

REPUBLIC OF RWANDA



JUSTICE FOR CHILDREN POLICY

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List of Acronyms

Acronym	Full Description
ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
FGD	Focused Group Discussion
GBV	Gender-Based Violence
JRLOS	Justice, Reconciliation, Law and Order Sector
MIGEPROF	Ministry of Gender and Family Promotion
MAJ	Maisons d'Accès à la Justice/ Access to Justice Offices
MINALOC	Ministry of Local Government, Good Governance and Social Welfare
MINIJUST	Ministry of Justice
Rwf	Rwandan Francs

Tables and Figures

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1. The Issue for This Policy

- 1.0.1 The broadening of the Access to Justice Regime is gaining respected international recognition.
- 1.0.2 To make the justice system more responsive to the needs of the children, there is need to continue efforts aimed at making maximum contribution to the survival, development, participation, and protection of the child, within an overall child protection system.

2 The Policy's Context

- 2.0.1 The relevance of this policy is based on Rwanda's aspirations on justice for children, with particular regard to the country's socio-economic, policy, international and national legal contexts.

2.1 The Background

- 2.1.1 It is the Government's intention that, as the country progresses, there should be justice for all, including children. There are inequalities that may result in injustices or the search for justice for children. For example, while the prevalence of poverty is 22.1% in urban areas, especially Kigali, it is more than twice, at 48.7% in rural areas.¹ Seventeen percent of women in Rwanda are married by age 18, compared with just 3% men, pointing towards teen pregnancies, early motherhood, and inability to provide adequate care for children. Over two in five women, 41%, reported in 2010 that they had suffered from physical violence at least once since they were 15 years old. Though legally prohibited, polygamy is prevalent and was reported at 7.1% in 2010, underlying the existence of a potential cause of conflicts that affect children.
- 2.1.2 As Rwanda continues to make tremendous progress in human development, the Government places importance on justice for children because children are vulnerable and still in need of support for optimal survival, development, participation, and protection. All children should attain their fullest potential without injustice or any other child unfriendly attitude, rule, or process. Rwanda seeks to have its children enjoy fairness.
- 2.1.3 This commitment is in line with the CRC, which the country signed and ratified on 26 January 1990 and 24 January 1991 respectively.² This signified the intention to realise its standards within the Rwandan legal system. The country has long recognised that human rights are necessary in the quest to reduce poverty and achieve development, justice, peace, and other human values. The link between human rights, poverty reduction, development, and peace is stressed in the Constitution,³ Vision 2020⁴, the EDPRS⁵, and the Seven-Year

¹ . Figures in this paragraph from: National Institute of Statistics of Rwanda (NISR) [Rwanda], Ministry of Health (MOH) [Rwanda], and ICF International. 2012. *Rwanda Demographic and Health Survey 2010*. Calverton, Maryland, USA: NISR, MOH, and ICF International

² . http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

³ . The Constitution of the Republic of Rwanda, (O.GN Special of June 04, 2003



⁴ . Republic of Rwanda, Vision 2020 (Kigali; Government of Rwanda)

⁵ . Republic of Rwanda, Economic Development & Poverty Reduction Strategy 2008 – 2012 (Kigali; Government of Rwanda, 2007)

Government Programme.⁶ A policy on justice for children is therefore a meaningful step in the country's quest for justice for all.

2.2 The Definition and Relevance of Justice for Children

2.2.1 According to the Convention on the Rights of the Child, a child is a person under the age of 18. Article 3 of the Child Rights and Protection Law similarly defines a child as a person under 18. The age of competence for criminal responsibility is 14.⁷ In this policy,



-  A child, in general, is a person under the age of 18; while
-  A child for purposes of being held criminally responsible is a person aged between 14 and 18.

2.2.2 All children in Rwanda are entitled to justice and the delivery of justice by the justice system for any child should be responsive.

2.2.3 Justice is an inherent need for every individual. The justice system safeguards and delivers it within the context of advancing the rule of law. In relation to the rule of law, the justice sector includes institutions in the justice system and extends to actors in the safety and security sector, civil society actors working on justice and accountability and local authorities.

2.2.4 The Convention on the Rights of the Child presents a challenge to all justice systems to ensure that all judicial and administrative decisions and actions advance the best interests of the child, according to the Convention's Article 3. Article 12 states that "States Parties should assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting her or him. The views of the child should be given due weight in accordance with the age and maturity of the child".⁸ The same Article underlines the child's right to be in "any judicial and administrative proceedings affecting the child".⁹ A policy on justice for children in Rwanda incorporating this right for a child to be heard in all criminal, civil and administrative matters affecting her/him, and for her/his evidence to be given due weight in these matters, would therefore clarify and strengthen the realisation of children's rights.

2.2.5 From a child rights perspective, justice for children broadly entails fair and responsive approach, processes, and outcomes by the justice system for the best interests of children to:

-  Make maximum contribution to the goals of child rights, survival, development, participation, and protection;
-  Comply with and advance child rights principles;

⁶ . Development Planning and Research, Ministry of Finance and Economic Planning, , 2012)
Republic of Rwanda, Seven Year Government Program 2010-2017 (Government of Rwanda, 2010)

⁷ . Article 58 of the Children Rights and Protection Law and Article 100 of N° 01/2012/OL of 02/05/2012
Organic Law instituting the Penal Code

⁸ See n.6, at Art. 12

⁹ *Ibid.*

- ✚ Respect, protect, promote, and fulfill child rights associated with justice in a given circumstance; and
- ✚ Ensure that duty bearers in the justice system have requisite capacities to deliver justice in a child-friendly manner that gives due weight to the voice of the child.

2.2.6 Justice for children requires a supportive legal system that advances the best interests of the child with regard to its functioning and results. In this regard, five key attributes of the justice system are relevant:

- ✚ Contribution to the prevention of injustice;
- ✚ Availability and accessibility of the services provided by the justice system;
- ✚ Friendliness in approach and processes regarding children;
- ✚ Participation and due weight for the voice of children; and
- ✚ Relevance and efficiency of the results of the system’s processes.

2.2.7 For children, this means that the processes and outcomes of the justice system must:

- ✚ Be age appropriate;
- ✚ Be familiar, speedy, and diligent;
- ✚ Be adapted to and focused on the needs and rights of the child;
- ✚ Respect the rights of the child especially the rights to due process, having her or his voice given due weight, and the respect for private and family life;
- ✚ Respect and advance the need to enjoy dignified life and treatment.

2.2.8 Justice for children affects the following groups of children: victims of crime, witnesses, in conflict with the law, those placed in alternative family proceedings, children in divorce and family law related matters, pupils and other children in institutions, orphaned and other vulnerable children, and children of parents accused of crimes.

2.2.9 Within the United Nations and other international contexts, there have emerged clear principles and best practices on justice for children. Table 1 provides the principles of justice for children and the best practices at the global level.

