not to be held in detention For instance, they have been held beyond the period prescribed by law or have already served a period in prison in excess of that to which they will be sentenced.

This report presents a set of recommendations that will help the Justice Sector in Rwanda to ensure that the problems which are identified can be addressed. Addressing these problems will assist the Government meet its own development targets, reduce the cost associated with the need for an expanding prison population, and prevent the abuse of citizens' rights through unlawful or excessive detention in prison.

Introduction and background

The power to arrest a person; detain them against their will; issue a judgment upon their behaviour; and ultimately impose punitive measures is the very essence of a criminal justice system. The use of such measures are among the most powerful instruments a state has against its citizens and it is the abuse of such powers which forms the basis for so many human rights abuses worldwide.

Many will consider the trial and determination of guilt or innocence, and if necessary the imposition of punishment, to be *the* moment when criminal justice is administered. Indeed, it should be hoped that a criminal justice system did act in a fair and reasonable way at that point. But for a justice system to be worthy of the name, it must administer justice well before the time of trial. It must deal justly with all citizens before, during, and after they are arrested. In assessing a criminal justice system as a whole it is, therefore, important to understand the way in which the state, through official agencies, accuses its citizens of violating the criminal law and brings them to trial. That is, it is important to know how the state behaves towards its citizens before it puts them on trial. What occurs, from the moment of an accusation of a breach of the criminal law, to the day on which the accused stands before a judge or jury can have consequences for the administration of justice; consequences which may even undermine the trial process itself; consequences which may, in fact, mean that there is never a trial.

In the broadest sense pre-trial justice demands the right to be free from arbitrary arrest; the provision of information to the accused of the nature of their arrest; access to legal representation; and the right to bail until tried. It is convenient, therefore, to divide the issue of pre-trial justice into two parts: (1) Arrest and evidence gathering; and (2) Detention pending trial. A failure to adhere to the rule of law and a failure to satisfactorily monitor the practices of relevant state authorities in each of these parts can result in serious human rights abuses. These issues are not simply of concern to the accused - governments who rely

heavily on pre-trial detention incur huge expense in holding those awaiting trial in custody; and exacerbate chronic overcrowding in detention facilities.

Pre-trial justice has been identified as a worldwide problem: The Open Society Justice Initiative cites the following to highlight the scale of the problem of pre-trial justice:

- In the course of a single year, **over nine million people** will be held in pretrial detention;
- **One out of every three people in detention is awaiting trial** and has not been found guilty of a crime;
- In some countries, **over three quarters of all prisoners are pretrial detainees.** This includes Liberia (97 percent), Mali (89 percent), Haiti (84 percent), Andorra (77 percent), Niger (76 percent), and Bolivia (75 percent);
- The **average time** spent in pretrial detention in the European Union is estimated to be 167 days. In Nigeria, the average time is estimated to be **3.7 years**;
- Most developing countries have a dearth of trained lawyers. In Rwanda there are currently 792 lawyers for an estimated population of about 11 million.

Publically, the Rwandan Government has been keen to demonstrate its commitment to improving standards in the criminal justice sector and the rule of law in general:

> *"Justice, Reconciliation, Law and Order are critical for fulfilling the promises of Vision 2020 and Rwanda's Economic Development and Poverty Reduction Strategy (EDPRS). Good governance and a capable state are characterised by the rule of law: a legal system that supports and protects all citizens without discrimination, including the poor who are overwhelmingly the victims of conflict, crime, insecurity and injustice. And the rule of law is a prerequisite for wealth creation in a private sector led economy…"*
>
> Paragraph 1.10 of the Justice, Reconciliation, Law & Order Sector Strategy and Budgeting (2009 -June 2012).

The 2009-2012 Justice Sector Strategy ("Strategy") defines how the government of Rwanda wants to deliver part of its governance program for the EDPRS. It is not optional but essential for the development of the country. The Strategy recognises the challenges facing the criminal justice system and notes that there is a critical role for civil society in providing services and promoting change – without which delivery cannot be attained. It is quite clear that in order to develop economically and reduce poverty, it is essential to adhere to the rule of law – the rule of law is a prerequisite for wealth creation. To that end, the Strategy has developed a number of Targets which have been identified as leading to outcomes which will result in adherence to the rule of law and, therefore, economic development. Those Targets include: reinforcing capacity in the efficient administration of justice in order to ensure universal and timely access to justice and respect for human rights, high levels of public confidence in the rule of law and integrity of JRLO institutions, all international Human Rights Instruments ratified by Rwanda and respected – resulting in reduced human rights abuses and Prisons operating within their planned capacity.

The Strategy quite clearly recognises that failure to respect the rights of those who are detained by the state results in a loss of confidence, both national and international, in the country's justice system; it undermines the rule of law; and ultimately affects the national development agenda.

It is quite clear that the issue of pre-trial justice concerns not only the rights of citizens but can also impact directly upon Government expenditure. For instance, in December 2010, twelve out of the fourteen prisons in Rwanda were holding more inmates than their capacity[1]. It is inevitable that placing more people in a prison than it is built to accommodate affects the welfare of those held within the prison. It also means that those charged with working within the prisons face greater demands to maintain security and discipline. And it is not simply criminals who are in prison: some people are detained who have yet to be found guilty – they are, according to the law, innocent, yet they are held within an overcrowded prison.

[1] Data provided by Rwandan Correctional Service - see Table A of Appendix 1 "Prison Capacity".

In Rwanda of the total prison population (not including Genocide cases and minors) 38%[2] is made up of persons held in pre-trial detention[*]. As at the end of June 2011 there were a total of 7,876 males and females (excluding Genocide cases and minors) being held in pre-trial detention. Leaving aside the rights of the persons so detained, this illuminates the issue of prison overcrowding. If those held in pre-trial detention were to be removed from the prison population Rwanda would have almost sufficient prison space for all the people it detained. Not only would the Government save money on the daily costs of housing those removed from the system and save money on the staff costs of running the prisons but it would also save the huge capital cost of having to extend the existing prisons or build more.

In a recent paper published by the Open Society Justice Initiative the effects of excessive use of pre-trial detention are explored.[3] The paper highlighted that excessive pretrial detention undermined the rule of law'; had a disproportionate effect on the poor and marginalized'; reduced the income of detainees, pushed their families toward poverty'; and damaged the education and income potential of their children. It also impoverishes communities, misdirects States' spending, and limits their policy options.[4]

The "Pre-trial Justice" research project was designed to evaluate and monitor the level of adherence to the rule of law when citizens are arrested and dealt with prior to trial. The report is split into four parts. The first contains a broad analysis of the international and domestic legislation which is relevant to pre-trial justice in Rwanda. The Second contains an explanation of the research which was undertaken to consider Rwanda's adherence to the legislation. The third & fourth parts contain a discussion of the findings and makes recommendations which are felt necessary to improve pre-trial justice in Rwanda.

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[2] Data provided by Rwanda Correctional Service - see Table B in Appendix 1 "Prison Population".

[*] It should be made clear that pre-trial detention is understood to mean detention up until either conviction or acquittal. "Conviction" means both a finding of guilt and the imposition of a penalty or other measure involving depravation of liberty (Article 5(1)(a) of the European Convention).

[3] *The socioeconomic Impact of Pretrial Detention,* 2011 - published by the Open Society Foundations (a copy can be obtained from "www.**opensocietyfoundations**.org/"

[4] Pg. 39 ibid.

Legal Analysis

The following section provides an analysis of the international and domestic legislative framework governing the detention of persons prior to conviction ("Pre-trial Detention"), and the rights of a person arrested on suspicion of a crime ("Rights upon arrest").

2.1. Pre-trial detention

The Government of Rwanda is obliged both by the Constitution of the Republic of Rwanda, international obligations, and primary Rwandan legislation to have in place effective measures to prevent the length of pre-trial detention becoming so extended as to render it a violation of the detainee's rights.

As noted in the introduction the issue of detention up to the point of conviction is to be understood as including detention even after a finding of guilt but before the passing of sentence (Art. 5(1)(a) of the European Convention).

2.1.1. Rwanda's international Obligations

The following sources of Rwanda's international obligations in respect of pre-trial detention have been identified:

(i) International Covenant on Civil and Political Rights 1966 ("ICPPR")[5]

Article 9 of the ICPPR reads as follows:

> ***Article 9***
>
> *1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

[5] Accession by Rwanda took place on 16 April 1975

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

It is important to note Rwanda's additional ICCPR obligations both to provide a judicial mechanism for reviewing the lawfulness of detention, and its obligation to compensate those unlawfully held.

(ii) African Charter on Human and Peoples' Rights, 1981[6]

Article 6 reads as follows:

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

It is important to note that the United Nations takes the view that a person who is lawfully detained initially can properly be described as being "arbitrarily detained" if their detention is for a duration that is unjustifiable. Thus an individual held on perfectly proper grounds

[6] Ratified by Rwanda on 15 July 1983

will come within the definition of being "arbitrarily detained" if their detention is for a period that is clearly disproportionate and is especially likely to come within the definition if there is no judicial oversight of the detention.

(iii) The "Tokyo Rules" (adopted by the General Assembly on the 14th of December 1990) have this to say on the topic of pre-trial detention:

> *II. PRE-TRIAL STAGE*
>
> *5. Pre-trial dispositions*
>
> *5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable noncustodial measures, as appropriate.*
>
> ***6. Avoidance of pre-trial detention***
>
> *6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.*
>
> *6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.*
>
> *6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.*

The individual and combined effect of these three treaty obligations is very clear: Rwanda is under a duty to have in place a system of pre-trial detention in which detainees have the right to:

- have their detention judicially monitored,
- challenge their detention before the courts,

- be released when their detention is no longer necessary or proportionate.

The unequivocal nature of the duty which Rwanda has imposed upon itself by becoming a signatory to these treaties is given in further principles and guidelines which have been proclaimed by the African Commission on Human and Peoples' Rights[7]. Of significance are the following:

(i) Principles and Guidelines on the Right to a Fair Trial ("ACHPR Guidelines"), which has this to say on the right to a fair trial without delay:

> *a) Every person charged with a criminal offence has the right to a trial without undue delay.*
>
> *b) The right to a trial without undue delay means the right to a trial which produces a final judgement and, if appropriate a sentence without undue delay.*
>
> *c) Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.*

(ii) Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 32nd Session, Banjul, The Gambia, October 2002, "RIG".

The following articles of the Robben Island Guidelines are of particular importance:

> *Article 21*
>
> *Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*
>
> *Article 27*
>
> *Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.*

[7] Rwanda does not appear to have adopted either ACHPR Guidelines or RIG; however, the standards that they set so closely mirror other international norms and the African Union's own standards, that they are certain to be taken as a useful guide to the standards that the international community deems appropriate for those awaiting trial.

Article 32

Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

(iii) The Article 21 commitment to establish regulations guided by *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* means that signatories to the Robben Island Guidelines expressly adopt the UN's guidance as providing the basis for domestic regulations. The UN Body of Principles, adopted by the General Assembly on 9 December 1988, includes the following statements of principle:

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph l of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

2.1.2. Domestic Law

The position in domestic law is just as clear.

(i) Article 18 of the Constitution states that:

> *"The person's liberty is guaranteed by the State….The right to be informed of the nature and charges and the right to defence are absolute at all levels and degrees before administrative, judicial and all other decision making organs."*

(ii) Law No.13/2004 of 17/5/2004. Relating to the Code of Criminal Procedure, O.G. Special No. of 30/07/2004 ("CPC") puts in place a comprehensive framework within which Rwandan criminal procedure must operate. Article 1 requires that criminal judgments *"must be rendered without any undue delay"*.

