FORGOTTEN PRISONERS

Burundi's justice system ignores the law

The Burundi Human Rights Initiative

November 2023

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BHRI

WHAT IS THE BURUNDI HUMAN RIGHTS INITIATIVE?

The Burundi Human Rights Initiative (BHRI) is an independent project that aims to document the evolving human rights situation in Burundi. It intends to expose the drivers of human rights violations with a view to establishing an accurate record that will help bring justice to Burundians and contribute to restoring respect for human rights.

BHRI's publications also analyse the political and social context in which these violations occur to provide a deeper and more nuanced understanding of human rights trends in Burundi.

BHRI has no political affiliation. Its investigations cover human rights violations by the Burundian government as well as abuses by armed opposition groups.

BHRI welcomes feedback on its publications as well as further information about the human rights situation in Burundi. Please write to contact@burundihri.org or +1 267 896 3399 (WhatsApp). Additional information is available at burundihri.org or on Twitter at twitter.com/@BHRI_IDHB.

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Introduction

President Évariste Ndayishimiye has publicly criticised his country's justice system on several occasions, making sweeping statements about its failings. He has promised to devote time and government resources to enforcing judgments, releasing prisoners who should not be in prison and weeding out corruption. "We can't live in a country where there is no justice," he said in July 2023. In his speech for the opening of the judicial year in September 2023, he went further: "Will I be officially launching a year of justice or a year of unfair judgments?"

Despite this tough talk, the president has failed to rectify one of the system's most serious forms of injustice: prisoners languishing for months or years in overcrowded prisons after they have been acquitted, after a court has ordered their provisional release or after they have served their sentence.

The Burundi Human Rights Initiative (BHRI) gathered information on cases of illegal detention in which judicial officials or prison directors disregarded the law or obeyed instructions not to release certain prisoners. The information in this report is based on testimonies from prisoners and other witnesses with first-hand knowledge of these cases, justice officials, prison staff, lawyers and other sources. Witnesses described how some political prisoners or prisoners accused of security offences are kept in prison beyond their release date, in clear violation of the law. Twenty-two cases documented by BHRI are listed in the annex to this report. This list is not exhaustive and does not include cases of prisoners who wish to remain anonymous or who were charged with other types of offences.[1]

Prison directors are required by law to release prisoners as soon as they are officially notified that the prisoners have been acquitted or a court has decided on their provisional release, or as soon as they have served their sentence, regardless of whether the prosecution has filed an appeal.[2] In recent years, however, prosecutors have demanded a final say over which prisoners are released. Many prosecutors are loyal to the ruling party, the National Council for the Defence of Democracy-Forces for the Defence of Democracy (*Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie*, CNDD-FDD), and collaborate with the National Intelligence Service (*Service national de renseignement,* SNR), even when that means violating the law.

A prison director said that government officials, SNR agents and magistrates threatened him and warned that he would be held responsible if certain prisoners were released. Another prison director told a prisoner who was due for release: "Go and see an (SNR) official, and if he gives me the authorisation, I'll release you."

Following President Ndayishimiye's frequent public reprimands to corrupt justice officials, several magistrates and other officials have been arrested or fired in 2023. However, persistent patterns of

[1] BHRI made every effort to confirm that the information in this report was correct at the time of writing. More recent developments may have taken place in some cases that have been difficult to verify.
[2] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 262.

injustice and disregard for the law have undermined the president's rhetoric about reforming the justice system. The authorities have failed to remedy many unlawful practices or address excessively long delays in the appeal courts, and especially at the Supreme Court. After going through the appeal process, some prisoners wait for years for the Supreme Court's appeal chamber to rule on their case. In what is known as the *cassation* procedure, the Supreme Court considers cases not on their merits, but on procedural grounds only.

In other cases, political prisoners who seemingly qualify for presidential pardon are excluded from release for unknown reasons.

As the head of the *Conseil supérieur de la magistrature* (Upper Council of the Judiciary), the country's top institution overseeing the justice system, the president is responsible for guaranteeing the independence of the judiciary. Ndayishimiye has publicly embraced this role. For example, in a speech on 1 September 2023, he reminded justice officials: "I am the supreme judge" and warned them: "If you fight justice, you're fighting the president. I'm not afraid to say it."[3]

Prisoners have written letters to President Ndayishimiye, to the minister of justice and to the former prosecutor general, Sylvestre Nyandwi, explaining the circumstances of their illegal detention and requesting clarification or assistance. Their letters were almost never answered. Intermediaries who met the minister of justice or the former prosecutor general on behalf of prisoners were given vague promises which never materialised. Some political prisoners were interviewed by representatives of the National Independent Human Rights Commission (*Commission nationale indépendante des droits de l'homme*, CNIDH) or contacted the CNIDH themselves, but most were not aware of any action taken by the CNIDH on their case.

BHRI submitted its findings and questions in writing to President Ndayishimiye, to the minister of justice, Domine Banyankimbona, and to the prosecutor general, Léonard Manirakiza, before publication, with a view to incorporating their responses. None of them replied.

Many of the concerns described in this report are not new. For decades, the delivery of justice in Burundi has been paralysed by a combination of corruption, institutional weakness, political interference and, in some cases, deliberate attempts to flout the law. These problems have been exacerbated by a longstanding tendency to use preventive detention as a first resort. Although Burundian law states clearly that detention should be the exception rather than the rule[4] – a point which the president and other officials have stressed repeatedly – the opposite situation prevails. A desire to punish detainees rather than follow the judicial process may explain why there is so little reaction on the part of the authorities when prisoners who have been acquitted or whose release has been ordered by a court are not released. Detention, legal or otherwise, has been normalised.

[3] Extracts of President Ndayishimiye's speech at the opening of the judicial year in Gitega, 1 September 2023.
[4] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 153.

In the past three years, foreign diplomats have raised a few emblematic cases with the president and the minister of justice, with limited results. It appears that even senior officials such as the minister of justice have not been given the power to order the release of prisoners who are illegally detained, especially members of opposition parties or those accused of links with armed groups.

A prisoner who has not been released despite being acquitted of charges of participating in armed groups and endangering internal state security said: "It is difficult to understand why my case is blocked. You can see someone who has been convicted but who is conditionally released after serving a quarter of his sentence. But you, who have been released (by a court), you are still there."[5]

Lawyers are also caught in the undertow of judicial malfeasance. When representing clients who are viewed by the government as opponents or who have a conflict with a powerful government official or CNDD-FDD member, they go through the legal motions but are often resigned to the fact that members of the SNR or the CNDD-FDD dictate the outcome of trials.

There are glimmers of progress. Judicial authorities have released some prisoners who had been illegally imprisoned for prolonged periods. In March 2023, for example, they released eight former Burundian refugees who were forcibly returned from Tanzania in August 2020 and illegally imprisoned. The eight were acquitted in March 2022 and the judgment was upheld by the court of appeal in June 2022.[6] Nevertheless, they spent more than one year in Muramvya prison when they should have been released straight after their acquittal.

In other cases, however, progress appeared to be reversed. In a case of blatant interference in the justice system, described in detail in Chapter 2 of this report, three judges and three prison officials in Bururi province were prosecuted and imprisoned simply for following the law.

The prevalence of such serious problems in the judiciary brings up larger questions: if President Ndayishimiye is willing to speak out publicly on the ills in the judicial system, why doesn't he acknowledge interference in political and security-related cases and why has he not given the minister of justice and senior judicial officials the power to correct these injustices?

The fragile political climate within the CNDD-FDD, particularly since the arrest of former Prime Minister Alain Guillaume Bunyoni in April 2023, may contribute to the president's hesitancy to punish or remove SNR agents and CNDD-FDD members who interfere in the process of justice, or prosecutors who abuse their power by obstructing releases of political prisoners.[7] Ndayishimiye may not want to further antagonise his critics in the CNDD-FDD by releasing prisoners who are seen as enemies of the party.

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[5] Testimony from prisoner, 29 June 2023.
[6] For further information, see Human Rights Watch, "Burundi: Free Forcibly Returned Refugees", https://www.hrw.org/news/2021/03/08/burundi-free-forcibly-returned-refugees, 8 March 2021.
[7] For information about the arrest of Alain Guillaume Bunyoni and related developments, see The Burundi Human Rights Initiative, "An adversary vanquished: how far will President Ndayishimiye go?", https://burundihri.org/english/september_2023.php, September 2023.

Ndayishimiye has also claimed that he doesn't know why certain court rulings haven't been enforced. In June 2023, he said: "I'm the supreme judge. I'm going to spend a whole week in a province and I'm going to ask them (the judges) what obstacles they have encountered in enforcing judgments that have been handed down. We're going to do it together, *commune* by *commune*, and they're going to show me how they've failed. We'll enforce (the judgments) and I'll be there… It's very shameful."[8]

On 25 July 2023, after consulting the *Conseil supérieur de la magistrature*, Ndayishimiye appointed a new prosecutor general, Léonard Manirakiza, replacing Sylvestre Nyandwi.[9] Nyandwi, who had held the post since August 2016, had shown a clear bias in favour of the CNDD-FDD, particularly in cases involving government opponents or critics or other politically sensitive matters. Eight new judges were also appointed to the Supreme Court. It is too early to assess the impact of these appointments.

The president's lofty statements about the judicial system sound hypocritical in the face of numerous cases in which prisoners are deliberately not released, in defiance of the law. His credibility – and that of the justice system – rests on whether he takes actions that lead to the release of prisoners who have been illegally detained and sanctions officials who ignore court decisions.