Table 1: International Principles and Best Practices in Justice for Children

Principles	Best Practices
✚ Ensuring that the best interests of the child is given primary consideration;	✚ Evidence-based policy formulation
✚ Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination;	✚ Diversionary measures
✚ Advancing the right of the child to express his or her views freely and to be heard;	✚ Avoidance of child incarcerations wherever possible
✚ Protecting every child from abuse, exploitation and violence;	✚ Comprehensive and complementary programming
✚ Treating every child with dignity and compassion	✚ Tailored for diverse groups
✚ Respecting legal guarantees and safeguards in all processes;	✚ Whole-of-government collaboration
✚ Preventing conflict with the law as a crucial element of any juvenile justice policy;	✚ Whole-of-community collaboration
✚ Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time	✚ Separation of children from adults in the justice system, especially at the police station level and in prisons
	✚ Priority given to cases involving children
	✚ Ready availability of legal services for children
	✚ Special child panels, as opposed to courts for children
	✚ Reform to increase prevalence and weight of children’s opinions
	✚ Recognition that the justice system is usually not designed for children

2.3 Relevance to the Policy Context

- 2.3.1 A strong trend in Rwanda’s policy has underlined the link between development, poverty reduction, and human rights,¹⁰ whose goals include justice. Pillar 4.1 of Rwanda’s Vision 2020 declared that the State should respect “democratic structures and processes and committed to the rule of law and the protection of human rights in particular”.
- 2.3.2 EDPRS 2 recognises the importance of participatory processes in good governance, including the advancement of the rule of law. Under Pillar 2 of the Government’s 7-Year Programme, the Government has planned to strengthen the rule of law and an efficient justice system that promotes development. Specifically on children, Article 66 of the Government’s 7-Year Programme commits the Government to take measures to tackle all problems that result in minors staying long in prison before trial. Article 68 calls for alternative punishments.
- 2.3.3 Although there have been no child-specific policies adopted within the context of the JRLOS, other sectors, especially the social welfare sector, have policies on children. For example, the country has already adopted policies on orphans and other vulnerable children¹¹, family promotion¹², integrated child rights¹³, and gender-based violence.¹⁴
- 2.3.4 The Orphans and Other Vulnerable Children Policy and the Integrated Child Rights Policy, in particular, have in their strategies underlined the need for the adoption of diversionary measures in juvenile justice.
- 2.3.5 The Integrated Child Rights Policy envisioned a “comprehensive juvenile justice system ‘characterised by three pillars: diversion, ‘restorative justice’, and ‘alternatives to custodial sentencing’. This policy responds to this requirement and goes beyond juvenile justice to stress the importance of a more holistic concept of justice for children.
- 2.3.6 Although these policies were not formulated within the JRLOS, the Government has implemented or is implementing certain measures on juvenile justice which are contained in the Orphans and Other Vulnerable Children Policy and the Integrated Child Rights Policy. Examples are the abolition of life imprisonment regarding child offenders and progress towards separate prisons for children in conflict with the law. There is a need, however, to take a more coherent approach and respond to other areas of justice for children and expand on juvenile justice.
- 2.3.7 Such a need is within continuing policy reforms in the JRLOS to ensure coherence in approach and delivery of justice.¹⁵ For example, there have been reforms to reduce backlogs in the justice system, such as the decision to reduce the number of judges on a bench at first

¹⁰ . Republic of Rwanda, ‘Vision 2020’ (Kigali; Government of Rwanda); Republic of Rwanda, ‘Economic Development & Poverty Reduction Strategy 2008 – 2012’ (Kigali; Government of Rwanda, 2007); Republic of Rwanda, ‘Seven Year Government Program 2010-2017’ (Government of Rwanda, 2010)

¹¹ . Republic of Rwanda, ‘National Policy for Orphans and Other Vulnerable Children’ (Kigali; Ministry of Local Government, Information and Social Affairs, 2003)

¹² . Republic of Rwanda, ‘National Policy for Family Promotion’ (Kigali; Government of Rwanda, 2005)

¹³ . Republic of Rwanda, ‘Integrated Child Rights Policy’, (Kigali; Ministry of Gender and Family Promotion 2011)

¹⁴ . Republic of Rwanda, ‘National Policy against Gender-Based Violence’ (Kigali; Ministry of Gender and Family Promotion, 2011)

¹⁵ . Republic of Rwanda, Justice, Reconciliation, Law & Order Sector Strategy 2009 – 2012 (Ministry of Justice 2009)

instance from three to one. This has allowed redeployment of judicial personnel to increase efficiency. Specifically on child justice, there is a commitment within the justice sector strategy to “ensure access to justice by poor people and vulnerable groups, in particular women and children”. In that regard, a specialized chamber has been established for children hearings and lawyers have been appointed to provide pro bono legal counsel during the trial.

- 2.3.8 The areas on which the sector will focus between 2013 and 2018 are highly relevant and will greatly promote and achieve justice for many, including children. A specific policy on justice for children would complement such broad policy and strategic frameworks.
- 2.3.9 This justice for children policy is one of the measures for the JRLOS to respond to this need, as part of continuing justice reform for the country. One of the areas identified for reform in the JRLOS has been the improvement of access to justice for all, including children. It is in this vein that the policy on justice for children elaborates the directions on justice for children. The policy is an implementation tool of the JRLO sector strategy on realising enhanced access to justice.

2.4 Relevance to the Legal Context

- 2.4.1 Rwanda has made significant legal reforms related to justice for children, particularly in the context of the JRLOS strategy. One of the instrumental achievements for Rwanda in justice for children has been the enactment of the Child Rights and Protection Law.
- 2.4.2 This Law enshrines four principles of child rights¹⁶: “equality of all children”, “birth-related non-discrimination”, “best interests of the child”, and the importance of the “opinion of the child”. This Law requires that the child should be provided with special protection “for his/her physical, mental, spiritual, moral, psychological and social growth according to human dignity”.¹⁷
- 2.4.3 The necessity of a policy on justice for children is most justifiable because of Article 6 of the Child Rights and Protection Law, which stipulates as follows: “*In all judicial and administrative proceedings related to the child, the primary consideration shall be in the best interests of the child.*” In terms of outcomes and processes, Article 6 means that judicial and administrative proceedings should advance the best interests of the child through a child-friendly justice system and outcomes.
- 2.4.4 The implication of Article 6 of the Child Rights and Protection Law is that the justice system should be child friendly, facilitate and respect the voice of the child, and generally advance the best interests of current and future children. The justice system shall reflect these attributes in all the types of justice it seeks to deliver, including the following: Penal law justice, judicial justice, family law justice, justice in care and protection, administrative justice, procedural justice, distributive justice, and retributive justice.