(iii) Against the background of this overarching requirement the following time-limits are specified:

- 72 hours initial detention by the police on suspicion of having committed an offence punishable by at least 2 years imprisonment or if there exist reasonable grounds to suspect that the accused is likely to escape or his/her identity is unknown or doubtful (Article 37);
- Seven days provisional arrest authorised by a public prosecutor in cases where specified requirements are met (Articles 96 & 93)[8]

The law appears, therefore, to provide a maximum of 10 days detention by the police and prosecution before being taken before a judicial officer. It should be noted that this may be in breach of international treaty obligations.[9]

[8] We understand that it is widely accepted in Rwanda that the total relevant period under Articles 37 and 96 is in fact 10 days. Whether this is right or not, this clearly makes no difference to the cases we are considering.

A person placed under provisional arrest who is taken before a judicial officer must be granted bail unless there are "*concrete grounds to prosecute him or her and the offence he or she is accused to have committed is punishable with at least two years' imprisonment"* (Art. 93). It is for a Judge or Magistrate to determine whether the accused should be granted bail or placed into pre-trial detention pursuant to an order for preventive detention (Art. 98).

"Concrete Grounds" are defined as being the totality of evidence which can lead to the suspicion that a person might have committed an offence (Art. 95).

A person accused of a crime which is punishable with imprisonment which is less than two years but exceeds one month may be placed into pre-trial detention for reasons of public security (Art. 94).

A person may only be placed into pre-trial detention pursuant to an order for preventive detention made by a Judge or Magistrate (Art. 97). Preventive detention is for a period of 30 days. This period cannot be extended for contraventions, but is renewable for one month at a time up to a maximum of six months for misdemeanours and one year for felonies (Art. 100).

The practice of the prosecutor is to obtain an order for pre-trial detention and thereafter prepare the case for trial. When the prosecutor has prepared the case for trial, the case papers will be served on the court. This is known as the court being "seized" (Art. 119). The Criminal Code provides that at the time of the court being seized an accused person shall remain in the position they were in prior to the court being seized; i.e. on bail or placed in pre-trial detention (Art. 116). However, the absolute time limit placed upon pre-trial

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[9] Article 9(3) of the ICCPR provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power". The Human Rights Committee has stated that the first sentence of article 9(3) of the Covenant "is intended to bring the detention of a person charged with a criminal offence under judicial control" (Communication No. 521/1992, *V, Kulomin v. Hungary*). Although the term "promptly" must, according to the jurisprudence of the Human Rights Committee, "be determined on a case-by-case basis", the delay between the arrest of an accused and the time before he is brought before a judicial authority ***"should not exceed a few days"*** (Communication No. 373/1989, *L. Stephens v. Jamaica*. A delay of four days, without justification, violated the notion of promptness stipulated by Article 9(3) (Communication No. 702/1996, *C. McLawrence v. Jamaica*).

detention is that which is provided for in Art. 100; i.e. one-year for felonies. It appears that once the court is seized of a case it is for the court to list the matter to come before it.

Art. 149 provides that Judgments should be read within thirty days following the conclusion of the hearing; and Article 150 provides that Judgments shall include an indication of the sentence passed. It is our view that the Court is obliged to pass sentence within 30 days of the finding of guilt.

2.2. Rights upon arrest

This section deals with the legislative framework governing the manner in which an arrested person is dealt with. It necessarily excludes the issue of being taken before a Judge or Magistrate and the period of time an accused is held in pre-trial detention.

2.2.1. Right to be informed of the reason for arrest and charges.

Domestic Provisions

Article 38 of the Code of Criminal Procedure ("CPC") provides that any person detained by the judicial police shall be informed of his or her charges. A similar provision is made in respect of public prosecutors by Article 64.

International Provisions and Guidelines

Article 9(2) of the ICCPR makes it abundantly clear that signatories must ensure that any person who is arrested *"shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."*

The African Charter on Human and People's Rights contains no specific provision with respect to the provision of information about arrest and charge, but the African Commission on Human and People's Rights has held that the "*right to a fair trial*" includes, inter alia, the requirement that persons arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any

charges against them (*ACHPR, Media rights Agenda (on behalf of Niran Malaolu) v. Nigeria, Communication No. 224/98.*

Indeed the African Commission on Human and Peoples' Rights proclaimed certain principles and guidelines on the right to a fair trial and legal assistance in Africa ("African Fair Trial Guidelines"). In the Fair Trial Guidelines the ACHPR record in Paragraph M(2)(a) that:

> *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her*.

And at Paragraph N(1) that:

> *a) Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her.*
>
> *b) The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused.*
>
> *c) The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.*

2.2.2. Right to consult legal representative (defence counsel)

Domestic Provisions

Article 39 of the CPC provides that a person detained by the judicial police shall have the right to consult with his or her legal counsel. This article does not explicitly provide either for the right to consult with a legal representative prior to questioning nor to the right to have a legal representative present when being questioned by the judicial police.

Article 64 of the CPC provides that the accused has the right to consult with their legal representative (defence counsel) prior to questioning. Interestingly there does not appear

to be a provision that the accused has the right to have their legal representative present during such questioning.

International Provisions and Guidelines

Principle 17 of the Body of Principles on Detention; Human Right Committee's General Comment No. 20 states that detainees in police custody (and in pre-trial detention) require prompt and regular access to a lawyer, with initial contact within 24 hours of detention.

Paragraph N (2) of the Fair Trial Guidelines states the following:

> *Right to counsel:*
>
> *a) The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms.*
>
> *b) The accused has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.*
>
> *c) This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings.*
>
> *d) The accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. A judicial body may not assign counsel for the accused if a qualified lawyer of the accused's own choosing is available.*

2.2.3. Right to a legal representative

Domestic Provisions

Article 39 of the CPC provides that anybody who fails to seek a legal counsel when held by the judicial police shall inform the chairperson of the bar association for assigning a counsel to him or her. In practice the accused person is required to obtain a certificate from local authorities demonstrating that they are "indigent". Few people qualify for this status, and even where they do the delivery of such legal representation appears difficult to administer. Regardless of the provisions of Article 39 most suspects are dealt with without legal representation (see paragraph 4.1.9 below).

2.2.4. Right to silence/waiver of right

Domestic Provisions

There is no domestic provision which provides for a suspect having a right to silence.

International Provisions and Guidelines

Paragraph M(2)(f) of the Fair Trial Guidelines states the following:

> *Any person arrested or detained shall have prompt access to a lawyer and, unless the person has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.*

2.2.5. Right to freedom from abuse etc.

Domestic Provisions

Art 15 of the Rwandan Constitution provides that "*No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment*."

Abuse perpetrated by state agents would also be a breach of the Penal Code; i.e. Articles 176 and 177.

It is noted that these provisions are not specifically aimed at the arrest and detention of a citizen.

International Provisions and Guidelines

International provisions are more specific with regard to the prohibition upon abuse when a person is detained and interrogated.

Art 7 of ICCPR prohibits torture etc. in the same manner as the Rwandan constitution.

Paragraph M(7)(e) of the Fair Trial Guidelines states the following:

> *No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgement.*

2.2.6. Right to inform family/friend

Domestic Provisions

Art. 38 of the CPC provides that a person detained by the judicial police shall be informed of his right to inform any person they wish that they are detained. This does not explicitly

provide that they have the right for a person to be informed. It has been observed that those who are detained by the police do not have the opportunity to inform a friend/family member even if they are told that they have the right to do so. It is important that a person is given the right *to have* a friend/family member informed of their arrest and detention as is done in the International Provisions (see below).

It should be noted that this article also states that they are to be informed of their rights. There does not appear to be any explicit statement as to what those rights are.

International Provisions and Guidelines

Paragraph M(2)(c) of the Fair Trial Guidelines states the following:

> *Anyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.*

2.2.7. Right to medical treatment at the time of detention by the Police or Prosecutor

Domestic Provisions

There is no explicit domestic provision that a detained person has a right to medical treatment, if necessary. This right may be considered to be covered by the provision of Article 38 of the CPC where is states that the suspect is to be informed of all their rights.

International Provisions and Guidelines

Paragraph M(2)(b) of the Fair Trial Guidelines states the following:

> *Anyone who is arrested or detained shall be informed upon arrest, in a language he or she understands, of the right to legal representation and to be examined by a doctor of his or her choice and the facilities available to exercise this right.*

2.3. Remedies available to those wrongly detained

There are a number of possible avenues to explore for those who are improperly detained.

2.3.1. Domestic remedies before the Rwandan courts.

(i) Each of the detainees who is in custody as a result of a judicial order for their preventive detention will have the possibility of a bail application.

(ii) Application to the court pursuant to Article 89 of the Code of Criminal Procedure which states:

> ***Article 89***
> *When a person is detained unlawfully, any judge who is appointed to a court which is located near the place where the person is detained and whose competence covers the offences the detained person is alleged to have committed can; upon request by any interested party, order the officer who detained that person to appear and produce the detainee in order to indicate reason and manner under which he or she is detained.*

(iii) Engaging the provisions of Articles 48 and 51 of Law No. 34/2010 of 12/11/2010 on the Establishment, Functioning and Organisation of Rwanda Correctional Service ("Law Establishing RCS"). Art. 4(2) of the Law Establishing RCS provides that the RCS has a duty to respect the rights of detainees and prisoners in accordance with the law. Art. 48 of the Law Establishing the RCS provides that if an incarcerated person's rights are violated they shall have the right to seek the assistance from the authorities or the courts. Most importantly Art. 51 provides that:

> *"…the prison management shall:*
> *1. Remind the Court and the Public Prosecution in writing at least seven days before the date when the provisional detention period expires. If the Public Prosecutor does not tell the Prison Management that the incarcerated person's file was forwarded to the Court or that the provisional detention period was extended before the expiration of the provisional detention period, the Prison Management shall release him/her…**A Prison Director who detains or continues to detain a person whose detention period has expired shall be punished in accordance with the provisions of the Penal Code.**"*

2.3.2. International Remedies

(i) The African Union[10] has its own Court, the African Court of Human and Peoples' Rights. It has jurisdiction to hear cases involving allegations of non-compliance by member states with treaty obligations. Prima facie, complaints by many of those currently detained in Rwanda would be admissible.

(ii) An application being made to the United Nations Working Group on Arbitrary Detention. This organisation is tasked by the United Nations with intervening in cases of unlawful detention. In cases where the initial detention of a suspect was lawful and proportionate,

[10] Rwanda has been a member of the OAU since 25 May 1963.

the Working Group will regard continued detention as falling within the definition of "arbitrary" where it is clearly unreasonable.

The Working Group's power is essentially an investigatory one. It presents facts to a government, and invites a response. It then reports in writing to the General Assembly on an annual basis. It offers the great advantage of being able to establish the facts behind a particular case in a manner that is likely to be regarded as impartial. In essence, its efficacy depends upon the government bowing to international pressure to resolve a particular case.

2.4. The difficulty with the identified remedies

Nothing that is set out in this report should be taken as discouraging any steps being taken to advance any individual case along any of the potential paths set out above.

However, the scale of the problem as demonstrated by the survey, suggests an obvious problem, whilst the individual cases remain separate and distinct they will require a level of resources that is likely to be impossible to find.

Whilst it is entirely possible to conceive of individuals gaining their release and/or compensation for unlawful detention, it is very hard to envisage that a case-by-case approach will achieve either a just outcome for the majority of those detained or provide any measure of protection for future detainees.

Methodology

In order to understand the state of pre-trial justice in Rwanda it was necessary to identify the relevant matters which would be researched. In order to do this the research element of the project was split into two parts and then further sub-divided as set out below:

(A). **Arrest & Detention by Prosecuting Authorities**

i. The circumstances of arrest and the information provided to the arrested person;
ii. The circumstances of immediate detention and access to representation;
iii. The circumstances of questioning, the information provided prior to questioning, and access to representation during questioning;
iv. The length of time a person is held by the prosecuting authorities prior to being brought before a court;
v. The information retained and access to such information;
vi. The over-sight, if any, of the above matters by an independent body.

