

# SECURITY SECTOR REFORM MONITOR



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## INSIDE

Introduction	1
The Current Security Challenge	3
Police Reform	4
Justice Sector Reform	7
Works Cited	10

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Cover Photo: Members of the CNDD-FDD rebel forces surrender their weapons in Mbanda, southern Burundi. (UN Photo/Martine Perret)

## INTRODUCTION

Following its independence in 1962, Burundi witnessed a race for power characterized by rising political tension and rivalry between the two main ethnic groups, the Tutsi minority and the Hutu majority. Although most post-independence state institutions incorporated both Hutu and Tutsi, a series of violent and deadly power grabs<sup>1</sup> culminated in the presidency of Michel Micombero, a Tutsi army officer. Micombero's reign consolidated Tutsi control over Burundi's security forces and political institutions. The regimes of Presidents Jean-Baptiste Bagaza (1976–87) and Pierre Buyoya (1987–93), also Tutsis from Micombero's home province of Bururi and drawn from and supported by the military, maintained the supremacy of the Tutsi minority in political and security sector institutions.

In June 1993, Burundi held its first pluralistic elections since the establishment of the republic. The largely Hutu opposition won by an overwhelming margin. This regime change and the reforms proposed by the new leadership threatened some privileged actors and triggered the October 1993 assassination of Hutu President Melchior Ndadaye and several close colleagues by members of the Tutsi-dominated army. A subsequent massacre of Tutsi civilians was followed by an army-led crackdown on the Hutu population and ultimately by civil war, pitting the state against a variety of Hutu factions. Conscious of the fact that the army had long represented the heart of power in Burundi, the rebels' main demand — apart from a return to the pre-assassination constitutional order — was the reform of the army, police and other

<sup>1</sup> For more information, see Chrétien and Dupaquier (1972).

## ABOUT THE SSR MONITOR

The *Security Sector Reform Monitor* is a quarterly publication that tracks developments and trends in the ongoing security sector reform (SSR) processes of five countries: Afghanistan, Burundi, Timor-Leste, Haiti and Southern Sudan. Every quarter, there will be separate editions for each case study country. Adopting a holistic definition of the security sector, the *Monitor* will cover a wide range of actors, topics and themes, from reforms in the rule of law institutions and armed forces to demilitarization activities and the role of non-statutory security and justice actors.

Research for the *Monitor* is field-based: a resident researcher in each case study country leads data collection and analysis, with support from desk-based analysts at The Centre for International Governance Innovation (CIGI). The same research guidelines are employed for each country. All editions of the *Monitor* are subjected to an external peer review process in addition to our internal editorial review.

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security services.

In 1998, a peace process began in Arusha, Tanzania, and an agreement for peace and reconciliation was ultimately signed in August 2000. The Arusha Agreement contains various provisions on the reform of the security sector, particularly providing for balanced representation of Hutu and Tutsi, professionalization of security and justice institutions, creation of a new national police service and demobilization of tens of thousands of combatants. It also places strong emphasis on the fight against impunity, particularly regarding members of the security sector who committed war crimes during the civil war.

Despite these advances, the civil war continued, due in large part to the absence of some of the main rebel groups — notably the Hutu CNDD–FDD<sup>2</sup> — from the negotiations. As such, the reforms outlined in the peace agreement were generally neglected in the years following Arusha. Eventually, in November 2003, the interim government and the CNDD–FDD signed a ceasefire agreement and the first measures to implement the Arusha Agreement, including the provisions for security sector reform (SSR), were taken.

A new army and police service — the Burundian National Defence Force and the Burundian National Police (BNP) — were established in 2004 and ex-combatants from rebel groups were integrated into these services. At the same time, major training programs aimed at professionalizing the security forces were implemented.

However, these reforms were launched in a delicate political and security context. While free and fair elections in 2005 had brought the CNDD–FDD to power, hostilities between the Burundian armed forces and the PALIPEHUTU–FNL<sup>3</sup>

<sup>2</sup> The CNDD–FDD is the Conseil National pour la Défense de la Démocratie–Forces pour la Défense de la Démocratie, one of the primary Hutu rebel groups active during the Burundian civil war.

