



TRIAL
International



DYSFUNCTIONAL, INEFFECTIVE, OPAQUE

An overview of the judicial
system in Burundi

Cover: A woman walks by the Court of Residence in Rutegama,
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EXECUTIVE SUMMARY

Deep-rooted structural deficiencies have resulted in impunity for human rights violations in Burundi. In view of this, TRIAL International has produced an overview of the failings of the judicial system, further exacerbated since the start of the political crisis in 2015.

The aim of this report is to stimulate actors in the regional community, particularly the African Commission on Human and Peoples' Rights (ACHPR), to use their full weight to encourage and support the process of transitional justice.

The report focuses on the violation of four fundamental rights:

- the right to an effective remedy,
- the right to personal liberty,
- the right to a fair trial,
- the right to reparation.

The right to an effective remedy (section 2) is one of the foundations of the rule of law. Unfortunately, the cases monitored by TRIAL International in Burundi show that it is almost systematically disregarded: the attention given to criminal complaints is merely a façade and does not lead to a satisfactory investigatory process. In the absence of investigations, the perpetrators of abuses are not identified and the acts go unpunished.

The Burundian authorities must guarantee the right to an effective remedy and unfettered access to justice, and promptly conduct investigations into serious human rights violations with a view to identifying and prosecuting those responsible.

The independence and impartiality of the judicial institutions are also essential to guarantee victims an effective remedy. Yet, **the lack of independence and impartiality of Burundi's judicial system** has been pointed out many times by a number of observers.

The Burundian authorities must guarantee the independence and impartiality of the judiciary, undertaking a thorough, structural reform of the country's judicial system and ensuring that no interference by other State powers and/or any other external actors influences the dispensation of justice.

The failings in Burundi's judicial system also affect two other fundamental rights that are intrinsically linked: **the right to personal liberty and the right to a fair trial (which are addressed jointly in section 3)**. The violations that undermine judicial proceedings reveal the often unjust and arbitrary nature of arrests and/or detentions. Worse still, these irregularities seem to be based on **false accusations** against the victims.

The Burundian authorities must guarantee respect for the right to personal liberty and the right to a fair trial, prohibiting any misuse of the judicial system.

Procedural delays are also common in Burundi, impacting the individual's rights to personal liberty and a fair trial. These delays affect both the duration of pre-trial detention and the length of the proceedings themselves.

The Burundian authorities must respect the right of every person to be tried within a reasonable time.

The shortage of financial, human, material and/or logistical resources of the judicial system has a significant impact on the duration of proceedings. Indeed, it is one of the causes of the considerable delays in the advancement of cases.

The Burundian authorities must allocate all the financial, human, material and logistical resources necessary for the good functioning of the country's judicial system.

Lastly, in order for justice to be meaningful, it must have two dimensions: punitive and restorative. Reparation refers to ways of restoring the victims' situations following the crimes committed against them. Yet, if there is no investigation or prosecution, **the victims cannot receive reparation (section 4).**

The Burundian authorities must guarantee the right to redress for victims, set up a full reparation program that is not dependent on the conviction of the perpetrators and establish State compensation funds for victims.

They must also promptly implement the decisions of regional and international mechanisms for the protection of human rights, with the aim of redressing the wrongs committed.

Finally, the Burundian authorities must make all the necessary reforms to establish an independent, functional and effective judicial system.

Without these reforms, Burundi will remain incapable of establishing the rule of law and commencing a credible process of transitional justice. And, even more seriously, this situation will prevent the building of peace and stability in the country, which will remain trapped in recurrent cycles of violence.

ABOUT TRIAL INTERNATIONAL

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable suffering. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.

Founded in 2002, TRIAL International has offices in Switzerland, Bosnia & Herzegovina and in the African Great Lakes region, as well as a local structure in Nepal. It also conducts investigations, presents cases and engages in advocacy in several other countries, including The Gambia and Mexico. Since its creation, TRIAL International has supported over 900 victims of international crimes in national and/or international proceedings. Within the framework of its training programs for local actors, it has trained more than 480 legal practitioners.

TRIAL INTERNATIONAL IN BURUNDI

TRIAL International has been working in Burundi since 2011. The organization has represented **over 100 victims of the most serious crimes** (torture, extrajudicial killings, enforced disappearances, sexual violence and arbitrary detentions) before national courts and international bodies, including the United Nations Committee Against Torture and the United Nations Working Group on Arbitrary Detention. It has trained **more than 120 Burundian lawyers** in the representation of victims of international crimes and **almost 60 human rights defenders** in the documentation of those crimes.

Twelve cases brought by TRIAL International against Burundi are currently pending before the African Commission on Human and Peoples' Rights. **Around 20 reports** have been submitted to the United Nations committees and the International Criminal Court.



1. INTRODUCTION

Since 2011, TRIAL International has been supporting Burundian lawyers to represent the victims of enforced disappearances, arbitrary detentions, extrajudicial killings, torture and sexual violence in Burundi. The cases selected for litigation are representative of the main trends of serious human rights violations in the country. Although they concern a limited number of victims, TRIAL International hopes that any success in these cases will serve as a precedent for many other similar cases.