¹⁶ . Law n° 54/2011 of 14/12/2011 Relating to the Rights and Protection of the Child, *Official Gazette n°26 of 25/06/2012*, Articles 4, 5, 6, and 7

¹⁷ . Law n° 54/2011 of 14/12/2011 Relating to the Rights and Protection of the Child, *Official Gazette n°26 of 25/06/2012*, Article 28

2.4.5 In addition, the country has introduced reforms to ensure more restorative approaches to justice in the introduction and maintenance of the Abunzi system. The Abunzi mediation committees are now part of the justice system. Under the Abunzi system, Abunzi or mediators have jurisdiction over civil disputes of a low value and low category criminal cases. The Law¹⁸ mandates Abunzi to refer cases to courts after failure of mediation, underlying a restorative approach. The Abunzi system offers participatory, speedy, conciliatory, and familiar-based justice in cases that are common. Table 2 indicates the nature of civil and criminal cases that Abunzi handle:

Table 2: The Civil and Criminal Jurisdiction of Abunzi

Civil Jurisdiction/Competence (Article 8): Cases About:	Criminal Jurisdiction/Competence (Article 9): Cases About:
<ul style="list-style-type: none"> ✦ Lands and other immovable assets whose value does not exceed (Rwf 3,000,000); ✦ Cattle and other movable assets whose value does not exceed 1,000,000; ✦ Breach of contracts where value of the subject matter does not exceed Rwf 1,000,000, except for cases involving central government, insurance and commercial contractual obligations; ✦ Breach of employment contracts of a value of less than one Rwf 1000,000 ✦ Family cases other than those related to civil status; ✦ Successions when the matter at issue does not exceed Rwf 3,000,000). 	<ul style="list-style-type: none"> ✦ Removing or displacing land and plot boundaries; ✦ Any kind of destruction or damage to crops if value does not exceed Rwf 3,000,000; ✦ Insults; ✦ Defamation, except in cases where it is done by the media; ✦ Stealing crops or standing crops of the value not exceeding Rwf 3,000,000 ✦ Larceny where the value of the stolen goods does not exceed Rwf 3,000,000; ✦ Concealment of goods stolen during larceny of the value not exceeding Rwf 3,000,000); ✦ Thefts or extortion committed by one spouse against the other, a widower or a widow as regards assets which belonged to the deceased spouse; descendants to the detriment of their ascendants, ascendants to the detriment of their descendants or by allies at the same degree; ✦ Breach of trust in case where the value does not exceed Rwf 3,000,000; ✦ Discovering a movable asset belonging to another person or getting it unexpectedly and keep it or fraudulently giving it to a person other than the owner if the value does not exceed Rwf 3,000,000; ✦ Killing or wounding without intent domestic or wild animals belonging to another person, where the value of such animals does not exceed Rwf 3,000,000; ✦ Destroying or damaging without intent, assets belonging to another person where the value of such assets does not exceed Rwf 3,000,000; ✦ Any type of assault to a person or intentionally throwing at him/her rubbish or any other thing of a dirtying nature without causing injury or physical harm.

Source: Organic Law No.31/2006 on the Organisation, Competence and Function of the Committee of Mediators, Article 8 and 8

2.4.6 Further, the reforms so far undertaken have begun to underline the importance of diversion-like measures from the police and court-based justice system. Indeed, there is support for a fully-fledged diversionary system. Table3 presents the few diversion-like opportunities already in Rwanda’s criminal justice system.

Table 3: Diversion-Like Aspects in Rwanda’s Juvenile Justice System

Laws	Aspect
Child Rights and Protection Law	<ul style="list-style-type: none"> ✦ Not holding children under 14 criminally responsible, with further advocacy to reduce the age to 12. ✦ No child to be on remand during judicial inquiry, except in cases of recidivism and in any case the remand period should not exceed 15 days. ✦ A prosecutor can suggest a compromise between the alleged child offender and his/her parents on the side, and the victim on the other ✦ Release of a child on parole should be the rule, with full completion of the sentence as an exception.

¹⁸ . Organic Law No.31/2006 on the Organisation, Competence and Function of the Committee of Mediators

Criminal Procedure Code	<ul style="list-style-type: none"> <li data-bbox="406 190 1449 291">✚ A judge is empowered to give sentences alternative to imprisonment against a child, including a deferred sentence, placement in a re-education centre or a rehabilitation centre. <li data-bbox="406 291 1449 389">✚ Article 190 of the Criminal Procedure and Evidence Code empowers a juvenile chamber to order measures for the protection of the child, his or her assistance, supervision or education as it deems appropriate
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3 Vision and Objectives

3.0.1 The vision of this policy is a responsive and child-friendly justice system that advances the best interests of the child. The Vision and objectives of this policy are meant to contribute to the realisation of Vision 2020. Specifically, the policy aligns itself to the JRLOS sector strategy under Outcome No 2, which is about the need for enhanced access to quality justice.

3.1 Mission

3.1.1 The justice for children policy aligns itself to the JRLOS strategy. The mission of that strategy is as follows:

“The JRLO Sector efficiently provides justice-related services to the people of Rwanda with the aim of transforming Rwanda into a country marked by the rule of law, accountable governance and a culture of peace thus contributing to socio-economic development and poverty reduction.”

3.1.2 The JRLOS seeks to contribute to poverty reduction, thereby linking into EDPRS 2. The purpose of JRLOS is “Strengthened rule of law to promote accountable governance, a culture of peace, and enhanced poverty reduction.”

3.1.3 Within this purpose, one of the strategy’s outcomes is “strengthened universal access to quality justice,” partly through measures to increased access to justice, such as the provision of legal aid. It is to this outcome that the policy for justice for children, seeks directly to contribute, focusing on children.

3.2 Principles of the Policy

3.2.1 In line with child rights principles and the meaning of justice for children, the following are the principles of the policy:

- ✚ Appropriate treatment of the child according to her/his age and ability;
- ✚ Familiar, speedy and diligent delivery of justice for the child;
- ✚ Delivery of justice focussing on the needs and rights of the child concerned;
- ✚ Respecting the rights of the child especially the rights to due process, having her or his voice given due weight, and the respect for private and family life;
- ✚ Respect and advancement of the need to enjoy dignified life and treatment

3.2.2 This policy underlines participation for children. It further underlines the availability of accessible friendly system through the participation of local people and families in the

delivery of justice. This approach links into EDPRS 2’s Thematic Area on accountable governance. That thematic area underlines “Citizen Engagement, ownership and more efficient governance are pre-requisites for success in EDPRS implementation.” In addition to public accountability and development communication, this EDPRS 2 thematic area stresses judicial reforms, to which the justice for children policy directly contributes under the JRLOS strategy.

3.3 The Results Chain for This Policy

3.3.1 The contribution to this outcome will be from two three related output, as follows:

Table 4: Outputs of the Policy

Output No.	Result Description
Output 1	A child friendly and responsive justice system that promotes participatory decision-making for reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities
Output 2	A growing critical mass for the delivery of friendly and responsive justice for children
Output 3	Effective and efficient coordination and monitoring of the delivery of justice for children

