



Republic of Rwanda
The Judiciary

REPORT ON THE MEDIATION WEEK

 20th - 24th March 2023



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Introduction:

In line with the National Alternative Dispute Resolution (ADR) Policy adopted by the Government of Rwanda with the aim to reduce as much as possible litigation and adjudication in handling disputes, the Judiciary of Rwanda organized a Mediation Week starting from 20th up to 24th of March 2023.

The theme for this year's week is “*Mediation, the appropriate choice for your business, your family and community*”. In order for the event to be successful, the Judiciary invited different stakeholders of mediation namely lawyers, legal practitioners, financial institutions, and experts in mediation. Mr. Bruce EDWARDS, Founder Edwards Mediation Academy and his wife Susan Edwards shared their experience and expertise of over 35 years in training and practicing in mediation.

Discussions were held within three days (Monday 20th, Tuesday 21st and Thursday 23rd of March 2023) with a special topic for each day. On Monday March 20th (Day One), participants discussed Mediation and Mediation Advocacy Skills for lawyers, and Day 2 (Tuesday March 21st) was dedicated to Mediation on Financial Sector. The two first days were organized at Marriott Hotel. The third day, Thursday March 23, was exclusive for professional mediators. The participants shared ideas on the contribution of certified mediators in the implementation of the ADR Policy. The event took place at Crown Conference Hall, Nyarutarama. Afterwards, Edwards Mediation Academy and the Chief Justice of Rwanda awarded Certificates for newly certified mediators. Day 4 was an open mediation day in courts countrywide. The public had the opportunity to follow the first two days' sessions via the YouTube channel of the Judiciary of Rwanda.

The present report highlights important issues raised during the event, remarks by various speakers and recommendations thereof.



DAY ONE

SESSION ONE: OFFICIAL OPENING OF THE MEDIATION WEEK



The official opening of the Judiciary Mediation Week was officiated by the Honorable Chief Justice, Dr Faustin Ntezilyayo. He acknowledged the role of Court Advisory Committee in implementing mediation in Rwanda.



The Chief Justice recalled that the Rwandan community has always managed to find cultural mechanisms of resolving disputes. Today's mediation is not however a pro bono service as it used to be in pre-colonial Rwanda. It is rather a business. Mediation is the modern way to go in complex businesses issues such as construction, medical negligence,etc.

The Chief Justice concluded his remarks by reminding participants that mediation has many benefits such as affordability, flexibility, confidentiality of parties, time-saving, among others.

The Chief Justice hereby then officiated the opening of the Judiciary Mediation Week 2023



The Chairperson of the Court Mediation Advisory Committee, Honorable Chief Justice Emeritus, Prof. Sam RUGEGE began his remarks by giving a detailed background of Mediation Advisory Committee, its composition as well as highlighting the benefits of the mediation process. The Chief Justice Emeritus reiterated the role of lawyers in mediation namely to advise clients and provide them with legal assistance in the mediation process by helping them to reach to a reasonable understanding on mediation, and this has been appreciated by many parties who underwent mediation.



With regard to lawyers' behavior vis-à-vis mediation, the Chairperson categorized them in three groups: 1) combative lawyers, who are really enthusiastic, 2) passive lawyers, who only intervene when asked to provide their opinions, and 3) resisting lawyers who are reluctant or discourage their clients to resort to mediation. He gave an example of what happened in one of the Intermediate Court, where after the parties agreed before the judge to go to mediation, the lawyer told his client to forget about it; that they would win the case. He explained that some lawyers present such attitudes for fear that they will not get their fees.

The Chairperson concluded his remarks by recommending to resort to court ordered mediation and pre-filing mediation in some categories of disputes, to train lawyers and court staff on mediation benefits and to raise public awareness on the importance of mediation.

The Chairperson of the Court Mediation Advisory Committee saluted the support from Mr. Bruce EDWARDS, Founder Edwards Mediation Academy, California US and the Bar Association of Rwanda.



The President of the Rwanda Bar Association, Counsel Moïse NKUNDABARASHI began his remarks by thanking the Judiciary for involving the Bar Association in mediation.