Indeed, deep-rooted structural deficiencies have resulted in impunity for human rights violations in Burundi. In this report, TRIAL International provides an overview of failings of the judicial system, further exacerbated since the start of the current crisis in 2015.

The aim of this report is not to pointlessly criticize Burundi's judicial system, but to **stimulate actors in the regional community**, particularly the African Commission on Human and Peoples' Rights (henceforth the ACHPR or the African Commission), to use their full weight to **encourage and support a credible process of transitional justice**.

1.1. FREQUENT CRITICISMS, BUT NO CHANGE

The ACHPR has, on a number of occasions, urged Burundi "to investigate and hold accountable all those who are responsible for perpetrating human rights violations".¹ It has also called on the country's authorities to "ensure that victims of the above violations and their families obtain full and adequate redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition".²

¹ ACHPR, *Statement on the situation of human rights in Burundi in the upcoming presidential elections*, 3 May 2015. See also *309 Resolution on the Human Rights Situation in Burundi*, ACHPR/Res.309(EXT.OS/XVIII)2015, 7 August 2015; *357 Resolution on the Human Rights Situation in the Republic of Burundi*, ACHPR/Res.357(LIX)2016, 4 November 2016, §4 (v); *396 Draft Resolution: Burundi*, ACHPR/Res. 396 (LXII) 2018; *412 Resolution on the Human Rights Situation in the Republic of Burundi*, ACHPR/Res. 412 (LXII) 2018, 13 November 2018.

² *357 Resolution on the Human Rights Situation in the Republic of Burundi*, ACHPR/Res.357(LIX)2016, 4 November 2016, §4 (vi).

The ACHPR undertook a fact-finding mission in Burundi in December 2015. The final report of that mission highlighted the “culture of impunity [that] has become entrenched in the politics of the country” and has a significant impact on the commission of further serious violations of human rights.³

It is worth noting that one of the recommendations in the report is “the establishment of an independent internationally supported special tribunal in Burundi whose mandates include holding perpetrators of human rights violations and other abuses criminally accountable during the current crisis”.⁴ This recommendation was also made in 2018 by the United Nations Commission of Inquiry on Burundi (CoIB), as one of the “priority measures” to be adopted by Burundi.⁵ The CoIB urged the authorities to, “with the support of the international community, establish ad hoc mechanisms with a mandate to investigate human rights violations and to prosecute perpetrators of international crimes that are not being investigated by the International Criminal Court”.⁶

To date, this recommendation – and the majority of the others – has not been implemented. TRIAL International notes with regret that the need to address the shortcomings in Burundi’s justice system is now more pressing than ever.

1.2. METHODOLOGY AND STRUCTURE OF THE REPORT

The report was prepared based on **23 cases concerning 47 Burundian victims** (direct victims and/or their families) on which TRIAL International has worked directly. More than half of the cases concern serious human rights violations such as extrajudicial killings, enforced disappearances, acts of torture. Two of these cases concern sexual violence. Four cases concern the implementation of international decisions. The remaining cases relate to arbitrary detention.

³ [Report of the Delegation of the African Commission on Human and Peoples’ Rights on its Fact-Finding Mission to Burundi](#), 7-13 December 2015, §§25-26.

⁴ *Idem*, §172 c.

⁵ [Commission of Inquiry on Burundi, Detailed Final Report of the Commission of Inquiry on Burundi, A/HRC/39/CRP.1](#), 12 September 2018, §831 (In French; Translation by TRIAL International).

⁶ *Idem*, §831 b.

TRIAL International collaborates with local lawyers to represent the victims in these cases. The organization closely follows the development of each case and offers its strategic legal expertise, to complement that of the Burundian lawyers.

The lawyers' case development notes, together with interviews with the representatives of TRIAL International, formed the methodological basis of the report. Interviews with 29 Burundian lawyers who have taken TRIAL International training and are still practicing in Burundi completed the gathered information.

This report does not purport to be exhaustive, but aims to give a general overview of the situation in order to encourage the regional human rights protection system, particularly the ACHPR, to take action in favor of the victims of international crimes in Burundi and support the country with the necessary reforms.

The report focuses on the violation of four fundamental rights:

- the right to an effective remedy,
- the right to personal liberty,
- the right to a fair trial,
- the right to reparation.

Some structural deficiencies may lead to the violation of more than one of these rights. In this case, they will only be described under one of them. Furthermore, these rights are intrinsically linked to each other.

In this report, a deliberate choice has been made to refer to *regional* legal standards and instruments, particularly the African Charter on Human and Peoples' Rights and its interpretation by the African Commission.

Finally, this report makes recommendations to the ACHPR to encourage the Burundian authorities to honor their obligations under the African Charter on Human and Peoples' Rights.

2. THE RIGHT TO AN EFFECTIVE REMEDY

The right to an effective remedy is the pillar of a justice system that serves citizens and one of the foundations of the rule of law. However, for this right to be truly effective, States must go beyond theoretical procedures. They must guarantee available and accessible means of obtaining redress before independent and impartial courts. The procedures must also be effective; that is, they must offer *real* prospects for success.