(B). **Detention or Bail pending trial**

i. The information given to a person upon being charged with a criminal offence;
ii. The length of time before being brought before an authorised judicial officer;
iii. The place of detention following charge;
iv. The length of time following charge to trial and access to representation;
v. The information retained on the above matters and access to such information;
vi. The over-sight of the above matters by an independent body.

3.1. Empirical data gathering

Questionnaires were created which were designed to obtain information from and about Judicial Police officers; prosecutors in the National Prosecution Authority ("NPPA"); and those persons who are currently held in prison awaiting a conclusion to their case. The

information required was designed to give a snap-shot of the situation regarding the matters set out in (A) and (B) above. Copies of the questionnaires are contained in Appendix 2.

The survey covered all four Provinces of Rwanda and the City of Kigali.

3.1.1. Persons awaiting a conclusion to their case ("Detained Persons")

The total number of Detained Persons in Rwanda as at the end of the financial year 2010/11 was recorded by the Rwanda Correctional Service as 7,876 (both male and female but excluding Genocide cases and Minors).[11] These persons were held in 14 prisons located throughout Rwanda .

This research was intended as a "snap-shot" survey carried out at five prisons, selected according to the following method:

From the beginning, it was proposed to select those prisons that account for at least 80% of all detainees. The prisons were sorted according to the population of each prison, in a descending order. After the sorting, it was apparent that there was a concentration in some Regions, namely Kigali City (PCK and Remera), North (Ruhengeri and Miyove) and East (Nsinda and Kibungo). To ensure the representation of all provinces, we maintained PCK in Kigali City, Ruhengeri in North, Kibungo in East, Gitarama in the South and Gisenyi/Nyakiliba in West (see Table A in Appendix 3).

A sample of 10% of the population of the Detained Persons[12] in each of the selected prisons were interviewed. A total of 457 detained persons (94.4% of male and 5.6% of women) were questioned. Table B in Appendix 3 sets out the number of those questioned at each of the selected prisons.

[11] See Table B in Appendix 1.

[12] 10% of the total prison population held on pre-trial detention.

3.1.2. Judicial Police

The police force is divided into "District Police Units" ("DPU") (set out below is a table showing the broad division of the police). Each District of Rwanda has a DPU and within each DPU are a number of police stations. There are a total of 30 DPUs, and a total of 73 police stations as per the table below.

Table 1: Distribution of the DPUs, Police Stations and Police Posts by Region.

Regions	**DPUs**	**Police Stations**	**Police Posts**
Central Region	3	9	43
Southern Region	8	17	68
Western Region	7	15	61
Northern Region	5	15	39
Eastern Region	7	17	72
Total	**30**	**73**	**283**

At each selected police station 3 judicial police officers, from those police officers who were at the police station, were questioned. A total of 15 police officers were questioned. The selected police station is set out in table 2 below. The police stations were selected on the basis of their proximity to the sampled prisons.

3.1.3. National Public Prosecution Authority

The National Prosecution Authority (NPPA) is headed by the Prosecutor General and the Deputy Prosecutor General. The Authority is structured as follows (figures in brackets represent the number of prosecutors at each level):

a. Primary Level Prosecutors (60);
b. Intermediate Level Prosecutors (75 plus 12 Chief Prosecutors);
c. National Level Prosecutors (15 plus the PG & Deputy).

Prosecutors at all three levels are involved in the arrest and questioning of suspects; in preparing the case against suspects; and making applications to the Court for the detention

of suspects. Primary and Intermediate Prosecutors are located within each region in Rwanda.

We interviewed one Primary Level Prosecutor in each region; two intermediate Level Prosecutors from each region, and two National Prosecutors, one from the Head Office and one from Musanze.

Table 2: Distribution of Police stations and Prosecution Locations visited

Prison	Police Stations (3)	Primary Prosecution Location (1)	Intermeditate Prosecutor Location (2)	National Prosecutor (1)
PCK	Muhima	Nyamirambo	Nyarugenge	Head Office
Ruhengeri	Muhoza	Muhoza	Musanze	Musanze
Kibungo	Kibungo	Kibungo	Ngoma	
Gitarama	Nyamabuye	Nyamabuye	Muhanga	
Gisenyi	Gisenyi	Gisenyi	Rubavu	

3.2 Interviews and Further Research

Once the data had been gathered and analysed, meetings were held with representatives of the Court, the Judicial Police and the NPPA. Further research was then carried out to investigate the veracity of the information that had been given during the course of the interviews. This is further discussed in section 4.4.

Interpretation of Data

4.1 Analysis and Discussion regarding detained persons[13]

4.1.1 Period suspects are held by police and prosecution

There is evidence of consistent detention of those arrested by the police and the prosecution beyond the maximum period of 10 days allowable under the Criminal Procedure Code. Of all those questioned in the prisons, other than PCK, 55% were detained for a period in excess of 10 days from the date of arrest before being taken before a court. In many of these cases it is a matter of days; however, extreme examples have been identified and there were five people in Gisenyi all of whom were held by the police/prosecution for over 40 days before being taken before a Court. One of these detainees had been held for 58 days from the point of arrest by the police before he was taken before a Court by the prosecution.

When the Prosecution Authority was given an opportunity to comment upon this issue, they said that often there was a delay in taking the detained person to the Court because there was insufficient transport available. This answer, whilst possibly explaining many of the cases, would not deal with the extreme examples identified.

4.1.2 Provision of rights upon arrest

Upon arrest by the police 64.7% of detainees who answered the question stated that they had been provided with a reason for their arrest by the police. Conversely, 27.6% said that they had been given no such information. It would seem that those interviewed, for the most part, did not consider themselves to have been further arrested by the prosecution and it may well be that those accused of crimes have little or no understanding of the difference between the police and the prosecution. This is not just of academic interest.

[13] References to numbers are to the designated number of a particular respondent at each prison – a decision was taken not to refer to individuals by name in this report.

The prosecutor has the power to detain a suspect and it is important that when a person is held in custody, they understand the reason for their detention at the hands of either the police or the prosecutor.

51.2% of detainees said that they had not been told by either the police or prosecutor of their right to legal representation. The Head of Judicial police said that the police would always provide such information and said that this would be recorded in the statement of the Judicial Police officer. It was difficult to verify the provision of such rights because there was no copy of the statement of the Judicial Police officer in a detainee's file. In any event there was anecdotal evidence given by detainees that they had been made to sign a statement without the opportunity of reading it first.

Because a suspect is often dealt with by one police officer only and there are no other persons present (e.g. a legal representative, paralegal, family member), it is easy for a Judicial Police officer to say that the suspect was provided with information about their rights when, in fact, they were not.

4.1.3 Informing family/friends

95% of those questioned stated that they had not been told by either the police or the prosecutor that they had the right to inform a family member or friend that they had been arrested and the location of where they were being detained. There was evidence that some of those detained were able to inform their family of their detention by asking other detainees who were released to let their family know or through visiting family members/friends of other detainees.

Anecdotal evidence was obtained which suggested that even when the detained person was aware of the right to inform a family member or friend of their detention they did not have the means to so inform.

4.1.4 Abuse suffered

45% of those questioned stated that they had been victims of abuse at the hands of those detaining them (i.e. police or prosecutors). The problem of such abuse is all the more relevant when considering that an individual in PCK stated that they had been beaten until they had said they were guilty. This was not an isolated example. One detained person in PCK said that he had been forced to plead guilty by having a gun pointed at them; another that he had been beaten and forced to sign a statement; two others that they were beaten and forced to accept the accusations being made against them. This issue is further highlighted by the example of Jackson Iyamuremye, discussed at paragraph 4.4.2 (at page 45) below.

The issue of accountability for such abuse is difficult to tackle given the involvement of the local defence force, reserved force (inkeragutabara) and the military in taking individuals to the police. A great number of people who end up in prison on preventive detention are taken to the police by the local defence force. There is some suggestion that detainees are beaten by those who take them to the police. Further research into the role of the local defence force in the criminal justice system appears necessary if there is to be accountability for abuse of detained persons.

The involvement of the military is also a cause for concern. An individual in PCK was arrested by the police and then handed over to the military. This individual was held by the military for a year before being handed back to the police. In total this person was detained by the police and the military, against his will, for a period of 404 days before he was taken before a Court and an order for his detention was granted.

4.1.5 Questioning

The vast majority of those detained by the police and prosecution were questioned during their detention: of all those detained by the police and prosecutor only 1% were not questioned by either the prosecutor or the police. Prisoners were, in general, questioned by both the police and the prosecutor (81%); however the data suggests that those persons

detained in PCK prison are more likely to be questioned by only the police; i.e. not by the prosecutor (25% in PCK compared to 2% in the other prisons).

The issue of questioning and abuse are linked to the significant number of those who are arrested being without legal representation. Of all the persons questioned, 82% were unrepresented during the interviews, and 76% were never told about a right to silence if they were not represented.

4.1.6 Record Keeping

It appears that there is some level of record keeping at the prisons which enables monitoring of the period detainees are held awaiting a conclusion to their case. Information was readily available to show the original date of arrest by the police. Interestingly, there did not appear to be any record of the date of arrest by the prosecution); the original date of an order for detention by a Court; and the original date for entry to the prison. It was also possible to determine the number of further orders for detention that had been made which renewed the original order for detention; e.g. Number 110 at Ruhengeri prison: The individual's record showed that they were arrested on the 16th of February 2011 and that they entered the prison on the 8th of March 2011. The original order for detention was made on the 4th of March 2011 and there had been five further occasions when the person had been before the court to renew the order for detention. The last order for detention being made on the 10th of August 2011.

What was absent from the records of those questioned was the date, if any, of the filing of a suit by the prosecution. There was an absence of any information in record form which established the status of the detained person and the date upon which a suit had been filed.

There appears to be limited awareness on the part of the Prison and the detained person as to their status. Without being informed of the status upon which they are held the individual, or the Prison Authority, is unable to raise the issue with the prosecution; take the matter to Court for a resolution where it appears that a person is being held in excess of

applicable periods of detention; or indeed release the detained person in accordance with Art. 51 of the Law Establishing the RCS.

4.1.7 Detention Periods in Prison

One of the most startling results from the survey is that 10% of those held in detention had been held for a period in excess of one year. That is for a period beyond the maximum period permitted under the CPC. It is worth mentioning that some of these detainees are accused of petty crimes whose order for preventive detention should, according to the law, not even be extended beyond the original 30 days.

It proved very difficult to establish if those held in prison were held pursuant to an order for preventive detention or if the prosecution had filed a suit.

The detainees, in general, did not have any idea what their status was and there was no documentary record which provided such information (see paragraph 4.1.6 above). Further, detainees generally do not know of the periods for which they may be held and the importance of whether they are held on 30 day preventive detention order or are held because a suit has been filed.

As a result, it was not possible to establish if those held in detention were held awaiting trial (i.e. a suit had been filed) or if they were on preventive detention. What is of concern is that there is no recording of the status of detainees so that the prison; court; or prosecution are in a position to bring them back before a court in order for them to be lawfully detained or for them to be released.

The results of the survey did show that 77% of those questioned who had been in prison for a period of more than 30 days had been before the court only once in order for the original order for detention to be granted. This would suggest that the prosecution had filed a suit with the court within the first 30 days of the person's detention or they had been held unlawfully. There was nothing within the detained persons records to establish the true

position. It is of grave concern that the detained person is unaware of their status and this is especially important given that 90% of those in prison had not been provided with any documentary information regarding the case against them (i.e. the suit which is filed with the court).

The failure to provide complete and timely information regarding the case against the detainee negatively affects his/her preparation of the defence and hence his/her right to fair trial (and fair judgment). This problem of lack of or limited access to documentary information regarding the case against them is mostly visible in indigent (poor) detainees who don't have defence lawyers. Those who can afford to hire a lawyer will easily get this information, through their lawyer, and be in a position to prepare their defence.