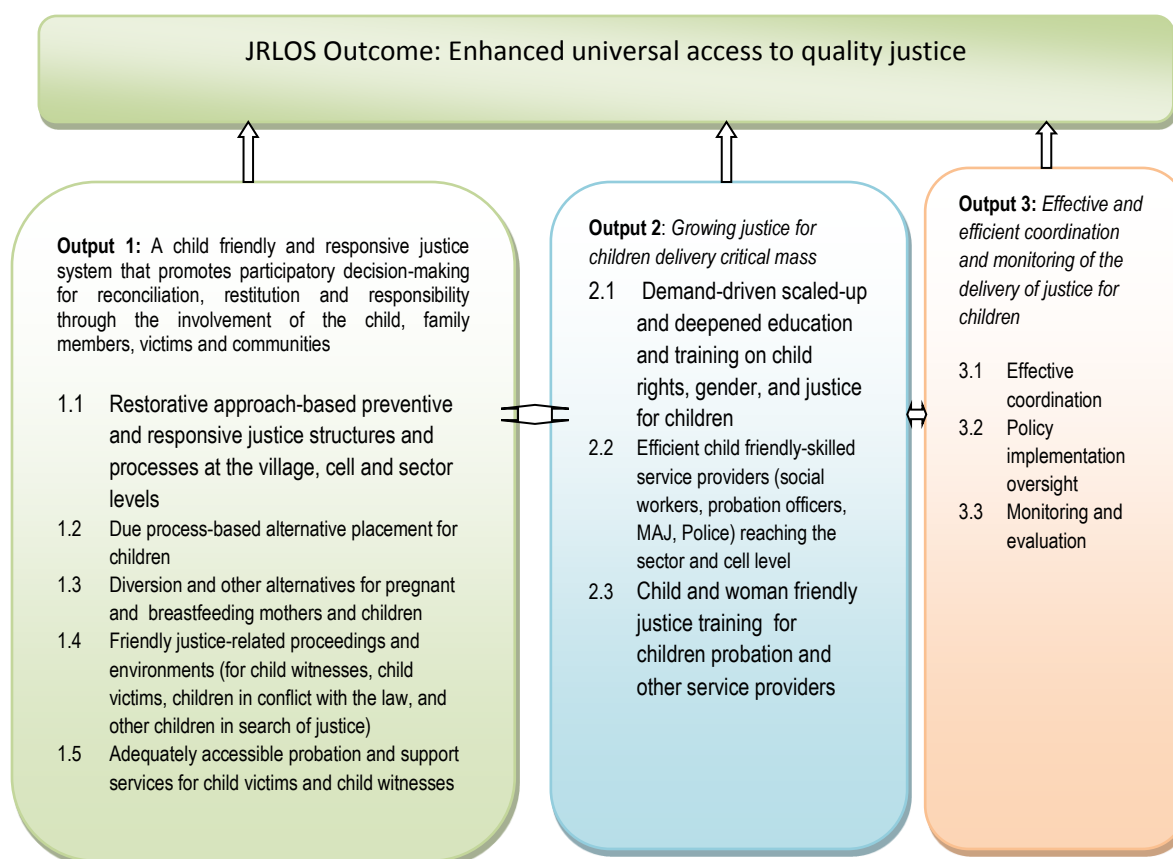
3.3.2 The objective of Output 1 is to complement efforts to increase the provision of legal aid and overall access to quality justice for children. The strategy is to make Rwanda’s justice system child-responsive and child-friendly. In criminal matters, the policy is, as much as possible, to divert most children from the police-based, prison-based, and law court-based system while making the institution-based system friendlier in its policies and procedures to deliver justice for children.

3.3.3 Output 2 seeks to create the critical mass for the attainment of Output 1 by having community members and justice service providers that have the appropriate attitudes and skills to deliver justice that is responsive and friendly to the child’s survival, developmental, participation, and protection needs.

3.3.4 The Objective of Output 3 is to ensure that results are delivered towards maximum contribution to the JRLOS outcome and, eventually, into Vision 2020. In this, Output 3 underlines the importance of the efficiency of activities and inputs as well as their effectiveness towards the realisation of each output and the outcome.

3.3.5 Figure 1 presents the activity results under each output, leading to the policy’s contribution to enhanced access to quality justice.

Figure 1: The Outputs and Activity Results of the Policy



4 Situation and Options Analysis for the Policy

4.0.1 The results chain for the policy responds to the situation analysis done specifically for this policy to ensure that it is evidence-based. That situation analysis further included an analysis of the options that Rwanda has to respond to the situation of justice for children in the country.

4.1 The State of Children and the Justice System in Rwanda in 2012

4.1.1 The situation analysis found that although there have been successes in the justice sector, but challenges remain with regard to justice for children. Justice services for the following two broad groups of children and mothers is to be improved:

- ✚ Children and mothers who need to be treated more sensitively and sometimes by the criminal justice system; and
- ✚ Children whose interests need special attention by the justice system:

4.1.2 The groups of children that need special attention in the justice system include:

- *Boys and girls accused of offences whose cases are pending investigations or awaiting dates of hearing or appeals:* In 2012, such children would be in police holding centres, where there are no separate cells for children.

- *Girls and boys who are in prisons with adults or in children-only prison:* As of 13 December 2012, there were 196 sentenced in Muhanga and Nyagatare prisons, 18 of whom were girls¹⁹. Some of them were on remand.
- *Children aged below three who are in prison with their convicted mothers:* There were, as of 17 January 2013, 142 babies²⁰ in prison with their mothers.
- *Minors who need legal assistance from a lawyer during Police investigation.*

4.1.3 The immediate causes of the problems facing these children are:

- *Inadequate diversionary measures and other alternatives in the criminal justice system:* There are few diversion-like measures available related to opportunities for prosecutors to facilitate mediation meetings to resolve conflicts and judges having powers to issue a non-custodial sentence against a child in conflict with the law.
- *While hearings in criminal matters are held in camera in the law courts, the practice is yet consistently to apply in the hearing of matters in civil matters involving children.*
- *Insufficient legal aid in criminal and civil cases for children:* Over eight in every ten, 81%, of alleged child offenders stated in 2011 that they did not meet lawyers assisting them until at the court. At the court, representation was high at 88.9%. This may affect the preparedness on part of lawyers.

4.1.4 In turn, these immediate causes result from the following:

- ✚ *A shortage of properly trained social workers, probation officers, police, prosecutors, and judges:* There are no probation officers in the justice system. Although there are social workers, police personnel, prosecutors, and judges, there is need for specialised training on the delivery of justice in a child-friendly manner.
- ✚ *Weak child-sensitive professional ethics amongst some law enforcing officers and defence lawyers:* Two in every five, 40%, of children in conflict with the law surveyed in 2012 indicated that they either received no legal assistance or their lawyers appeared unprepared.²¹
- ✚ *Low child rights literacy and understanding among some personnel in the justice system and community members:* Although the country passed the Children's Rights and Protection Law in 2012, few service providers, children, and community members know about the changes it has introduced.

4.1.5 At the national level, the problems faced by these children result from the following basic factors:

- ✚ *Low child rights related education:* Although Rwanda is a party to the CRC, there is yet to be a coordinated and effective child rights education.

¹⁹ Interviews with directors of prisons accommodating children, December 13, 2012

²⁰ Rwanda Correctional Service records, January 16, 2013

²¹ . Ibid.

✚ There is no data on adults' appreciation on the importance of child rights.