2.1. BURUNDI'S OBLIGATIONS

The right to bring a case before the courts

Article 7.1 a) of the African Charter on Human and Peoples' Rights⁷ states that:



Every individual shall have the right to have his cause heard. This comprises: (...) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

The African Commission on Human and Peoples' Rights (henceforth the ACHPR or the African Commission) has interpreted this provision as recognizing the right to have “**unfettered access** to a tribunal of competent jurisdiction to hear their case”.⁸ According to its case law, a competent tribunal is a body that has been given power by law to investigate the case and to try the person subject to the proceedings.⁹

⁷ See also the [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#), 2003, developed by the ACHPR, which also specify that “any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body”(§C c. (i)).

⁸ ACHPR, *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v. Sudan* (279/03-296/05), 27 May 2009, §181. Unless otherwise specified, any bolding has been added by the authors.

⁹ *Ibid.*

In its case law, the African Commission has also affirmed that States have at least a threefold obligation under international human rights law: “to respect, to ensure and to fulfil the rights under international human rights treaties”.¹⁰ In the view of the African Commission, “to fulfil the rights means that any person whose rights are violated would have an effective remedy as **rights without remedies have little value**”.¹¹

Thus, the ACHPR has clearly established that, by virtue of Article 1 of the African Charter, States must “ensure that effective and enforceable remedies are available to individuals”.¹² According to “an authoritative interpretation of an international standard on State duty” that, in the opinion of the ACHPR, would also apply to Article 1 of the African Charter, “States are obliged to **investigate every situation** involving a violation of the rights protected by [international law]” and “to use the means at its (*sic*) disposal (...) to **identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation**”.¹³

While the right to an effective remedy is not expressly guaranteed in Burundian law, it should be noted that Burundi is a monist system. Therefore, like any other international text duly ratified by the country, the African Charter on Human and Peoples’ Rights is not only an integral part of Burundian law, but also prevails over it.

¹⁰ ACHPR, *Zimbabwe Human Rights ONG Forum v. Zimbabwe* (245/2002), 15 May 2006, §171.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Idem*, §144. This refers to the Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Series C., No. 4.9 Hum. Rts.1.J. 212 (1988).

Every individual shall have the right to have his cause heard. This comprises (...) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, ARTICLE 7



Independence and impartiality of the courts

In order for a remedy to be truly effective, it must also be possible to access it before independent and impartial courts. In this regard, Article 26 of the African Charter imposes on States **the duty to guarantee the independence of the courts.**



Furthermore, Article 214 of the Burundian Constitution declares that:

The judiciary is impartial and independent of the legislature and executive. In the exercise of his or her judicial functions, the judge is subject only to the Constitution and the law.

(Translation by TRIAL International)

It is worth noting that the independence and impartiality of the judiciary is also fundamental for the right to a fair trial to be fully guaranteed; this reflects the tight interconnection of the fundamental rights in question. Areas where the system is dysfunctional thus often impact several of those rights. In this regard, TRIAL International underlines that the right to an effective remedy also involves the victims' right to reparation.¹⁴

¹⁴ This aspect will be developed further in section 4, below.



“The public prosecutors do not process cases of international crimes linked to politics. They always look for alibis to avoid investigating the case or questioning the accused.”

Mr X. Y., Burundian lawyer

2.2. INEFFECTIVE OR NON-EXISTENT INVESTIGATIONS

The cases monitored by TRIAL International show that the filing of a complaint seldom leads to any actual action. Instead, there is often merely a façade rather than a satisfactory investigation.

“The public prosecutors do not process cases of international crimes linked to politics. They always look for alibis to avoid investigating the case or questioning the accused”.

Mr. X. Y., Burundian lawyer

Indeed, TRIAL International has brought many cases concerning crimes of extrajudicial killings, enforced disappearances and acts of torture. Despite filing complaints in due form and sending numerous reminders to the competent judicial authorities, **none of these cases have been correctly followed up.**

In most of these cases, at the insistence of the lawyers, an investigation file was formally opened and a number was assigned to the case. The procedural steps to prepare the cases for trial have also been laborious and have required disproportionate follow-up by the representing lawyers. In some cases, **the original complaint was lost**, and a second complaint – or a copy of the first – was requested. Those actions have thus far been fruitless since, in the majority of the cases, **no investigative measures have been taken**, as far as the lawyers are aware.

“The victims and their lawyers are often asked to provide evidence, or they are accused of not having provided evidence.”

Mr. X. Y., Burundian lawyer

In just one case, a torture victim was heard by the investigating magistrate, who even went to the prison where the victim is still being held. However, that remained an isolated measure

and the outcome of that case is the same as the others: **in the absence of an investigation to establish what really happened, the perpetrators of the abuses have not been identified and the events surrounding the crimes remain unpunished.**

RECOMMENDATIONS TO THE ACHPR:

- urge the Burundian authorities to guarantee the right to an effective remedy and unfettered access to justice;
- urge the Burundian authorities to promptly conduct investigations into serious human rights violations with a view to identifying and prosecuting those responsible.