Recommendations to the Burundian government

1. The president should order the immediate release of all prisoners who have been acquitted, who have been granted provisional release or who have served their sentence. He should empower the minister of justice to ensure court rulings are implemented without delay, including in politically sensitive cases.

2. The president and the minister of justice should order prosecutors to refrain from blocking the release of prisoners in defiance of court decisions and hold accountable any prosecutors or other officials who obstruct the implementation of judgments.

3. To curb the abuse of power by prosecutors, courts should inform prison directors directly of decisions to acquit or provisionally release prisoners. This would enable prison directors to immediately release those prisoners in accordance with the court rulings, without having to wait for the prosecutor's authorisation through a release warrant.

[8] Extracts of President Ndayishimiye's speech in Muyinga province, https://www.youtube.com/watch?v=HM36BcF5GHc, 3 June 2023.
[9] Décret n°100/181 portant nomination du Procureur général de la République, https://www.presidence.gov.bi/2023/07/25/decret-no-100-181-du-25-juillet-2023-portant-nomination-du-procureur-general-de-la-republique/, 25 July 2023.

4. The minister of justice should investigate all the cases of prisoners listed in the annex of this report and other similar cases, and order the release of those who should be free, according to the law.

5. The president should immediately order government, SNR and CNDD-FDD officials to stop interfering in court cases or intimidating or threatening judicial officials.

6. The president and the minister of justice should publicly encourage judges, prosecutors and other officials to resist political pressure and to report confidentially any instances in which government, SNR or CNDD-FDD officials attempt to give them orders or dictate the outcome of court cases. The ministry of justice should investigate such allegations thoroughly and promptly, and take action against those found responsible.

7. The ministry of justice should release all prisoners who meet the requirements for presidential pardons in a timely manner, including political prisoners.

8. The president should ensure that future presidential pardons do not exclude prisoners accused of security-related offences or political prisoners. Decrees on presidential pardons should include a list of names of prisoners who will be released, a clear and transparent procedure and timetable for implementation, and a process for prisoners to inquire about their eligibility for release within the categories in the pardon.

9. The minister of justice should investigate delays in the appeal courts and in the cassation chamber of the Supreme Court, with particular attention to excessively long delays for prisoners convicted in politically sensitive cases. The government should provide the Supreme Court with adequate means and support to reduce its backlog and accelerate the processing of cases.

10. The government should provide adequate financial compensation and, where appropriate, rehabilitation or other forms of support to prisoners held beyond their release date, including access to legal, psychological, social and medical services.

1. A justice system that ignores the law

Acquitted but not released

"*There are no more excuses to justify the failings observed in the justice sector.*"[10]
President Ndayishimiye at the opening of the judicial year, September 2023

BHRI documented 20 cases of prisoners who remain in prison despite being acquitted. According to Burundian law, when a court acquits a defendant, they should be released immediately, whether an appeal is filed or not, unless the person is detained for another reason.[11] But as explained in more detail in Chapter 2, in most of these cases, prison directors refused to release the prisoners without a release warrant (*mandat d'élargissement*) signed by a prosecutor.[12]

Many cases of illegal imprisonment have a political connotation. Notable examples are the cases of Roger Ndayisaba in Muramvya prison (see "The case of Roger Ndayisaba" in this chapter) and five members of Burundi's main opposition party, the National Freedom Congress (*Congrès national pour la liberté*, CNL). *Imbonerakure* (members of the youth league of the ruling party) arrested the five CNL members straight after the 2020 elections and took them to the provincial office of the SNR. After the provincial head of the SNR questioned them, the detainees were transferred to Muramvya prison. The *tribunal de grande instance* (high court) of Muramvya acquitted them on 6 July 2021 of the charge of participating in armed groups, and the appeal court of Ntahangwa upheld that decision on 24 January 2022, but four of them remain in prison at the time of writing; one has been released.[13]

Prolonged illegal deprivation of liberty is particularly prevalent in cases of defendants accused of security-related offences. Several prisoners who have been acquitted of these charges remain in Mpimba prison in Bujumbura. They include two soldiers and a civilian who were arrested in September 2021 for being in contact with an alleged army deserter, and five men from Mugamba *commune,* in Bururi province. The five men from Mugamba, seen as an opposition stronghold, were among a large group of people arrested in late 2020 or 2021 on suspicion of collaborating with armed groups; several small-scale armed attacks were reported throughout that period.[14]

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[10] "Le Président de la République rehausse la rentrée judiciaire à Gitega", https://www.presidence.gov.bi/2023/09/01/le-president-de-la-republique-rehausse-la-rentree-judiciaire-a-gitega/, 1 September 2023.
[11] Code de procédure pénale, loi n°1/09 du 11 mai 2018, articles 262 and 326. The last clause, which leaves open the possibility of keeping a person in detention "for another reason", has sometimes been abused in the past. In some cases, prosecutors have argued that a prisoner should not be released because they are suspected of, or have been charged with, another offence. These prisoners have then effectively been re-arrested (without being released) and held in pre-trial detention for a separate offence. However, this does not appear to be the case for most of the prisoners whose cases are documented in this report.
[12] Loi n°1/24 du 14 décembre 2017 portant révision du régime pénitentiaire, articles 54-58.
[13] Interviews with sources close to the case, 14 March 2023, and judicial documents, on file; information from a confidential source, 17 November 2023.
[14] See The Burundi Human Rights Initiative, "A stranglehold on Burundi's future," https://burundihri.org/english/december_2020.php, December 2020, and "Behind the gate: a rise in torture and disappearances", https://burundihri.org/english/november_2021.php, November 2021.

All eight men spent between one week and two months at the SNR, where they were beaten or tortured.[15] Courts ruled in favour of their release at different stages of the procedure, citing a lack of evidence. Judges ordered the provisional release of three of the prisoners during the pre-trial phase, acquitted two in first instance and overturned an earlier conviction of three others on appeal. Despite these rulings, the men were not released; some have spent more than two years in Mpimba prison illegally.

Richard Bagabo, from the Batwa ethnic group, has spent an even longer period in illegal detention. During the 2015-2016 political crisis, Alfred Innocent Museremu, at the time a police officer in Bujumbura (see footnote 30), arrested him in Nyakabiga, in Bujumbura, and took him to the SNR where police officers beat him and asked him why he had joined Tutsis in taking up arms against the government.[16] Bagabo denied taking up arms and said he had gone to Nyakabiga to buy food. The high court of Muha acquitted him of the charge of endangering internal state security on 25 January 2018; the judgment was upheld by the appeal court of Muha on 31 March 2020.[17] Yet nearly six years after his initial acquittal, he remains in Mpimba prison.

Some prisoners who have been acquitted are kept in prison while an appeal by the prosecution is pending. One example is Audace Karisabiye. The SNR arrested and tortured him in 2015, seemingly because he was an MSD member. After several prison transfers and years of judicial confusion, he was released on 2 April 2021. Four days later, the provincial head of the SNR in Mwaro, Eliphaz Niyongabo, arrested him again, accusing him of involvement in an attack on a local CNDD-FDD official.[18] Niyongabo detained him for 27 days in his residence where Karisabiye was tortured. Karisabiye then spent six months in police detention in Mwaro, before being transferred to prison. The high court of Mwaro acquitted him on 19 April 2022. The prosecutor filed an appeal. Karisabiye remains in Mpimba prison pending the decision by the appeal court of Muha.[19]

[15] For further information on arbitrary detention and torture by the SNR of detainees accused of security-related offences, see The Burundi Human Rights Initiative, "A stranglehold on Burundi's future," https://burundihri.org/english/december_2020.php, December 2020, and "Behind the gate: a rise in torture and disappearances", https://burundihri.org/english/november_2021.php, November 2021.
[16] Nyakabiga is one of several neighbourhoods of Bujumbura where residents protested President Pierre Nkurunziza's run for a controversial third term in 2015.
[17] Interview with source close to the case, 7 July 2023, and court documents, on file.
[18] Several prisoners perceived as political opponents or suspected of security offences have been re-arrested days after their release. For more information on the armed attacks in Mwaro, see The Burundi Human Rights Initiative, "Behind the gate: a rise in torture and disappearances", https://burundihri.org/english/november_2021.php, November 2021.
[19] Interview with source close to the case, 24 July 2023.

The case of Roger Ndayisaba

Imbonerakure arrested Roger Ndayisaba, a 51-year-old teacher and former local representative of the banned opposition party Movement for Solidarity and Democracy (*Mouvement pour la solidarité et la démocratie*, MSD), on 13 March 2018, in Bukeye *commune*, in Muramvya province. They took him to a police station, and he was later transferred to Muramvya prison. On 4 April 2019, the high court of Muramvya sentenced him to three years in prison and a fine of 50,000 Burundian francs (approximately US $27) for insulting the head of state, disrupting security, ethnic hatred and assault.

The prosecution had accused Ndayisaba of insulting the president (Pierre Nkurunziza) by saying the president had called on the population to kill Tutsis or those who voted against proposed constitutional amendments during the 2018 referendum. The prosecutor also accused Ndayisaba of saying that Hutus are killers and that they should be urinated upon, and of urinating on an *Imbonerakure*. Ndayisaba pleaded not guilty and said he had urinated on someone by accident. Witnesses said that he had talked about political parties and that he had argued with someone who had called for people to vote for the CNDD-FDD, which Ndayisaba said he refused to do.

