



**TRIAL**  
International



## DYSFUNCTIONAL, INEFFECTIVE, OPAQUE

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An overview of the judicial  
system in Burundi (abridged version)

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## RECOMMENDATIONS TO THE BURUNDIAN AUTHORITIES

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Far from being isolated cases, the prevalence of impunity for human rights violations in Burundi is due to deep-rooted structural reasons. It is the responsibility of the Burundian authorities to tackle them at the root, particularly by:

- guaranteeing the right to an effective remedy and unfettered access to justice, promptly conducting investigations into serious human rights violations with a view to identifying and prosecuting those responsible.
- guaranteeing the independence and impartiality of the judiciary, undertaking a thorough, structural reform of the judicial system and ensuring that no interference by other State powers and/or other external actors influences the dispensation of justice.
- guaranteeing respect for the right to personal liberty and the right to a fair trial, prohibiting any misuse of the judicial system.
- ensuring respect for every person's right to be tried within a reasonable time.
- allocating all the financial, human, material and logistical resources necessary for the judicial system to function properly.
- guaranteeing the right to redress for victims, setting up a full reparation program that is not dependent on the conviction of the perpetrators and establishing State compensation funds for victims.
- promptly implementing the decisions of regional and international mechanisms for the protection of human rights, with the aim of redressing the wrongs committed.
- making 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

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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

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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 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.

The prevalence of impunity in Burundi is due to deep-rooted structural reasons. Therefore, in this report TRIAL International provides an overview of failings of the judicial system, which have been further exacerbated since the start of the political crisis in 2015. A long version of the report may be [consulted here](#).

**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 (ACHPR), to use their full weight to encourage and support a credible process of transitional justice.**





## 1.1. METHODOLOGY

This 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 and acts of torture. Two cases involve sexual violence. Four cases concern the implementation of international decisions. The remaining cases relate to incidents of arbitrary detention.

The report focuses on the violation of four fundamental rights:



the right to an effective remedy



the right to a fair trial



the right to personal liberty



the right to reparation

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 ACHPR.

## 2. THE RIGHT TO AN EFFECTIVE REMEDY

### 2.1. BURUNDI'S OBLIGATIONS

*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.*

Article 7(1)(a) of the African Charter on Human and Peoples' Rights

*States (...) shall have the duty to guarantee the independence of the Courts (...).*

Article 26 of the African Charter on Human and Peoples' Rights

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

Article 214 of the Constitution of Burundi (translation by TRIAL International)



The right to an effective remedy is the pillar of a justice system that serves citizens and is 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 impartial and independent courts. The procedures must also be effective; that is, they must offer *real* prospects for success.

## 2.2. INEFFECTIVE OR NON-EXISTENT INVESTIGATIONS

In practice, complaints filed by victims are almost systematically disregarded. When steps are taken to address a complaint, they are often merely a façade and do not lead to a satisfactory investigatory process.

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; however, that has generally proven to be merely a formality as no investigative measures have been carried out. In some cases, the original complaint was lost. In just one case, a torture victim was heard by the investigating magistrate – an isolated measure that did not lead to a proper investigation.