The President of the Bar Association highlighted some of the benefits of mediation such as time saving, good future relationships of disputants, confidentiality of parties, quick solution to disputes, among others, and hence reminding the role of lawyers in the implementation of this mechanism. In this regard, the Counsel invoked the need for training lawyers in mediation as many don't have yet a full and clear understanding on the matter. He raised this because lawyers play a vital role in mediation including providing legal counsel to their clients.

The President of the Bar Association concluded his remarks by thanking the Judiciary for its role in partnering with the Bar Association to promote mediation.

SESSION TWO: THE ROLE OF LAWYERS IN MEDIATION



Mr. Bruce EDWARDS, Founder Edwards Mediation Academy, California US, as the Keynote Speaker started the conversation by sharing his experience of over 35 years in mediation, hence highlighting the importance of resorting to mediation and how to embrace it.

Mr. Bruce EDWARDS reminded that Lawyers are the stakeholders of mediation and they play a



vital role for the success of mediation. Lawyers, all over the world, started by being hesitant to join mediation because either they are used to be in control of their clients or lack skills on mediation. To overcome these hindrances, the first step is to train lawyers in mediation.

He wined up his note by reminding participants about the role of lawyers in mediation, which includes providing mediation statements to mediators, writing a good mediation brief, designing a process that is suitable to both parties, preparing the client to negotiations by avoiding irritating messages to them, as well as keep all parties involved in mediation. He concluded by stating that he and Susan will continue to help the Judiciary of Rwanda in its process to developing mediation practice.



Mrs. Bernadette UWICYEZA, Mediation Trainer and ADR Expert as discussant 1, shared the experience from Courts visits conducted by the Advisory Committee to discuss with judges and registrars challenges they are facing and share best practices.

The discussant revealed some challenges facing courts and the current situation about the collaboration between courts and lawyers in mediation.

Regarding challenges, the discussant stated that in some cases, court registrars and judges think they do not need lawyers during mediation, which is not the true. To address this issue, court judges and registrars need more training in mediation skills and referral to mediation.

Mrs. Bernadette also said that lawyers have a problem of discussing issues of compensation in mediation. They also need more training in mediation advocacy to understand their role in mediation and further reading on Chief Justice Instructions governing court mediation. She added that some judges were not aware about different forms developed to facilitate mediation case management such as the one-page court order form for enforcement of the settlement agreement or the model of the settlement agreement itself. They also need to familiarize themselves with those tools.



Counsel Emmanuel BUTARE, as discussant 2, was asked to present on the lawyer's fee in mediation. On this issue, the discussant stated that lawyers need to know that mediation is another source of income.

The issue of mediation is not normally mentioned in the engagement contract concluded between the lawyer and client. As a remedy to this issue, the discussant advised lawyers to include mediation in the engagement agreement, and by doing so, the issue of lawyers who are still reluctant to adopt mediation method will be settled. He also advised lawyers to consider the end-result of the issue. He added that lawyers should be proud of being part of the solution.



SESSION 3: FROM THEORY TO PRACTICE

With this session, Mr. Bruce EDWARDS, Founder Edwards Mediation Academy, California US, led a **role play exercise from a typical mediation case referred from a court**, after which participants gave their reactions and inputs.

For this session, Counsel Florida KABASINGA led a plenary discussion by which participants followed with much attention and after which some of them reacted thereof.

After fruitful discussions within three sessions, the President of the Bar Association saluted the contribution of participants in the activities of day one, reminded the benefits of mediation, hence reminding the lawyers of their role in mediation practice development .

After the closing remarks, the President of the Bar Association officially closed Day one of the Judiciary Mediation Week 2023 and invited participants to attend Day two.

RECOMMENDATIONS DAY ONE

After discussions on different topics planned on Day One of the Judiciary Mediation Week 2023, participants agreed on the following recommendations:

- i. To amend the Civil Procedure Code in order to introduce provisions on pre-filing mediation in some categories of cases and court ordered mediation.
- ii. To train court staffs and advocates in mediation skills
- iii. to raise public awareness about court mediation and encourage the sue of mediation before filing cases in courts.
- iv. to include a mediation clause in the contract between advocates and their clients to secure their payments once a case ended during mediation process.

DAY TWO: FINANCIAL SECTOR MEDIATION SYMPOSIUM

SESSION ONE: OPENING REMARKS BY THE CHIEF JUSTICE

Day two started at 10:30. The Chief Justice, Hon. Dr. Faustin NTEZILYAYO welcomed participants in the event. Participants on this day included CEOs and Managing Directors of various financial institutions in the banking and insurance industry.