<sup>3</sup> PALIPEHUTU–FNL is the Parti pour la Libération du Peuple Hutu–Forces Nationales de Libération, one of the primary Hutu rebel groups active during the Burundian civil war.

rebels resumed as the Hutu rebel group refused to recognize the new regime. Consequently, civilians in several western provinces continued to endure violence at the hands of both parties to the conflict. The persistence of the rebellion, though increasingly weakened by the combination of military offensives and civilian repression, was used as another pretext for delaying some of the security sector reforms specified in the Arusha Agreement.

At the political level, the governing party's tendency to resort to authoritarianism created tensions with the main opposition parties, civil society groups and the media. These tensions led to a political crisis in 2006, which saw the arrest of members of the opposition, power struggles within the CNDD–FDD and the general paralysis of the National Assembly until June 2008 (ICG, 2006; 2008). In this context of recurrent conflict and rigid rule, the reforms carried out in the security sector — and particularly the police and justice system — are suffering due to a lack of political will (Nindorera, 2007). Both services are subject to attempts at manipulation and co-optation for personal and political interests, as evidenced by the frequent interference in court decisions by the executive, which has served to further undermine efforts at reform.

This issue of the *SSR Monitor* explores police and justice reform, with a focus on operational questions. Future issues will examine other challenges to holistic SSR in Burundi.

## THE CURRENT SECURITY CHALLENGE

While the 2003 ceasefire between the interim government and the CNDD–FDD brought the conflict to an end in most of Burundi, the proliferation of weapons and the impoverishment of the population — both legacies of the civil war — have significantly eroded security. Violence has become one of the primary means for resolving

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conflicts, particularly those concerning land (Pézard and de Tessières, 2009). Responding to the need for security, the CNDD–FDD parlayed its massive representation in the defence and security services into a political advantage: it made security a main plank in its platform. Yet the CNDD–

FDD's promise of restoring security and maintaining peace through dialogue with the PALIPEHUTU–FNL was somewhat disingenuous as, once in office, immediately resorted to a military solution to the rebellion, prolonging the hostilities and doing little to improve security for much of the Burundian population.

Apart from military combat zones and despite the challenges mentioned above, the security situation has largely improved in Burundi since the signing of the Arusha Agreement. The country's main roads, once plagued by armed gangs using pseudo-political claims as excuses for ambushing cars and individuals, are now relatively safe. But criminality seems to have moved off the highways and into local communities, particularly urban centres. Crime is also on the rise: according to BNP statistics, it has increased over the last two years (BNP and BINUB, 2008). In some areas, armed robbery by organized gangs is now routine; in others, crimes stemming from land-related conflict are common. This increase in crime also disproportionately touches some at-risk groups, such as women and young girls, who are often victims of sexual assaults.<sup>4</sup> Minority groups, including ethnic minorities and albinos (as illustrated in recent well-publicized cases) are also the targets of heinous crimes. This criminality is only exacerbated by the large number of small arms and light weapons that remain in the hands of the general population, including ex-combatants (Pézard and Florquin, 2007: 62; *Afrique en ligne*, 2009).

Not only are the security forces unable or unwilling to put a halt to such crimes, but they are often themselves considered a main source of insecurity by local populations. Many cases of police officers caught stealing have been reported (AFP, 2009). While the phenomenon is far less frequent among soldiers, local law organizations have recorded various cases of theft involving soldiers on active duty. In

addition to current security sector personnel, demobilized combatants also contribute to the rising rate of criminality in the country.

Insecurity related to the political activism of the PALIPEHUTU–FNL has declined since its recognition as a legal political party in April 2009, as well as the subsequent demobilization, disarmament and reintegration of some ex-combatants into the public and security services. Even so, political violence is increasing as the next round of elections draws closer (Human Rights Watch, 2009). Grenade attacks on houses and public establishments are common and create a renewed challenge for Burundi's emerging security forces. Grenades and rifles are also the weapons of choice for Burundi's criminals, with 70 percent of crimes involving one or the other (OAG, 2009: 14–15). In this context, two of Burundi's key security sector institutions are being consolidated and renewed: the police and the justice system.

