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## Pragmatism leads the way in setting up specialized commercial courts

SABINE HERTVELDT

After the 1994 genocide Rwanda recognized that it had to reform its commercial justice institutions. But the country faced a more immediate challenge from the genocide: bringing thousands of perpetrators to justice. So, according to Vincent Karega, minister of state for industry and investment promotion, “the many competing needs, especially due to the legacy of the genocide, made it impossible to embark on commercial justice reforms until 2001.”

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### Kicking off an overhaul of the justice system

In May 2001 President Paul Kagame created the Rwanda Law Reform Commission, giving its 10 members a mandate “to review all existing laws and court rules and to recommend reforms to improve the efficiency of justice.”

The president handpicked the 10 members—all lawyers. The commission drafted new laws from July 2001 through December 2003. But once it began deliberations, conflicts multiplied. Disagreements were rife, and debates heated. The chairman, now justice minister, spent months working hard to build a cohesive team, using 3–4 day retreats to hash out the contentious issues. That leadership ultimately helped members build trust and respect—and to compromise. Members with rigid views were persuaded to soften their stance.

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### Outside opposition forms quickly

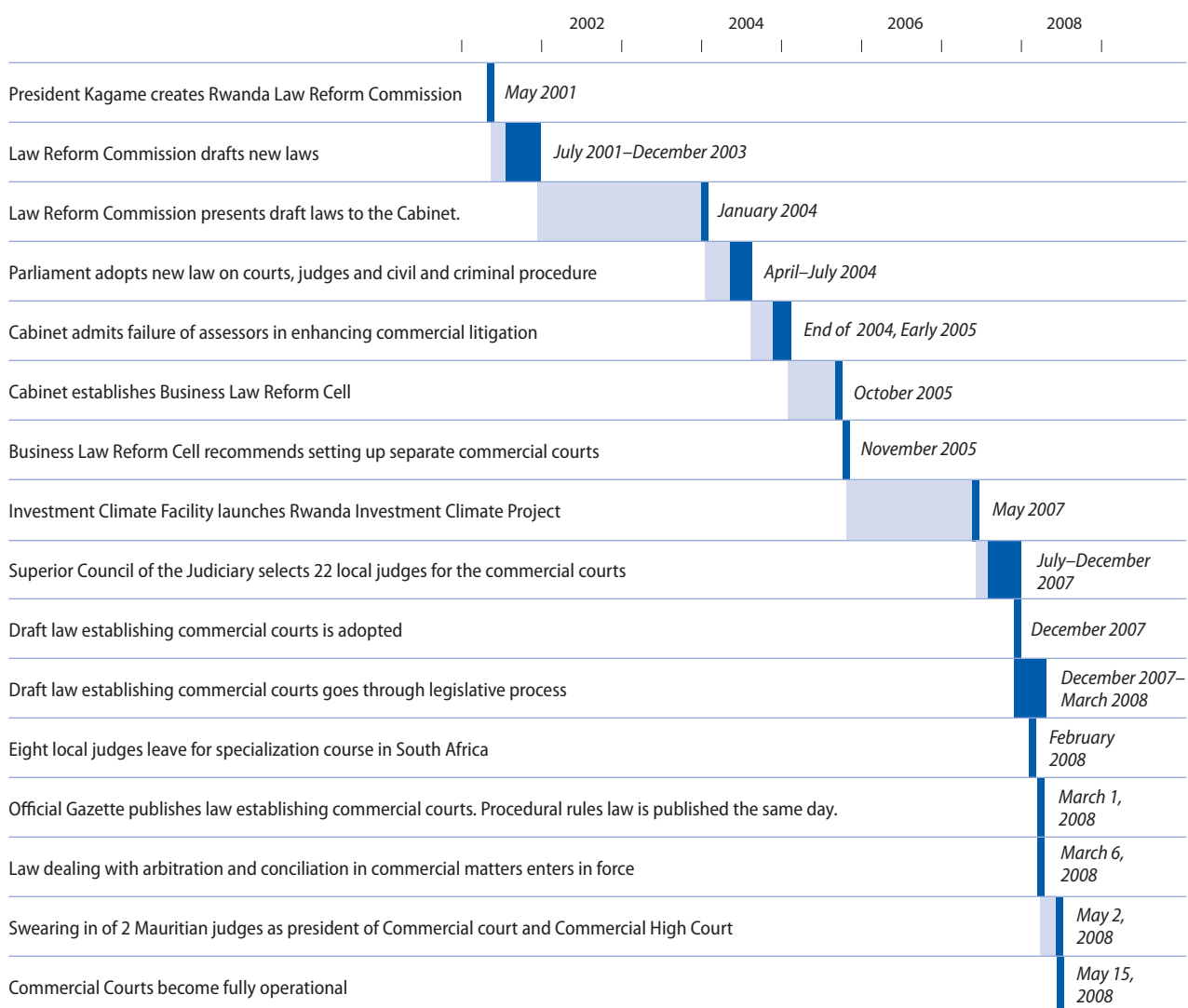
The commission developed into a collegial, effective body, gaining respect from the public by speaking with a single voice. As details of the reform agenda emerged, however, a narrow but politically strong opposition bloc began to form outside. The commission had proposed laying off redundant, incompetent, and corrupt judicial staff. Once this plan became clear, judges and members of the executive started to oppose the reform.