The Chief Justice of Rwanda, Hon. Dr. Faustin NTEZILYAYO began his remarks by exchanging with the leadership of financial institutions on the benefits of using mediation to resolve financial disputes and thus, maintain and strengthen good relationships between consumers of financial services and financial services providers. He then thanked various leaders of different financial institutions for their attendance.

With regard to mediation, the Chief Justice reiterated that litigation is not the only solution to resolve

financial disputes between consumers and financial institutions like banks, finance companies, life insurers, general insurers, capital markets services licenses, licensed financial advisors and insurance brokers. He therefore recommended financial institutions to resort to mediation, since it has proved to be more beneficial by allowing parties to resolve disputes quickly privately and efficiently.

The Chief Justice concluded his remarks by promising participants that the Judiciary of Rwanda is committed to continuously explore ways to deliver timely and quality justice for all and that they will continue to join hands with stakeholders in promoting mediation as one of the best ways to expeditiously, confidentially, effectively and efficiently resolve disputes, including financial disputes, subject matter of Day two discussions.

Leaders of financial institutions posing a photo with Hon. Chief Justice



MEDIATION IN THE FINANCIAL SECTOR, THE ROLE OF THE LEADERSHIP

Leaders & Decision Makers Role Throughout the Mediation Process and Mediation System Design



Mr. Bruce EDWARDS, JAMS Mediator and Founder Edwards Mediation Academy, told participants that conflict is part of human being, therefore, all financial institutions know well the importance of keeping legal departments in their companies. Mr. EDWARDS explained various benefits of mediation to leaders of financial institutions who attended the discussion. He reminded them that “the danger in life is not knowing what you do not know”.

He informed them that, **in US, no one goes in litigation without first going through mediation.** He added that only around 1% of disputes go to courts. After explaining to participants how mediation has helped financial institutions in US over 35 years, Mr. Bruce strongly recommended financial institutions in Rwanda to resort to such dispute’s resolution mechanism. CEOs and MD should not spend time managing conflicts instead of focusing on the core objectives of their businesses. Companies lose a lot of money and confidence in dragging their customers into endless litigations. The mission of any company manager should be to minimize to the maximum conflicts within and outside in order to invest the time in activities that are profitable to the enterprise.



The Vice Chairperson of Court Mediation Advisory Committee, Justice Dr. Aimé Muyoboke Karimunda, as discussant, presented to participants the current overview of mediation in litigated cases. Mediation is the best way to go for business people as it creates a healthy and sustainable relationship between partners.



The financial sector would attract more investors if financial companies adopt an adequate approach to resolve conflicts with their customers. The business would also expand and be sustainable if the leadership in the sectors doesn't waste time in litigation and adjudication. Courts would also concentrate on heavy cases for which there is need for clear and robust ruling on complex legal issues. Today, judges spend hours and hours in calculating compensations that could have been well calculated by the insurer himself.

He recalled that for this judicial year for example, there are 550 insurance cases pending before Rwandan courts. Radiant Insurance Company is on top of other companies with 212 cases representing 38%, Sanlam Insurance Company with 143 cases (26%), Sonarwa has 80 cases or 14% and Prime Insurance Company has 61 cases or 11%. These cases create case backlog with the consequence of jeopardizing the rights of victims (widows, orphans, etc.) who are seeking insurance compensation. Even when the insurance company wins the case, it will have frozen its money for all the years it will be waiting for a court ruling.

Justice Aimé Muyobokey Karimunda commended however the positive move towards mediation from the Banking and Insurance Sector in recent months. Answering to the concern of basic salary raised by a participant, the discussant reminded that the issue has been sorted out through a legal position adopted by the Supreme Court.



With an example of the case *INKUNDAMAHORO v BRD*, in which 54 individuals intervened as third party, a case that was sent to mediation and came out with a positive solution. The CEO of BRD, **Mrs. KAMPETA SAYINZOGA Pichette**, highlighted the benefits of mediation she has learnt after the case:

- i. avoiding reputation risks (confidentiality) since it is for instance boring for any financial institution to appear in news headlines;
- ii. helping business companies to keep track on their financial provisions (budget) by avoiding litigations which disturb the annual budget;
- iii. emotional retribution meaning that mediation helps parties feel their emotions considered;
- iv. with mediation, you get more information that you could never know with litigation because parties are able to speak out almost everything about the matter;
- v. mediation is time-effective
- vi. mediation helps financial institutions to save legal fees due to reduced number of litigations.