4.1.6 The following are children whose justice interests need to be improved:

- *Children with disabilities:* Specialised training among service providers will be needed to facilitate to communication during police investigations and court proceedings.
- *Children placed in alternative care:* In December 2012, there were 107 children at Gitagata Rehabilitation Centre awaiting due process.
- *Children with family, land, paternity, and inheritance cases:* These are the commonest cases facing children in civil matters. Awareness among Abunzi needs to be increased on how to handle children related cases since children rarely take up claims to the courts.
- *Children whose parents are imprisoned.*

4.1.7 At the immediate cause level, these incidents are caused by the following factors:

- *Community rehabilitation and reintegration mechanism:* Anti-GBV committees, child rights observatories, and child rights committees that are meant to be mechanisms for the community-based protection of children and women generally need strengthening.
- *Limited numbers of social welfare and legal workers that reach the community:* While social workers exist, they are so few, 1192 in 2011²², that they are not able effectively to work at the community level, let alone respond to the demands of the justice system. On their part, the personnel among the police and prosecutors are also not adequately trained in child friendly justice approaches, attitudes, and processes. Although other service providers commend the work of the MAJ, the accessibility of their services is difficult due to long distance and inadequate transport means, as they are based at the district level.
- *Neglect and abandonment of children by some parents:* Although polygamy is prohibited in Rwanda, the 2010 DHS reported at 7% prevalence. The situation analysis preceding this policy found that polygamy was one of the key causes of conflicts among family members and adversely affecting children.
- *Existence of some dysfunctional families and poor parenting skills:* The key factors causing this trend are polygamy, large family sizes, and neglect of parental duties by some fathers.

4.1.8 At the underlying level, the key causes of these problems are:

✚ *Local government social welfare capacity:* Although the local government has a focus on social welfare at the district and sector levels, the work with the cell and the village/Umudugudu is yet to be strong on matters related to the protection and participation of children.

²² . National Institute of Statistics in Rwanda, *Statistical Yearbook 2012*, (Kigali; National Institute of Statistics in Rwanda, 2012)

- ✚ *A cultural acceptance of polygamous marriages and informal sexual unions:* Although the law prohibits polygamy, the practice is still practiced among some individuals. Community members and children strongly identify polygamy as an underlying causes for injustices affecting children.

4.1.9 At the basic level, children’s justice issues are caused by:

- ✚ *Gender and child images:* The mother is expected to bear a disproportionate burden of childcare, compared to the father.

- ✚ *Children as rights holders:* One tendency among community members is the care ethic that children have to be controlled. Such control, however, is sometimes not in the best interests of the child but the preservation of status for elders and other adults.

- ✚ *Child and women’s rights implementation monitoring and oversight:* Although there are other national bodies that monitor human rights implementation, such as the Gender Monitoring Office, the Law grants the oversight role on human rights realisation to the NHRC whose role in this area needs to be strengthened.

4.1.10 These causes are sometimes crosscutting affecting more sectors than the JRLOS. In particular, the social welfare sector interfaces with the JRLOS and the performance of one affects the capacity and performance in the other.

4.1.11 The response of the policy to these matters is to build on current positive achievements, as follows:

- ✚ Facilitate and provide more child-friendly and responsive justice through mechanisms such as Abunzi system.
- ✚ Make the law court-based justice system friendlier for cases that should not be handled by the Abunzi system.
- ✚ Create capacity for the Abunzi systems and the law court-based systems to provide more child-responsive and child-friendly justice in Rwanda’s context.

4.2 Options Analysis for Justice for Children in Rwanda

4.2.1 In terms of approaches that a justice system can take, the choice is between either a retributive or a restorative approach. A retributive approach aims at fair treatment of people according to how they are proven to have wronged others or society. Its key advantages are that it provides punishment to reform behaviour, offers deterrence especially against heinous crimes, such as those related to genocide, and facilitates a sense of justice for victims and those seeking vengeance. Its key disadvantages, however, are that it neglects future relationships between parties, is economically costly, and is not participatory for those who are not parties or called as witnesses.

4.2.2 In contrast, a restorative approach to justice is the institutionalisation and delivery of justice using peaceful approaches to address harm, resolve conflicts, and provide remedies for violations of legal and human rights. One of the advantages is that it encourages positive-sum thinking and the peaceful resolution of disputes. It also facilitates reconciliation and psychosocial therapy between parties and thereby speeds reintegration. In addition, it is less economically costly and taking shorter time compared to retributive justice. Against these advantages, the disadvantages are that the approach may be regarded as amnesty or pardon

for perpetrators. Another disadvantage is that it may be seen as disregarding individual justice interests in favour of the wider interests and moving on.

- 4.2.3 Nevertheless, studies have shown that restorative justice methods are not only preferred by parties including victims, but that they are economically cheaper as well. Independent research in the UK found that in trials of restorative justice with serious offence (robbery, burglary and violent offences) by adult offenders, the majority of the victims chose to participate face to face with the offender with the help of a restorative justice facilitator and 85% of those who took part were satisfied. More significantly, restorative justice reduced the frequency of re-offending, **“leading to £9 savings for every £1 spent on restorative justice.”** Based on this research, further research showed that providing restorative justice in 70,000 cases involving adult offenders would deliver £185 million in cashable cost savings to the criminal justice system over two years, through reductions in re-offending alone.²³
- 4.2.4 A research on peace studies has concluded that like “the *Gacaca* courts, *Abunzi* mediations have contributed to reducing the congestion of the formal courts as most civil suits and crimes that fall under 3 million Rwandan francs are resolved at the local level.”²⁴ Having accessed statistical reports in July 2011 from the Ministry of Justice website, the research found that, “80% of civil cases pending before courts involved less than 1 million Rwandan francs. The *Abunzi* system was also effective. A MINIJUST study conducted in 2005 concluded that 73% of cases tried by *Abunzi* were not later referred to the formal court system. A 2008 USAID report on land and conflict revealed that the *Abunzi* mediators had helped alleviate the burden of the court system.
- 4.2.5 The efficiency of the *Abunzi* system, compared to other parts of the justice sector working on justice is huge, as Figure 2 shows. The attribute for the justice system advocated by *Abunzi* is restorative. This approach already exists in Rwanda’s traditions and the current *Abunzi* system. For justice for children, this approach is not only efficient and speedy, but also preventive of conflict as a result, due to its tendency to address current harm for future peace. The approach also facilitates participatory and friendly processes that are unlikely to harm the development of children.
- 4.2.6 With regard to procedure, the choice is between two main systems: Adversarial and inquisitorial. An adversarial system is mostly prevalent in Commonwealth countries. An adversarial system involves parties to a dispute and their representatives having the primary responsibility for finding and presenting evidence. Its key advantages are that it allows those judging to be seen as impartial, underlines the rule that the person who accuses must prove, and promotes the rule of law by insisting on adherence to procedure and rules. Its key disadvantages are that it is confrontational and may increase conflict, and may favour the domination of the powerful or those with resources. In addition, the approach is costly and time-consuming due to notice periods required for either party or adjournments.

