



Overhauling Contract Enforcement Lessons from Rwanda

This Best Practice was adapted from "Doing Business 2007: How to Reform Case Study: Enforcing Contracts—Rwanda," prepared by Booz Allen Hamilton in cooperation with USAID for the World Bank Group's 2007 Doing Business Reformers Club Conference.

Executive Summary:

Rwanda's sweeping reforms in the area of contract enforcement went beyond new legislation to include new institutions and significant training and outreach activities. Rwanda's experience demonstrates how a country with a civil law tradition can move toward a common law system.

Introduction

In the wake of the genocide of 1994, Rwanda embarked on policy and structural reforms targeted to reduce poverty through private sector-led economic growth. Rwanda chose the path of economic growth through competitiveness to address the business climate and private sector development constraints which affected its ability to attract domestic and foreign investment. A major constraint targeted for reform was the justice system, "which was not responding to the country's immediate aspirations"¹ of becoming a middle-income country and achieving the Millennium Development Goals.

While Rwanda recognized early that reforms in the commercial justice sector were critical, the competing needs, especially due to the legacy of the genocide, made it difficult to enact reforms until 2001. In December of that year, with World Bank support provided through the Competitiveness and Enterprise Development Project (CEDP), Rwanda began the process of building an enabling environment for private sector-led development. Since then the country has not looked back, posting a track record of reform that has generated strong support within both the country and the international community. While the reform process is far from complete, results are already being seen. The country has attracted major foreign inves-

tors, notably in the communications field. Improvements in the business and investment climate and in overall competitiveness have been achieved by updating the legal and regulatory framework, improving efficiency of institutional structures, and building human resource capacity to enable effective and speedy enforcement of contractual obligations and resolution of disputes. The effectiveness of Rwanda's reforms is largely the result of a highly consultative process, which involved the private sector, government, and legal community.

Context

Rwanda's legal reforms were motivated by two major factors: an outdated legal system and an economic reform program committed to private sector-led growth. Cognizant of its need to address poverty, achieve prosperity, and move beyond the events of 1994, Rwanda was determined to address flaws in its legal system which stood as major obstacles to business growth.

As Rwanda began to move toward building a regionally and globally competitive economy, the country found that the outdated legal system was not only failing to meet the challenges of supporting economic and social transformation, but was actually a bottleneck in national reconstruction. The commitment to judicial reform began at the top with President Paul Kagame, who stated to the Rwanda Bar



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Association in November 2002, “We are aware that our long term vision of transforming this country in a fundamental way cannot succeed in the absence of a conducive legal framework.”²

Approach

From the outset, the reform effort has had the full backing of political leadership at executive and parliament levels. The Competitiveness and Enterprise Development Project has been a major contributor to the reform process, as well as Rwanda’s national universities and its development partners. Private sector advocacy for reform has been led by the Rwanda Private Sector Federation (RPSF) and the Rwanda Bar Association, both formed after 1994.

The first phase of reform, carried out between 2001 and 2003, began with the Constitution-making process. In 2002, an ad hoc Law Reform Commission consisting of representatives of all stakeholders was set up to draw a road map for reforming the legal and regulatory framework. During this period, reforms undertaken in the judicial/court structures and in the prosecution service led to the recruitment of new judges, magistrates, and prosecutors and to the development of new minimum requirements for their selection. Reforms also included formulation of new civil and commercial procedures and of new evidence codes, all geared toward creating efficiency in the delivery of justice. From the outset, Rwanda placed clear emphasis on building a commercial justice system that would contribute to an improved investment environment. As a first step, specialized chambers of commerce were set up to deal with commercial litigation within the ordinary court structure. In addition, a small claims court was set up at the district level.

These initiatives were hampered by a lack of judges knowledgeable in commercial matters, as well as by procedural bottlenecks. To reduce pressure on ordinary courts so that they would have more time to deal with bigger issues, mediation committees known locally as Abunzi were introduced at the lowest administrative levels to sort out civil and commercial matters involving small amounts of money and simple contracts. Because commercial issues tend to be technical, however, the Abunzi could not deal adequately with all issues involved.