The case of J. N.

A case was formally referred to Burundi's judicial authorities for the first time in relation to the enforced disappearance of Mr. J. N. in November 2016. The complaint was filed with the public prosecution office of the competent court two days later. During the month following the filing of that complaint, the legal representative visited the public prosecution office five times. The copy of the complaint filed went missing nonetheless.

In December 2016, another copy of that complaint was lodged and registered. After three visits to the court registry by the victim's representative, a month later the public prosecutor ordered that the case be opened as a D15 (a preliminary investigation file, in the language of the public prosecution office) and assigned it to a magistrate to investigate.

Although an initial meeting took place with the designated magistrate, no progress was made in the case until May 2017, five months after the first referral to the authorities. No fewer than ten visits were made to revive the investigation, but these were unsuccessful. In May 2017, a meeting was arranged with the public prosecutor to inform him of this inertia. Despite promising to discuss the matter with the the investigating magistrate, there have been no further developments and the case has come to a standstill.

2.3. PARTIAL JUSTICE WITHOUT INDEPENDENCE

As underlined above, the independence and impartiality of national judicial institutions are essential to guarantee victims an effective remedy. Article 26 of the African Charter imposes on States the duty to guarantee that independence.

Out of 13 relevant cases considered here, in only two cases of sexual violence supported by TRIAL International did the trials of the alleged perpetrators actually start. The two cases concern the rape of minors. However, those proceedings were not devoid of problems.

Although one of the cases is still ongoing, in the other,¹⁵ the irregularities were so numerous that the only possible outcome was the acquittal of the accused. **The judicial bias towards the alleged perpetrator, a member of the military, was striking.** Although the case was investigated by the police and the public prosecution office, from the start of the trial phase there were multiple irregularities. Among other anomalies, the lawyer representing the victim was interrupted many times when he attempted to support the allegations of the public prosecutor, who remained passive himself. When the victim's lawyer asked the judge to put certain questions to the accused and the defense witnesses, the judge refused, promising that observations could be submitted at the end. That promise was not honored. There were moments of consultation between two defense witnesses and the accused during the hearing, under the permissive gaze of the judge. After having been questioned, outside the courtroom, witness X spoke to witness Y, who was also a defense witness and was shortly due to appear before the court. Moreover, witness Y was allowed to talk to the accused in the middle of the hearing. Such practices seriously undermine the process of establishing the facts, as they enable the accused and the witnesses to align their stories.

¹⁵ For more details, see the [TRIAL International article of 29 August 2019](#).

“Although we flagged this issue, the judges played it down. The witness and the accused were heard anyway: they both gave a new version of the facts. All that happened before the judges’ eyes.”

Mr. B. N., Burundian lawyer

The lack of independence and impartiality of Burundi’s judicial system has been pointed out many times by a number of observers. In October 2015, the United Nations Committee on Economic, Social and Cultural Rights stated that it was “concerned that the security of judges’ tenure is not adequately guaranteed, and that could seriously undermine their independence”.¹⁶ In addition, in August 2015, Human Rights Watch denounced the interference of the National Intelligence Service (SNR) in some judicial decisions.¹⁷

“The judiciary is not at all reliable to handle this kind of case [involving international crimes] and reach an entirely independent decision.”

Mr. S. N., Burundian lawyer

Meanwhile, the United Nations Committee against Torture expressed its concern that “little progress has been made in terms of independence of the judiciary: the Supreme Council of the Judiciary, which has the power to suspend or recall judges, remains under the control of the executive branch”.¹⁸

¹⁶ Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Burundi, E/C.12/BDI/CO/1, 16 October 2015, §7.

¹⁷ Human Rights Watch, “Burundi: Spate of Arbitrary Arrests, Torture”, 6 August 2015.

¹⁸ Committee against Torture, Concluding observations of the Committee on the special report of Burundi requested under article 19 (1) in fine of the Convention, CAT/C/BDI/CO/2/Add. 1, 9 September 2016, §26.



The lack of independence and impartiality of Burundi's judicial system has been pointed out many times by a number of observers.

What is more, in all its reports, the United Nations Commission of Inquiry on Burundi highlighted the lack of structural independence of the judiciary, detailing all the obstacles to Burundi's judicial system having the necessary independence.¹⁹

RECOMMENDATIONS TO THE ACHPR:

- **urge the Burundian authorities to guarantee the independence and impartiality of the judiciary, including:**
 - **by undertaking a thorough, structural reform of the judicial system;**
 - **by ensuring that no interference by other State powers and/or any other external actors influences the dispensation of justice.**

¹⁹ Commission of Inquiry on Burundi (CoIB), Detailed Final Report of the Commission of Inquiry on Burundi, A/HRC/36/CRP.1/Rev.1, 29 September 2017, §§648-654; CoIB, Final Report, *supra* note 5, §§471-493; CoIB, Detailed Final Report of the Commission of Inquiry on Burundi, A/HRC/42/CRP.2, 13 September 2019, §§302-314; CoIB, Detailed Findings of the Commission of Inquiry on Burundi, A/HRC/45/CRP.1, 16 September 2020, §§569-573. All reports are only available in French.