Ndayisaba appealed his conviction. At the hearing at the appeal court of Ntahangwa, he said that he had been convicted because he had urged residents to vote no during the 2018 referendum and because he had earlier taken his school director to court on an unrelated matter; after realising he might lose the case, the school director allegedly paid an *Imbonerakure* to testify against Ndayisaba in his criminal trial. The court, citing a lack of evidence, acquitted Ndayisaba on 14 January 2021. No appeal was filed at the Supreme Court.

Despite his acquittal, Ndayisaba remains in prison. He contacted the minister of justice, the prosecutor general and the prosecutor of the appeal court in Ntahangwa and told the local CNIDH representative about his case, all in vain. The prosecutor of the appeal court of Ntahangwa told him via an intermediary that he couldn't release someone who had insulted the president, even though he promised to investigate why Ndayisaba remained in prison.[20]

The law clearly states that an appeal does not suspend an earlier judgment: if a court orders the release of a detainee, that judgment should be enforced, whether an appeal is pending or not.[21] Yet there have been numerous examples of prisoners who have had to wait in prison until the

[20] Interview with source close to the case, 9 February 2023, and court documents, on file.
[21] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 326.

prosecution's appeal is heard by an appeal court or by the Supreme Court. As described in Chapter 3, it can take years for the Supreme Court to hear appeals.

For example, three of four men accused of involvement in the murder of a woman in Songa *commune*, in Bururi province, were convicted to life imprisonment; all four were acquitted on appeal in March 2022. The prosecutor's office appealed the decision to the Supreme Court. Although they should have been released following their acquittal and been called to appear at the Supreme Court as free men, they remained in prison. On 31 March 2023, the Supreme Court quashed the judgment and sent the case back to the appeal court, on the basis that the complainant and the prosecution witnesses were absent at the hearing. The four men remain in Bururi prison more than a year and a half after their acquittal.[22]

In cases such as this, detention in a prison far from Bujumbura, where the Supreme Court is located, makes it even more difficult for prisoners to try to secure a hearing at the Supreme Court. This is a common problem, particularly for poorer prisoners in remote provinces who can't afford to send a lawyer or another intermediary to the court to pursue the scheduling of their case. In practice, however, prisoners and their intermediaries are often unable to influence the Supreme Court to speed up the process. In addition, some prisoners have been unable to attend their court hearing because the police refused to transport them unless the prisoners paid for their transport themselves.[23]

In some trials, prosecutors claimed they had filed an appeal at the Supreme Court, even though there was no evidence that they had done so. For example, a Rwandan citizen, John Bagire, who is in Murembwe prison, in Rumonge, was acquitted of armed robbery by the appeal court of Ntahangwa on 22 November 2021. The prosecutor refused to release him, saying that an appeal was pending at the Supreme Court, even though Bagire had obtained an official document known as an *attestation de non-poursuite*, proving that no such appeal had been registered.[24]

Lawyers said that prosecutors often disregarded procedures for filing appeals and failed to notify prisoners or prison directors. A lawyer said that in some cases, prosecutors or their assistants simply wrote an application for an appeal to the Supreme Court on a piece of paper that they sent to the prison to try to block the release of certain prisoners. This application was often missing from the prisoner's case file as the correct procedure had not been followed.[25] The law requires the prosecutor general to submit appeals in writing to the registry of the Supreme Court.[26]

Another lawyer said that some prosecutors filed an appeal, for example against a court decision to provisionally release a prisoner, but kept the appeal document in their office and did not inform the

[22] Information from sources close to the case, November 2023, and legal documents.
[23] Interviews with sources close to the cases, 14 and 15 April 2023.
[24] Interviews with sources close to the case, 25 January 2023.
[25] Information from a lawyer, 11 November 2023.
[26] Loi organique n°21 du 3 août 2019 portant modification de la loi n°1/07 du 25 février 2005 régissant la Cour suprême.

prison or the prisoner. Prisoners could therefore be unaware that the prosecutor had filed an appeal for weeks or even months, unless a lawyer or a family member inquired at the court of appeal.[27]

The long wait: justice perpetually postponed

"*You have to wait; investigations are ongoing.*"[28]

Prison legal advisor's response to an illegally detained prisoner

Another category of prisoners who remain in prison illegally are those who have been granted provisional release by a court, but whom the prosecutor refuses to release pending their trial. The law states clearly that a court decision has to be implemented immediately. Exemptions are only made in specific situations, such as when an appeal is pending against a decision to provisionally release a person accused of a crime that can carry a minimum prison sentence of 10 years.[29]

Recent examples of illegal deprivation of liberty during the pre-trial phase include those of Emmanuel Hakizimana (see "The case of Emmanuel Hakizimana" in this chapter), Prime Niyongabo and Pontien Baritonda.

Niyongabo and Baritonda, both members of the former armed forces (ex-FAB), were arrested on 13 September 2020 in Bujumbura by SNR agents, including Alfred Innocent Museremu and Joseph Mathias Niyonzima, alias Kazungu.[30] They were questioned at the SNR headquarters in Bujumbura about their links to the CNL and its previous appellation, the National Liberation Forces (*Forces nationales de libération*, FNL), and about the CNL president Agathon Rwasa.[31]

Niyongabo and Baritonda were charged with endangering internal state security,[32] a common charge against people suspected of links with the opposition and others in politically sensitive cases. The prosecutor initially said he wanted to release Niyongabo, but after a phone call to an unknown person, he transferred Niyongabo to Muramvya prison, and Baritonda to Bubanza prison. When Niyongabo arrived in Muramvya prison, the prison director called the prosecutor to inquire about the case and asked whether he should be closely monitored. The prosecutor replied: "Just treat him like the others. I don't know why he is there."[33] Niyongabo was later transferred to Murembwe prison, in Rumonge.

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[27] Information from a lawyer, 16 November 2023.
[28] Interview with source close to the case, 15 March 2023.
[29] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 174.
[30] Niyonzima and Museremu have committed serious human rights violations over several years. Museremu was head of the SNR's internal intelligence department between 2020 and 2022, then head of its external intelligence department from July 2022 until April or May 2023, when he was dismissed from his position at the SNR. For further information, see The Burundi Human Rights Initiative, "A stranglehold on Burundi's future," https://burundihri.org/english/december_2020.php, December 2020, and "An adversary vanquished: how far will President Ndayishimiye go?", https://burundihri.org/french/september_2023.php, September 2023.
[31] The FNL was an armed opposition group, formed in 1980. It turned into a political party in 2009 and changed its name to CNL in 2019.
[32] Loi n°1/27 du 29 décembre 2017 portant révision du code pénal, articles 607-630.
[33] Interview with source close to the case, 30 October 2020.

The high court of Muha ordered the provisional release of Niyongabo and Baritonda in October 2020; the appeal court upheld this decision in November 2020. Yet the two men remained in prison, and their letters to the prosecutor of the appeal court, the president, the minister of justice and the prosecutor general went unanswered. The start of their trial was repeatedly delayed because the two prisoners refused to take part if they were not released. Eventually, under pressure by the court, they agreed to attend their trial and were sentenced to five years in prison on 31 May 2023.[34]

The case of Emmanuel Hakizimana

Emmanuel Hakizimana, a 42-year-old man from Ruhororo *commune* in Ngozi province, didn't realise he would spend more two years in prison when he went to look for work in Kiganda *commune* in Muramvya province on 17 November 2021, as he had done many times before. He also didn't realise that a connection would be made between his visit to Kiganda and two ambushes in Muramvya province a few months earlier, in which at least 22 people were killed.[35] The fact that he did not have his original identity card with him – he only carried a copy after his identity card was lost in a fire – would land him in trouble.

Imbonerakure arrested Hakizimana in Gatabo, in Kiganda *commune,* and when they discovered that he did not have his original identity card, they took him to the local police station. The prosecutor charged him a few days later with participating in armed groups, but failed to provide any evidence. He ignored the fact that the administrator of Ruhororo, who was contacted by a judicial police officer investigating the case, confirmed he knew Hakizimana and was aware that Hakizimana often went to Gatabo to look for work.

After the prosecutor admitted in court that Hakizimana was arrested merely on suspicion of participating in an armed group, the judges of the *chambre de conseil* (pre-trial chamber) of the high court of Muramvya ordered his provisional release on 25 November 2021. A judge told Hakizimana after the hearing that there was no evidence against him, but added: "Sorry, we thought you could go home, but the prosecutor appealed the decision."

Six months later, on 1 June 2022, the appeal court of Ntahangwa upheld the decision to release Hakizimana pending his trial. The judges threw out the appeal by the prosecution, which had been submitted after the legal deadline of two working days, and sent the case back to the high court in Muramvya. A trial date has been set for January 2024. Hakizimana remains in Muramvya prison, awaiting trial, two years after the court decision to release him. He was afraid to approach the prison director to ask why he had not been released. The legal advisor of the prison eventually told him: "You have to wait; investigations are ongoing."[36]

[34] Interviews with sources close to the case, 18 January, 16 February and 26 July 2023.
[35] For information on these attacks, see The Burundi Human Rights Initiative, "Behind the gate: a rise in torture and disappearances", https://burundihri.org/english/november_2021.php, November 2021.
[36] Interview with source close to the case, 15 March 2023, and judicial documents, on file; information from a confidential source, 17 November 2023.