What is clear is that there is a an absence of consistent judicial oversight of the period a person is held in the prison because once a person is placed into prison they are not brought back before the court before the date upon which they are tried. It would appear that it falls to the Prosecution to seek to bring the case back before the court once they are ready to progress the case or for the court to list the case for trial once a suit has been filed.
The absence of consistent judicial oversight is compounded by the paucity of representation of those persons in the criminal justice system: there is nobody who can champion the rights of those placed into prison (88% of those questioned had no ability to see a representative). This lack of representation means that not only is there a failure to avoid detention periods in excess of the legal limit but also there are issues about a total inability on the part of those held in prison to do anything about their situation because they have no way to communicate with anybody about their case. Some of those spoken to during the survey expressed the desire for help in bringing their case before a court.

For example: No. 51 of Gisenyi has sought to obtain information about the nature of the accusation made against them, clearly protesting that they are innocent. The questionnaire records that the prison authorities have refused to send the communications written by the detainee. This is somebody held in prison without any apparent ability to raise her concerns about the case. When considering this case, it is relevant to note that there are other

detainees for whom it has proved impossible to raise the fact that they have been held for a period beyond that which is lawful. For example No. 115 of Ruhengeri states that he wants to instruct a lawyer but he is unable to make contact with his family in order to facilitate the instruction of a legal representative.

This apparent inability to communicate with those outside of the prison inevitably exacerbates the problem of people becoming "lost" within the prison. It may well be considered that this failure to facilitate communication and the failure to bring those detained in prison back before a court for consideration of whether to renew the order for detention is a breach of Article 9(4) of the Covenant on Civil and Political Rights (UN 1967).

It is simply not good enough to suggest that 90% of people detained awaiting a conclusion to their case have not been held in excess of the absolute period provided by law: Each and every detained person who is currently held in prison is at the mercy of the current system: a system which does not have adequate checks and safe-guards within it to prevent a person being detained for periods well in excess of the one-year maximum, and which, more importantly, has such a backlog within it so as to be impotent to deal with those cases of excessive detention.

If the results regarding the number of persons held for greater than one-year were applied to the numbers of those held in prison awaiting a conclusion to their case in the whole of the Rwandan prison system **it is possible that there are over 700 people who have been held for a period in excess of one year.**

Number 61 of PCK is a 35-year-old female who has been held for a period in excess of 12 years. This lady stated that she does not know why she is being held and has never been produced before a court.

Even those who have been placed into prison with a valid order for detention are at risk of becoming lost. For example Number 67 of PCK was originally placed into the prison with an order of the court. He has not been taken back to the Court since his original remand and has now spent over 6 years in prison. He claims that the police beat him. The fact that this

man has been placed into the prison system and has not been returned to court in six years demonstrates an obvious failing in the system and, from an individual point of view, this person has not been given the opportunity to raise his concerns about the treatment he received at the hands of the police.

It should also be observed that the breach of the law in holding persons in excess of the permitted maximum may result in people spending longer in prison awaiting a conclusion to their case than they are ultimately sentenced to; i.e. people will be held in prison for periods which are greater than a Judge decides is appropriate for the crime committed. Indeed further research has identified that this does occur (see section 4.4.2 below). This raises great concern especially in cases where the detainee pleaded guilty to his/her crime/offence. According to Article 33 of CPC such cases should be treated expeditiously and hence the seized court must examine the case within fifteen (15) days from the reception of the case.

The results of the questionnaires make it abundantly clear that once a person has been placed into prison pursuant to an order of the Court (i.e. without being granted bail) they generally do not return to the Court for a renewal of the Detention Order at all. The results show that 77% of those questioned who had been in prison for a period of more than 30 days had been before the court only the once in order for the original order for detention to be granted. The individual is not taken back to the Court upon the suit being filed and is therefore unaware of their status or any time scale within which the case will be dealt with. The failure to either bring a detained person back before the court for a renewal of the detention order or for information to be given regarding the filing of a suit means that there is no trigger moment when it becomes clear that a person is being detained in custody for an excessive period of time.

4.1.8 Extreme examples

Certain individuals who are held awaiting a conclusion to their case are considered worthy of mention because they highlight the way in which detained persons may become "lost" within the criminal justice system.

(a) A 48 year-old male has been held in PCK (No. 14 of PCK) since the 6th of November 2005. This individual has been held for just under six years. He made the comment to those interviewing him that he did not know what he was detained for and that he had "never been told of what he was accused."

(b) Number 67 of PCK is a 26 year-old male. He was 21 years old when he was placed into prison on preventive detention. He has spent almost six years in prison awaiting a conclusion to his case. He stated that he was forced to plead guilty through being beaten by the police. Although he has pleaded guilty he has yet to be dealt with by the Courts; appearing only once in those six years. At the least he has yet to be sentenced; more importantly his plea of guilty through beating has not been addressed before a Judge. It is of note that this man is said to have committed a theft. Art. 51 of Law Establishing the RCS provides that a person is eligible for provisional release once they have served one quarter of their sentence (provided they have been of good behaviour whilst in prison). This individual may well have now served a sentence far in excess of any sentence he would have served had he been convicted and sentenced in a timely fashion.

(c) An 18 year-old male was held for three years on preventive detention (No. 129 of PCK). This is a significant case because the individual was only 15 years old when originally placed into custody and ought properly to have been dealt with as a minor (this individual is dealt with in more detail in section 4.4.2 (at page 45) below).

(d) A 21 year old male (No. 56 of Kibungo) has been held in Kibungo prison for just under three years awaiting trial.

(e) Despite requesting legal assistance and receiving no answer to his request, No. 38 of Ruhengeri has spent just over 6 and a half years on preventive detention.

(f) No. 89 of Ruhengeri is a male who has now spent over nine years on preventive detention.

(g) No. 5 of Gisenyi was placed into preventive detention when he was 22 years old. He is now 31 years old and has yet to see a conclusion to his case; having spent almost nine and a half years in custody.

(h) 26 year-old male (No. 27 of Gisenyi) has spent over four years in Gisenyi prison awaiting a conclusion to his case. His inmate (No. 35 of Gisenyi) has spent almost six years on preventive detention.

4.1.9 Level of representation

There is a distinct lack of representation for those arrested and detained. Of all those held in prison only 12% have ever had legal representation or met with a legal representative. This lack of legal representation allows, it is suggested, the failings in the justice system to go unchallenged.

4.1.10 Information regarding allegations

Compounding the lack of representation for those detained is the fact that 90% of those detained said that they had never been shown a file or information regarding the case against them. This failure to provide information, together with the lack of representation, must have inevitable consequences for any trial of the accused person.

It is worth noting that in the course of the further research, discussed at section 4.4.2 below, it became apparent that the detained person is not given access to the file which contains the evidence against them at the time the suit is filed. At best, and providing the suspect is

fortunate enough to be transported to the Court, the suspect is given the opportunity to see the file a few days or the day before his trial. Such a procedure, irrespective of whether the untrained individual is equipped to deal with paperwork, simply does not provide the suspect any time to prepare their defence and fails to meet the standards for a fair trial laid down in the African Fair Trial Guidelines at section 3 "*Right to adequate time and facilities for the preparation of a defence*."

4.1.11 Use of Bail

There is some evidence to suggest that the Prosecution and the Courts are failing to adequately use a system of granting bail rather than preventive detention.

For example number 131 of PCK: a female and mother wants to be granted bail in order to care for her child.

The impact of the over-use of preventive detention is damaging not just for the person concerned but for the family as a whole. And it is all the more important to avoid the use of preventive detention when there is the acute risk that the person will become stuck in prison without an obvious means of being released (see paragraph 4.1.6 above).

The statistics on the use of preventive detention which are available for 2010 and produced by the NPPA are telling (published on the NPPA website at www.nppa.gov.rw): Of the total of the 14,183 applications for an order for detention made by the Prosecution, they were successful in 73% of the cases. This represents a total of 10,367 people being placed into the prison system in 2010 alone. That figure represents 20% of the prison capacity as at December 2010. The lack of representation of those accused at the time of the application for preventive detention may be important with over 80% being unrepresented at the time that the order for detention was made.

4.2 Analysis & Discussion regarding Judicial Police.

4.2.1 Words used upon arrest and informing of rights

All of the respondents stated that *they* had a standard form of words which they used when arresting a suspect and when informing the suspect of their rights. Whilst that may be so, there was no standard form of words used relative to each of the respondents. It is possible to conclude that there is, therefore, no standard form of words which are used by all police when making an arrest and when informing suspect of their rights.

4.2.2 Provision of information about rights

The finding identified at 4.2.1 above is important when considering what rights a suspect is informed they have upon arrest; detention; and questioning by the police. As a result of their being no standard form of words which the police use when making an arrest and when informing a suspect of their rights it falls to the individual officer to know what rights a suspect has and to remember to inform the suspect of such rights. It should be noted that the lack of an explicit legislative provision as to the rights a suspect has (see 2.2.6 above) may be causative of the failure on the part of the police to provide consistency in which rights a suspect is informed that they have.

An analysis of the answers provided by the police to questions about the rights they inform the suspect they have shows that 20% of the police fail to inform the suspect that they have a right to legal representation at the police station. The respondents who appear to fail to inform suspects of this right do state that they inform the suspect that they have a right to be questioned in the presence of their lawyer (Respondents 1 and 2 for Gisenyi). This subtle difference is important because for the most part those arrested in Rwanda do not have a lawyer. What these suspects need to be informed of, and in clear terms, is that they have a right to *a* lawyer and that if they cannot afford the lawyer the state will provide the lawyer. This problem appears to arise from the failure on the part of the police to have a standard form of words regarding the rights which a suspect has upon arrest.

It is interesting that in answering the specific question as to whether the respondent informed a suspect of the right to a legal representative all of the respondents stated that they always informed a suspect of such a right. That 100% did so inform a suspect of this right is at odds with the findings observed in the paragraph above.
53% of the respondents appear to fail to inform the suspect that they have a right to medical attention should that be necessary.

All but one of the respondents stated that they inform the suspect of the right to tell family or friends of the fact that they have been arrested. There was one respondent who stated that they "sometimes" tell the suspect of this right. All respondents stated that they inform the suspect of this right immediately upon arrival at the police station. It should be noted that there may be problems in the practical application of such a right where the family or friend who the suspect would wish to be informed is not able to be contacted other than physically meeting with them.

There is apparently no police officer who informs the suspect that anything the suspect says may be used in evidence against them. It does appear that the concept of imparting such a warning is totally overlooked by the police. The head of the Judicial Police was questioned as to whether he was aware if officers did so inform and he responded by saying that they would. Such a response is not borne out by the responses provided by the judicial police questioned; none of whom stated they give any such warning to the suspect.

Not one respondent stated that they informed the suspect that they did not have to answer police questions without a legal representative being present unless the suspect had waived such a right in writing.
There is inconsistency in the manner in which the rights of the suspect are communicated with the following results arising from the question as to the manner in which the respondent inform the suspect of their rights:

Orally:	13%
Written:	47%
Both:	40%

These results, it is suggested, demonstrate the inconsistency that arises in the way in which a suspect is dealt with and, in all likelihood, arises out of the failure to have a standard way in which a suspect is arrested and informed of their rights.

The inconsistency occurs again when considering the responses provided to the question as to whether the respondent recorded the fact that a suspect had been informed of their rights: 60% of respondents said that they always recorded that information; 20% said they sometimes did; and 20% said that they never did. Again, it seems essential that there be a set procedure for the way in which suspects are informed of their rights and equally, a set procedure for the recording of the fact that such information has been given to the suspect.

4.2.3 Record of Arrest

All but one respondent stated that they completed a record of arrest and that such record was provided to the prosecution. It is slightly worrying that there was one respondent who stated that they only sometimes completed a record of arrest and another respondent who stated that they only sometimes provided the record of arrest to the prosecution.

4.2.4 Request for legal representation and delaying questioning

27% of respondents stated that when a suspect requested legal representation but was unable to afford such representation the respondent did nothing and simply proceeded to question the suspect. This is a clear breach of Article 39 and when considered alongside paragraph 4.2.2 [re. informing suspect of silence unless they waive their right] suggests that a suspect may well answer police questions when there is no power to make them do so and where they have, in effect, been denied legal representation.