3. PERSONAL LIBERTY AND THE RIGHT TO A FAIR TRIAL

The failings in Burundi's judicial system also affect two fundamental rights that are closely linked: the right to personal liberty and the right to a fair trial.

The right to personal liberty is the right to not be arbitrarily arrested and/or detained. Yet, failure to respect the guarantees of a fair trial often leads to violations of personal liberty. That is why these two rights are being addressed jointly in this report.

Furthermore, the aforementioned lack of independence and impartiality of the courts also contributes to violations of these two rights. Once again, this shows how the flaws in Burundi's judicial system are interconnected.

3.1. BURUNDI'S OBLIGATIONS

Article 6 of the African Charter stipulates that:



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

The African Commission on Human and Peoples' Rights (henceforth the ACHPR or the African Commission) has provided elements for a definition of what makes a deprivation of liberty arbitrary. Indeed, it has referred to the case law of other international bodies, which have also explored this notion: "[I]n the *Albert Mukong Case*, the United Nations Human Rights Committee stated that, Arbitrariness is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law (...)."²⁰

²⁰ ACHPR, *Article 19 v. Eritrea* (275/03), 30 May 2007, §92. Footnote omitted.

Consequently, the legality of a deprivation of liberty cannot be deduced exclusively from the fact that it complies with national legislation. Indeed, “an arrest or detention may be legal according to the letter of domestic law, but arbitrary and therefore illegal by reason of its inappropriate, unjust or unpredictable nature”.²¹

According to Article 7(1)(b)-(d) of the African Charter:



Every individual shall have the right to have his cause heard. This comprises: (...) (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

TRIAL International notes that Burundian law also enshrines these guarantees, particularly in Articles 38, 39 and 40 of the Constitution.²² Other, more specific, guarantees are provided for in the code of criminal procedure.

²¹ *Ibid.*

²² Article 38 of the [Constitution](#) declares that “Each person has the right, in judicial or administrative proceedings, to have their case heard fairly and to be judged without unreasonable delay.” Article 39 states that: “No one may be deprived of their freedom if it does not conform to the provisions of law (...)” Article 40 enshrines the presumption of innocence and establishes that “[e]very person accused of a criminal act is presumed innocent until their guilt has been legally established in court in a public trial during which the necessary guarantees for a free defence have been assured.” Translation by TRIAL International.

Victims have reported being arrested without being informed of the reasons for their arrest or their rights. These irregularities reflect the false nature of the accusations.



3.2. ARBITRARY ARRESTS BASED ON FALSE ACCUSATIONS

The procedural violations that undermine the judicial proceedings documented by TRIAL International reveal the often unjust and arbitrary nature of arrests and/or detentions. It will suffice to mention here that in the cases monitored by the organization, several guarantees around the right to individual liberty and a fair trial were ignored.²³

Indeed, arrests can only take place “pursuant to a warrant, on reasonable suspicion or for probable cause”²⁴ and every person must be entitled “to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings”.²⁵ In addition, victims have reported being arrested without being informed of the reasons for their arrest²⁶ or their rights (to legal representation and to be examined by a doctor of their choice, etc.)²⁷ and have not been permitted to inform their families that they have been arrested or detained, including for long periods.²⁸

These irregularities seem to reflect **the false nature of the accusations**. The victims are viewed as posing a threat to internal State security, participating in armed gangs or threatening the integrity of the national territory. What the victims have in common is the fact that they are perceived – rightly or wrongly – as opponents of the ruling party.

RECOMMENDATION TO THE ACHPR:

- urge the Burundian authorities to guarantee respect for the right to personal liberty and the right to a fair trial, prohibiting any misuse of the judicial system.

²³ Since the start of the crisis in 2015, reports of serious human rights violations, particularly arbitrary arrests and detentions, have increased exponentially. Since the aim of this report is to highlight the weaknesses of the judicial system, here we will focus on a few of the most recurrent key elements in the cases considered.

²⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, supra note 7, §M 1. b.

²⁵ *Idem*, §A 2. f.

²⁶ In this regard, see *Idem*, §M 2. a.

²⁷ In this regard, see *Idem*, §M 2. b.

²⁸ In this regard, see *Idem*, §M 2. c.

The case of H. & others

The case of H. & others concerns 11 defendants, four of whom are women. Arrested in September 2016, they were all sentenced in the first instance, in May 2019, for threatening internal State security and participating in armed gangs.

The ruling was less than six pages long, almost two of which contain the personal details of the defendants. It clearly shows that the accusations are based entirely on the statements of a witness called by the prosecution... who never appeared before the court, in either the pre-trial phase or the public hearing. Therefore, there has been no opportunity to confront this witness or to assess her credibility. The allegations seem to have been made at the offices of the National Intelligence Service. Given that said witness would appear to be part of the same alleged group of rebels, the court of first instance classed her allegations as “incontestable proof” and sentenced the 11 defendants to 30 years’ imprisonment.