**"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*

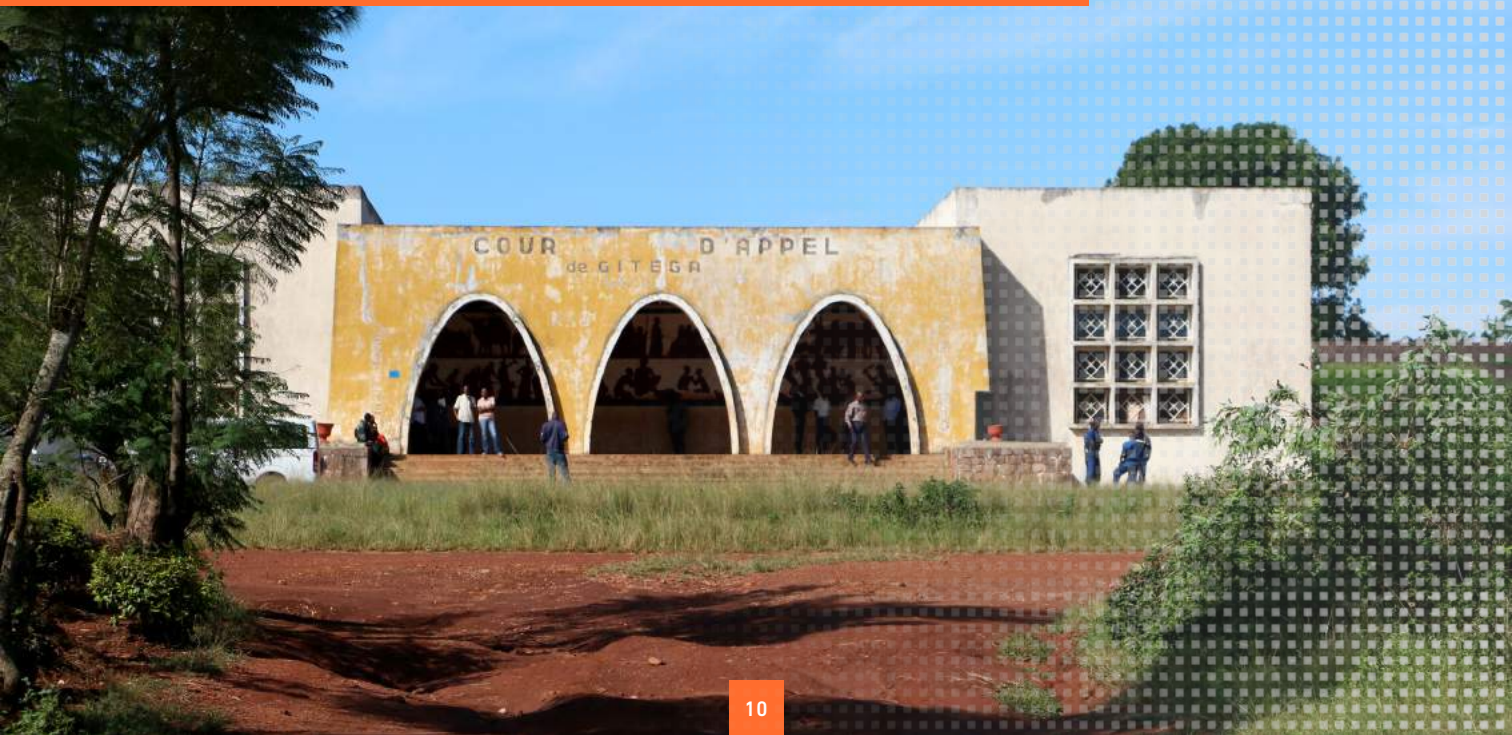


## 2.3. PARTIAL JUSTICE WITHOUT INDEPENDENCE

Out of 13 relevant cases considered here, in only two cases supported by TRIAL International – both sexual violence cases – have the trials of the alleged perpetrators actually started. Although one of the cases is ongoing, in the other, **the judicial bias towards the alleged perpetrator, a soldier, was striking.**

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

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



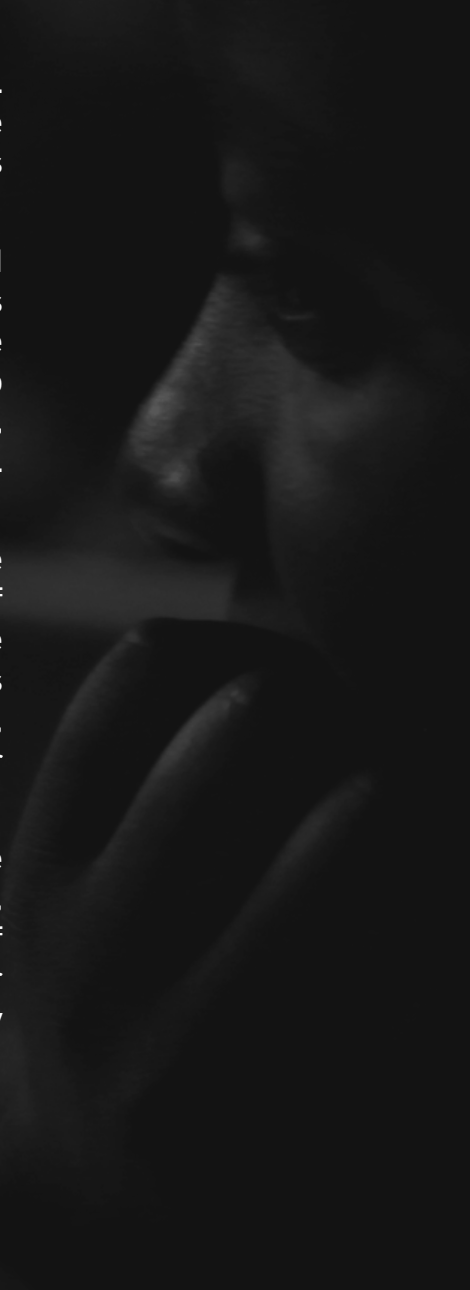
## The case of R. F.