All but two respondents stated that they always delayed questioning a suspect in order for a legal representative to be present. One respondent stated that they never waited and another that they sometimes waited. During the course of speaking with a criminal defence

lawyer it became clear that proceeding to question a suspect before their legal representative had arrived at the police station was a common occurrence.

4.2.5 Private Consultation

13% of respondents stated that they never allowed a suspect to have private consultations with their legal representative; and 13% stated that they sometimes allowed a suspect to have a private consultation with their legal representative.
Indeed 27% of respondents stated that there was specific area within which a suspect may meet with their legal representative. Again, anecdotal evidence from a criminal defence lawyer suggests that it is often very difficult to speak with a client without being overheard by a near-by police officer.

4.2.6. Questioning of unrepresented suspects

93% of respondents stated that when a suspect was unrepresented at interrogation, they were always interrogated without anybody else being present. It is important to note that such a situation not only leaves a suspect vulnerable to inappropriate behaviour on the part of the police (as to which 45% of pre-trial detainees stated they had experienced abuse at the time of their arrest) but also the police vulnerable to fictitious accusations of such abuse.

4.2.7 Record of interrogation

100% of those asked stated that a record of the interrogation with the suspect was made and the suspect was always asked to sign the record as being accurate. Such recording is, it would seem, in fact the officer writing a statement of the suspect based upon what information is gained in the course of the interview. There is no provision for objective recording of what the suspect says to the police such as an audio recording of the interrogation.

4.2.8 Knowledge and Training

All respondents were aware of the maximum period that the judicial police are able to detain a suspect and all said that they had never exceeded such a period. All but one respondent had received police training on the rights of a suspect.

4.2.9 Further observations

Clearly there was some getting of heads together by the respondents to the questionnaires. For example in answer to question 9, respondents 1, 2 and 3 at Muhanga all put down the words: "There are some rights we inform them and record and there are others we inform verbally (without recording it anywhere)".

There is clearly a failure on the part of the police to state that a person has the right to be provided with a lawyer, rather than the right to have a lawyer present. When a person is told that they may have a lawyer present but that person is unable to afford a lawyer they are more than likely going to say they will not have a lawyer.

4.3. Analysis & Discussion regarding Prosecutors

Seventeen prosecutors were approached to provide information regarding the cases which they had dealt with during 2010.

It is acknowledged the nature of the questions asked and the number of such questions demanded that a significant amount of time would have been incurred by each prosecutor in providing the information. However, the responses given demonstrate that either the respondents were unwilling to undertake such laborious work or that it was, in any event, extremely difficult or impossible, for such information to be given by each prosecutor. This does, of course, clearly highlight the issue of data management in the NPPA: They appear to have no system to electronically keep and maintain a suspect's data/information which would facilitate the easy finding of the arrested persons' information.

Of those that did respond, it is considered that the information is not possible to analyse in any meaningful way.

Notwithstanding the foregoing, the following observations are made with respect to some of the responses provided:

4.3.1 Muhanga

Four prosecutors returned questionnaires.

The first respondent appeared to have made some effort in providing a response; however for the most part the answers to the questions given were that they did not have sufficient information to give an answer. Further, the answers given appeared to demonstrate clear inconsistencies; e.g. In response to question 14 (relating to the number of applications made for files received in 2010) the answer was given that 240 applications had been made for orders for preventive detention.

In answer to question 15 (the number of orders granted pursuant to such applications) the answer was given that there was insufficient information to provide a figure. If the answers given are accurate it demonstrates a complete absence of any record as to the status of the accused. What must result is that there is no record of the date of the order for preventive detention and, therefore, no system which would allow for the prosecutor to be aware that a period of preventive detention was going to expire. Without this information it is inevitable that the prosecutor will be unable to bring a person back before the Court for a renewal of the order for preventive detention.

That view is confirmed by the responses given in answer to question 22 (the period of time the accused has been held on preventive detention) and question 23 (the number of cases in which the prosecution failed to renew an order for preventive detention within the 30 day time limit) in which it was stated that the prosecutor did not have sufficient information to provide an answer to the question.

It is also of interest that the second respondent provided the following comment when answering question 8 (the manner in which the prosecutor became involved in the case and the mode of disposal/action taken by the prosecutor):

"Most of the time the suspect is put in preventive detention, even dropping the case comes afterwards (i.e. after he/she has been detained)".

That a suspect would be held in preventive detention pending the decision of a prosecutor as to whether to proceed with the prosecution raises obvious concerns about the efficiency of file review.

4.3.2 Musanze

Only one prosecutor provided a response. This prosecutor stated, in answer to question 1, that they had received 1094 cases in 2010. In answer to all other questions it was said that they either did not have sufficient information to respond or it was "difficult to provide a correct figure".

4.3.3 Nyarugenge

Only one prosecutor returned a questionnaire. The prosecutor stated that they had received 698 cases in 2010. Thereafter the prosecutor consistently answered that there was insufficient information to provide an answer to the questions asked.

However the prosecutor stated against question 31 (the period of time a suspect has spent on preventive detention following the filing of a suit) that all cases had been filed with the court within the required 30 days. This statement raises an immediate issue: if the prosecutor has been unable to provide any information as to the questions raised in the questionnaire it is difficult to see how it is possible for them to say that they have adhered to a time limit for filing with the court. A suspicion is raised that the prosecutor is simply stating what they consider to be an appropriate response without any basis for doing so.

4.3.4 Ngoma-Kibungo

It is a similar situation for the responses provided by the prosecutors of this region. Three prosecutors returned the questionnaires an, again, the answer to almost all the questions was that it was not possible to provide the information requested. Of interest were certain comments by the first and second respondents who said, in answer to question 3 (the number of cases in which there is a record of the suspect being informed of their rights upon arrest) that it was difficult to know because the prosecutors were changing all the time.

4.4 Further Research

Once the preliminary results, as set out in the preceding section, had been gathered an opportunity was given to representatives of the Courts; the Judicial Police; and the NPPA to make comment upon the findings.

4.4.1 Discussions with representatives of the Courts and the NPPA

The representatives of the NPPA and the Court said that it was not possible that an individual could be held in pre-trial detention beyond the period that was allowable under the law.

The NPPA said that in each of the cases of those people who appeared to be held beyond 30-days on preventive detention but for whom there was no evidence of a renewal of their preventive detention it would have been the case that the prosecution had filed a suit – thereby bringing to an end the need for further renewal of the preventive detention until the date of trial. The NPPA said that it was then for the Court to list the case – a matter which was outside of the control of the prosecution.

4.4.2 Further Investigations of Prisoners' Files

As a result of the discussions the issue was investigated further by way of a return visit to the PCK prison in order to establish whether a suit had, in fact, been filed for those who had been detained in prison beyond 30-days but for whom there had been no further order of the Court for preventive detention.

Of the 35 cases which were further investigated only one person had been made the subject of a renewal of preventive detention (i.e. a second order of the Court had been made granting preventive detention). In that individual's case the Court had granted a renewal of the preventive detention over three weeks after the original order had expired. The Court would have had no power to make such an Order and it would appear from this case that the Court is willing to sanction the unlawful detention of a person.

There was no record in the other detainees' files to show that a suit had been filed. It was possible to investigate the Court record and the records held by the NPPA to obtain information on the date a suit had been filed.

It seems that the NPPA does file a suit in order to obviate the need for any further order for preventive detention. However, this information did not appear to have made its way to the prisoners' files and consequently the Prison Authority would have no way of establishing the status of the prisoner.

If it is right that the Prison Authority are unaware that a suit has been filed, and that there has been no request to extend the period of preventive detention, then strictly the Prison Authority ought to be releasing the suspect in accordance with Article 51 of the Law Establishing RCS (see section 2.3.1 above).

The NPPA say that they inform the Prison Authority on a monthly basis of all those suspects for whom they have filed a suit. Anecdotal evidence was provided which suggests that this procedure is not always followed. What is clear is that there is a failure in communication between the various agents involved in the Criminal Justice System.

Pausing there, the poor level of communication between the various agents is highlighted by the example of an individual by the name of Jackson Iyamuremye (number 129 of PCK). This case also draws attention to the abuse the police use in extracting confessions or admissions of guilt, even when the person has not committed the crime. Jackson was arrested by the

police on the 14th of April 2009, he was aged 15 at the time. The police questioned him about the accusation that he had raped his sister.

The file showed that he had said he was guilty to the police. He was questioned by the prosecutor on the 15th of April 2009 and Jackson denied the allegations. Jackson explained this discrepancy as resulting from the torture to which he was subjected by the judicial police officer. Jackson was placed into preventive detention by an order made on the 22nd of April 2009. The Court file reveals that on the 12th of January 2010 Jackson was tried in his absence because he did not appear for his trial. It was also recorded that he had been duly summonsed.

If that is right, there must have been a failing on the part of the prison in not producing him. The alternative is that the Court, in fact, never summonsed him. Irrespective of his absence Jackson was acquitted of the crime. The Judgment of the Court was delivered on the 28th of January 2010. Again, this document did not reach the prison and Jackson remained in custody until the 29th of May 2012 after Jackson asked a legal aid visitor to the prison to find out why he had not been dealt with by the Court: Jackson had been before the court once in April 2009 and no further information had ever been provided to him. Jackson spent three years in prison for a crime he did not commit. Jackson was 15 years old when he was sent to prison; he was 18 upon his release.

The further research did reveal that there is a not insignificant number who are ultimately acquitted of the crime of which they are accused: of the 35 cases that were re-visited, six were acquitted of the crimes. Number 149 had spent one year and six months in prison (a period which meant that she had been held unlawfully) and was ultimately acquitted of the crime.

Number 138 was held for a period of two years awaiting trial. They were ultimately acquitted.

Other detained persons state that they are guilty from the outset but remain in custody pending a determination of sentence for an excessive period of time. For instance No. 103

of PCK was originally placed in custody on the 15th of November 2010. They said that they had pleaded guilty from the outset but were not sentenced until the 6th of January 2012; this is in contravention of what is provided for under Article 35 of the CPC. They had been held in custody for a period of one year and 2 months. They were sentenced to imprisonment of 1 year. This person had, therefore, been incarcerated for a greater period of time than that which he was ordered to serve for the crime he had committed.

Another such example is that of number 165. On investigating this person's file it showed that he had been arrested on the 21st of March 2011. When appearing before the Court on the 13th of April 2011 he said he was guilty. The Court ordered that he be placed into preventive detention. He was next brought back before the Court for Judgment and sentence on the 27th of January 2012. He had been held in prison for a period of nine months. He was sentence to five months and was immediately released.

Similarly, there are those who are found guilty but are sentenced to periods of imprisonment which are less than the time they have served waiting for the trial; e.g. Number 147 who was sentenced to imprisonment of five months but had been on remand for five months and two weeks.

There was a delay in the receipt of the Judgment at the Prison and consequently there was a delay in the release of the Prisoners. Some of those who had already served a period of time in custody greater than the ultimate sentence continued to remain in custody for further days whilst the Judgment was transmitted to the Prison.

4.4.3 Discussions with representative of Judicial Police

The Director of the Judicial Police said that, despite the evidence suggesting that 45% of persons arrested stated that they had been subjected to abuse at the hands of the police, he was confident that this was simply wrong. He said that he knew of only two cases of abuse of a detained person. He said that the police officers implicated in those matters had been dealt with in the criminal justice system. It is regrettable that there should be a denial of the

possibility of abuse at the hands of Judicial Police officers. In most cases an officer is alone with the suspect and there is therefore no protective measure against abuse by the police, or indeed, against false accusations of abuse by the suspect. The Director of Judicial Police did say that he would welcome an independent person being present at all police interviews to protect the rights of the suspect and the police from false accusations of abuse.