The verdict of the appeal is still pending. Despite several adjournments during the appeal proceedings to enable that key witness for the prosecution to appear, she never attended a public hearing.

3.3. EXCESSIVE DURATION OF PROCEEDINGS

Procedural delays have also been noted in Burundi. They affect both the duration of pre-trial detention and the length of the proceedings themselves.

“After the context of threat that prevails in the country, unreasonable delays are one of the biggest obstacles we face.”

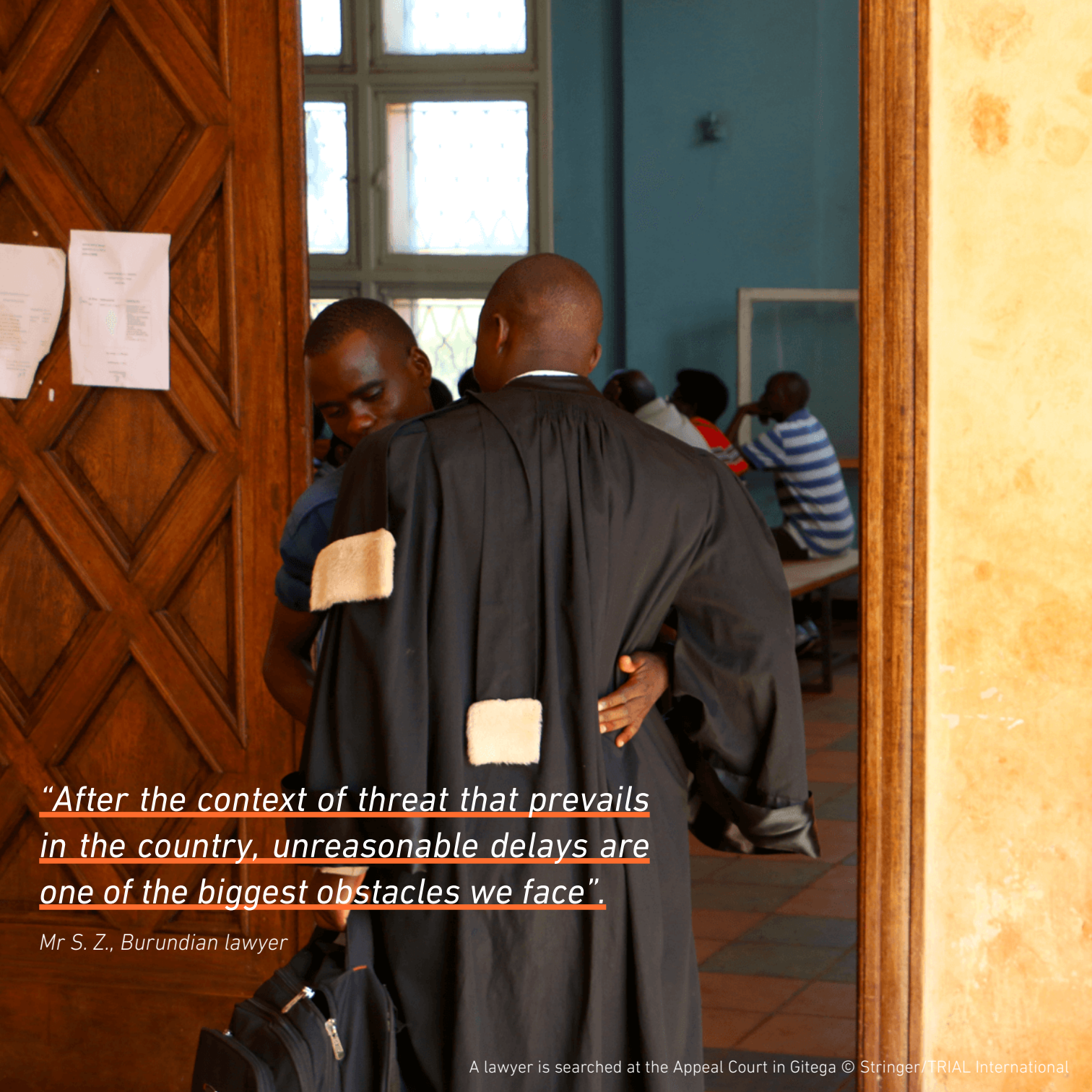
Mr. S. Z., Burundian lawyer

Excessively lengthy proceedings impact both the individual’s right to liberty and the right to a fair trial. The right to be tried without undue delay is also provided for in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission in 2003. According to the Guidelines, “the right to a trial without undue delay means the right to a trial which produces a final judgement and, if appropriate a sentence without undue delay”.²⁹

In a case recently referred to TRIAL International, the defendant J. H. was arrested in January 2016. Accused of threatening internal State security, J. H. **has been awaiting trial for more than four and a half years**. At the time of writing and despite the efforts of the lawyer appointed by the organization, the case cannot be scheduled for a public hearing because the majority of the documents relating to the investigation have been lost by the public prosecution office. Worst still, the authorities keep the victim in custody under the pretext that he is accused of a very serious crime, that of threatening State security.