A particularly thorny issue was the independence of the Superior Council of the Judiciary, the body that would appoint future judges. Some members of the executive wanted to be members of the council, but the commission insisted that their executive responsibilities were not reconcilable with appointing judges.

FIGURE 1

**Timeline of court reform in Rwanda**

Source: Doing Business database.

**Listening to stakeholders**

President Paul Kagame met with the commission on request, also calling several meetings himself to keep abreast of the deliberations. When the president learned about the opposition from the legal community, he asked some of his ministers to discuss the issues with the committee and other stakeholders.

To diffuse opposition, the president called a large stakeholder meeting to hear out the opposition and its views. About 200 people attended. The debate was heated, with the reformers defending their views against opponents. Afterwards, the president had the final say, requesting that the commission proceed to draft the laws as recommended.

The commission worked hard to gain the public's confidence in the reforms—not easy because at the beginning of the process, the public had little belief that the government could deliver. Previous attempts to reform the judiciary had failed.

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### **A first attempt at new laws**

By January 2004 the commission presented draft laws to the Cabinet. With the Ministry of Justice taking the lead in ushering the draft laws through Parliament, the commission provided on-demand technical advice to the parliamentary commissions. Between April and July 2004 Rwanda's Parliament enacted new laws on courts, judges, court staff, public prosecutors, and civil and criminal procedure.

Recognizing that the country's strategy to grow long-term investment was at risk of backsliding because of legal uncertainty, the government passed a law that established 3 specialized commercial chambers within 3 of Rwanda's 12 provincial high courts and 1 specialized commercial chamber within the Kigali High Court. The specialized commercial chambers became operational with the support of the World Bank Competitiveness & Enterprise Development Project (CEDP), which provided \$200,000 for the equipment and training of judges.

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### **Specialized commercial chambers end in failure**

The 2004 law required that each specialized commercial chamber be composed of 1 professional judge and 2 lay judges, called "assessors." Assessor-assisted courts, functioning in many countries, were new to Rwanda. The assessors, independent and experienced businesspeople who volunteer to assist in ruling on commercial cases, enrich the court with their technical understanding of *Doing Business*. In insurance cases, for example, employees of insurance companies assist the professional judge.

But in Rwanda the assessors were misunderstood. Rather than nominating technical experts, companies nominated their in-house legal counsels to assist the judges. Other potential assessors boycotted the system because the work was voluntary and unpaid. As a result, the courts did not decide any commercial cases during 2004.

After the cabinet admitted assessors' failure to enhance commercial litigation at the end of 2004, the Ministry of Justice had to re-strategize.

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**Separate commercial courts—from an idea in 2005...**

Early in 2005 the prime minister and the ministers for trade and justice signed an order to review all commercial laws in banking, insurance, electronics, trade, and arbitration. The major goals were to adopt international best practices in the legal system and to fulfill the imperatives of Rwanda's regional integration agenda. A 2004 customs union among Kenya, Tanzania, Uganda, and Rwanda spurred efforts to harmonize business laws.