## POLICE REFORM

Before Arusha, the Burundian police service was comprised of three different police institutions operating under the control of different ministries. The Airport and Border Police (ABP) and the Public Security Police (PSP) were controlled by the Ministry of the Interior and Public Security while the Criminal Investigations Department (CID) fell under the purview of the Ministry of Justice. For the most part, the mandate of each institution was clear: for example, the ABP was in charge of immigration, the status of foreigners and infractions committed at borders; the CID handled investigations, especially cases of public security and economic, commercial and financial matters. However, at times the spheres of responsibility of these three institutions overlapped. The PSP, for example, was not only responsible for the maintenance of law and order, but also for parts of the mandate of the CID, such as maintaining public security. Confusing matters even

<sup>4</sup> Médecins Sans Frontières and the local non-governmental organization Seruka treated 6,800 survivors of sexual violence at their Bujumbura clinic between 2003 and 2008 (MSF, 2009: 22). In 2008, Seruka reported treating 1,575 survivors, representing an increase of 10 percent over 2007 figures (ARIB, 2009).



further, the army, and the gendarmerie within it, also had responsibility for enforcing laws and maintaining internal security.

The Arusha process presented an opportunity to streamline the responsibilities of these institutions. The reforms included the creation of a new police service, which was to be coordinated only by the Ministry of Public Security. The Arusha Agreement also determined the police service's mandate and constituent parts. The BNP was officially created on December 31, 2004. It includes the ABP, the National Security Police, the Penitentiary Police and the CID.

The BNP drew its staff from the existing police services, the army and gendarmerie as well as the seven ex-rebel groups that were party to the Arusha Agreement. With former army and gendarmerie members representing almost half of police membership — and about 40 percent being

ex-rebel combatants — military and paramilitary forces represent a whopping 89 percent of the new Burundian police's workforce. This situation poses serious challenges to the professionalization of a police service meant to have daily interaction with a civilian population. Moreover, the size of the police ballooned shortly after its establishment, which made it difficult to know the precise number of police officers. A recent census of the police service documents the number of members and their origin (see Figure 1).

The Police Census and Identification Program identified 18,164 current members of the BNP. Because the groups that came together to form the BNP have differing levels of training and capacity, the BNP finds itself with uneven operational capacity overall. The composition of the new police service creates challenges for legitimacy, management, supervision, discipline and training. The census has facilitated the implementation of a reliable personnel database and should allow service cards and identification badges to be provided to all police officers in the BNP, a process that should enhance the management — and discipline — of the police.

Recognizing the importance of a competent, rights-respecting police service for the peace building process and the strengthening of democracy in Burundi, several development partners are dedicating a portion of their aid budgets to support the BNP. Since 2005, important general and focused training programs<sup>5</sup> have been developed through bilateral and multilateral relationships (Mora, 2008). Most of them place particular emphasis on respect for human rights and international humanitarian law. Recent programs have focused on the legal use of force, and upcoming ones will explore the role of the BNP and the ethics of policing within the framework of the electoral process. The varying levels of education and competence among the BNP's constituent groups pose a challenge to

**FIGURE 1: GROUPS CONTRIBUTING TO THE BURUNDIAN NATIONAL POLICE**

Contributing Entity	Members Contributed
Criminal Investigations Department	248
Burundian Armed Forces	6,590
Penitentiary Police	4
Public Security Police	1,474
Air and Border Police	208
Gendarmerie	2,042
<i>CNDD-FDD</i>	4,943
<i>CNDD</i>	480
<i>PALIGE AGAKIZA</i>	167
<i>KAZE FDD</i>	142
<i>FROLINA</i>	164
<i>FNL ICANZO</i>	42
<i>FNL (approximately)</i>	1,400

**Note:** Names of rebel groups appear in *italics*.

**Source:** Public presentation of the Police Census and Identification Program, on the occasion of its completion. Bujumbura, 29 May 2009.