In the aforementioned case of H. & others, the proceedings were not quite as long: the first instance sentence was pronounced “only” two and a half years after their arrest, in May 2019. The appeal process commenced “just” one year later. At the time of writing this report, the deadline for delivering the appeal verdict is more than two months overdue and the victims are still waiting. Indeed, the organization frequently documents **failures to respect the deliberation deadline**.

²⁹ *Idem*, §N 5. b.



“After the context of threat that prevails in the country, unreasonable delays are one of the biggest obstacles we face”.

Mr S. Z., Burundian lawyer

A third case recently brought by TRIAL International shows both the bias of Burundi's justice system – which can be extremely quick when it so wishes – and the excessive duration of proceedings. In the case *G. & others*, the three accused were **arrested in February 2016 and sentenced to 20 years' imprisonment less than a month later**. They have all regularly appealed this decision and **have been waiting for the appeal process to start since March 2016**.



RECOMMENDATION TO THE ACHPR:

- urge the Burundian authorities to respect the right to be tried within a reasonable time.



The shortage of human, material and/or logistical resources of the judicial system has a significant impact on the duration of proceedings, given that it causes considerable delays in the advancement of cases.

3.4. LACK OF HUMAN, MATERIAL AND LOGISTICAL RESOURCES

It is certainly difficult to uphold the right to a fair trial without the necessary means to do so. This lack of resources also significantly affects the right to an effective remedy.

The detailed assessment of these shortcomings by the United Nations Commission of Inquiry on Burundi in 2018 is particularly worrying.³⁰ Its report reveals a lack of “basic resources and equipment”, “office and logistics equipment” (such as computers and typewriters) and the necessary means of transport for proceedings to progress properly.³¹

The shortage of human, material and/or logistical resources of the judicial system is felt at different levels in most of the cases monitored by TRIAL International. Indeed, it has a significant impact on the duration of proceedings, given that this lack of resources causes considerable delays in the advancement of cases. More concretely, TRIAL International regularly observes delays due to waiting for typed copies of procedural documents. This lack of resources is also frequently cited by the authorities themselves to justify their inertia. For instance, the public prosecutor said that he had “*run out of toner to print the documents relating to the case*” to justify why a case had not yet been scheduled for a public hearing.

Another example is that when a case requires the investigating magistrate or judges to travel somewhere, such as the prison where the accused is detained, the proceedings become even more protracted. It is not uncommon for hearings to be postponed several times due to a lack of funds to cover such travel.

RECOMMENDATION TO THE ACHPR:

- urge the Burundian authorities to commit all the financial, human, material and logistical resources necessary for the good functioning of the judicial system.

³⁰ See ColB, Final Report, *supra* note 5, §§495-502.

³¹ *Idem*, §§496-500. Translation by TRIAL International.

The case of S. & others

This case concerns five defendants who are all members of an opposition party, the National Congress for Liberty (CNL). Arrested in November 2019, they were accused of threatening the integrity of the national territory, among other things.

As they are being detained in one of the prisons in the interior of the country while the case is pending before one of the jurisdictional districts in Bujumbura Mairie, between June and October 2020, the hearings were regularly postponed due to a lack of funds for the judges to travel to the prison where the five are being held.

4. THE RIGHT TO FULL AND EFFECTIVE REPARATION

Reparation refers to different ways of restoring the victims' situations following the crimes committed against them. TRIAL International considers that in order for justice to be meaningful, it must have two dimensions: punitive and restorative.

The victims of serious human rights violations have “the right to adequate, effective and comprehensive reparation”,³² including financial compensation measures for any material or immaterial damage caused, as well as satisfactory psychological, social, economic and judicial rehabilitation, particularly through public apologies to the victims and a strong message condemning such acts and their impunity.

³² ACHPR, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), which was adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, Gambia, §8.

Although the right to reparation is not expressly mentioned in the African Charter, it is inextricably linked to several rights that are protected by the Charter, including the right to an effective remedy, the prohibition of torture, the right to life and the right to liberty.



4.1. BURUNDI'S OBLIGATIONS

Although the right to reparation is not expressly mentioned in the African Charter, it is inextricably linked to several rights that are protected by the Charter, including the right to an effective remedy, the prohibition of torture, the right to life and the right to liberty.

Indeed, States have *positive* obligations in relation to the prohibition of torture, the right to life and the right to liberty, among others. In particular, they must take measures to prevent violations of these rights, conduct independent and effective investigations into any alleged violations, punish the perpetrators and **grant full reparations to the victims**.³³

In addition, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, state that “[t]he right to an effective remedy includes: (i) access to justice; (ii) reparation for the harm suffered (...)”.³⁴ Thus, there can be no real right to an effective remedy without compensation for the material or immaterial damage suffered.