Of note is that the Director of Judicial Police was asked if officers would inform a suspect that what they say may be used in evidence against them. The answer given was that they always would. It has to be said that this assertion must be treated with a high degree of caution given the individual responses provided by the police officers questioned (as to which see 4.2.2 at page 38 above).

Conclusion & Recommendations

The *de jure* position in Rwanda is crystal clear and in the regional context Rwanda is to be congratulated on the laws which, in principle, govern the way in which the accused are treated by the state. Unfortunately, there is overwhelming evidence that the *de facto* position in Rwanda is a cause for concern. It should be pointed out that the problems appear to stem from systemic failures. These issues are discussed in detail in section 4, but it is felt that of greatest significance are the following points (reference should also be made to the summary given in the Executive Summary):

(i) There is no over-sight of the actions of the police upon arrest and detention of a suspect which may result in a failure to inform them of their rights and liable to abuse;

(ii) There is no mechanism of stream-lining those cases that need to be dealt with in an expeditious manner in courts of law especially where the suspect pleads guilty or where the offence is a petty crime for which the sentence (if found guilty) is less than a possible period he/she can risk spending in prison;

(iii) There is insufficient over-sight of the status and period of those held in pre-trial detention resulting in people being held in prison unlawfully and in some cases for years. There is limited in-built monitoring mechanism within the criminal justice system;

(iv) The NPPA provides insufficient information regarding the status of the accused person and the accusations that they face. Even when such information is given it is not provided in a timely fashion;

(v) Accused persons are given too little time to prepare a defence;

(vi) The Prison Authority is failing to release all suspects once their period of detention has expired;

(vii) As a general issue, there is a poor level of communication between/among the criminal justice agencies and this negatively impacts upon the detainees.

There are legal avenues for the detainees to explore, both domestically, regionally and internationally before the United Nations Working Group on Arbitrary Detention. In this latter forum, the prospects of individual detainees having their complaints upheld is very high. However, it may be that the scale of the problem means that enlisting the co-operation of the Rwandan Government, rather than litigating against it, may more readily provide a solution to the problems identified and, crucially, prevent the recurrence of the problems.

Recommendations

(a) Long-term

The long-term goal must be to improve the system so that examples such as that presented by Jackson cannot occur. Greater co-ordination between, but also scrutiny of the actions of the agencies in the criminal justice system is essential to enable the system to avoid creating a backlog and committing abuses of suspects rights. It is considered that the Government should commission a full review of the criminal justice system in order to achieve greater efficiency and also better coordination and scrutiny of the actions of the agencies in the criminal justice system.

(b) Short-term

In the short-term there is an overwhelming need for the backlog of detained persons to be removed. This must be tackled as a matter of urgency given that there are people held in custody who, at the least, will likely be released having served longer than any sentence they may receive, or at worst, are being held unlawfully.

Removing the backlog will aid the efficiency towards which the government is working. It is recommended that a working party is established which is able to enter the prisons and review the file of all those who are held in pretrial detention.

The working party should have the power to bring a case before the Court in order that the case may be immediately concluded or for a timetable to be imposed.

A designated Judge should be nominated to hear all cases brought before the Court by the working party.

The Government is urged to give consideration to tendering for proposals as to how to meet the need to remove the existing backlog. Such a tendering process will require the development of the proposal set out above and the Legal Aid Forum would welcome the opportunity to work with the Government in developing that proposal.

(c) Further Recommendations

Arrest & Detention – Provision and Enforcement of Rights

- It is essential that a paralegal network is established which can provide representatives to those persons arrested and held by the Police and Prosecutor. This will ensure that an independent person will monitor the rights of those detained[14]. It is recommended that the Government integrate paralegalism in the formal justice sector, and consider the necessary budgetary requirements for the training and provision of such paralegals. In the interim it is considered that a detained person should have the right to have another person present whilst they are questioned by the police.

- A standard form of words should be introduced to be used by the police at the time of arrest.

- The Code of Criminal Procedure should be amended to include a specific statement of the rights which a detained person has, and the fact that they

[14] A short summary of the impact that early intervention by Lawyers and Paralegals can have on improving the criminal justice process is set out in *Improving Pretrial Justice: The Roles of Lawyers and Paralegals*, 2012, published by the Open Society Foundations (a copy can be obtained from "www.**opensocietyfoundations**.org/"

must be informed of such rights. As a minimum the rights ought to be in accordance with international standards. In particular, those rights should include a specific right to have a family member/friend informed of the suspect's arrest and that if the detained person is unable to do this the authorities will inform the nominated person on the suspect's behalf. A further specific right should be included to provide that a person has the right to silence if they are unrepresented, unless they specifically waive such a right in writing.

- The list of rights granted by the amended CPC (see bullet above) should be set out at every police station at which suspects are detained and should include the time limits during which they may be detained by the police and prosecutor. Every person detained by the police should be given this list, both orally and in writing, at the time they are placed into police custody. A record should be kept of the provision of such rights and the suspect asked to endorse the record to say that they have been given the information about those rights.

- The Code of Criminal Procedure should be amended to include a specific prohibition of abuse when a person is being interrogated by the police (as to which see paragraph 2.2.5 above).

Judicial Oversight

- The Code of Criminal Procedure should be amended to provide that every person is entitled to be released on bail unless there are specific grounds for not granting bail. These specific grounds would be:
  (i) That there exist substantial grounds for the belief that if released on bail, whether with a bond or not, he will:
    (a) fail to surrender;
    (b) commit an offence while on bail;
    (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(ii) that it appears that the accused was on bail in criminal proceedings on the date of the offence;

(iii) having previously been on bail in the proceedings, the accused has broken the terms of their bail;

(iv) that the accused ought to be kept in custody for their own protection.

Judges should enquire of the accused financial circumstances and a bond only be set at an appropriate and proportionate level, if at all.

- The Judge before whom a suspect is first taken should inform the suspect of their rights and confirm that they were informed of such rights by the police and prosecutor. Any alleged failure on the part of the Judicial Police or the Prosecutor should result in the Judge requiring the production of the arrest record to establish if it was endorsed by the suspect.

- The Code of Criminal Procedure should be amended to provide for the following procedural rules when dealing with an accused person:

    (i) On each and every occasion a person is taken before the Court the Court must set a date for the next hearing and state that date in open court. If the person is to be held in prison until that next hearing the Court must draw an order stating that the individual is to be held in prison **only** until the stipulated date and that they **must** be produced before the Court on that date.

    (ii) The Court administration should place the case in the court list for the day stated by the court to be the next date the case is before the court. This date is to be placed in the diary at the time that the Court states that date. When the diary is produced it will therefore contain that case.

(iii) No prison may admit a person without a valid order for their detention which contains the date upon which they must be produced before the court – it is in effect an order for their production before the court on the stipulated day.

(iv) With these rules in place the following procedure may be followed:

Upon being produced before a Court for the first time a suspect should enter a plea:

(a) If the plea is guilty sentence should follow within 30 days of such plea and the date set, at the time of the plea and in open court, for this return hearing. If the suspect is to be remanded in prison pending sentence the date upon which he must be returned to Court is to be written on an Order providing for his detention. The Court administration will place the case in the diary for the date 30 days from the date the case is in the court. The plea of guilty is to be taken as establishing the accused guilt and the accused may be sentenced thereafter (such a step would move Rwandan into line with the common law system).

(b) If the plea is "not guilty" the NPPA should be given a date by which the suit should be filed, this may well be after the Judge has discussed the nature of the case and the time the Prosecutor deems necessary to file the suit. A date 7 days after this date should be set as the next date the case is before the court and, if the accused is to be held in prison awaiting trial, an order should be produced detaining the accused until such date (this order will stipulate that the accused is to be produced at court by the RCS on that date). This date will be placed in the court diary. If the date is more than 30 days from the date upon which a plea is entered the next date should be set as being 29 days from the date of the plea in order for the order for preventive detention to be renewed. At this renewal hearing the date may be set for the date upon which the NPPA are

to file the suit. Ultimately the accused will be produced before the court 7 days after the suit was filed. When the suspect is produced before the Court at this return hearing they will be provided with a copy of the file which contains the evidence against them and a date will be set for trial (this date should be set so that the person detained is not to be held for greater than the maximum period allowable under the law and, again, should be provided in open court at the time of the review of the evidence and in open court). This hearing will also provide an opportunity for the court to review the case and consideration given to disposal; indeed it may be that the suspect would wish to change their plea to guilty.

(c) In the event of the NPPA failing to file a suit by the date set the suspect will be taken to Court on the designated date (i.e. the date set as being seven days after the date on which the suit was to be filed) as a consequence of the nature of the order which provided for his detention. The Judge will be able to enquire as to why no suit has been filed – the Judge is starting to case manage. It may be that the Court wish to consider the granting of bail or disposing of the case in some other way. It may be that a further date should be set by which a suit is to be filed and the suspect produced before the Court – this should be not more than 30 days later, and, once again, any such date will result in an order for detention which expires upon that date. Such a mechanism will ensure that there is some judicial oversight of the progress of the case and also ensure that detained persons are brought regularly before the court.

(d) The prison holding a person ought to automatically take a detained person to Court on the date stipulated in their order. In this way if the detained person is taken to Court and if the Court and Prosecution have lost track of the case enquiries may be made and

the situation remedied. Of course, if the prison fail, the case ought to be in the Court list and when it is called into court and the detained person is not produced the Judge can issue an immediate order for the production of the detained person in order for an enquiry to be made of the failure to bring them to court.

(e) Things may still go wrong. The accused needs to have a representative in order to alert the court to any failing in the above procedure.

- The Code of Criminal Procedure ought to be amended to provide for specific sanctions against the RCS for any instances of unlawful detention (the RCS ought to be able to avoid any such sanction by the appropriate use of s.51 of the Law Establishing the RCS). A level of compensation ought to be set which is payable to all those unlawfully detained.

Further use of Paralegals

- It is understood that establishing a fully funded state provided legal service is prohibitively expensive. It is possible that the provision of paralegal representation at important stages of the criminal system may improve the system as a whole. It has already been noted that the provision of representation at the time of detention by the police is important. Other areas where the use of paralegals will increase the efficiency of the justice system and reduce human rights abuses are:

(i) The provision of legal assistance at the remand hearing can greatly reduce the number of people placed into pre-trial detention. It is recommended that a pilot scheme be established to investigate the role that paralegals might be able to play in providing legal assistance to those brought before a

court. It may be that there needs only be one paralegal at each remand court.

(ii) Each prison should contain a paralegal representative, funded by the Government, who is able to take cases before a court where it appears a suspect has been detained unlawfully.

