

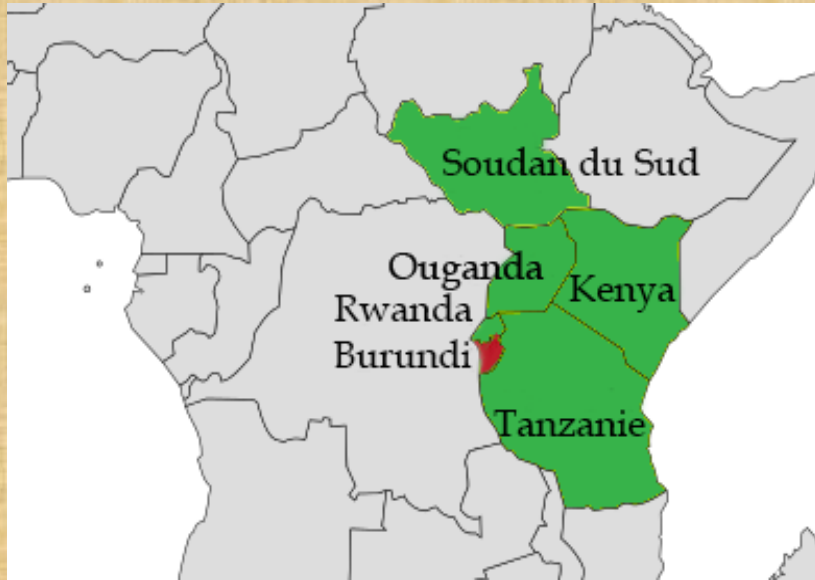


Management of Pre-Trial Detention: **“Challenges in Protecting the Fundamental Human Rights of Suspects/Defendants and Challenges (Burundi)”**

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Presentation of Burundi



- Burundi: 25680 sq. Km) with around
- Population: around 12,857,000
- The capital cities are Gitega (political) and Bujumbura city (economic).
- Germany colonized the Kingdom of Burundi. After the 1st World, Burundi was colonized by the Kingdom of Belgium
- Languages: French, English and Swahili



Introduction

- Human Rights are inherent to every individual as human beings.
- The Fundamental Human Rights start to be managed at the Pre-Trial Detention.
- The mechanisms in Burundi, have been put together to make sure that the judicial decision/practical guidelines/strategies are



I. The Legal Framework for Protecting Fundamental Human Rights and Rights of a Suspect



A. Legal

1. Main Legal Framework

- a. Constitution of the Republic of Burundi (2018).
- b. Law amending the Code of Criminal Procedure (2018).
- c. Law revising the prison system (2017).
- d. Ministerial Order on the internal⁵



2. Rights incorporated in Burundi Constitution

- Natural right of every person to life and physical integrity
- The right not to be subjected to torture or cruel inhuman or degrading treatment
- The right to respect for human dignity
- The right to privacy
- The right to equal protection before the law



B. Rights of Suspects before the Police and Prosecutor office

1. The Right to Registration and Identification

- Any person arrested must be recorded in an appropriate register which includes the complete identification of the person, the date of arrest, the reasons for the arrest, the place of arrest, the status of the person, the identity of the judicial authority who made the arrest, etc. (Article 11: Penal Code 2018)



2. The Right to be informed of one's rights

- Every person who is arrested has the right to certain necessary information. In the event of prosecution, each person has the right to choose a counsel, to communicate freely with him in complete confidentiality, to be assisted by his counsel during the acts of investigation, the right to remain silent in absence of his council, etc.



3. Rights to be assisted: Legal Aid at Pre Trial

- Ministry of Justice provide the free legal aid for identified persons(especially for children, and for the identified persons who can't afford the payment of the legal council at pre trial.
- Every child who is arrested by a police is assisted by a legal council until he is convicted by a judge



II. The Role of the Judiciary in Protecting the Rights of Suspects/Defendants at the Pre Trial Detention



A. Pre Trial Case Management

1. Criminal Case Management (Police and Prosecutors)

- When a crime, a misdemeanor or any criminal offence is committed, the preliminary investigations are carried out by the police.
- When the Police exhaust his investigations, he submits the case to the public prosecutor for further inquiry and follow-up.
- The Public Prosecutor has power to discontinue



2. Criminal Case Management (At the Court)

- Suspects has Rights to be presented by the Prosecutor before a Judge before 14 days to decide the Detention(The Decision is available within 72 hours)
- Suspects has Rights to appeal against the



2. a. Preventive Detention

- Freedom being the rule and detention the exception, the accused can only be remanded in custody if there is sufficient evidence of guilt against him and the facts with which he is charged seem constitute an offense punishable by law with a



2. b. Preventive Detention Conditions:

- 1° Preserve evidence or prevent either pressure on witnesses or victims, or fraudulent consultation between the accused, co-perpetrators or accomplices; 2° preserve public order from the current disturbance caused by the offence; 3° put an end to the infringement or prevent its renewal; 4° guarantee that the accused remains at the disposal of justice. The decision



B. Bail

1. Definition of Bail

- In all cases where detention is authorized or extended to satisfy the conditions of article 154 paragraph 2, the judge may, if the accused so requests, order that he nevertheless be released. provisional, on condition that a sum of money is deposited



a. Bail in court/prosecution office

- **Bail without paying money:** A person arrested, may be released on specific conditions determined by law.
- **Bail by paying money:** When a person is brought before the court, He/she may be release on bail and the amount is fixed by



b) Bail As Guarantee

- The Bail guarantees the representation of the Accused in all the acts of the procedure and the execution by him of the custodial sentences as soon as it is required, if necessary, the repair of the damage caused by the offense, the