Though mediation has many benefits, Mrs. KAMPETA revealed that some financial institutions are still reluctant to resort to mediation due to the challenge of the level of flexibility with the mediation process, finding neutral person to mediate parties and the predictability of mediation outcome.

The CEO also requested the Bar Association to train lawyers in mediation since it appeared that they have not yet grasped the mediation process. She further requested the Minister of Justice to be the one who approves the settlement agreement and not the Auditor General or other Chief Budget Officers. Mrs. KAMPETA concluded her conversation by informing participants that BRD has been convinced with the benefits of mediation and therefore, they have adopted a policy that all cases involving BRD will have to first pass through mediation, and they have included this clause in their contracts.



Mr. John MILENGE ; CEO Prime Insurance as discussant, started his conversation by reiterating the benefits of mediation where he stated that Rwanda needs mediation since it brings humanity, as shown by the history of the country. He stated that mediation cannot be embraced without an enforcing policy from the government.

The CEO Prime Insurance Rwanda reminded that lawyers see every single case as a way of generating income, and victims are held hostages of legal technicalities and jargons. He therefore requested the government to intervene in order to change such attitudes. Mr. John MILENGE revealed to participants that between 60 – 70% of claimed funds in insurance-related cases never go to victims, which is extremely unfortunate. He therefore recommended that mediation be made mandatory in all civil cases.

After a good conversation by the discussants, the Hon. Chief Justice, Dr Faustin NTEZILYAYO, saluted their insights. He reacted on two points that were raised by discussants namely the issue relating to government disputes and the issue of mandatory mediation.

With regard to the issue of government disputes, the Chief Justice informed participants there is hope that over time citizens will no longer be pushed to litigation while there is no really case, rather, they will be encouraged to opt for other alternative disputes resolution options, especially mediation. The Chief Justice reminded that the Rwandan legislation allow all cases to be settled through mediation.

On matter relating to mandatory mediation, Hon. Chief Justice of Rwanda informed participants that the government recommends commercial cases, family disputes, to be referred to mediation before trial. He further stated that there is a draft law that is being worked in the Law Reform Commission, which will set light to the issue of mandatory mediation.

The Chief Justice concluded his comments by promising participants to convey the message of the urgency of the law on mandatory mediation.



In her closing remarks, the Deputy Governor of the National Bank of Rwanda, Mrs. Soraya HAKUZIYAREMYE, who spoke in the name of the Governor and on behalf of the National Bank of Rwanda, noted that before this symposium on mediation, the trend in financial institutions was to think that they will use their powers to influence courts decisions. She thus recommended for a change on attitudes and embrace mediation.

The Deputy Governor submitted that the recent finding of the National Bank of Rwanda is to recommend all financial institutions and their consumers/customers to resolve their disputes through mediation. Financial institutions should plan for capacity building sessions in order to upskill both their in-house legal counsels and supervision teams in mediation skills. Mrs. Soraya further revealed that insurance, banking and micro-finance sectors represent more cases in courts than other sectors, and they should be the first to embrace mediation as way of retaining their customers.

The Deputy Governor concluded her remarks by informing participants that the National Bank of Rwanda is in the middle of conducting a study in order to assess the implementation of ADR Policies especially mediation across all financial institutions including by making sure that senior management boards are fully involved in mediation or really understand the process. She added that, the National Bank of Rwanda, as a regulator of financial institutions, is committed to ensure that mediation is considered as a first dispute resolution mechanism in the financial sector, since it does not only contribute to the reputation of Rwanda financial hub, but also to stability and safeguarding of financial sector.

RECOMMENDATIONS (DAY 2)

After fruitful discussions with financial institutions, participants came up with important recommendations namely:

- i. To include a clause in contracts between financial institutions and their clients, requiring mediation as a first option in dispute resolution
- ii. The State and its agencies to take the lead in engaging in mediation for disputes involving public administration.
- iii. Financial sectors should review their in-house litigation management policy to include mandatory mediation before filing a case to court.
- iv. financial sectors should encourage their external advocates to engage in mediation before rushing to litigation, and
- v. need for training in house lawyers on mediation and mediation advocacy skills.