Some prisoners spend years in pre-trial detention, even after a court has ordered their provisional release, and, in many cases, in excess of the maximum length of pre-trial detention set out in the law.[37] For example, Pierre Nkurunziza was arrested in Bujumbura on 7 April 2016 and accused of endangering state security and collaborating with armed groups. A former member of the MSD, he had been involved in protests against the third term of his namesake, President Pierre Nkurunziza, in 2015. Police officers beat him at the headquarters of the SNR, where he was detained for a week; he was then transferred to Mpimba prison. In May 2016, the high court of Bujumbura ordered his provisional release. The prison legal advisor told him that the prosecution had appealed the decision, but he was never called to appear in court again and was not released. Lawyers were unable to locate his file at the appeal court. He has spent more than seven years in prison illegally.[38]

Sentence served, but still in prison

"*Do you know how much it hurts when you spend months and months knowing that you're going to be released but remain in detention?*"[39] – President Ndayishimiye, 26 April 2021

President Ndayishimiye has acknowledged that some prisoners are held beyond their release date. Nevertheless, the practice continues. In these situations, too, Burundian law is clear: "Detention ends when the sentence expires... The director of the penitentiary establishment notes (the expiry of the sentence) two months in advance and immediately informs the state prosecution... After that deadline, the prison director proceeds with the detainee's release."[40] Prisoners whose pre-trial detention has exceeded the length of the prison term to which they have been sentenced should also be released.[41]

A manager of a health centre in Rumonge province remains behind bars, four years after serving a two-month sentence. The Rumonge high court had sentenced him to two and a half years in prison and a fine of around 30 million Burundian francs (approximately US $16,345) for "breach of trust", for misappropriating public money. In 2019, the appeal court in Bururi reduced his sentence to two months in prison and a fine of 27 million Burundian francs (approximately US $14,710), which he was unable to pay.

As he was arrested on 14 May 2018, he had already served much more than two months when the appeal court reduced his sentence. As he wasn't released after being notified of the appeal court decision, he sent a relative to see the prosecutor, who responded: "Thank you for reminding me that

[37] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 159.
[38] Interview with source close to the case, 6 July 2023, and court documents, on file. See also Radio publique africaine, "Le directeur de la prison centrale de Mpimba détient illégalement depuis 7 ans un jeune homme", https://www.rpa.bi/index.php/actualites/3droits-de-l-homme/le-directeur-de-la-prison-centrale-de-mpimba-detient-illegalement-depuis-7-ans-un-jeune-homme, 19 May 2023.
[39] Extract from a speech by President Ndayishimiye in Mpimba prison on the occasion of the release of prisoners through a presidential pardon, 26 April 2021.
[40] Loi n°1/24 portant révision du régime pénitentiaire, article 54, 14 December 2017. See also Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 342.
[41] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 264.

I have to file an appeal at the Supreme Court!"[42] The relative said the prosecutor resented the decision of the appeal court not to include in its judgment a provision known as *contrainte par corps,* which requires prisoners to serve additional time if they are unable to pay a fine.[43]

The Supreme Court's cassation chamber struck down the appeal court's ruling on 18 March 2020 and sent the case back for re-trial. On 16 October 2020, the appeal court of Bururi sentenced the defendant to two months again, as well as a fine of more than 29 million Burundian francs (approximately US $15,000); this time, the requirement of *contrainte par corps* was added, equivalent to a 30-year sentence if he fails to pay his fine. To date, he remains in prison because he has not paid the fine.[44]

BHRI has received credible information about other prisoners who have not been released after serving their sentence. For example, a prisoner in a politically sensitive case served his sentence and was then convicted and sentenced to another prison term for an offence he was accused of committing in prison; he served that sentence too. Yet he has still not been released and has spent more than three years in prison illegally.[45] Burundian human rights groups and the CNIDH have reported on cases of prisoners who were not released after serving their sentence and have highlighted the prevalence of this practice in politically sensitive cases.[46]

Years in prison without trial

Some prisoners have been deliberately ignored and have never even appeared in court. For example, Christian Butoyi, who has mental health issues, was arrested in 2014 in connection with the murder of three elderly Italian nuns in Kamenge, Bujumbura.[47] He has spent nine years in prison without trial, without a chance to defend himself. It is widely believed that he was arrested arbitrarily and blamed for the killings to conceal the involvement of SNR officials, as well as police and *Imbonerakure*, in one of the most brutal crimes involving state agents during this period. Butoyi, 43, has no family to advocate for him; both his parents have died. Given the extreme sensitivity of this case, few Burundians in the country would dare campaign for justice on his behalf, especially as some of the officials allegedly involved in the case of the nuns' murder still

[42] Interview with confidential source, 27 February 2023.
[43] The additional time is calculated according to the amount the prisoner owes. The law states that a prisoner should serve six months for 100,000 Burundian francs (approximately US $35); the duration of imprisonment increases for higher amounts. The length of additional time to be spent in prison should be specified in the court judgment. Code de procédure pénale, loi n°1/09 du 11 mai 2018, articles 351-360.
[44] Information from confidential source, 1 November 2023.
[45] Information from source close to the case, 29 March 2023.
[46] ACAT-Burundi, "Rapport de Monitoring des Violations des Droits des personnes privées de liberté", https://www.acatburundi.org/wp-content/uploads/2023/07/Rapport-de-lACAT-Burundi-sur-le-monitoring-des-violations-des-droits-des-prisonniers-pour-les-mois-davrilmai-et-juin-2023.pdf, 16 July 2023; CNIDH, "Rapport annuel d'activités : exercice 2022", https://cnidh.bi/documents/CNIDH_Rapport%20annuel%20d'activit%C3%A9s,%20exercice%202022.pdf, February 2023, pages 37-38.
[47] For further information on the murder of the Italian nuns, see Radio France Internationale, "Assassinat de trois religieuses italiennes : le Burundi s'interroge", https://www.rfi.fr/fr/afrique/20140908-burundi-trois-religieuses-assassinees-couvent-bujumbura-forces-ordre-kamenge-soeurs-italiennes, 8 September 2014.

hold government positions. Butoyi may therefore face the prospect of many more years in prison without trial.[48]

In response to a question about Butoyi during a public meeting on 6 October 2023 in Gitega, the minister of justice minimised the gravity of the case: "This prisoner was listened to (questioned), then he had a mental health problem. He was treated at *Chez le gentil* (a mental health hospital in Bujumbura). He has medication and none of his family members have come to follow up on his case. He's there, in the hands of the State, and has no problem."[49] The minister did not express any concern about the fact that Butoyi has spent nine years in pre-trial detention, well in excess of the legal limits;[50] nor did she acknowledge that someone who has mental health problems has the right to a fair hearing. The Burundian Constitution states that all citizens are equal before the law which guarantees them equal protection, and that no one should be discriminated against, including for physical or mental disabilities.[51]

2. Behind the scenes of the justice system

Prosecutors abusing their power

"*I went to see the (prison) director. He said he is not responsible for releasing me and he needs a document from the prosecutor.*"[52]

Prisoner recounting a conversation with the prison director

Several prisoners said they learned that their illegal imprisonment was the result of prosecutors abusing their power or acting on their own initiative, or of interference by government officials, for political motives or for personal gain.

To understand why they have not been released, prisoners often contact the prison director or legal advisor. One prisoner, who was eventually released several months after serving his sentence, said one of his co-accused in a security-related trial asked the prison director: "We've served our sentence, so why don't you release us?" The prison director told him that political cases were difficult: "I can release you, but you may be killed immediately. I have to go slowly and inform myself about what I can do (about your case)."[53] Some prisoners have been rearrested or disappeared after their release. But the response of the prison's legal service to another prisoner, whom the prosecutor had refused to release, was more blunt: "He (the prosecutor) lied to you. He is the one who has to release you, with a release warrant (*mandat d'élargissement*)."[54]

[48] Information from confidential source, 22 September 2023.
[49] Public broadcast by government ministers, Gitega, https://www.youtube.com/watch?v=1hsHCZxC94A, 6 October 2023.
[50] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 159.
[51] Constitution de la République du Burundi, 17 June 2018, article 22.
[52] Testimony from prisoner, 4 July 2023.
[53] Testimony from prisoner, 22 June 2023.
[54] Testimony from prisoner, 20 June 2023.

During the 2015 political and human rights crisis in Burundi, when some lower-level magistrates released detainees without the prosecutor's knowledge, prosecutors tightened their control over who was released. Some government and SNR officials told prison directors not to release people arrested during the crackdown on suspected government opponents without written authorisation from the prosecutor's office.[55] This was confirmed in a meeting in 2019 when prison directors complained about prisoners being detained because of the inaction of prosecutors. Rather than suggesting a solution, the head of the national prison service confirmed what was already the practice: that prisoners can only be released after the prosecutor has issued and personally signed a release warrant.

This has since become standard practice, even though it is not an explicit legal requirement.[56] Article 401 of the Code of Criminal Procedure refers to the use of release warrants, including in cases of acquittal, but does not specify whether they are a precondition for release or whether obtaining a release warrant is the only way for a prisoner to leave prison. Part of the article states: "The arrest warrant is also used if a defendant is acquitted. The arrest warrant is sent to the prison where the accused person is, or was, detained, and has the effect of cancelling the effects of the detention already served by the accused person."[57] The wording indicates that a release warrant may be issued after a prisoner has been released.