In its General Comment No. 4 on the African Charter on Human and Peoples’ Rights, concerning the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (Article 5), the African Commission on Human and Peoples’ Rights (ACHPR) asserts that the States Parties “should include in their national budgets funds for reparation for victims of human rights violations, including victims of torture and other ill-treatment”.³⁵

Furthermore, it underlines that “victims’ access to reparation shall not depend on the initiation of and/or successful outcome of an investigation or criminal proceedings against a perpetrator. States shall ensure that reparation is accessible independently from the identification, apprehension, investigation, prosecution or conviction of the perpetrator”.³⁶

³³ See, for example, ACHPR, *Zimbabwe Human Rights ONG Forum v. Zimbabwe*, supra note 10, §143; ACHPR, *Al, ComitB LB, LCHR, AMECEA v. Sudan* (48/90-50/91-52/91-89/93), 15 November 1999, §56.

³⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, supra note 7, §C b.

³⁵ ACHPR, General Comment No. 4, supra note 32, §26.

³⁶ *Idem*, §33.

4.2. A RIGHT STILL SUBORDINATE TO OTHER ASPECTS OF ACCESS TO JUSTICE

Section 2 of this report described the virtual absence of investigations into the cases monitored by the organization. Yet, in Burundi, in the absence of investigations or prosecutions, “it is impossible to guarantee the rights of victims of human rights violations to reparation”.³⁷

Moreover, as illustrated above, even if a trial does take place, procedural violations may result in the accused being acquitted. Consequently, once again, the victims have no access to redress.

The United Nations Commission of Inquiry on Burundi has already asked the Burundian authorities to put in place “in consultation with the beneficiaries, (...) a reparations programme (*sic*) for victims of human rights violations, ensuring that material, symbolic, individual and collective reparations are made available regardless of whether or not the perpetrators are convicted”.³⁸

RECOMMENDATIONS TO THE ACHPR:

- urge the Burundian authorities to guarantee victims the right to adequate, effective and comprehensive reparation;
- urge the Burundian authorities to set up a full reparation program that is not dependent on the conviction of the perpetrators;
- urge the Burundian authorities to establish State compensation funds for victims of serious human rights violations.

³⁷ CoIB, Final Report, 29 September 2017, *supra* note 19, §635. Translation by TRIAL International.

³⁸ CoIB, Final Report, *supra* note 5, §832 g.



In view of the failings in Burundi's justice system, which predate the crisis that began in April 2015, TRIAL International has submitted several cases to international bodies since 2011.

4.3. IMPLEMENTATION OF INTERNATIONAL BODIES' DECISIONS

In view of the failings in Burundi's justice system, which predate the crisis that began in April 2015, since 2011 TRIAL International has submitted several cases to international bodies, including the ACHPR, the UN Committee against Torture (CAT) and the UN Working Group on Arbitrary Detention (WGAD). Following favorable decisions before the CAT and WGAD, TRIAL International went back to the national judicial system to urge it to implement those decisions. In particular, the organization has worked on the implementation of four decisions from international bodies.

The first two cases concerned acts of torture. None of the organization's efforts were successful and the decisions of the CAT recognizing Burundi's responsibility have, to date, gone unheeded. Despite the various endeavors of the lawyers appointed by TRIAL International, an investigation has not even been opened.

The other two cases, which have been ongoing for several years, concerned arbitrary detentions. Although in one of the two cases the victim has managed to leave the country after being granted provisional release, in the other case the person concerned is still in prison. Thus, in addition to not receiving adequate reparation, this person has not been released, in spite of the opinion of the WGAD that considered his detention to be arbitrary.

RECOMMENDATION TO THE ACHPR:

- **urge the Burundian authorities to promptly implement the decisions of regional and international mechanisms for the protection of human rights.**

5. CONCLUSIONS

Burundi's judicial system is marred by a number of failings that mainly affect four fundamental rights: the right to an effective remedy, the right to personal liberty, the right to a fair trial and the right to reparation.

These rights are systematically and often jointly violated. The victims of international crimes are denied unfettered access to an independent and impartial justice system. In the absence of investigations into serious human rights violations, impunity is the rule. And if there is no prosecution, the victims' right to redress is also regularly flouted. Added to all that are violations of the rights to personal liberty and to a fair trial.

"Dysfunctional, ineffective and opaque" is TRIAL International's assessment of Burundi's judicial system. **Without the necessary reforms and a significant change of direction, Burundi will be incapable of establishing the rule of law and commencing a credible process of transitional justice.** And, even more seriously, this situation will prevent the building of peace and stability in the country, which will remain trapped in recurrent cycles of violence. Therefore, the African Commission on Human and Peoples' Rights (ACHPR) should urge the Burundian authorities to promptly undertake the reforms necessary to restore the rule of law in the country and establish an independent, functional and effective judicial system.

Finally, there is the recommendation of the ACHPR – echoed by the United Nations Commission of Inquiry on Burundi – to establish an *ad hoc* mechanism with a mandate to prosecute perpetrators of international crimes. This proposal is certainly interesting and should be explored further. However, it must not override the immediate priority: to improve Burundi's current judicial system. Without waiting for the establishment of a separate mechanism, which could take place later, reforms need to be speedily introduced so that victims do not face any additional delays in accessing justice.



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