Appendix 1: Table A – Prison Capacity

N°	Prison	Year of construction	Capacity at construction	Current population	Capacity As of Dec 2010	Remarks
1	**PCK**	1930	2500	4477	2500	No construction extensions
2	**Remera**	1997	5000	5287	5000	No construction extensions
3	**Cyangugu**	1974	3412	3625	3412	No construction extensions
4	**Gikongoro**	1968	1927	3932	1927	No construction extensions
5	**Gisenyi**	1937	2000	3313	2500	Extension at Gikombe site
6	**Butare**	1956	5750	8898	8750	New construction works done
7	**Gitarama**	1973	5000	7770	5500	Renovations & extension done
8	**Mpanga**	2005	7500	7233	7500	Numbers less than capacity
9	**Ruhengeri**	1935	1500	2138	1700	Transfers to Gikombe site
10	**Kibungo**	1934	1500	2473	1600	Extension work done but numbers still high
11	**Miyove**	1975	1500	2058	1600	Extension works done but numbers still high
12	**Nsinda**	1975	6000	8186	6500	Extension works done but numbers still high
13	**Nyagatare**	2003	**500**	**175**	**500**	**Numbers less than capacity**
14	**Rilima**	1982	3000	3480	3125	Extension works done
	TOTAL		**47 089**	**63 045**	**52 114**	

Appendix 1: Table B– Prison Population: End June 2011

No	Prison		Genocide				Droit Commun				MINORS				TOTAL	Babies
			Male		Female		Male		Female		Boys		Girls			
		Planned Capacity	convicted	Arrested	Convicted	Arrested	Convicted	Arrested	Convicted	Arrested	Convicted	Arrested	Convicted	Arrested		
1	PCK	2,500	876	15	232	1	1,388	1,491	244	152	17	45	7	9	4,477	51
2	Remera	5,000	3,140	26	0	0	797	1,324	0	0	0	0	0	0	5,287	0
3	Rilima	3,125	2,482	6	95	0	644	174	64	15	0	0	0	0	3,480	12
4	Gitarama	5,500	4,780	19	355	0	1,704	560	160	42	109	26	11	4	7,770	52
5	Mpanga	7,500	6,081	12	333	0	730	17	60	0	0	0	0	0	7,233	0
6	Butare	8,750	6,133	35	651	0	1,606	196	265	12	0	0	0	0	8,898	35
7	Gikongoro	1,927	2,724	0	156	0	636	365	39	11	0	1	0	0	3,932	11
8	Miyove	1,600	788	0	36	0	581	561	31	61	0	0	0	0	2,058	6
9	Cyangugu	3,412	1,811	1	75	0	1,294	239	164	15	20	4	0	2	3,625	11
10	Gisenyi	2,500	1,252	0	0	0	1,571	490	0	0	0	0	0	0	3,313	0
11	Ruhengeri	1,700	610	2	110	0	30	1,202	104	28	20	30	0	2	2,138	37
12	Nsinda	6,500	5,092	17	199	0	2,152	543	118	65	0	0	0	0	8,186	16
13	Kibungo	1,600	1,278	5	57	0	477	577	43	36	0	0	0	0	2,473	8
14	Nyagatare	500	96	0	1	0	9	0	0	0	59	3	5	2	175	0
	TOTAL	**52,114**	**37,194**	**138**	**2,316**	**1**	**11,929**	**7,455**	**994**	**421**	**279**	**127**	**23**	**19**	**63,045**	**239**

NB: The results of the survey for the new jail capacity 2011/2012 are ongoing (not yet finished). The survey is ongoing; results will be published later on completion.

Appendix 2.1 Detained persons questionnaire

This questionnaire consists of 10 [as per original] pages and contains a total of 38 questions.

Where a choice of answer is given please circle the most appropriate answer.

Background Information (To be obtained from the prison records – if such records are not available or provision of the records is refused please state: "No records available" or "Failed to provide"):

Name & D.O.B (such information will not be published):

Status of interviewee: Preventive Detention/Awaiting Trial

Date of arrest:

Date of entry to prison:

Number of Court appearances:

Is there a valid Order for detention ? Yes/No

When was the Order for detention granted (date)? :

Has the Order for detention being renewed? Yes/No

If Yes, when was the last Order granted (date of the last renewal)? :

Sex of interviewee: Male/Female

Location of Prison:

Interview held in private: Yes/No

Questions

1. What type of offence have you been accused of committing?
    a. Offence against national security/High treason
    b. Murder
    c. Rape/Sexual Assault
    d. Abortion
    e. Assault/Battery

f. Battery that leads to death/Manslaughter

g. Theft

h. Drug related offence

i. Forgery and counterfeiting

j. Other (please specify)

2. Do you currently have legal representation? (If "Yes, go to question 4)

Yes/No

3. Why not? (*tick all those that apply*)

a. I did not know I had a right to legal representation

b. I cannot afford legal representation

c. I have asked for free assistance but this has been declined

d. I have asked for free assistance and I am waiting for a decision.

e. I don't need one.

4. Which of the following applies to you:

a. Detained awaiting trial; i.e. a suit has been filed with the court (please provide a date for the trial, if no date state: "no date for trial").

b. Detained for further investigation of my case; i.e. no suit has yet been filed with the court ("Preventive Detention")

c. Don't know

5. How long have you been detained in prison? (Give estimate if precise time not known and write "est." after the figure e.g. "1 year and 6 months est.").

6. Have you ever seen your case file (papers/information which provides the evidence against you):

Yes/No/Don't remember

7. Were you arrested by the police or prosecutor? (If "Neither", go to question 12)

   Police/Prosecutor/Both/Neither

8. When were you arrested by the police/prosecutor?
   (Give estimate if time not known and write "est." after figure. If you don't remember, write: "Don't recall").

   Police: Date……. Or ……days/months/years ago.

   Prosecutor: Date……. Or ……days/months/years ago.

9. If arrested by police **and** prosecutor, were you released by the police before being arrested by the prosecutor?

   Yes/No

10. At the time of arrest did the police/prosecutor inform you of the reason for your arrest?

    Police: Yes/No/Don't remember

    Prosecutor: Yes/No/Don't remember

11. At the time of the arrest did the officer:
    (a) identify him/herself

    Police: Yes/No/Don't remember

    Prosecutor: Yes/No/Don't remember

    (b) inform you of the power to arrest you?

    Police: Yes/No/Don't remember

    Prosecutor: Yes/No/Don't remember

12. Were you summonsed to meet with the police/prosecutor?

    Police/Prosecutor/Both/Neither/Caught red-handed

13. If you were summonsed, was there a summons (written document)? Yes/No

14. If you were not summonsed by the police/prosecutor, how did you get to the police station? (Explain)

15. Were you detained by the police/prosecutor following arrest or summons? (If "No" to both police and prosecutor, go to question 26).

Police: Yes/No

Prosecutor: Yes/No

16. Where were you held?

Police station/Other (please state)

17. How long were you held by the police/prosecutor before being taken before a court? (Give estimate if time not known and write "est." after figure. If you don't remember, write: "Don't recall").

18. On being detained at the police station were you told that you had the right to inform a friend/relative of your detention?

a. Told by the police;
b. Told by the prosecutor;
c. Told by both the police and prosecutor;
d. I was not told by either the police or prosecutor
e. Don't remember.

19. Did you inform a friend/relative of your detention once you had been detained?

Yes/No

20. Did the police inform a friend/relative of your detention once you had been detained?

Yes/No/Don't know

21. At the time of your detention were you **aware** of your right to legal representation?

Yes/No/Don't remember

22. When detained were you **informed** of your right to legal representation?

a. Told by the police;
b. Told by the prosecutor;
c. Told by both the police and prosecutor;
d. I was not told by either the police or prosecutor
e. Don't remember.

23. Did you request legal representation? (If “No”, go to question 26)

Yes/No/Don’t remember

24. If “Yes”, were you provided with a legal representative? If “Yes”, go to question 26)

Yes/No/Don’t remember

25. What was the reason for not being given legal representation?

No person available/Not able to afford/Other

26. During the period you were detained in the police station did you suffer any abuse? (If “No”, go to question 28)

Yes/No

27. If Yes, what was the nature of this abuse?

28. Did the police and/or prosecutor question you? (If “Neither”, go to question 34)

Police/Prosecutor/Both/Neither

29. Did you have a legal representative present at the interview(s)? (If “Representation at all interviews” go to question 31)

a. No representation

b. Representation at some of interviews

c. Representation at all interviews.

30. Would you have wanted legal representation?

Yes/No

31. Were you informed at any point that if you did not have legal representation you did not have to answer questions unless you agreed to do so?

a. Never informed

b. Informed before at least one interview

c. Informed before each interview.

32. Did you answer police/prosecution questions?

Police: Yes/No/Not questioned by police

Prosecution: Yes/No/Not questioned by prosecutor

33. How many times did the police or prosecutor question you before taking you before a court?
(Give estimate if precise number not known and write "est." after figure. If you don't remember write: "Don't recall").

Police: ……times
Prosecution: ……times

34. Have you seen a legal representative at any stage of the proceedings? (If "No" finish questionnaire)

Yes/No

35. How many times have you seen a representative?

36. Who paid for this representation?

a. I did

b. Friends/family

c. Bar Association Pro Bono representation

d. Legal aid providers

e. Government of Rwanda/MINIJUST

f. Other, please state

37. Which of the following applies? (If "b", go to question 38)

a. I am always represented by a legal representative when appearing in court.

b. I am sometimes represented by a legal representative when appearing in court.

c. I have never been represented by a legal representative when appearing in court.

38. Were you represented in court when the order was made to detain you in prison?

Yes/No

END OF QUESTIONAIRE

Please make any additional notes regarding information about the interviewee's experience of arrest and detention and any information about other detained persons that the interviewee knows about:

Appendix 2.2 Judicial Police Questionnaire

This questionnaire consists of 6 pages [as per the original] and contains a total of 31 questions.

Where a choice of answer is given please circle the most appropriate answer.

Background Information (this data will not be published):

Police Station:

Police Officer's Number:

Date of interview:

Questions

1. How long have you been a Judicial Police Officer?

2. When arresting a suspect do you have a standard form of words which you use to inform them of their arrest? (If "No", please go to question 4).

   Yes/No

3. If "Yes", what are those words?

4. When arresting a suspect do you have a standard form of words which you use to inform them of their rights? If "No", please go to question 6)

   Yes/No

5. If "Yes", what are those words?

6. When detaining a suspect at the police station do you inform them of their rights? (If "No", go to question 11)

   Yes/No

7. If "Yes", what rights do you inform the suspect he has when detaining him at the police station)?

   a.
   b.
   c.
   d.
   e.

8. How do you inform the suspect of their rights?

   Orally/In writing

9. Do you keep a record of giving the suspect the information about their rights? Always/Sometimes/Never

10. Do you give the suspect an opportunity to confirm that he has been provided with the information about their rights?

    Always/Sometimes/Never

11. Do you complete a record of arrest for each person arrested? (If “Never”, go to question 14)

    Always/Sometimes/Never

12. What information do you record on the record of arrest?

    a.
    b.
    c.
    d.
    e.

13. Is a record of arrest supplied to the Prosecutor?

    Always/Sometimes/Never

14. Do you inform the suspect of his right to have a family member or friend informed of his arrest? (If “Never”, go to question 16)

    Always/Sometimes/Never

15. When do you inform the suspect of this right?

    a. Immediately upon arrival at the police station

    b. Within the first 24 hours of arrival at the police station

    c. Within the first 48 hours of arrival at the police station

    d. Within the first 72 hours of arrival at the police station

    e. It depends, please provide an example of a reason.

16. Do you inform the suspect of his right to legal representation (i.e. the right to have somebody to give him advice at the police station)?

Always/Sometimes/Never

17. If a suspect requests legal representation but he is unable to afford representation which of the following do you do?
    a. Inform the suspect of the need to request assistance from the Bar Association.
    b. Inform the Chairman of the Bar Association of the need for legal assistance?
    c. Nothing, I proceed to question the suspect.
    d. Other, please state.
18. Do you delay questioning the suspect to allow a legal representative to be present? (If "Always" or "Never", go to question 20)

    Always/Sometimes/Never

19. If a suspect has a legal representative who comes to the police station do you allow them to talk with their legal advisor without a police officer being present?
    Always/Sometimes/Never

20. Is there access to a private place where suspects may talk with their representative?

21. When a suspect is unrepresented do you question them without anybody else being present? (If "Always", go to question 23)

    Always/Sometimes/Never

If "Sometimes" or "Never" who else is present? (Circle all those that apply)

    a. Other police officer
    b. Family/friend of the suspect
    c. Other, please state

22. Do you keep a record of the questioning of the suspect? (If "No", go to question 26)
    Yes/No

23. Is the record of the questioning seen by the suspect? (If "No", go to question 26)
    Yes/No

24. Do you give the suspect an opportunity to sign the record as being an accurate record of the questioning?
    Yes/No

25. How long may a judicial police officer detain a person under a power of arrest?

    a. 24 hours
    b. 48 hours
    c. 72 hours
    d. Until a prosecutor has made a decision about the suspect.
    e. Until the police or prosecutor have obtained all the necessary evidence.