In October 2005 the cabinet established within the Ministry of Justice a Business Law Reform Cell, chaired by Richard Mugisha and composed of 3 members from the private sector and 3 from the public sector. The reform cell was established with the support of the World Bank CEDP which provided the staffing and equipment.

Apart from proposing legislative reforms, the work of the Business Law Reform Cell also included reviewing the institutional framework for implementing legislation in commercial justice and building the machinery for business registration, intellectual property, chattel securities, and land titles. The Business Law Reform Cell prepared fourteen commercial laws that are waiting to be adopted in 2008, including a new bankruptcy law, companies law, secured transactions law and contracts law. The law establishing the business registration services agency was passed in November 2007. The new arbitration and mediation law was already passed in March 2008.

An early recommendation from the Business Law Reform Cell in 2005 was to create separate commercial courts. Today, 3 years later, they exist.

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**...to realization in March 2008**

The Parliament's Chamber of Deputies adopted the draft law establishing separate commercial courts in May 2007. The law provides for 4 new commercial courts dealing with all sorts of commercial cases, ranging from commercial contracts to bankruptcy, tax disputes, transport disputes, intellectual property adjudication, and consumer protection cases.

Of the 4 courts, 3 are lower commercial courts—in Kigali, in the Northern Province, and in the Southern Province. These 3 commercial courts will replace the 3 specialized chambers within the provincial high courts. They will cover all commercial disputes with a value below 20 million Rwandese francs, or about \$37,000.

The other court, the Commercial High Court in Kigali, will decide all cases with a value above \$37,000 and appeals against decisions from the 3 lower courts.

The government of Rwanda and the Investment Climate Facility for Africa financed the 4 new commercial courts. The Rwanda Investment Climate Project was launched in May 2007 as the first initiative of the Dar es Salaam-based Investment Climate Facility. Along with establishing a new commercial registration agency and improving Rwanda's land titling, this project financed a commercial court to ensure a speedy and effective system of commercial dispute resolution. In total, the Investment Climate Facility spent about \$3,600,000 on court logistics, computers, training for judges and hiring of expatriate judges. The Rwandese government gave about \$307,000 for the year 2008 as seed fund to start off the commercial courts. The World Bank CEDP spent \$255,000 for IT equipment and the appointment of three Rwandese judges. In total, World Bank's CEDP spent \$1,500,000 on commercial justice reforms in Rwanda.

Unlike other specialized commercial courts in, say, Tanzania, Rwanda's commercial courts will not fund themselves by charging higher court fees than the ordinary courts. The fees to file a new case is \$10 before the commercial high court and \$7 before the lower commercial courts.

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### Legislative back and forth

On 1 March 2008, almost a year after Parliament adopted the first draft law, Rwanda's Official Gazette published the final version, which entered into force on the same day.

Now a single professional judge decides cases in the commercial courts. The law did away with the assessors, which had delayed the introduction of commercial chambers in the higher instance courts. Three professional judges are reserved for appeals that come before the Commercial High Court.

In the 10 months between the first draft and the final version, the law went through Rwanda's usual legislative process: from the Chamber of Deputies to the Senate and back. The Senate proposed an amendment to specify the minimum experience a judge should have to be appointed to the new courts: 3 years for candidates with a doctorate, 5 years for candidates with a bachelor's degree. The amendment also clarified that both Rwandese nationals and foreigners could be appointed judges. Allowing foreigners to the new commercial courts is innovative—in most countries only nationals can serve as judges, regardless of the type of court.

After the Senate's amendment, the law went back to the Chamber of Deputies, which adopted the amendment without much discussion. The Parliament sent the law to the prime minister and the prime minister sent the law to the minister of justice, who advised the president to sign it. The president did so on December 16, 2007.

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### **A new approach to commercial justice**

On 1 March, 2008, the same day the law on commercial courts was published, a separate law with procedural rules for the new commercial courts was published as well.

Rwanda is a mix of civil and common law. The procedural rules reflect this pragmatic approach, according to Richard Mugisha: “since civil and common law systems are converging in the globalized world of today, Rwanda has picked the best of both systems. We cherry picked from what works well in the United States, Canada, Britain, Ireland, Mauritius, Kenya, Ghana, Uganda, and Tanzania.”