DAY THREE: THE ROLE OF CERTIFIED MEDIATORS IN THE IMPLEMENTATION OF THE ADR POLICY

SESSION ONE: OPENING REMARKS

Day Three started around 2pm at Crown Conference Hall and an emphasis was put on certified mediators and their contribution to the implementation of the ADR Policy. The event began by a welcome note by Justice Harrison MUTABAZI, Inspector of Courts and Spokesperson of the Judiciary, who thanked participants and welcomed them to the event. Participants on this day include newly certified mediators, representatives of legal institutions in relation to mediation, among others.

In his opening remarks, the Chief Justice Emeritus Hon. Prof. Sam RUGEGE congratulated the graduates who have become professional mediators. It is never easy to start a new carrier. However, mediation is part of the Rwandan culture of disputes resolution. Therefore, except that mediation is nowadays a little bit sophisticated, it is not new.

On the background of mediation, the Chairperson of the Court Mediation Advisory Committee stated that the journey begun in 2018 by the incorporating mediation into the civil procedure code. Since then, judges and registrars were empowered to initiate and conduct mediation.

The Chief Justice Emeritus reminded a couple of complaints and issues faced in last few months:

- I. Lack of understanding by the public, regardless involvement of the radios and other media platforms to sensitize the public on mediation, the level of appreciation has not yet been achieved, sensitization must continue.
- II. Resistance by many of the lawyers, this will be addressed through continuous trainings;
- III. Lack of training among the judicial officials, especially judges who are traditionally trained to take decisions while in the mediation it is not the case, although they are enthusiastic about the whole process;
- IV. There are also complaints on the mediators' fee which is too low, he notes that with time this will be dealt with in drafting of the new law, but people should also think of pro-bono services of mediation to those who cannot afford to pay a mediator in private practice.
- V. Lack of space for mediation, places where to carry out mediation, no enough rooms at courts, whereby judges lend their chambers for mediation sessions
- VI. Lack of convenient requirements such as water, furniture, among others;
- VII. The biggest one being not getting enough work to do. On that issue of not being there enough work, the proposed solution includes to upgrade ADR policy which was done traditionally, which will create more work, whereby the court will have the power to order for the mediation, like how it is done in Kenya and Singapore. Other proposed solutions are Prefilling mediation in commercial, family issues, among others, awareness raising and also to approach business entities to embrace mediation. There is also a need to set up an organization of the mediation profession that will be handling training and ethics of mediators.

The Chief Justice Emeritus concluded his remarks by stating that the road to mediation carrier is not easy, but people should not be discouraged.

SESSION 2 : MEDIATORS' CONTRIBUTION TO THE IMPLEMENTATION OF THE ADR POLICY



Many people had the opportunity to give their remarks during this session. Those include the Representative of the USAID, Mr. Anastase NABAHIRE, D.G Justice Sector Secretariat, Mr. Fred RWAHUNDE, Chairperson Mediators' Task Force, Me. Andrews KANANGA, Executive Director Legal Aid Forum, Mr. Victor MUGABE, KIAC Secretary General, all stressed the contribution of mediators and the role of each stakeholder present in implementing ADR Policy such as availing a draft of ADR policy implementation guidelines, as promised by Mr. Anastase NABAHIRE, D.G Justice Sector Secretariat, as well as providing facilities (offices) for mediation.

Discussants agreed on the following for the ADR policy to be implemented:

- To organize all professionals involved.
- Regulation of mediation for the benefit of the public;
- Mediators' Task Force has to avail draft of laws and internal rules to all mediators for review and comments in the next few weeks.
- All stakeholders need to consider the importance of collaborating with professional mediators.
- Creating strong network within mediation professionals.
- Putting in place referral mechanisms with courts, law firms, business companies, among others;
- Developing specialization in mediation profession;
- To educate the community on mediation;
- To educate on how to market mediation business.



After a good discussion by the panelists on the role of certified mediators in implementing ADR Policy, the Chief Justice of Rwanda, **Dr. Faustin NTEZILYAYO** gave a message of encouragement and he thus called for continuous training on mediation.