R. F. was raped by a soldier of the Burundian army in 2016. Although the case was investigated by the police and the public prosecution office, there were multiple irregularities from the start of the trial.

Among other anomalies, the victim's lawyer was interrupted many times when he attempted to support the allegations of the public prosecutor, who remained passive. 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.

Two defense witnesses were permitted to talk to the accused during the hearing, under the permissive gaze of the judge. After that, they both gave a new version of the facts, which was accepted by the judge. Such practices seriously undermine the process of establishing the facts, as they enable the accused and the witnesses to align their stories.

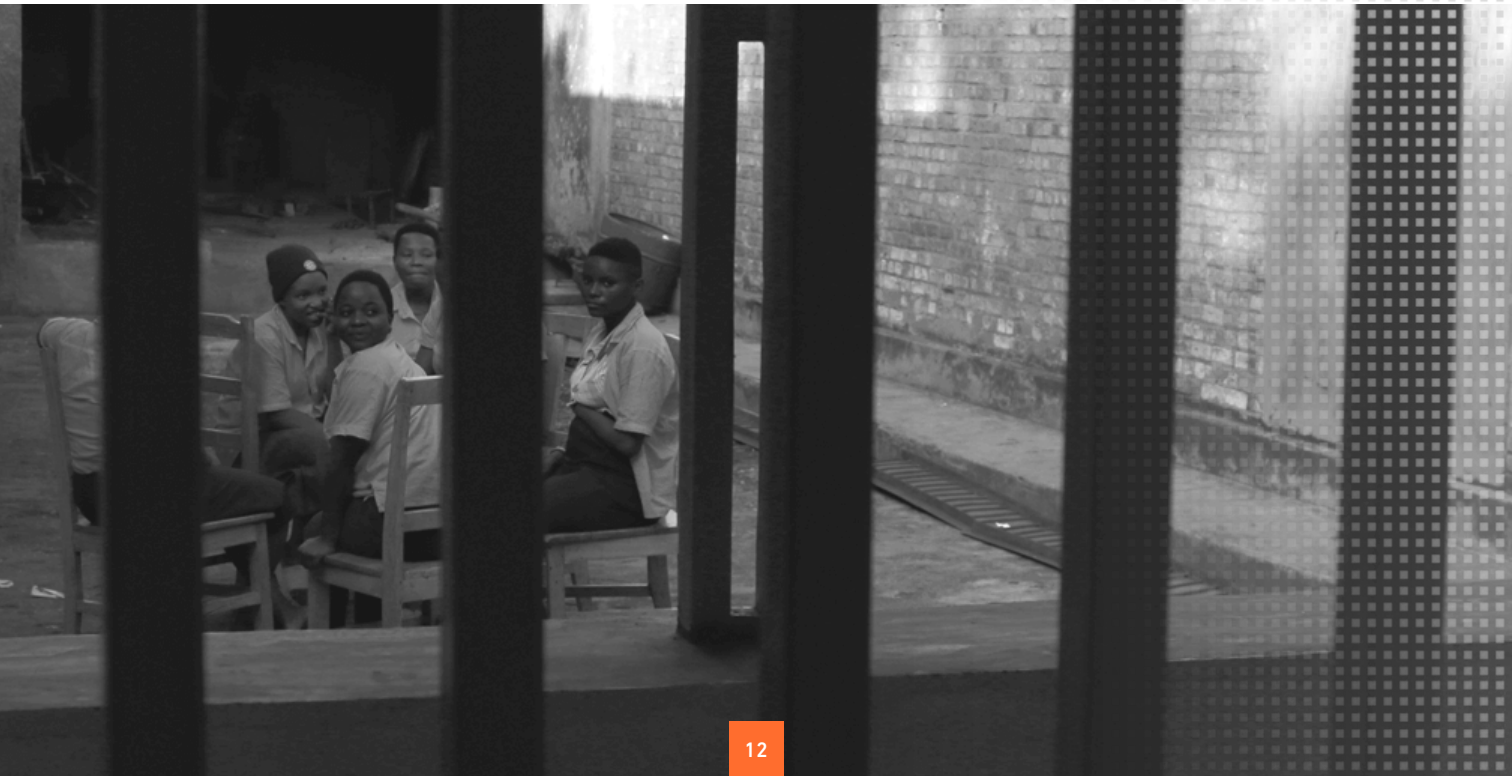
Unsurprisingly, this manifest bias led to the acquittal of the soldier in 2017. The appeal ruling, delivered in early 2019, confirmed that verdict. Among other problems, the Court of Appeal ignored the medical report produced a few days after the assault, on the ground that it "must be corroborated" by other evidence.