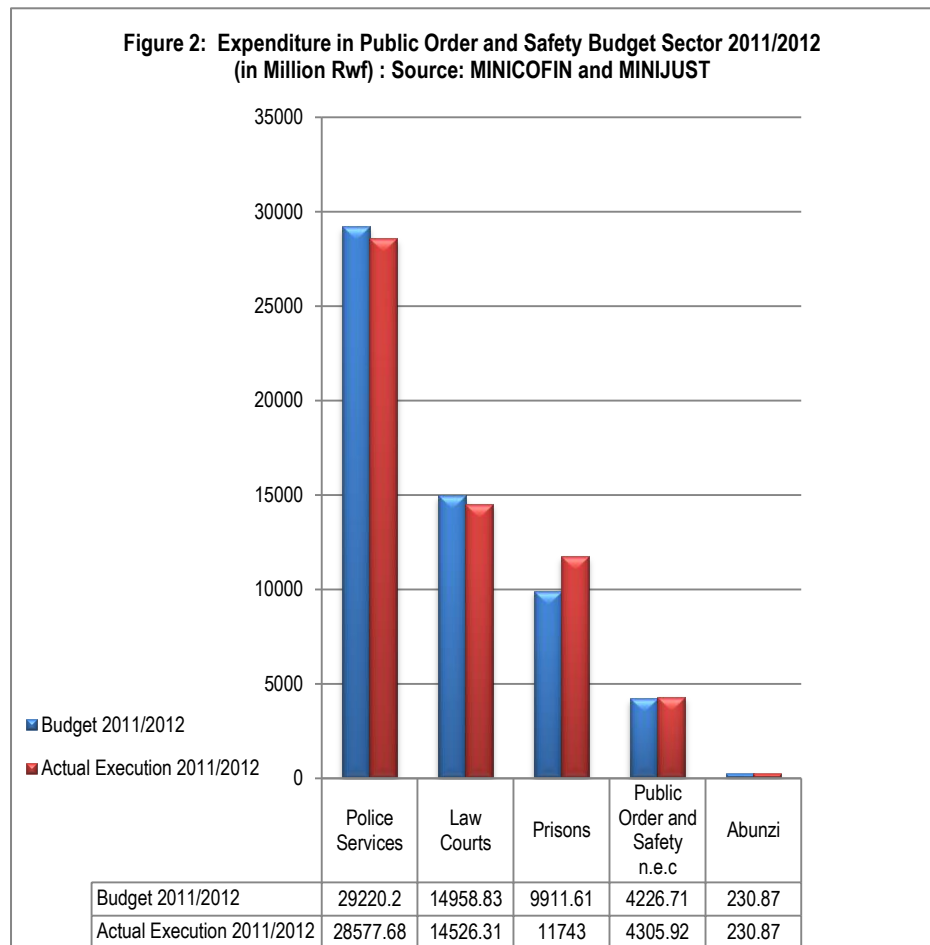
²³ . Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence* (The Smith Institute; London, 2007), <http://www.smith-institute.org.uk/file/RestorativeJusticeTheEvidenceFullreport.pdf>

²⁴ . Martha Mutisi, ‘Local Conflict Resolution in Rwanda: The Case of *Abunzi* Mediators’, in *Integrating Traditional and Modern Conflict Resolution Experiences from Selected Cases in Eastern and the Horn of Africa* (Accord; Durban2012), at 41 <http://accord.org.za/downloads/monograph/ACCORD-monograph-2012-2.pdf>

4.2.7 The adversarial system can be contrasted with the inquisitorial approach, which is mostly in Europe. It is premised on the need to attain justice with the composite effort of the prosecutor, the police, the defence lawyer and the court. Its key advantages are that it focuses on substantive justice rather than minor procedures and that all the components of the justice system can contribute to investigation to ascertain the truth. The approach also accords freedom to the judge. A key disadvantage however are that the court may be perceived as taking sides because of its active participation in the case. Further, the approach allows allegations to be made even when evidence is still scanty or non-existent. Furthermore, it ill-prepares the defendant to answer allegations.

4.2.8 Both these procedural approaches contrast with the traditional African approach, mostly in Sub-Saharan Africa. The system stresses the importance of an open participatory forum to resolve conflicts. In terms of advantages, this approach encourages participatory positive-sum thinking and the peaceful resolution of disputes. Further, it is still capable of dispensing familiar justice at low cost and without taking too much time. Furthermore, it facilitates collective

learning on conflict resolution and good relationship maintenance. Its disadvantages largely relate to the culture in which it has roots. There are fears that because African culture tends to be patriarchal, this approach to justice may foster patriarchal stereotypes that may prejudice women and children. It also tends to be



status-based, and feared not to respect the child as a rights holder. Lastly, the system, not enshrined in the principles of judicial independence, may be prone to corruption in resource poor social units.

4.2.9 With regard to juvenile justice, there are three competing approaches globally. The first is the punitive approach. This approach is mostly prevalent in English speaking countries (except Scotland), the Netherlands, and most Sub-Saharan African countries. It underlines the enforcement of punitive measures and ensuring that due process is followed. Its key advantages are that it provides deterrence to children, allows an unforgiving wronged

person to feel that justice has been done, and protects society from child re-offenders. One of its key disadvantage is that it is increasingly acknowledged that traditional ‘get tough’ and penal responses are ineffective as correctional and crime prevention methods. The approach also results in high custody rates for children. As it is institution-based, it tends to be economically expensive.

- 4.2.10 In contrast, the welfare approach is common in areas of Europe including Germany, France, Belgium as well as East Europe. One of its key advantages include that it is cheaper in process and has lower custody rates. Further, use of informal proceedings such as the children’s panels and hearings in Scotland tend to be child-friendly. Further, the participatory approach facilitates holistic decision, and actions based on the best interests of the young person. Its key disadvantages are that it allows people not trained or versed in the law to dispense justice and negates the role of punishment in correction. Further, the approach admits evidence that may be legally unreliable.
- 4.2.11 The third model of juvenile justice is a hybrid one, combining the attributes of the punitive and welfare approaches. This system exists in Scandinavia and incorporating a mix of justice and welfare elements. One of its advantages is that diverting young offenders and utilising community-based programmes is the most effective way to reduce juvenile crime. Further, the model satisfies the justice needs of those that are not ready to be forgiving. Furthermore, the model retains the deterrence effect in exceptional cases. A key disadvantage is that it is a challenge to balance public safety outcomes, public perceptions, and the needs of young offenders. Another challenge is to formulate the right criteria for various types and handling of cases.

5 The Preferred Option

- 5.0.1 The JRLOS strategy has set “universal access to justice” as one of its outputs. In Rwanda’s context, where many people are still poor, this entails that it is preferable to have justice systems that are universally affordable, easy to access, and whose procedures are not just efficient and effective, but also friendly.
- 5.0.2 To realise this goal for children, appropriate approaches, procedures and processes, and attitudes are necessary, partly because the justice system is traditionally not designed for children. It is important that justice delivered by Rwanda’s justice system is not only accessible, but also of good quality.

5.1 The General Approach

- 5.1.1 For a general approach for all children, this policy adopts a restorative approach. The Integrated Child Rights Policy defines a restorative approach to justice as that which promotes “reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities.” The policy opts for a restorative approach because this option:
- ✚ Already exists in Rwanda’s traditions and the current Abunzi system;
 - ✚ Increasingly proven to be the best approach to prevent conflict and address harm for future peace;
 - ✚ It is cost effective in terms of expenses on justice and prevention of unnecessary conflict; and

- ✚ Facilitates participatory, familiar, and speedy justice.