<sup>5</sup> From September 2007 to August 2008, 16,923 policemen — 13,494 constables, 2,383 corporals and 1,046 officers — completed the initial police training courses.

these training programs and lead some officers to question their effectiveness and relevance, though they generally seem to appreciate the programs.<sup>6</sup> New ex-FNL police officers are benefiting from the original training modules, while a plan to harmonize their training with others is being developed.

Exacerbating the training challenges is a chronic lack of resources, which hinders the police's efficient operation in urban as well as rural areas. In Bujumbura, police officers patrol on foot and cannot easily respond to emergencies. For night-time burglaries and other crimes, the police has established a free telephone line for the public to call when they need a rapid response. This commendable development has at least one critical flaw: the victims are expected to accompany the police back to the scene of the crime.

Weaknesses in the PNB's governance and management are also worrying. While some initial shortcomings were the result of a lack of key pieces of enabling legislation, corruption<sup>7</sup> and political pressure continue to undermine its legitimacy and effectiveness. Ambiguity related to ministerial oversight has led some political actors to attempt to manipulate the police to their own personal or political ends, which is particularly troubling in light of the upcoming elections (*Burundi Tribune*, 2009). Often criticized for a tendency to harass the political opposition, the police is increasingly considered subservient to the ruling party (CENAP and ICTJ, 2009).

One of the biggest difficulties facing the police lies in its operational weakness (Belgian Federal Police, 2009). Most of its members are former soldiers or guerrilla fighters, meaning that some of them continue to act and react as

if they were still fighting a war, frequently resorting to violence when performing their duties. It is not unusual to witness the police using disproportionate force, acting violently or firing their weapons around civilians without first employing standard measures such as issuing a ticket or verbal warning. Furthermore, despite the provisions of the Arusha Agreement, a systematic vetting process has not been established and the police has not dismissed those accused of gross human rights violations. This has not helped the police improve its relations with local populations; as noted above, the police services are considered one of the main sources of insecurity in Burundi. Several actions have recently been taken to fight criminality within the police and more than 200 police officers are reportedly imprisoned for various crimes (OCPD and DGP, 2009). However, many people — including police officers — are doubtful of the BNP's ability and, above all, its determination to eradicate criminal behaviour from its membership.

Though some internal and external police accountability mechanisms have been put in place, they are generally ineffective or do not function well. This may be a result of financial and material constraints experienced by bodies such as the Inspector General of the Police;<sup>8</sup> it may also be caused by political lethargy, as in the case of the National Assembly's Defence and Security Commission, which is currently inactive. While Burundian civil society, through one or two organizations, plays a major role in monitoring police performance, it remains understandably timid in fulfilling its watchdog role.

Surprisingly and despite all of these dysfunctions, the general public still has a relatively good opinion of the police overall. According to a November 2008 opinion poll on the subject carried out by the Centre d'Alerte et de Prévention des Conflits (CENAP) and The North-South Institute, 51% of respondents trust the police, 34% trust

<sup>6</sup> According to the program evaluation by the PNB, 96 percent of interviewed police officers expressed their satisfaction after the first modules on human rights, ethics, attitudes toward civilians and the police missions.

<sup>7</sup> According to a May 2008 survey on governance and corruption initiated by the minister of the president responsible for good governance, privatization, and monitoring state and local administration, 1,810 respondents reported that the police is one of the most corrupt institutions. Among respondents affiliated with non-governmental organizations, it is considered the most corrupt institution.

<sup>8</sup> In early 2009, the Inspector General of the Police was replaced by the Inspector General of the Ministry of Public Security, which appears to be facing the same operational challenges as its predecessor.

them somewhat and 15% do not trust them at all.<sup>9</sup> The level of trust decreases among more educated respondents and perceptions vary by region and location, with urban populations expressing more variety in their opinion of the police and rural populations viewing the police more favourably.

However, people do not express the same confidence in the ability of the police to ensure the security of people and property during the upcoming elections in 2010. Only 28.8 percent of respondents express trust regarding this capacity. The remainder is about evenly split among those who expressed trust in the police (26.9%), those who distrust them (21.7%) and those who have no opinion (22.5%). Among highly educated respondents, 15.6 percent trust the police with respect to elections while 39 percent indicate the contrary.