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.

They must also 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 other external actors influences the dispensation of justice.





## 3. PERSONAL LIBERTY AND THE RIGHT TO A FAIR TRIAL

### 3.1. BURUNDI'S OBLIGATIONS

*Every 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.*

Article 6 of the African Charter on Human and Peoples' Rights

*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.*

Art. 7(1)(b)-(d) of the African Charter on Human and Peoples' Rights

*Each person has the right, in judicial or administrative proceedings, to have their case heard fairly and to be judged without unreasonable delay.*

Article 38 of the Constitution of Burundi (translation by TRIAL International)

*No one may be deprived of their freedom if it does not conform to the provisions of law.*

Article 39 of the Constitution of Burundi (translation by TRIAL International)

*Every 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 defense have been assured.*

Article 40 of the Constitution of Burundi (translation by TRIAL International)

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. This shows how the flaws in Burundi's judicial system are interconnected.

### 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. For example, individuals have been arrested without a warrant and without justification; they have been denied the right to contact a lawyer or their family; or they have not been informed of their rights.

These irregularities seem to reflect **the false nature of the accusations**. In the cases examined, 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.





## 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 comprises less than six pages, almost two of which list the personal details of the defendants. It clearly shows that the accusations are based entirely on the statements of one 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 this key witness for the accusation to appear, she never attended a public hearing.

### 3.3. EXCESSIVE DURATION OF PROCEEDINGS

Procedural delays affect both the duration of pre-trial detention and the length of the proceedings themselves; consequently, they impact the individual's right to liberty and to a fair trial. In one of the cases referred to TRIAL International, the defendant was arrested in January 2016. His trial has yet to begin because most of the documents relating to the case have been lost, which continues to prevent commencement of the proceedings. 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.

Failure to respect the deliberation deadline is also frequently observed. Yet, Burundi's justice system can be extremely quick when it comes to trying political dissidents, whether real or alleged.

### 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 shortage of human, material and/or logistical resources in Burundi's judicial system is felt at different levels in most of the cases monitored by TRIAL International. For instance, the organization regularly observes delays due to waiting for typed copies of procedural documents. A lack of resources is also frequently cited by the authorities themselves to justify their inertia. 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.



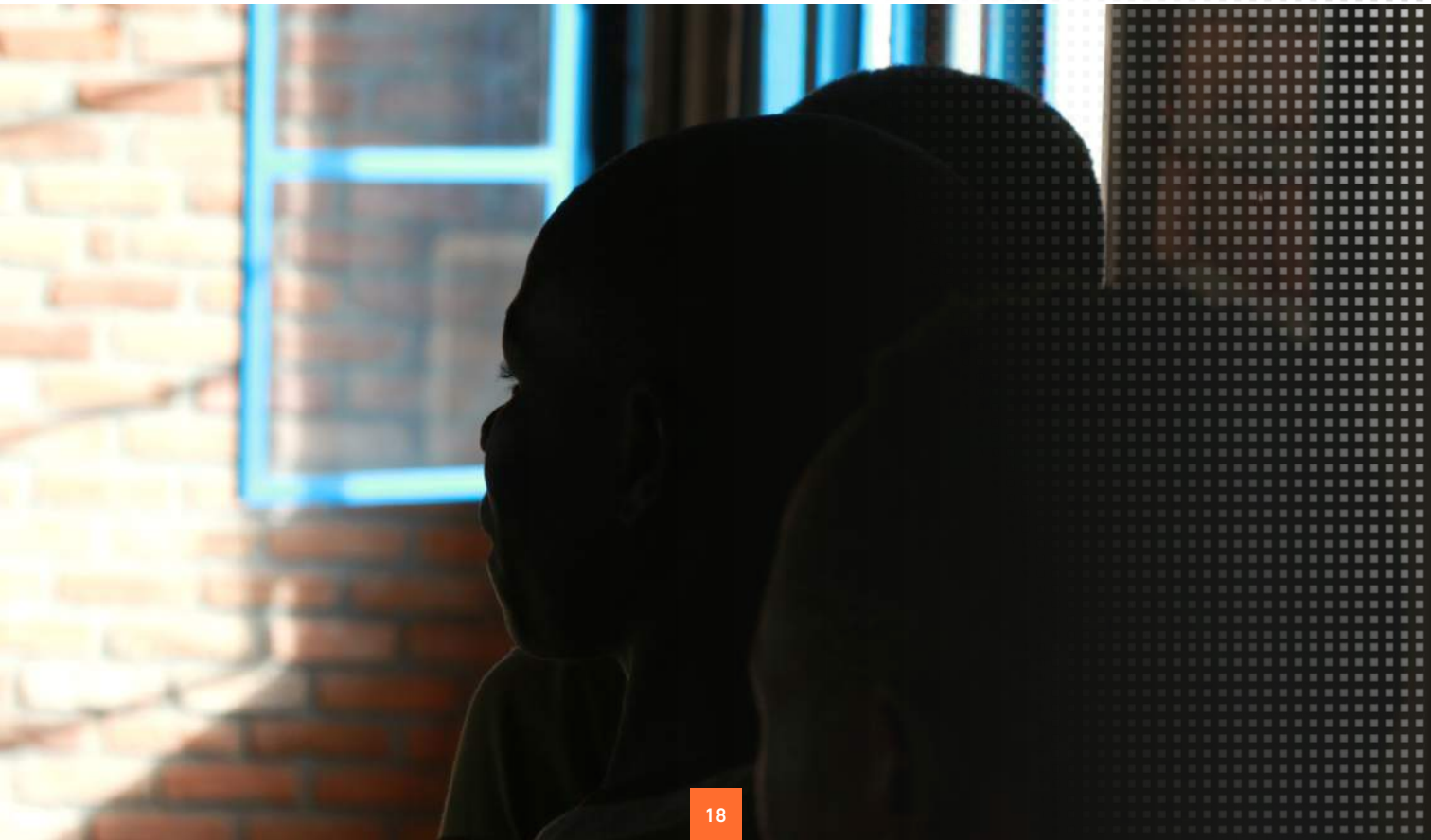
**“After the context of threat that prevails in the country, unreasonable delays are one of the biggest obstacles we face”.**