5.2 The Approach for Juvenile Justice

- 5.2.1 For Juvenile justice, Rwanda has so far tried to use the formal justice system. Traditionally though, there were less formal ways of handling children who had offended, underlying counsel, respect for the rights of others, and that a child is capable of change. From a child's rights perspective, the duty to ensure good behaviour for children is on parents and guardians. The country's increased association with standards on justice for children has shown an intention to move away from the unnecessary use of the formal justice system.
- 5.2.2 For juvenile justice system, the preferred option is a Hybrid one, within a restorative model because:
- ✚ Evidence shows that the welfare approach is more effective than the retributive approach in preventing and responding to youth crime;
 - ✚ Rwanda has already taken legal steps towards this position;
 - ✚ There is still strong opinions that seek to use punishment as an example for future conduct and believe that retributive justice is necessary in some cases (at least, according to international standards, in exceptional cases).

6 Stakeholder Views

- 6.0.1 There have been no objections to the approaches proposed in this policy, mainly because the aspirations came from stakeholders, community members, and children. This is largely because the policy continues a trend already taken in Rwanda, to have accessible, efficient and effective procedures and processes in the delivery of justice. The policy has such a wide endorsement, partly because of the process adopted in the formulation of this policy.

6.1 The Participatory Method in the formulation of this Policy

- 6.1.1 The process used to develop this policy was participatory and human rights-based. As a human rights-based in its process and intended outcomes, the process used international standards on justice for children as yardsticks to review the current situation and generate aspirations.
- 6.1.2 As results of a highly participatory process, the policy and this plan are the works of a Multi-Sectoral Technical Working Group. The Permanent Secretary in MINIJUST and Deputy Attorney General chaired the group. It worked on the necessary research and the development of the policy itself, assisted by two consultants. In all, this group held four working meetings, starting with the development of the concept to a detailed scrutiny of the strategic plan that accompanies this policy. The group finally presented the proposed policy and accompanying strategic plan at national validation conference attended by people from various sectors.
- 6.1.3 The research to ensure that the policy is evidence-based was gender and life cycle sensitive. The research involved members of the JRLS, policy makers, civil society actors in the JRLS, male and female justice providers, community members, adult and minor prisoners, and male and female children.
- 6.1.4 To ensure reliability of the data, the research triangulated its methods, holding 10 focused group discussions with community members, adult and minor prisoners, and other male and

female children. Over 20 interviews were held with people with special experiential knowledge on justice for children in the country. There were visits to three prisons and one to a children's rehabilitation centre. All these methods complemented findings from literature, which generated best practices in approaches, standard setting and implementation.

- 6.1.5 Appreciative Inquiry, the approach that stresses the positive experiences and dreams before scrutinising problems, guided the data collection and analysis in the research. This highly empowering approach avoided unnecessary focus on negatives. Instead, the approach facilitated the generation of aspirations, drawing from past and present experiences.
- 6.1.6 In its formulation, the policy is results-based. This is to allow the flexibility to adopt efficient and effective actions. In this, the development of the policy followed the guidelines of policies in Rwanda in terms of both the process and the substance.²⁵

6.2 The Dominant Views of Stakeholders

6.2.1 The research that preceded this policy was dominated by the following views from stakeholders:

- ✚ The State should regard itself as the ultimate parent for all children;
- ✚ The current criminal justice system is sometimes unfair to children in the way it handles them and particularly in the long sentences that children are given at the end of the trial;
- ✚ The possibility of diversions and community and other alternative sentences needs to be given serious consideration;
- ✚ The justice system is not sensitive enough to pregnant and lactating mothers. This impacts negatively on the health, survival and/or development of their children;
- ✚ The interests and voice of many child victims needs more attention in Rwanda's justice system;
- ✚ The justice system is too tolerant of fathers who neglect their children or marry polygamously.

6.2.2 The conclusion of all stakeholders who participated in the process to develop this policy was that it was time to have a justice system that is more friendly to children.

7 Implementation Plan

7.0.1 An accompanying costed strategic plan has been prepared for this policy.

7.1 Principles of Implementation

7.1.1 The strategic plan, which is results-based, stresses the need for efficiency, effectiveness, making an impact, and sustainability in its implementation.

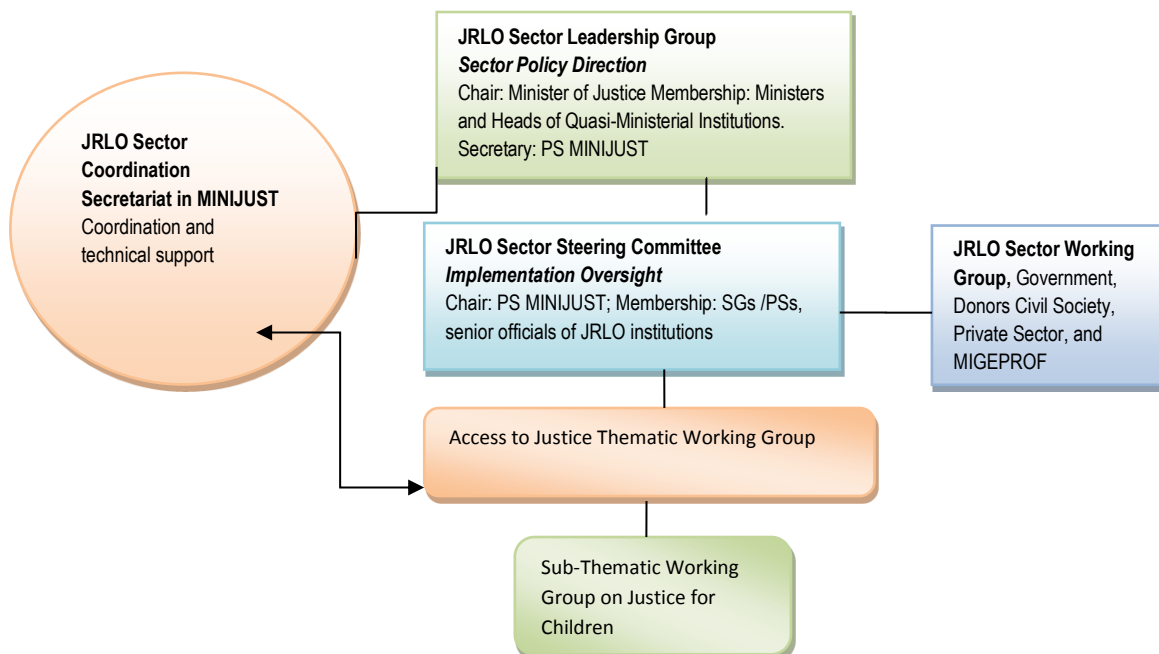
²⁵ . Article 3 of the Child Rights and Protection Law and Article 217 of the N° 01/2012/OL of 02/05/2012 Organic Law instituting the Penal Code

- 7.1.2 Efficiency will require that the activities and inputs should transform available resources into intended results in terms of quantity, quality and timeliness.
- 7.1.3 Effectiveness will relate the extent to which the results of the policy will have to achieve the outcome and the sector purpose.
- 7.1.4 Implementation towards making an impact will require focus on the relationship between the purpose and outputs and wide overall effect on both the lives of large numbers of people in the country and the wider policy or sector objectives.
- 7.1.5 Sustainability considerations will ensure that the positive results of the policy continue after external funding ends, with issues of ownership, policy support, economic and financial factors, socio-cultural aspects, gender equality, and institutional and management capacity as important. Of particular importance in Rwanda’s context will be the policy’s contribution to reconciliation, unity, business, and overall development.