There is significant confusion around the issue of release warrants, in part because of the vague and poorly drafted language in the law, which leaves it open to interpretation and makes it difficult for prisoners to know their rights.

In practice, prison directors rarely take the initiative to release prisoners; instead, they usually contact the prosecutor's office to request a release warrant, then wait for that warrant, however long it may take – a process that gives prosecutors the opportunity to block or delay a prisoner's release. A lawyer said that prisoners are victims of a combination of prison directors' ignorance of the law and ill-will on the part of prosecutors.[58]

An additional obstacle can arise when a prison director is not informed of a court ruling. Once a court has delivered its judgment, the registrar should notify the prison legal service and the prisoner concerned. But if the legal service fails to inform the prison director about a ruling that should lead to a prisoner's immediate release, the prison director will not take the initiative to request a release warrant from the prosecutor.[59]

Prison directors told several prisoners that they couldn't release them without a release warrant.[60] One prisoner said: "I went to see the director. He said he is not responsible for releasing us (the

[55] Interview with lawyer, 29 September 2023.
[56] Interview with prison director, 11 June 2023; interviews with lawyers, August and September 2023.
[57] Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 401.
[58] Information from lawyer, 1 August 2023.
[59] Information from lawyers, 11 and 16 November 2023.
[60] Interviews with witnesses with first-hand knowledge of cases, 28 June and 4 July 2023.

prisoner and his co-defendants) and that he needs a document from the prosecutor. The prosecutor said there are still things he is checking about us, that he is studying the case file. He said that because we disturbed the (security) situation, he has to analyse the case. He said this to the person I sent (to see him) and he said that maybe the person who ordered our release didn't base (his decision) on the law, that there are still steps to be taken."[61]

In 2022 and 2023, two prisoners in separate, politically sensitive cases sent several intermediaries to meet with the prosecutor of the appeal court of Muha, Aristide Nsengiyumva, who should have released them after a court acquitted them. Nsengiyumva brushed them off, referring the intermediaries to Sylvestre Nyandwi, then prosecutor general. Nyandwi initially told the intermediaries the men should be released and would order Nsengiyumva to do so, but Nsengiyumva still refused to release them. Both prisoners had obtained a document from the Supreme Court proving that no appeal had been registered in due time, which they also showed the prosecutors, but that didn't stop Nsengiyumva and Nyandwi from filing an appeal at the Supreme Court for each case; in at least one case, the legal deadline of two months had expired.[62] In any event, this did not relieve them of their legal duty to release the prisoners, who remain in detention.

A shocking case in Gitega illustrates the abuse of power by certain prosecutors. Mévain Shurweryimana, a member of MUCO – a human rights organisation working on HIV-AIDS – was one of 24 people arrested on 22 February 2023 as they were taking part in a workshop in Gitega; some were later accused of homosexuality and incitement to debauchery. The high court of Gitega acquitted Shurweryimana and several of his co-defendants on 21 August, but the prosecutor at the court of appeal of Gitega, Félicité Nishemezwe, refused to sign their release warrant. The director of Gitega prison reminded her that there was a legal obligation to release those who had been acquitted; the prosecutor replied that there were many people who had been acquitted but were still in prison, and she would release them in due course.[63]

Shurweryimana suffered from a serious illness. By the time he was acquitted, his condition had deteriorated, and he was taken to hospital, where he died on 25 August. The prosecutor only issued the formal release warrant after his death. According to one source, she issued an unstamped version on 23 August; the prison director told her it wasn't valid without the official stamp. It wasn't until after Shurweryimana's death that she issued the official, stamped document.[64]

[61] Testimony from prisoner, 4 July 2023.
[62] Interviews with witnesses with first-hand knowledge of the case, 20 and 29 June 2023; interview with lawyer, 22 June 2023; interview with intermediary, 6 July 2023. The legal deadline for submitting an appeal at the Supreme Court is 60 days after the notification of the judgment of the court of appeal. See Loi n°1/21 portant modification de la loi n°1/07 du 25 février 2005 régissant la Cour Suprême, 3 August 2019, article 144.
[63] Interview with person with first-hand knowledge of the case, 31 August 2023. For further details of this case, see Iwacu, "Un cadavre autorisé à recouvrer sa liberté", https://www.iwacu-burundi.org/un-cadavre-autorise-a-recouvrer-sa-liberte/, 2 September 2023.
[64] Interview with person with first-hand knowledge of the case, 31 August 2023.

After Shurweryimana's death, the prosecutor was reprimanded by her boss, the prosecutor general of the Republic, Léonard Manirakiza, but at the time of writing, it appears no further action has been taken against her.[65]

The minister of justice admitted in a public broadcast on 6 October 2023 that prisoners should be released if a court ruled to that effect, but said that the Code of Criminal Procedure also contains articles which enable prosecutors to keep prisoners in detention in certain cases: "It's true, there is an article (in the Code of Criminal Procedure) that stipulates that a detainee should be released as soon as the court has taken the decision to release him. A lot of people base themselves on this article. But there are other articles in the same (criminal procedure) code that give the public prosecutor the power (to keep the person in detention) if he finds that the person who was released by the court, once freed, can cause insecurity in the country or can himself be the object of insecurity. When there has been an appeal, such a person can't be released."[66]

A lawyer described the minister's comments as misleading, as the Code of Criminal Procedure does not allow prosecutors to detain defendants who have been acquitted, unless there are other grounds for doing so (see Chapter 1 of this report, section on "Acquitted but not released"). Article 340 of the Code of Criminal Procedure gives prosecutors the right to arrest defendants who are not in custody but who have been sentenced, with a judge's authorisation, in exceptional cases; however, this article does not apply to individuals who have been acquitted.[67] Furthermore, the minister's assertion that a person can't be released if an appeal has been filed is incorrect (see Chapter 1 of this report).

The looming presence of the SNR and the CNDD-FDD

"*The (provincial) head of the intelligence service arrives at the office and tells you not to release the defendant.*"[68]

A judge describing how he received orders from the SNR

Prosecutors are not the only ones blocking the release of prisoners. Often SNR or other state officials ensure that prisoners are kept in prison. A prison director said that SNR officials, government officials or magistrates sometimes called him with instructions or warned him that if certain prisoners were released, he would be held personally responsible.[69] Even though the law prescribes that "nobody can be held in a penitentiary facility without a detention order provided by the law",[70] two prison directors admitted that they didn't always respect that provision; instead,

[65] Interviews with justice officials, 12 and 13 September 2023.
[66] Public broadcast by government ministers, Gitega, https://www.youtube.com/watch?v=1hsHCZxC94A, 6 October 2023.
[67] Information from lawyer, 23 October 2023; Code de procédure pénale, loi n°1/09 du 11 mai 2018, article 340.
[68] Interview with judge, 17 July 2023.
[69] Information from prison director, 11 June 2023.
[70] Loi n°1/24 du 14 décembre 2017 portant révision du régime pénitentiaire, article 8.

particularly in sensitive cases such as those described in this report, they followed instructions from other officials.[71]

The SNR has been involved in most of the cases documented in this report, particularly those affecting political opponents or detainees accused of security-related offences. Before transferring them to prison, SNR officials arbitrarily detained, interrogated and sometimes tortured these detainees. Several were beaten by or on the orders of Alexis Ndayikengurukiye, alias Nkoroka, who works in the SNR operations department, or by Moïse Arakaza, a police commissioner who worked closely with the SNR.[72] A prisoner who remained in prison after being acquitted of a common crime did not want to talk about how he survived his detention at the SNR: "That question is like another knife (in my wound). The two weeks I spent there were worse than hell."[73]

After obtaining information or forced confessions at the SNR headquarters in Bujumbura, SNR officials personally transferred some detainees to official prisons. An SNR agent who took detainees to a prison told the prison director to "follow their case" and inform him if there was an attempt to release them. These detainees had still not been released at the time of writing.[74]

The SNR's involvement did not always end after it had transferred detainees to prisons. Some SNR agents have remained involved in the trials of these detainees too.

A former political prisoner said that the head of the SNR in his province was behind his arrest in 2020 and his conviction in 2021: "The (SNR) was behind my case. In fact, it initiated it. (The SNR provincial head) did everything possible to make sure I was convicted. Each time I came before the judge, he sent (SNR agents) so that the judges would be afraid."[75]

When SNR agents remain involved during the judicial process, they usually do so behind the scenes. One prisoner said that when his lawyer requested the prosecutor to release him after a court order to do so, the prosecutor responded: "Go and see an official of the intelligence service, and if he gives me the authorisation, I'll release you." The prisoner sent another intermediary to meet with a provincial SNR official to request his intervention, but the SNR official refused to cooperate: "Is that what you're looking for, to talk to me about that dog? We made a mistake by not breaking his head," he said.[76]

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[71] Information from prison directors, 11 and 14 June 2023.
[72] For information on Alexis Ndayikengurukiye, see The Burundi Human Rights Initiative, "A stranglehold on Burundi's future," https://burundihri.org/english/december_2020.php, December 2020; "Enquête de l'APRODH sur la composition, les abus, les responsabilités, impunité au Service national de renseignement du Burundi/Organe cité dans les violations des droits humains", https://focode.org/574/, 25 August 2016; and Ndondeza, "Disparition forcée de Savin Nahindavyi, Officier du SNR", https://ndondeza.org/declaration-du-focode-n0052017-du- 16-mars-2017/. For information on Moïse Arakaza, see The Burundi Human Rights Initiative, "The road ahead: will Burundi bring its torturers to justice?", https://burundihri.org/english/march_2022.php, March 2022.
[73] Testimony from prisoner, 25 January 2023.
[74] Information from prison director, 14 June 2023.
[75] Interview with former prisoner, 27 July 2023.
[76] Interview with person with first-hand knowledge of the case, 18 January 2023.