*Mr S. Z., Burundian lawyer*

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.

They must respect the right to be tried within a reasonable time.

Lastly, the Burundian authorities must commit all the financial, human, material and logistical resources necessary for the judicial system to function properly.



## 4. THE RIGHT TO FULL AND EFFECTIVE REPARATION

### 4.1. BURUNDI'S OBLIGATIONS

*The State is obligated to indemnify all victims of arbitrary actions of the State or of its organs.*

Article 23 of the Constitution of Burundi  
(translation by TRIAL International)

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 provide full reparation to the victims.



Reparation refers to the 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.

Victims of serious human rights violations have the right to effective and comprehensive reparation, 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.

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

In Burundi, in practice, the right to reparation does not exist outside the framework of criminal prosecutions and convictions. The inefficiency of the judicial system hinders the right of victims and survivors to access reparations.

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 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”.<sup>1</sup>

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<sup>1</sup> Commission of Inquiry on Burundi (CoIB), Detailed Final Report of the Commission of Inquiry on Burundi, 1A/HRC/39/CRP.1, 12 September 2018, §832 g.





The Commission of Inquiry on Burundi has recommended that reparation for victims not be dependent on the conviction of the perpetrators.

### 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 some favorable decisions, TRIAL International went back to the national judicial system to urge it to implement them.

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, despite the WGAD's opinion that his detention was arbitrary.

**The Burundian authorities must guarantee victims the right to full, adequate and effective reparation.**

**They must set up a comprehensive reparation program that is not dependent on the conviction of the perpetrators.**

**They must also establish State compensation funds for victims of serious human rights violations.**

**Lastly, the Burundian authorities must promptly implement the decisions of regional and international mechanisms for the protection of human rights.**

## 5. CONCLUSIONS

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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 violated, often jointly. 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 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, the ACHPR – echoed by the United Nations Commission of Inquiry on Burundi<sup>2</sup> – has recommended the establishment of an *ad hoc* mechanism with a mandate to prosecute perpetrators of international crimes.<sup>3</sup> 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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<sup>2</sup> ColB, Detailed Final Report of the Commission of Inquiry on Burundi, *supra* note 1, §831 b.

<sup>3</sup> The ACHPR "recommends 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", Report of the Delegation of the African Commission on Human and Peoples' Rights on its Fact-Finding Mission to Burundi, 7 - 13 December 2015, §172 c).



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Harerimana, TRIAL International

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Institut für  
Auslandsbeziehungen



# **TRIAL**

International

Rue de Lyon 95 - 1203 Geneva  
Switzerland  
+41 22 321 61 10



info@trialinternational.org  
@trial

[www.trialinternational.org](http://www.trialinternational.org)