Some of the rules are innovative, such as the introduction of strict deadlines. If judges enforce these deadlines, things might speed up. One example is that a defendant must deliver a written answer within 14 days of receiving the initial complaint. Another is that the judge has a duty to organize, within 21 days of receiving the defendant's answer to the complaint, a preliminary hearing with both parties, where the judge can refer the parties to arbitration or mediation.

The rules on adjournments—extra time to comply with procedural requirements—are meant to avoid delaying tactics. If the judge grants a party extra time and it later turns out the request was not genuine and meant only to delay the process, the judge can impose damages, which must be paid before the next hearing. If they are not paid on time, a further penalty applies.

To avoid flooding the new courts immediately, the new procedural law also regulates which cases pending before the commercial chambers can be transferred to the new courts. By May 2008, a total of 3,300 disputes had been transferred to the 4 new commercial courts. The Commercial High Court alone received over 600 cases from different courts around the country. Each judge will have to prepare and render decisions in at least three cases per week.

A new law dealing with arbitration and conciliation in commercial matters came in force on 6 March 2008. If arbitration succeeds, it may reduce the number of cases that end up before the new commercial courts. Although arbitration centers have existed in Rwanda since 1998, the new law is a major departure

from the previous legal regime, making arbitral awards final and binding. Before, awards from arbitrators were treated as decisions from the courts of first instance that could be appealed to the High Court. The new law is in line with the rationale for arbitration: arbitrators make a final decision that, unlike court decisions, cannot be appealed.

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### **The search for judges—a stumbling block**

Although the law on the commercial courts entered into force 1 March 2008, the courts became fully operational only on 15 May 2008. Why? Selecting the judges took longer than expected.

Between July 2007 and December 2007, the Superior Council of the Judiciary selected 22 local judges for the 3 lower commercial courts. Some come from the existing commercial chambers, others from outside the judiciary, such as former legal counsels in commercial banks. On 1 February 2008, 8 of the 22 local judges left for a yearlong specialization course in commercial law in Johannesburg, South Africa, partially funded by the World Bank. The goal is for all 22 local judges to do the same course over the next 3 years on a rotating basis.

To properly staff the Commercial High Court, the Rwandese Supreme Court tried to hire 7 expatriate judges from abroad, including from Mauritius and the United Kingdom. According to Anne Gahongayire, secretary general of the Supreme Court, the court chose Mauritius “because of the existing relationship between the two judiciaries and because the country is bilingual.”

On 2 May 2008, 2 Mauritian judges were sworn in: Angeeli Devi, president of the Commercial Court of Kigali City and Benjamin Gerald, president of the Commercial High Court. The 5 others who had previously accepted the position ultimately declined the offer. Their positions in Mauritius did not allow them to leave, and some did not find the package appealing enough. In April 2008 recruitment of expatriate judges was temporarily suspended to give the Supreme Court more time to look for judges with a mixed background in common law and civil law, preferably coming from a country with a mixed system similar to what Rwanda is trying to create. In the future, seven more foreign judges will be hired on a contractual basis for not more than three years to help the local judges run the new courts.

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**Lessons learned**

Reforms do not happen without a good amount of pragmatism. Johnston Businghe, president of Rwanda's High Court, points out that "if we had waited for the courts to get to the perfect starting point, cases would never be heard. Perfection is only obtainable from a work in progress."

Pragmatism drove reformers to copy what works in other countries. Given the reality of a globalized world where distinctions in legal systems become less clear, it did not matter whether procedural rules were specific to civil law or common law countries. But copying models without translating them to the local reality does not work—evident in the experience with the assessors in the commercial chambers.

Over the last years Rwanda has won praise for its vision and lack of corruption. Gross domestic product expanded by an average of 6% a year during the last decade. With an expanding private sector and a new stock exchange since February 2008, the need for an efficient commercial dispute resolution will only grow. The ancient Roman quote from Marcus Tullius Cicero still holds true: "To those who are engaged in commercial dealings, justice is indispensable to the conduct of business."