A former judge said that when she worked in the justice system a few years ago, SNR agents gave instructions to prosecutors and judges on how to deal with detainees they had arrested.[77] Another judge explained: "When we're dealing with this kind of case, on the day of the pre-trial hearing, for example, the (provincial) head of the intelligence service arrives at the office and tells you not to release the defendant. I automatically change my plans so I can go to the public hearing to prevent their release."[78]

Senior ruling party members sometimes also intervened to prevent releases. A prisoner mentioned that a CNDD-FDD member of parliament told him and his co-detainee that they would never be released if they didn't join the CNDD-FDD.[79] Other prisoners said that CNDD-FDD members, including a former member of parliament, colluded with magistrates to block their release. A judge said that he had received instructions on the phone from the provincial secretary of the CNDD-FDD to continue to detain a defendant, even though his fellow judges had ordered his release. The judge said he would lose his job if he didn't follow orders.[80]

In some cases, people with whom prisoners had personal disputes tried to pull strings to prevent prosecutors from releasing them and called on CNDD-FDD representatives to help them. When a woman was released by a prosecutor in early 2023, a colleague with whom she had a conflict went to see the provincial secretary of the CNDD-FDD, who in turn called the prosecutor to ask him to return the woman to prison immediately, which he did. The prison director asked the prosecutor why the woman had returned to prison when the same prosecutor had earlier signed a release note. The prosecutor explained that he had received an order from the provincial secretary of the CNDD-FDD. The prison director asked what he should do in case there was a problem, as there was no new arrest warrant. The prosecutor replied that he was well aware of that irregularity, but that he had no choice. The woman was eventually released.[81]

Charging for release: prosecutors demanding bribes

"*We pay bribes. We do. It's rare that a release note is issued without corruption.*"[82] – Prisoner

Corruption is a huge problem throughout the justice sector in Burundi, in both political and non-political cases. Some prosecutors keep prisoners in detention to solicit bribes, which can reach substantial amounts. One prisoner said: "We pay bribes, we do. It's rare that a release note is issued without corruption." He admitted he had tried to approach the prosecutor who should have released him after he was acquitted, but the prosecutor refused to accept the 800,000 Burundian francs (approximately US $282) that the prisoner offered, as he said it was insufficient. Soon after his arrest, when his whereabouts were not known, his family had already paid one million Burundian

[77] Interview with former judge, 21 July 2023.
[78] Interview with judge, 17 July 2023.
[79] Testimony from prisoner, 9 February 2023.
[80] Interview with judge, 19 July 2023.
[81] Interview with person with first-hand knowledge of the case, 11 June 2023.
[82] Testimony from prisoner, 20 June 2023.

francs (approximately US $350) to intermediaries to confirm that he was detained at the SNR. Intermediaries had also attempted to approach another prosecutor in an early phase of the trial, but he too had turned down the offer because the amount was too low. The prisoner concluded: "When the amount is sufficient, you're freed. They're corrupt; they only release those who bribe them."[83] Another prisoner had also been approached by intermediaries who solicited a bribe on behalf of a prosecutor, but he was unable to obtain the required amount; the prosecutor then filed an appeal at the Supreme Court.[84]

In some cases, prison officials encouraged prisoners to send family members to bribe a prosecutor. A prisoner in Mpimba had been unable to do this, despite the prison director recommending he bribe the prosecutor: "It's impossible. I'm from a faraway place and I'm poor… When you're acquitted and you have no family to pay for you, you can spend years here in prison... If people have been able to send their family to pay, you often hear that these people are called to be released."[85]

The minister of justice: powerless and obliged to follow orders

"*The minister of justice doesn't have any power. If she were to try to apply the law… she would lose her job and she'd be replaced by someone who obeys.*"[86] – Former judicial official

A former judge, a former judicial official and a lawyer all said that the minister of justice's powers were very limited, that she had not been given the green light by the president to ensure the law is upheld in sensitive cases and that she had to obey orders handed down to her.[87]

Several prisoners said they had written to the minister of justice or sent intermediaries to meet her. One said that after his intermediary showed her all the documents that proved he should have been released, "the minister was surprised that I was still languishing in prison. She told the person that she was going to check with the court of appeal, and that I'd have to wait for an answer." To date, there have been no further developments in his case.[88]

Another prisoner said an intermediary went to see the minister multiple times on his behalf. After hearing that the prisoner was illegally detained, the minister called the presiding judge of the high court who was dealing with the case and told her to close the case. The minister promised the intermediary that the case was on her agenda; it is not known if there was any follow up. The prisoner said: "She always makes promises that don't stick. She receives instructions from

[83] Testimony from prisoner, 20 June 2023.
[84] Testimony from prisoner, 29 June 2023.
[85] Testimony from prisoner, 7 July 2023.
[86] Interview with former judicial official, 22 July 2023.
[87] Interviews with former justice officials, 22 July 2023; interview with lawyer, 23 July 2023.
[88] Testimony from prisoner, 29 June 2023.

somewhere. She can't take many initiatives at her level. Particularly on political cases, she can't do much."[89]

President Ndayishimiye has said numerous times that judicial officials should deliver justice fairly. During a public broadcast on 12 July 2023 in Muramvya province, the president's spokesperson said: "(The President) continues to ask the population to denounce anyone who doesn't carry out their mission properly, and those who are caught will be punished."[90]

In a meeting with judicial officials in Karusi province on 18 July, the president went further: "We can't live in a country where there is no justice," he said. "It would be better to have a shortage of magistrates than to have magistrates who cause chaos between people."[91] He told magistrates: "If you are unable to mete out justice, leave (the job)".[92]

Despite these and other similar statements, neither the president nor the minister of justice have acted on instances of blatant injustice in politically sensitive cases, many of which have been brought to their attention.

"The minister of justice doesn't have any power," said a former judicial official. "She's not allowed to do what she wants. If she were to try to apply the law and work well, she would lose her job and she'd be replaced by someone who obeys."[93]

The Bururi case: punished for applying the law

In an unprecedented case, in August and September 2023 senior justice officials ordered the arrest, imprisonment and prosecution of three prison officials and three judges in Bururi for releasing detainees against whom there was no evidence. The minister of justice, Domine Banyankimbona, intervened in this case, but undermined the law rather than upholding it.

In May 2023, a spate of machete attacks took place in Bururi *commune*, Bururi province. The attacks attracted the attention of senior government and security officials who visited the area. Several people were arrested. On 25 July, the pre-trial chamber of the high court of Bururi granted provisional release to eight of the suspects, who were released from Murembwe prison, in Rumonge.

[89] Testimony from prisoner, 26 July 2023.
[90] Broadcast by government spokespersons, Muramvya, 12 July 2023.
[91] "Le Président Ndayishimiye déterminé à assainir le secteur de la justice au Burundi", https://www.presidence.gov.bi/2023/07/18/le-president-ndayishimiye-determine-a-assainir-le-secteur-de-la-justice-au-burundi/, 18 July 2023. The president's speech marked the launch of a "national campaign for the enforcements of judgments", which concerns mainly civil rather than criminal cases.
[92] Extract from President Ndayishimiye's comments to judicial officials in Karusi province, 18 July 2023.
[93] Interview with former judicial official, 22 July 2023.

On 8 August, the director of Murembwe prison, Patrice Nkurikiye, the head of the prison's legal service, Florence Nimbona, and another staff member of the legal service, Pélagie Nindamutsa, were arrested for releasing the eight suspects in accordance with the court ruling. They were charged with facilitating the escape of prisoners and endangering internal state security. The prosecutor argued that they should not have released the prisoners because they did not have his authorisation and because the prosecution appealed their provisional release on 26 July. In a court hearing on 14 August, held through an accelerated process known as *flagrance* (used to try defendants caught in the act), the judges asked the prosecution to justify the charge of "facilitating the prisoners' escape", as the eight prisoners did not escape but were officially released. In a surprisingly honest admission that not all cases should be treated the same way, the presiding judge reprimanded the prison director for not realising that the case was "sensitive". In an equally honest reply, the prison director said he knew that there were sensitive cases "that we can't touch without informing senior officials."[94]

On 22 August, the appeal court of Bururi convicted the three prison officials and sentenced them each to seven and a half years in prison and a fine of one million Burundian francs (approximately US $352).

One of the judges later said that there were no grounds for convicting them, especially as seven of the eight released prisoners had been re-arrested (the eighth couldn't be found). However, he and his fellow judges didn't feel they had any choice, as the high court judges who ordered the release of the eight prisoners had come under heavy pressure from the president of the court, acting on the orders of Domine Banyankimbona.[95]

Before the judgment convicting the prison officials, the prosecutor of the appeal court of Bururi approached one of the judges in the appeal court and asked him to increase the sentence of the prison officials to 15 years – twice what the prosecutor had requested – because, he said, he was afraid he would have to explain himself to the minister of justice and to the SNR, who were following the case closely. The judge replied that there was no evidence against the defendants and the judges couldn't impose a higher sentence than that requested by the prosecutor.[96]
In a further extraordinary development, the three judges who had ordered the provisional release of the eight prisoners – Léonard Nizigiyimana, Antoine Ngendakumana and Irène Mukeshimana – were also arrested. Following their ruling, Banyankimbona had demanded that they explain their decision, apparently because the case was causing problems in the SNR and in the president's office. The judges explained to her that there were no grounds for keeping the suspects in detention; the minister insisted that they explain this in writing, which they did. Another judge went to see Banyankimbona in person to explain their decision. Banyankimbona became angry and accused him of disregarding the sensitivity of the case.[97]

[94] Information from person present at the court hearing on 14 August 2023.
[95] Information from confidential source, 22 August 2023.
[96] Information from confidential source, 22 August 2023.
[97] Information from confidential sources, July and August 2023.