26. Have you ever held a suspect beyond the time limit allowed? (if “No”, go to question 30).

    Yes/No

27. In the last year on how many occasions have you held a suspect beyond the time limit allowed?

28. What were the reasons for doing so?

29. Have you received training on the rights of a suspect?

    Yes/No

30. If “Yes”, when did you receive that training?

END OF QUESTIONAIRE

Appendix 2.3 Prosecutor Questionnaire

It is proposed that the data collector will deliver the questionnaires to the prosecutor and they will go through each question so that the prosecutor understands the nature of the question. The data collector will then leave the prosecutor to gather the necessary information and will return at a pre-arranged date to collect the answers. Ideally, a review will be made with the prosecutor of the answers in order to obtain sample confirmation of the answers (e.g. seeing a record referred to in question 12).

In the instance of any question which is marked with "(n.b. please also supply the number of cases in which there is insufficient information to give an answer)" please record the number of files in which there is insufficient information to provide the requested information, together with the number of files in which the information requested ***is*** contained.

Please provide information for all crimes other than those related to the Genocide and those involving minors (juveniles).

Many of the questions in this questionnaire cross-refer to answers given to previous questions. To assist some answers are given a definition. Where this occurs the definition is placed in brackets, is emboldened and quotation marks are used.

Information on arrests in 2010

1. Please state how many cases were transmitted to you from the police in 2010 (in this questionnaire these cases will be called "**Cases received in 2010**"):

2. For all the Cases received in 2010 (i.e. the cases given in answer to question 1) provide the number in which the suspect had:
   a. legal representation at the police station at any point:
   b. no legal representation at the police station:
   c. there is no record of such information:

3. For all the Cases received in 2010 (i.e. the cases given in answer to question 1), provide the number of cases in which there is a record of the suspect being informed of their rights upon arrest and detention:

4. For all the Cases received in 2010 (i.e. the cases given in answer to question 1), state:
   a. how many persons had a legal representative present during questioning by police:
   b. how many persons had no legal representative present when being questioned by the police:
   c. in how many there is no record of whether the suspect had a representative when being questioned by the police:

5. For all the Cases received in 2010 (i.e. the cases given in answer to question 1), how many cases
   a. contain a record of the interview(s) (**"Record of Interview in the file"**):
   b. do not contain a record of the interview(s):

6. For all cases in which there is a **Record of Interview in the file** (i.e. cases given in answer to question 5 (a)) in how many is the record of interview endorsed as being accurate by the suspect?

7. For all the Cases received in 2010 (i.e. the cases given in answer to question 1), in how many cases was the suspect interviewed by the police
   a. Once:
   b. Twice:
   c. Three times:
   d. More than three times:
   e. insufficient information in the file to provide answer:

Involvement of Prosecutor in Cases in 2010

8. For all the Cases received in 2010 (i.e. the cases given in answer to question 1):
   a. How many cases involved the use of a summons to produce the suspect before the prosecutor:
      (i) In how many of these cases (given in answer to 8(a)) was
         (a) the suspect provisionally arrested:
         (b) the decision made to "safe-keep" the case (or otherwise deal with it out of court):

(c) Insufficient information to give answer:

b. How many involved the prosecutor becoming involved whilst the suspect was still held under the police's power of arrest (**"Suspect in Police Custody"**):

(i) In how many of these cases (given in answer to 8(b)) was

(a) the suspect provisionally arrested:

(b) the decision made to "safe-keep" the case (or otherwise deal with it out of court):

(c) Insufficient information to give answer:

c. In how many is there insufficient information to state whether the suspect was summonsed or in police detention ("**Not Known Whether Summonsed or in Police Custody"**):

(i) In how many of these cases (given in answer to 8(c)) was

(a) the suspect provisionally arrested:

(b) the decision made to "safe-keep" the case (or otherwise deal with it out of court):

(c) Insufficient information to give answer:

9. In those cases in which the prosecutor was involved whilst the **Suspect in police custody** (i.e. those cases given in answer 8(b)) how long had the suspect been held by the police prior to the prosecutor visiting the police station?

a. 24 hours or less:

b. 24 to 48 hours:

c. 48 to 72 hours:

d. more than 72 hours:

e. insufficient information to provide an answer:

10. For all the Cases received in 2010 (i.e. the cases given in answer to question 1) in how many did the prosecutor question/interrogate the suspect? (n.b. please also supply the number of cases in which there is insufficient information to give an answer at (b) below):

a. Cases in which prosecutor questioned suspect (**"Prosecutor Questioned the Suspect"**):

b. Cases in which there is insufficient information to give answer:

11. For all cases in which the **Prosecutor Questioned the Suspect** (i.e. those cases given at answer 10(a)), in how many of those cases was
    a. a legal representative present:
    b. no legal representative present (**"No Legal Representative Present at Questioning by Prosecutor""**:
    c. Insufficient information in file to provide answer:

12. For all cases in which there was **No Legal Representative Present at Questioning by Prosecutor** (i.e. all those cases given as answer 11(b)), in how many is there a record of the prosecutor informing the suspect of his right to refuse to answer questions if he did not have a legal representative (**"Suspect was Informed of the Right to Refuse to Answer Questions"**)?

13. For all cases in which the **Suspect was Informed of the Right to Refuse to Answer Questions** (i.e. all cases given in answer to question 12) in how many cases is there a written waiver of the suspect's right to legal representation?

Applications for Preventive Detention

14. For all the Cases received in 2010 (i.e. the cases given in answer to question 1) in how many were applications for preventive detention requested by the prosecutor? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):
    a. Applications for Preventive Detention (**"Applications for Preventive Detention"**):
    b. Insufficient information to give answer:

15. For those in which there were **Applications for Preventive Detention** (i.e. cases given in answer 14(a)) in how many was:
    a. an Order for Preventive Detention obtained (**"Order for Preventive Detention"**):
    b. no Order for Preventive Detention Obtained (i.e. court refused to make order for preventive detention) (**"No Order for Preventive Detention"**
    b. Insufficient information to give answer:

16. For those cases in which an **Order for Preventive Detention** *was made* (i.e. cases given as answer 15(a)), in how many was the suspect represented at the application before the court? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):

    a. Suspect represented:
    b. Insufficient information to give answer:

17. For those cases in which **No Order for Preventive Detention** was made (i.e. cases given as answer 15(b)) in how many was the suspect represented? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):

    a. Suspect represented:
    b. Insufficient information to give answer:

18. For those cases in which **Applications for Preventive Detention** were made (i.e. those cases given as answer 14(a)), **and in which the person was detained under a power of arrest**, in how many was the application for preventive detention made outside of the 7-day time limit? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):

    a. Applications made outside of 7-day time limit:
    b. Insufficient information to give answer:

19. For those cases given as answer to 18(a), in how many such cases was preventive detention obtained? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):

    a. Preventive Detention Obtained:
    b. Insufficient information to give answer:

20. For those cases in which **an Order for Preventive Detention** *was made* (i.e. cases given in answer 15(a)) in how many cases has the decision been made to not file a suit (i.e. "drop the case")?

21. For those cases in answer to question 20 (i.e. those in which a decision has been made not to file a suit), for how long was the suspect held on preventive detention before the prosecution made the decision to "drop the case":

a. 1 month or less:
b. 1 to 3 months:
c. 3 to 6 months:
d. 6 months to 1year:
e. Insufficient information in file:

22. For those cases in which **an Order for Preventive Detention** *was made* (i.e. cases given in answer 15(a)) in how many cases has the suspect been on preventive detention for greater than 30 days (through the use of renewals) (n.b. please also supply the number of cases in which there is insufficient information to give an answer):
a. Suspect held on Preventive Detention for greater than 30-days:
b. Insufficient information to give answer:

23. For those cases given at answer 22(a) (i.e. those cases in which a suspect has been held on Preventive Detention for greater than 30 days), in how many did the prosecution fail to apply to renew preventive detention within the 30-day time limit? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):
a. Failed to apply within 30-day time limit:
b. Insufficient information to give answer:

24. For those cases given as answer 23(a), in how many was the suspect released from preventive detention? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):
a. Suspect released from Preventive Detention
b. Insufficient information to give answer:

25. For those cases in which an **Order for Preventive Detention** *was made* (i.e. Cases given as answer 15(a)), in how many:
a. has a suit been filed:
b. no suit been filed:

26. For those cases given as answer 25(a) (i.e. those cases in which a suit has been filed), what was the period of time from the first court order for preventive detention to the filing of the suit:

a. 1 month or less:
b. 1 to 2 months:
c. 2 to 3 months:
d. 3 to 6 months:
e. 6 months to one year:
f. more than one year:
g. Insufficient information in file:

27. For those cases given as answer 26(a), in how many:
    a. Has a trial taken place and a guilty verdict delivered:
    b. Has a trial taken place and a not-guilty verdict delivered:
    c. Has the case been dealt with by other means (e.g. safe-keep):

28. For those cases given as answer 25(b) (i.e. suspect still on preventive detention because no suit has been filed), how long has the suspect been on preventive detention?
    a. less than 1 month:
    b. 1 to 2 months:
    c. 2 to 3 months:
    d. 3 to 6 months:
    e. 6 months to 1 year:
    f. more than 1 year:
    g. Insufficient information in file:

All cases awaiting Trial:

29. For ***all cases*** (i.e. not just those in which an arrest was made in 2010), but excluding those transferred to you during 2010, in which a suspect is ***currently*** awaiting trial and is held in prison (i.e. a suit has been filed and the suspect is held in detention awaiting a trial date), please provide the number of cases in which:
    a. The date between the first order for preventive detention and filing the suit was 3 months or less;
    b. The date between the first order for preventive detention and filing the suit was between 3 and 6 months or less;
    c. The date between the first order for preventive detention and the filing of the suit was 6 months to 1 year:

d. The date between the first order for preventive detention and the filing of the suit was 1 year to 2 years:

e. The date between the first order for preventive detention and the filing of the suit was more than 2 years:

30. For those cases in which the time waiting for trial has exceeded two years (i.e. cases given in answer 30(d)), in how many such cases has the suspect legal representation? (n.b. please also supply the number of cases in which there is insufficient information to give an answer):
    a. Suspect legally represented:
    b. Insufficient information to give answer:

31. For ***all cases*** (i.e. not just those in which an arrest was made in 2010), but excluding those transferred to you in 2010, in which a suspect is ***currently*** held on preventive detention (and a suit has yet to be filed) please provide the number of cases in which the period spent on preventive detention has exceeded:
    a. One year but is less than two years:
    b. Has exceeded two years but is less than three years:
    c. Has exceeded three years:

Appendix 3: Prisoner Sample Size Tables

Table A

Prison	Men	Women	Total	Cumulative %	Region
PCK	1,491	152	1,643	20.1	Central Region
Remera	1,324	0	1,324	36.3	
Ruhengeri	1,202	28	1,230	51.3	Northern Region
Miyove	561	61	622	58.9	
Kibungo	577	36	613	66.4	Eastern Region
Nsinda	543	65	608	73.9	
Gitarama	560	42	602	81.2	Southern Region
Gisenyi	490	0	490	87.2	Western Region
Gikongoro	365	11	376	91.8	
Cyangugu	239	15	254	94.9	
Butare	196	12	208	97.5	
Rilima	174	15	189	99.8	
Mpanga	17	0	17	100.0	
Nygatare	0	0	0	100.0	
Total	7,739	437	8,176		

Table B

Prison	Men	Women	Total	% Men	% Women	Sample size	Region
PCK	1,491	152	1,643	90.7%	9.3%	164	Central Region
Ruhengeri	1,202	28	1,230	97.7%	2.3%	123	Northern Region
Kibungo	577	36	613	94.1%	5.9%	61	Eastern Region
Gitarama	560	42	602	93.0%	7.0%	60	Southern Region
Gisenyi	490	0	490	100.0%	0.0%	49	Western Region
Total	4,320	258	4,578	94.4%	5.6%	457	All Regions