2. Exceptions to the Rule

- The provisions of the preceding article do not apply: 1° To persons prosecuted for a crime punishable by more than twenty years of Penal Servitude; 2° To persons who have not yet returned the sums of money or any other Property obtained through the offense or, failing that, their equivalent; 3° To



3) Refund the Bail

- The Bail is reimbursed in the event of: 1) the case being closed without further action, 2) release from detention, 3) withdrawal of the benefit of provisional release, or acquittal. Reimbursement of the deposit deposited during the provisional release is ordered by the Public Prosecutor



4) In the event of the escape of the Accused on Bail

- In the event of absconding, the security is acquired by the Public Treasury, without prejudice to the Rights of the civil party and after deduction of the costs to which the failure to appear may have given rise.
- Reimbursement is made by the competent Court in the event of Bail operated by the



(Next) In the event of the escape of the Accused on Bail

- The case is heard, the judgment continues by assigning the Suspect to an unknown Residence.
- When the Suspect is apprehended, he will serve the sentence, or appeal the Judicial Decision



III. The Role of Prisons and Centers in Protecting the Rights of Suspects



Prisons and Centers in Statistics (Data on 09th September 2022):

Burundi Prisons (Penitentiary)

- 11 prisons establishments
- 2 rehabilitation centers for minors in conflict with the law
- Capacity: 4,294 prisoners.
- Prisoners 12,708 .
- Numbers: 6883 defendants including 6839 adults and 44 minors as well as 5825 convicted including 5702 adults and 123 minors.



A. Prisons

1. Internal Rules of Prison (Ordinance June 2004)

- It provides that in its article 46 that “detainees are, as a General Rule, subject to the system of joint imprisonment. However, women are strictly separated from men minors



2. Guaranty of Rights by Burundi Prison Regime

- The Article 61 of Law No. 1/24 of 14 December 2017 revising the Prison regime stipulates that "Any prison official, any surveillance agent guilty of acts of torture, cruel treatment, inhuman or degrading acts must be subject to disciplinary and criminal proceedings. »



3. Guaranty of Food by Burundi Prison Regime

- Ordinance No. 550/782 of June 30, 2004 on the internal regulations of penitentiary establishments in Burundi recognizes in its article 54 that “Prisoners receive a sufficient ration including food commonly consumed in the country. Meals are served in the middle of the day and in the evening



B. Centers

1. Rehabilitation Centers for Minors in Conflict with Law

Two re-education centers for minors and a section for under age girls in the women's prison

- Children are assisted by a lawyer
- Children under 18 are no longer admitted to prisons with adults



2. The Separation of Categories of Detainees (Children at Police Cell)

- The different categories of detainees must be placed in separate establishments or quarters of establishments, taking into account their gender, age, background, reasons their detention and the demands of their treatment.



IV. Challenges in Prisons and Centers while protecting the Rights of Suspects/Defendants in Detention



A. Prison Regime Challenges

1. Food

- it is a challenge to have food comprising the required nutrition for all.

2. Health Care Challenge

- there are nurses who are not specialist and who take care of many prisoners

3. Accommodation Conditions



(Next: Prison regime Challenges)

4. **Absence of separation between Men and Women in places of Detention**

- In Burundi, there is only one institution specific to women: Ngozi Prison. But even in other prisons, female prisoners are separated from male prisoners, even though there are plenty of opportunities to meet (eg: to pray,)

As long as the security and rights for all is respected, is it necessary to avoid contact?



(Police Challenges)

5. Women to be arrested by Officials of the same sex

Most Police Stations have no female staff within the jurisdiction of these stations where women are apprehended and arrested for³²



B. Rehabilitation Centers for Minors in conflict with law (Challenges)

- The challenge is the transfer of Minors from the place of arrest to the Re-education Center because the distances remain long and the means of movement limited. Some NGO's are helping in this area and contribute enormously.



C. The Judiciary challenges in protecting the Rights of Suspects

1. Police and Prosecutor's office

- Long distance between police cells to the prosecution office
- Few female at police station

2. Court

- Training in some aspects
- Internet connection for E research



V. Practical insights for tackling the identified Challenges

In respect of the woman dignity, the specific rights for the arrested or detained woman must be respected:

- In the event of an arrest, woman must be searched by the personnel of the same sex (whenever possible). The practical way is to increase or recruit more police women, to grant the woman the rights in police cells/prisons by making sure that she is guarded and supervised by the staff of the same sex. This can also help to ensure that “no male official shall enter the women's section without being accompanied by a female member of staff (article 53 paragraph 3)



- Appoint or hire more Doctors in charge of prisons and sign contracts with the hospitals that receive sick prisoners, including psychiatric treatment centers.
- Due to the high numbers of prisoners and the reception infrastructures which are old, efforts must be made to build prisons /cells or rooms that meet international standards in terms of the respect for human rights including the respect



Conclusion

- Burundi's criminal Procedure Legislation and Prison Laws under 2018 Constitution has a significant impact on Human Rights and international standards relating to procedural safeguards for Arrested and Detained Persons.
- To make efforts to continue to comply with international law, in terms of normative content and implementation mechanisms by making



Thanks for you attention