On 16 August, the three judges were arrested and taken to Bururi prison. The prosecutor of the court of appeal apologised to them and said it was not his decision, but a decision imposed "from above". Banyankimbona had phoned the prosecutor demanding that he open a case file and arrest the three judges.[98]

The three judges were accused of facilitating the offence of "endangering internal state security" by ordering the provisional release of the eight suspects. When they were questioned on 17 August, they explained that they had taken this decision because there was insufficient evidence against the eight suspects. After they were questioned, the prosecutor told them he believed they were unjustly detained but he didn't have any choice as it was a decision handed down by the minister of justice.[99]

Before the hearing on their pre-trial detention, the president of the court of appeal of Bururi tried to convince his boss, the president of the Supreme Court, that there was no justification for detaining the three judges. His plea was ignored. He then asked if the case could be transferred to another jurisdiction because he felt uncomfortable with it, arguing that the three judges were his colleagues so the court of appeal might be biased. His request was turned down. The president of the Supreme Court then called him to tell him that this was a high-level case that went right up to the president's office, and that if the three judges were released, the judges of the appeal court would have to account for their actions. The president of the appeal court relayed this message to the other judges of his court.

During the hearing at the pre-trial chamber of the appeal court of Bururi on 4 September, the prosecutor admitted in court that the three judges had done nothing wrong and that they were only on trial because of interference in the case. He asked the judges to apply the law and do the honourable thing by ensuring that justice was done.[100] The appeal court judges then discussed the matter among themselves and sought the advice of the president of the court, who advised them "not to commit suicide" and to confirm the three judges' pre-trial detention, as they had been ordered to do. They reluctantly obeyed, for fear of being arrested themselves, and ruled that the three judges should remain in detention.[101]

At the time of writing, the three judges are still in prison, awaiting trial. They appealed their pre-trial detention to the cassation chamber of the Supreme Court. On 17 October, the Supreme Court upheld the decision to keep them in prison, but didn't notify them of its decision until 21 November.

The judges and prosecutors involved in this case repeatedly conveyed their concerns to their superiors – in vain. They said they could not justify the arrest of the three judges or the prison

[98] Information from confidential sources, 17 August, 22 August and 4 September 2023.
[99] Information from confidential sources, 4 and 6 September 2023.
[100] Information from person present at the hearing, 5 September 2023.
[101] Information from confidential source, 8 September 2023.

officials and defended the decision to release the eight prisoners suspected of involvement in the machete attacks, as they said there was no evidence against them. But in the face of explicit orders by senior officials, they felt obliged to comply.[102] One of the justice officials involved in the case said it was the first time he had come across a case of judges being imprisoned because of their decision in a court case.[103]

It is not clear why this case is so sensitive and why senior officials became involved. Several witnesses with first-hand knowledge of the case mentioned that the president's office had taken a personal interest in it. President Ndayishimiye referred to this case in his speech in Gitega on 1 September 2023 to mark the opening of the judicial year: "A judge who dares to say that a person who injured others, who stabbed another person... is acquitted... that judge is cursed... If you release a killer, it's as if you're saying: 'go and kill others'... When they cut (injured) people in Bururi, how did that happen? Until now, the whereabouts of one of them is not known. One day, you'll hear that he is killing people. Isn't it the judges who acquitted him who will have killed these people?" Later in the same speech, he said: "We should know the names of the (judges) who released those who killed people in Bururi... they should be branded as cursed."

However, in a typical contradiction, in the same speech Ndayishimiye called on judges to stand up for the truth: "I'm asking judges who know they are good to come out into the open... and stand up for the law. Even if there are only two of you, stand up for the law and say 'I prefer to die for the sake of the truth'... Justice is always justice, but bad justice never represents justice."[104]

Some judges believe that it's not worth the risk. A former judge put it this way: "Some judges obey orders because they're afraid of being redeployed far from home. They say to themselves: 'It's not worth ruining my life for someone I don't know.'"[105]

The minister of justice returned to the Bururi case during a meeting with justice officials on 17 November 2023 and expressed her indignation at the release of the eight suspects accused of taking part in the machete attacks: "The case that took place in Bururi where they cut (injured) citizens... People were arrested. They appeared before the pre-trial chamber and the judges released them, saying: we don't have tangible evidence of their guilt. Do you think that's normal? The evidence is there. People were injured and they're being prosecuted for that. It is not yet the time for producing evidence because we're not at the trial stage yet. And they say there is no tangible evidence of guilt for such an offence."[106]

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[102] Interviews with justice officials, August and September 2023.
[103] Information from justice official, 4 September 2023. See also ACAT-Burundi, " Le principe d'intime conviction du juge toujours en péril dans le système judiciaire burundais", https://www.acatburundi.org/le-principe-dintime-conviction-du-juge-toujours-en-peril-dans-le-systeme-judiciaire-burundais/, 25 September 2023.
[104] Extracts of President Ndayishimiye's speech at the opening of the judicial year in Gitega, 1 September 2023.
[105] Interview with former judge, 22 July 2023.
[106] Extracts of Domine Banyankimbona's speech at a meeting with justice officials from several provinces held in Bujumbura, 17 November 2023. See Télé Renaissance, "Les magistrats doivent respecter les délais légaux des jugements", https://twitter.com/RTVRenaissance/status/1727075935554269240, 21 November 2023.

The CNIDH: reticent and ineffective

The CNIDH, which is supposed to be independent from the government and has the legal authority to refer cases of human rights violations to the public prosecutor,[107] noted in its 2022 annual report "the continued imprisonment of prisoners who were definitively acquitted and others who already served their full sentences. This particularly concerns prisoners who were prosecuted for offences of endangering internal state security or illegal possession of weapons." On 9 September 2022 the CNIDH sent a letter with a list of 41 such cases to the ministry of justice; it is not known if the ministry replied or if any action was taken.[108]

Several prisoners said that CNIDH representatives visited them in prison or that they contacted the CNIDH themselves to complain about their illegal imprisonment. In one case, the CNIDH visited the area where the prisoner was arrested and talked to witnesses and the judges of the court who acquitted him.[109] CNIDH representatives who interviewed prisoners promised to follow up on their cases and to report back to the prisoners, but almost none of the prisoners interviewed for this report were aware of any action taken by the CNIDH on their behalf. In one case, a CNIDH representative told a prisoner: "We are aware of the case and we have to go slowly, because (the CNIDH) doesn't give orders (it doesn't make decisions)".[110] CNIDH representatives interviewed another prisoner several times and promised to raise his case with the prosecutor general, but the prisoner never received any feedback from them.[111]

A prison director said that the CNIDH investigated several cases of prisoners who were held illegally in his prison, but that it seemed reluctant to act due to the sensitive nature of these cases.[112] For the same reason, a prisoner accused of being a government opponent decided not to approach the CNIDH: "I don't have any confidence in the CNIDH because they collaborate with the government. They're a tool of the government. There is no adequate response that the CNIDH can give if they would advocate in my favour. I'm accused of being a fierce opponent of the government."[113] Another prisoner concurred: "The CNIDH has been coming here since 2016. We give them our documents and they leave. As they're close to the government, they say nothing. Because we've suffered injustice at the hands of the government, they don't say what's going on with our case."[114]

[107] Loi n°1/04 du 05 janvier 2011 portant création de la Commission nationale indépendante des droits de l'homme, https://www.cnidh.bi/documents/Loi-cnidh.pdf, 5 January 2011.
[108] CNIDH annual report 2022, https://cnidh.bi/documents/CNIDH_Rapport%20annuel%20d'activit%C3%A9s,%20exercice%202022.pdf, February 2023, pages 37-38.
[109] Testimony from prisoner, 24 July 2023.
[110] Testimony from prisoner, 21 March 2023.
[111] Testimony from prisoner, 25 January 2023.
[112] Information from prison director, 14 June 2023.
[113] Testimony from prisoner, 3 July 2023.
[114] Testimony from prisoner, 7 July 2023. For an analysis of the lack of independence of the CNIDH, see The Burundi Human Rights Initiative and Human Rights Watch, "Submission to the Global Alliance of National Human Rights institutions (GANHRI): Burundi's National Independent Human Rights Commission's lack of independence merits examination", https://burundihri.org/rep/CNIDH-submission-to-GANHRI-2023-(ENGL).pdf, 13 September 2023.

3. The Supreme Court: administrative backlog or intentional delays?

"*This is the Mukoni case. You shouldn't ask for information about that.*"[115]

Staff member of the Supreme Court responding to a lawyer's question about the trial relating to a 2017 attack in Muyinga

In addition to long delays in some of the appeal courts, some prisoners have spent years waiting for the cassation chamber of the Supreme Court to hear their case. The Supreme Court is the last resort for the defence or the prosecution if they are not satisfied with a judgment pronounced by the appeal court. Because many criminal cases end up at the Supreme Court, a huge backlog has built up, resulting in long delays.