7.2 Coordination

- 7.2.1 In its implementation, as in the design of this policy, the plan is within the JRLOS strategy, with a sub-theme working group to be established to focus on the coordinated implementation of this policy and its accompanying strategic plan.
- 7.2.2 The following figure presents the alignment and accommodation of this policy within the JRLOS strategy structure.

Figure 3: Coordination Arrangements for the Policy



7.3 Principles of Monitoring and Evaluation

- 7.3.1 The objective of the policy's monitoring and evaluation will be facilitation of a human rights and results-based tracking and responsiveness of the progressive implementation of the policy on justice for children.
- 7.3.2 The M and E principles will be as follows:
- ✚ Tracking of progress based on the friendliness of the justice system and its ability to accord due weight to the voice of the child;
 - ✚ Reporting on results referring to targets and the totality of the results chain, to ensure clear progress towards the outcome, within the framework of EDPRS II indicators;
 - ✚ Reporting on both quantifiable results and indications of economic and social transformation in communities implementing the Policy;
 - ✚ Distinct reporting on current activities and results as well as the sustainability of results from completed activities, to ensure proper consolidation of achieved results; and
 - ✚ Community members involvement in monitoring and evaluation.

8 Financial Implications

- 8.0.1 The initial stages of introducing the system will require some cost before it starts making returns and savings for the JRLS and the entire nation.

8.1 Financing Principles

- 8.1.1 This justice for children policy has been premised on the following efficiency principles:
- ✚ Not to make the policy cost the Government more than its current allocation to justice, until the implementation of the policy and the strategic plan become sustainable through savings and demand for the system.
 - ✚ Build on current efficient structures and processes and infuse child friendliness into the justice system using current laws, structures, and systems at no cost.
 - ✚ Meet any inception costs additional to the ordinary budget allocated to the sector through development and other assistance from partners who appreciate the importance of child-friendly justice.
- 8.1.2 Much as these principles have influenced the design of this policy, they will also guide the implementation of the policy.

8.2 The Cost of Implementing the Policy

- 8.2.1 The cost-saving nature of this policy may not be initially apparent by looking at the budget. However, the savings lie in the policy's reliance on the Abunzi system and the restorative approach over time. Most of the activities under Output 1 will not require additional funding, because of this policy. The details and costing of the activities that will require additional funding are in the strategic plan.
- 8.2.2 The activities under Output 2, about the creation of a critical mass for a child-friendly justice system in Rwanda, and those under Output 3, relating to monitoring and evaluation, will require additional funding. The details of the costs are in the strategic plan.

8.2.3 As the results are realised under the three outputs, there will be savings, because of the cost-effectiveness of a restorative approach and diversions from the criminal justice system. The key savings of implementing the justice for children policy and the strategic plan lie in the policy's reliance on the Abunzi system.

8.2.4 The following table provides a breakdown of the estimated budget by year and output.

Table 4: The Policy's Estimated Budget by Output and Year of Implementation

Output	2014	2015	2016	2017	2018	Total
1	323508367	723602343	730358713	474434515	506475956	2758379894
2	65404485	154743483	124916563	146238308	112099994	603402833
3	58996200	252999626	252999626	258894626	265899626	1089789704
Total	447909052	1131345452	1108274902	879567449	884475576	4,451,572,431

8.2.5 A full 5-year budget for the implementation of the policy is part of the strategic plan.

9 Legal implications

9.0.1 In many ways, this policy seeks to be a tool for a coherent implantation of the many of child-friendly justice reforms accomplished in the JRLOS.

9.1 Activities having no legal implications

9.1.1 As this policy largely seeks to implement existing law and advance the direction of reforms in the JRLOS, most of the activities under this policy will not require legal change. An example of such activities is instructions for Abunzi to be handling civil cases involving children, under Output 1.

9.1.2 Both Outputs 2 and 3 do not necessitate any change of the law.

9.2 Requisite law reform

9.2.1 However, the policy, in its implementation plan, puts forward a three-item agenda for law reform to make the justice system in Rwanda friendlier. The first law reform is to extend Abunzi jurisdiction to undertake re-integration in favour of child offenders, rehabilitation of victims of crime, and protection of children of imprisoned parents from stigma and discrimination.

9.2.2 The second activity result that will require law reform is the designation of space and personnel to implement special child and women protection units.

9.2.3 The third is the designation of courts specialised for children.

10 Impact on Business

10.0.1 This policy has a positive impact on business, for three reasons. Firstly, through its system of diversions and settlement of civil claims that Abunzi can handle, the policy will help reduce backlogs in the High court and other formal courts, allowing faster completion of business cases. Second, by speedily settling cases involving children, the policy will facilitate families and communities to have time for business and other productive endeavours. Thirdly, through savings expected from the restorative approach, the Government can re-invest in crime prevention measures thereby increasing safety, law, and order, which is essential for business.

11 Impact on Equality, Unity, and Reconciliation

11.0.1 The restorative approach adopted in this policy is in tandem with the country's efforts towards equality, unity, and reconciliation. Rehabilitation and reintegration are key strategies in justice for children and a restorative approach to justice. The participatory approach for this policy will enhance the spirit of collective decision making and unity among community members concerned about justice.

11.0.2 This policy further contributes clarity to balance between justice and reconciliation based on the best interests of the child. With regard to most children, the policy will help settle matters using a reconciliation approach through the work of the Abunzi. Justice will result through reconciliation in that regard. In addition, complex or serious cases will be referred to the law courts for appropriate justice.

12 Handling Plan/Communication Strategy

12.0.1 Through the extensive consultations undertaken during the development of this policy, it was clear that this policy would not be controversial. It was instead seen as a continuation of the country's efforts to ensure dignified lives, efficiency, and effectiveness, particularly with regard to justice.

12.1 Pre-Implementation Communication

12.1.1 This policy was subject to national level validation, mainly through the JRLOS steering committee. Accompanying and following the validation of the policy by the JRLOS steering Committee and approval by Cabinet will be involvement of the media in reporting the contents of the policy.

12.2 Implementation Related Communication

12.2.1 During its implementation, the policy has communication-related activities. The policy will be publicised at the district and lower levels by the MAJ and JRLOS district level communities that were established in all districts.

12.2.2 Output 2 under the policy is about awareness and training activities meant to create a critical mass for a child-friendly justice system in Rwanda. There will therefore be understanding of the policy among service providers in the justice system.

12.2.3 The implementation of the policy will benefit from resolutions of the Children's Summit, to which the JRLOS will also report on the implementation of previous resolutions. This will also ensure that matters of justice to children are placed on the agenda of the Children's Summit.