The Chief Justice requested all stakeholders to come on board, and stated that there is a room for growth with mediation since it is clear that the future is bright based on the current feedback from various mediation partners (lawyers and financial sector). He added that the Judiciary is hopeful that mediation and ADRs will work as expected.



SESSION3: CERTIFICATES AWARDING CEREMONY FOR INTAKE 7 OF THE MEDIATION SKILLS PROGRAM



This mediation skills program was undertaken by the Judiciary of Rwanda and implemented by Edwards Mediation Academy in collaboration with Mediation Home Rwanda. The present intake started with **121** participants and **115** of them managed to successfully complete the course. The certificate award ceremony was officiated by Hon. Chief Justice, Dr. Faustin NTEZILYAYO.

The Hon. Chief Justice, Dr. Faustin NTEZILYAYO, during Certificates awarding ceremony for intake 7 of the mediation skills program, he recalled that Mediation is a key component of the Alternative Dispute Resolution (ADR) policy adopted by the Government of Rwanda. The Chief Justice congratulated those who completed successively the course. He took this opportunity to thank Mr. and Mrs. EDWARDS for their contribution to mediation training and development program, and he promised that the Judiciary will work with other stakeholders to organize capacity building programs in mediation.

During this ceremony, newly certified mediators, represented by Mrs. Patricia MUHONGERWA offered various gifts to the Chief Justice for his role in promoting mediation, and to Mr. and Mrs. EDWARDS for their contribution to mediation training and development.

After awarding certificates to newly certified mediators, graduates posed for a photo with the Chief justice.





Hon. Chief Justice giving his remarks

RECOMMENDATIONS (DAY 3)

Participants of Day 3 of the Judiciary Mediation Week 2023 agreed on the following recommendations:

- I. to train paralegals and other community actors about ADR policy and its implementation;
- II. to create a good cooperation between institutions that deals with ADR mechanisms such as KIAC and other relevant actors to promote mediation;
- III. to include ADR clause(mediation) in contracts between advocate and their clients to secure their payments once a case ended during mediation process;
- IV. to train paralegals and other community actors about ADR policy and its implementation,
- V. to include ADR clause(mediation) in contracts between advocate and their clients to secure their payments once a case ended during mediation process.

After a three-day discussion on various important topics during the Judiciary Mediation Week 2023, participants from different institutions involved in the mediation process agreed on the following twenty (20) recommendations:

➤ Recommendations to the Judiciary

1. To Strengthen capacity building for judicial officers on court mediation.
2. To streamline the case referral mechanism from the Judiciary to private mediators.
3. To develop specialization in mediation training and practice;
4. To raise public awareness about all existing mediation forms of mediation.
5. To work with accredited mediators to educate the business community about mediation.

6. To include mediation rooms in all court buildings to facilitate the mediation process.
 - **Recommendations to MINIJUST**
7. To fast-track the adoption of a comprehensive legal and institutional framework for mediation
8. To amend the Civil Procedure Code in order to introduce provisions on pre-filing mediation in some categories of cases and court ordered mediation.
9. The State and its agencies to take the lead in engaging in mediation.
10. To engage stakeholders on facilitating pro-bono mediation services to vulnerable disputants.
11. To build the capacity of both professional and non-professional bailiffs to engage in mediation.
 - **Recommendations to financial institutions**
12. To include a clause in contracts between financial institutions and their clients, requiring mediation as a first option in dispute resolution
13. Financial sector institutions should change their dispute management policy to include mandatory mediation before filing a case in court.
14. Financial sector institutions should require their external lawyers to engage in mediation process before rushing to litigation.
15. Financial sector institutions should facilitate in house lawyers and other relevant staff to undergo training in mediation and mediation advocacy.
16. Financial sector institutions should encourage their external lawyers to be trained in mediation advocacy.
 - **Recommendations to NGOs, KIAC**
17. To train paralegals and other community actors about ADR policy and its implementation;
18. To create good cooperation between institutions that deal with ADR such as KIAC and other relevant actors to promote mediation.
 - **Recommendation to RBA**
19. To include in the contract between a lawyer and his/her client a clause that allows lawyers to secure their full payment even when a case is resolved through mediation.
20. To encourage all lawyers to undergo training in mediation and mediation advocacy.



P.O. Box 2197 Kigali Rwanda



NRS - KG 543 St.



www.judiciary.gov.rw



info@judiciary.gov.rw