In his speech on 1 September 2023, President Ndayishimiye acknowledged that there was an unacceptable backlog of cases (without specific reference to the Supreme Court). He blamed judges and other officials for allowing the backlog to build up.[116]

Prisoners in political cases appear to bear the brunt of these delays, but other prisoners' cases are also caught up in the backlog, particularly those detained in provinces far from Bujumbura, where the Supreme Court is located.[117]

Joseph Sahabo, a former FNL member, has been detained for more than 10 years in Murembwe prison. In January 2012, he was convicted of participating in the massacre of Congolese refugees in Gatumba in 2004 and sentenced to life imprisonment.[118] After the judgment was upheld by the appeal court on 31 January 2014, he appealed to the Supreme Court's cassation chamber, but more than nine years later, his appeal is still pending. A lawyer who approached the Supreme Court about his case was told that his file could not be located.[119]

Twenty-one prisoners – many of them soldiers, who were among 25 people arrested after an attack on Camp Mukoni, a military base in Muyinga province, in 2017 – have also faced long delays. The high court in Muyinga, in two separate trials, handed them long prison sentences; many of them had been tortured. The appeal court upheld or increased most of the sentences.[120] In early 2018, the 21 prisoners appealed to the Supreme Court's cassation chamber. More than five years later, in early November 2023, the cassation chamber finally heard their case. At the time of writing, it hadn't delivered its judgment. The 21 remain behind bars, in several different prisons; four of their co-

[115] Interview with lawyer, 29 March 2023.
[116] President Ndayishimiye's speech at the opening of the judicial year in Gitega, 1 September 2023.
[117] Information from prison official, 18 April 2023.
[118] For more information, see Human Rights Watch, "Burundi: 15 years on, no justice for Gatumba massacre", https://www.hrw.org/news/2019/08/13/burundi-15-years-no-justice-gatumba-massacre, 13 August 2019.
[119] Interview with source close to the case, 25 January 2023.
[120] See The Burundi Human Rights Initiative, "The road ahead: will Burundi bring its torturers to justice?", https://burundihri.org/english/march_2022.php, March 2022.

defendants have been released.[121] When a lawyer had tried to inquire about the cases at the cassation chamber of the Supreme Court in early 2023, a staff member of the court told him: "This is the Mukoni file. You shouldn't ask for information about that." Another staff member told him that the files on these cases were kept by the president of the court.[122]

4. Arbitrary exclusions from presidential pardons

"*We know your case and it concerns us. There must be someone who has a problem with you, who wanted to treat you badly. Wait patiently and we will deal with it. It's a political case.*"[123]

Senior justice official talking to prisoners excluded from a presidential pardon

Some prisoners remain in prison even though their co-defendants or prisoners in a similar situation were released through a presidential pardon. Presidential pardons, which sometimes result in large numbers of releases, are usually announced through a presidential decree; this was typically done once a year during the presidency of Pierre Nkurunziza.[124] The decree stipulates the criteria and sometimes the number of prisoners per category, but does not provide the names of prisoners who are to be pardoned. Prisoners who believe they should have been released through a presidential pardon can appeal to the commission in charge of presidential pardons, or to the ministry of justice, but both the commission and the ministry have a significant degree of discretion, and there is no automatic right to release through this process.[125]

President Ndayishimiye signed his first decree pardoning 5,255 prisoners on 5 March 2021. By the end of April 2021, more than 2,600 prisoners had been released.[126] In December 2021, he promised to release detainees who were not accused of murder, but excluded prisoners charged with offences related to state security, which include most political prisoners.[127] Since then, no other large-scale presidential pardons have taken place.

The arbitrary and inconsistent nature of presidential pardons, as well as the absence of individual, written notifications and of a clear procedure for challenging or inquiring about exclusion from a pardon, makes it difficult for certain prisoners who believe they fall into the relevant categories to

[121] Information from sources close to the case, November 2023, and judicial documents on file. For further details, see Human Rights Watch, "Justice in Burundi: Torture First, Prosecute Later", https://www.hrw.org/news/2017/02/03/justice-burundi-torture-first-prosecute-later, 3 February 2017; Fédération internationale pour les droits humains, "Intensification d'exécutions, de tortures et de détentions de militaires tutsi", https://www.fidh.org/fr/regions/afrique/burundi/intensification-d-executions-de-tortures-et-de-detentions-de, 9 February 2017; and Radio Inzamba, "Muyinga : Attaque du camp de Mukoni : 4 ans sans verdict pour les militaires accusés", https://inzamba.org/muyinga-attaque-du-camp-de-mukoni-4-ans-sans-verdict-pour-les-militaires-accuses/, 17 July 2021.
[122] Interviews with lawyer, 29 March and 16 November 2023.
[123] Interview with person with first-hand knowledge of the case, 21 March 2023.
[124] See The Burundi Human Rights Initiative, "A façade of peace in a land of fear: behind Burundi's human rights crisis", https://burundihri.org/english/january_2020.php, January 2020.
[125] Information from lawyers, 31 March 2023.
[126] See The Burundi Human Rights Initiative, "Ndayishimiye one year on: has he kept his word on human rights?", https://burundihri.org/rep/Report-June-2021-Engl.pd https://burundihri.org/english/june_2021.php, June 2021.
[127] The Burundi Human Rights Initiative, "The road ahead: will Burundi bring its torturers to justice?", https://burundihri.org/english/march_2022.php, March 2022.

understand why they have not been released. Many prisoners excluded from pardons have been convicted of politically sensitive offences.[128]

After around 70 MSD members were arrested at their headquarters on 8 March 2014, 48 were handed sentences ranging from two years to life imprisonment for participating in an insurrection movement.[129] On 3 January 2017, President Nkurunziza pardoned many of them and the minister of justice promised that all defendants in the case would be pardoned.[130] Yet several convicted MSD members were left out of the measure. Some have since been released, but at least four remain in prison at the time of writing; one of them was subsequently accused of a minor offence allegedly committed in prison. The prisoners wrote to the commission in charge of presidential pardons but did not receive a reply.

A source close to the MSD prisoners said: "It's been six years and they refuse to notify us. They say the case is closed and nothing else… They tell us we need to go slowly, that it's a political case."[131] As the MSD members were told they could be pardoned, they did not appeal to the Supreme Court. A senior justice official told them: "We know your case and it concerns us. There must be someone who has a problem with you, who wanted to treat you badly. Wait patiently and we will deal with it. It's a political case."[132]

[128] Interviews with witnesses with first-hand knowledge of these cases, 21 and 29 March 2023, and judicial documents, on file.
[129] See Human Rights Watch, "Burundi: halt crackdown on opponents, critics", https://www.hrw.org/news/2014/07/16/burundi-halt-crackdown-opponents-critics, 16 July 2014.
[130] See The Burundi Human Rights Initiative, "A façade of peace in a land of fear: behind Burundi's human rights crisis", https://burundihri.org/english/january_2020.php, January 2020.
[131] Interview with person with first-hand knowledge of the case, 21 March 2023.
[132] Interview with person with first-hand knowledge of the case, 21 March 2023.

Annex: Examples of prisoners detained illegally

This list of cases documented by BHRI is not exhaustive. It does not include cases of prisoners who wish to remain anonymous or cases which do not have a political connotation.

	Name	Prison	Date of first court ruling ordering release
1	Jean Bosco Barumbanza	Bururi	Acquittal on appeal on 1 March 2022
2	Nicodème Sakubu	Bururi	Acquittal on appeal on 1 March 2022
3	Samuel Ntirampeba	Bururi	Acquittal on appeal on 1 March 2022
4	Yves Mugisha	Bururi	Acquittal in first instance on 7 October 2021
5	Eugène Nintunze	Mpimba	Acquittal on appeal on 1 March 2022
6	Célestin Hitimana	Mpimba	Acquittal in first instance on 24 February 2022
7	Alexis Ntakarutimana	Mpimba	Acquittal in first instance on 24 February 2022
8	Justin Nduwayo	Mpimba	Acquittal in first instance on 24 February 2022
9	Léonard Habonimana	Mpimba	Acquittal in first instance on 15 April 2021
10	Régis Mpundu	Mpimba	Acquittal on appeal on 16 May 2023
11	Joseph Bertrand Irambona	Mpimba	Acquittal in first instance on 16 April 2022
12	Pierre Nkurunziza	Mpimba	Provisional release on 31 May 2016
13	Richard Bagabo	Mpimba	Acquittal in first instance on 25 January 2018
14	Dieudonné Nsengiyumva	Mpimba	Acquittal in first instance on 1 October 2020
15	Audace Karisabiye	Mpimba	Acquittal in first instance on 19 April 2022
16	Emmanuel Hakizimana	Muramvya	Provisional release (on appeal) on 1 June 2022
17	Roger Ndayisaba	Muramvya	Acquittal on appeal on 14 January 2021
18	Boniface Ndayiziga	Muramvya	Acquittal in first instance on 6 July 2021
19	Ernest Hatungimana	Muramvya	Acquittal in first instance on 6 July 2021
20	Pasteur Nduwimana	Muramvya	Acquittal in first instance on 6 July 2021
21	Lionel Arakaza	Muramvya	Acquittal in first instance on 6 July 2021
22	John Bagire	Murembwe	Acquittal on appeal on 24 November 2021