The second phase of reform followed the December 2003 report of the ad hoc Law Reform

Commission. In 2004, a high-level government meeting agreed on the main policy interventions required to deal with the difficult aspects of commercial litigation needed for business law reform. In July 2005, the Business Law Review Cell (BLRC), composed of five private and public sector appointees, was set up by the Cabinet to look at commercial business law interventions in detail. Initial terms of reference for the BLRC, which focused on the legislative framework, were expanded to include the institutional framework. Even as the BLRC was being established, Rwanda had already begun work on some aspects of law reform, in the areas of land, tax, customs, public procurement, finance, insurance, investment, environment, and intellectual property. Much of this work has since been passed into law.

Proposals for Sweeping Reform

The December 2005 BLRC report proposed reforms having far-reaching implications, beginning with the establishment of a stand-alone commercial court, separate from other courts, which would operate under specialized procedural legislation and under judges trained in commercial and business law. Through the creation of a dedicated training center, judges and lawyers alike would have access to specialized training in legal practice and case management. New legislation was proposed to provide for updated use of alternative dispute resolution (ADR) mechanisms, including mediation and conciliation. The proposed legislation would streamline the activities of the existing Center for Arbitration and provide for the establishment of private ADR centers.

The BLRC report proposed independent and consolidated registration agencies to regulate the formation and registration of business organizations, chattels, securities, and intellectual property rights; and provide for efficient and speedy registration and titling of land. A further proposal called for a National Legal Documentation Center to serve as a virtual library, an electronic depository for all legal information, especially court rulings and precedents.

BLRC proposals underscored the need for well-trained and well-equipped personnel who would be able to implement the reforms effectively using customer-oriented approaches. The importance of a customer service approach was emphasized by most of those interviewed as being critical to the effort, with one of them stating, “if

Objectives of the Business Law Reform Cell

- Identify legislative and regulatory constraints affecting private sector development.
- Diagnose the institutional framework for commercial transactions.
- Propose ways to integrate international best practices into the reform process.
- Produce a guideline and road map for the business law reform.

implementation in terms of service delivery is not right, you will wind up with serious problems.”³

Challenges to the Reform Effort

One of the most interesting challenges faced by Rwanda has been transformation from civil law to common law. Rwanda was a civil law country, and some concepts of the common law practices have not been readily accepted. The introduction of commercial laws and procedures leaning toward a middle point between the civil and common law systems will require additional and rigorous training for judges and advocates. It will take time for all involved at the training center, the Center for Legal Development, to get acquainted with the various aspects of reform and to generate the skills required to meet the demand they have created. Another challenge to reform is the fact that Rwanda’s commercial law reforms coincide with the country’s preparations to join the East African Community (EAC). The reformers must ensure that the legislative framework is in harmony with that of other EAC members (Tanzania, Uganda, Kenya, and Burundi).

Rwanda’s reform process has been financed by the government of Rwanda, with donor support led by the World Bank-funded Competitiveness and Enterprise Development Project (CEDP) and the NEPAD Investment Climate Facility for Africa (ICFA), which has committed funding for the reforms for up to three years.

Results

Progress Toward Implementation

Rwanda’s reform process has encountered occasional delays caused by, for example, having to comply with procurement procedures imposed by varying implementing agencies, difficulties in obtaining counterpart funding, and holdups related to the release of donor funds. In reality, such delays appear to have given the country time to catch up with the pace of its reforms, which have demanded major shifts in thinking within the judicial system. And the judicial system has even surprised itself with its ability to deal with implementation of reform initiatives. When presented with the need to carry out a reform that included recruiting close to 300 judicial officers, the judiciary responded by terminating the services of all serving officers. Those terminated were given the chance to reapply against newly formulated criteria. The judiciary was able to successfully complete this massive restructuring in a short time.

Rwanda seeks to have all justice sector reforms in place by the end of 2007. A review of efforts under way shows that achievement of this objective is highly possible. Implementation of reforms within the institutional framework is almost 50 percent complete. The law establishing the dedicated commercial courts is before Parliament. The proposal calls for the commercial courts to be operated initially by foreign-trained judges, understudied by local counterparts, with the language of the court system shifting to English and French (from Kinyarwanda). The necessary adjustments to the legal and regulatory framework on alternative dispute resolution (ADR) have been enacted and guidelines for implementation prepared. The laws establishing the business and land registries, which contain information that is vital to government, the business community, the courts, and the financial institutions, have been passed. Also passed and awaiting implementation is the law that will set up a dedicated legal training center as the focal point for preparing skilled personnel to serve the courts. In the meantime the courts have been provided with digital recording systems for recording proceedings and judgments.

Implementation of reforms in the legal framework is also in advanced stages, with the company law, insolvency, and e-commerce laws already under discussion and expected to be passed in March 2007. Other commercial laws are in draft stage; it is expected that all of them will be ready by April 2007. With regard to the basic law of contracts, an important component of its regulatory reform, Rwanda will adopt the American-style code of contract based on common law. According to the leader of the consulting team working closely with the Business Law Review Cell, “the plan is not to start from scratch but to draw heavily on what has already been done elsewhere, especially drawing from the provisions of Restatement (Second) of Contracts prepared by the American Law Institute.” Another member of the team pointed out that “this work will be a major contribution to Rwanda’s rebuilding effort because they have no contractual code at this point. . . . The new code will have a significant impact on the region by serving as a model law for Rwanda’s neighbors who also lack comprehensive contract codes.” The draft should be ready at the end of 2007.

Impact of Reform

The overall response to the reforms has been positive despite some initial discomfort with the

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—President Paul Kagame, to the Rwanda Bar Association in November 2002

About BizCLIR:

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shift from a civil law system to a more common law-oriented system. Reform in the procedural laws introduced changes that reduced the time required to resolve commercial disputes, an effect that, although positive, was received with mixed feelings by some lawyers. There were also misgivings expressed by some with regard to the proposed ADR mechanisms. Both the Minister of Justice and the head of the BLRC are positive that such objections will be overcome with time. A senior lawyer who did not want to be quoted observed that, at the end of the day, what really matters is that “the reforms take globalization into account so that we can ably participate in the global market. . . . Finally we hope that the outcome of the reforms will be practical.”

Those involved in the reform effort feel that with the reforms still unfolding, it is too early to judge and that their impact can only be realized and quantified when all the reforms are in place. However, in addition to the fact, previously noted, that the time needed to resolve commercial disputes has already decreased, there has been improvement reported in the speed of conducting trials and in the quality of court judgments. For example, cases that used to take 5 to 10 years now take 2 to 3 years due to the changes in the judicial structure and the procedural rules.

Conclusions

Rwanda realized that the creation of a suitable environment for the enforcement of contractual obligations required a holistic approach that looked at the laws, the legal institutions, human resource capacity, and customer service mechanisms. As new insights were made, the reform process was amended to incorporate them; for example, the BLRC terms of reference were amended to include attention to the institutional framework as well as to the laws themselves. Rwanda also learned the importance of taking enough time to involve both the top leadership and representatives of all those likely to be involved with and/or affected by the process. “It takes time for people to accept change; people prefer what they are used to, however poor or inefficient it may be.”⁴

Engaging and involving the private sector in the reform effort helped to bridge the gap between the public and private sector and to drive the reforms forward by increasing acceptability and ownership by the private sector. Rwanda’s

reform process gained significantly by having private sector individuals head some of the key reform committees and related projects.

To move forward, additional sensitization to reform is necessary. The reforms were preceded by consultations and awareness raising, but there is need for an ongoing program before and during the implementation of the new commercial justice system in order to educate lawyers, judges, and the business community on the reforms, including the rationale for the changes.

Applicability of Reform

Other countries within the African region, particularly those seeking to build commercial law systems based on common law, are likely to find the following aspects of Rwanda’s reform efforts of particular interest:

- The establishment of ad hoc law review committees and commissions with time-limited scopes of work as opposed to permanent organs is a cost-effective and efficient way of accelerating reforms. The fact that the BLRC’s mandate included designing the program for the reform as well as presenting the proposed laws to various approval levels moved the process forward faster.
- The assurance that reforms do not have to compete for government resources with other pressing needs contributes to smooth management and financing of the reform effort. The government support structure for the reforms was clearly centered in the Justice and Commerce ministries, while the CEDP operated as a semi-autonomous source of funding for the reform effort.
- The establishment of commercial court branches in at least three other locations in the country addressed the geographical representation issues that have hampered reforms elsewhere. This move, plus the establishment of the commercial court in Kigali as a court of both original and appellate record, is worthy of more study by other countries.

¹ Honorable Tharcisse Karugarama, Minister of Justice of the Government of Rwanda.

² Remarks by H.E Paul Kagame, president of the Republic of Rwanda at the Occasion to Mark the Fifth Anniversary of the Bar Association (November 9, 2002).

³ Interview with William Nkurunziza, Executive Director, Rwanda Investment and Export Promotion Agency.

⁴ Tharcisse Karugarama, Minister for Justice.