Despite many improvements since the initiation of the police reform process in 2004, the PNB continues to face many challenges, particularly in its relationship with the Burundian public. Strong political will on the part of the government will be required to overcome these challenges and to ensure that successes in police reform are not undermined by weaknesses in the judicial system.

## JUSTICE SECTOR REFORM

Ten years after its first reform and modernization plan, the Burundian judicial and penitentiary system is still criticized on the one hand for its lack of performance and effectiveness, and on the other hand for its lack of independence vis-à-vis the executive branch of government (Amnesty International, 1998). This is unsurprising given the remarkable list of shortcomings and dysfunctions in the system, issues which are recognized, but as yet not fully addressed by the government (see box above).

### CHALLENGES TO THE JUSTICE SYSTEM AND ITS REFORM

- **Resources:** A lack of financial, material and qualified human resources; poor management of existing resources and systems.
- **Corruption:** Impunity for those in power and their supporters; frequent interference by the executive in judicial proceedings; widespread corruption at all levels.
- **Accountability:** Lack of accountability, oversight and timeliness in courts and a failure to enforce judgements.
- **Prisons and detention:** Unlawful, arbitrary or prolonged detentions; overpopulation in prisons\* and precarious living conditions of detainees and those being reintegrated into society.

\* In May 2009, Burundi's prison population consisted of 9,483 prisoners, of which 3,383 were convicts and 6,100 were people under preventive detention. Among this latter group, 1,794 prisoners' arrest warrants had expired and 4,091 had not had their detention orders extended.

The guidelines for justice sector reform were established by the Arusha Agreement and were since renewed in the March 2005 Constitution, the 2006 *Poverty Reduction Strategy Paper* and the latest Ministry of Justice policies (2002–2004 and 2006–2010). One of the main themes of the Arusha Agreement's provisions on the justice system is the determination to deal with the numerous crimes that involved mass participation (such as riots or looting), which the judicial system might not be best equipped to address. All parties to the Arusha Agreement agreed to a process of transitional justice.<sup>10</sup>

Different legislative, procedural and institutional reforms are also provided for under Arusha, including:

- the creation of a National Observatory for the Prevention and Eradication of Genocide, War Crimes

<sup>9</sup> CENAP and NSI surveyed 2,260 people, with representation from each of the different provinces of Burundi. See Nindorera (forthcoming).

<sup>10</sup> For details, see the Arusha Peace and Reconciliation Agreement for Burundi (n.d.) and ICTJ (2008).

and Other Crimes against Humanity;

- the reform of the judicial system at all levels, especially focused on resolving ethnic and gender disparities where they exist;
- the reform of the supreme judicial council so as to ensure its independence and that of the judicial system as a whole;
- the amendment of laws where necessary (such as criminal and civil codes and criminal law procedures); and
- the organization of a judicial training program through the creation of a National School for Magistrates.

In order to operationalize these reforms, the Burundian government is implementing new legislation and taking significant measures to balance ethnicity among justice system personnel. Though important steps have been taken on the legislative front, there are shortcomings in implementation and the reforms remain incomplete.

For example, Burundi does not have a framework governing legal aid, despite national and international legal and ethical obligations to do so.<sup>11</sup> The process of enacting these laws continues to be undermined both by a lack of financial resources to pay lawyers and by the shortage of lawyers practicing in Burundi. International and local non-governmental organizations (NGOs) have developed legal aid activities for the poorest populations of Burundi, with about 750 people benefiting from such representation in courts in 2008.<sup>12</sup> As suggested by a draft bill on legal aid,

however, this system cannot fully function without a special legal framework and appropriate structures — as well as a dedicated budget — to ensure people are able to access the law, have their cases heard and, if necessary, benefit from legal representation (Assogba and Nyamoya, 2009). To help address this gap, the European Union is sponsoring a pilot project in three communities to investigate the feasibility of legal aid clinics managed by the municipality.

Corruption is also a serious concern in Burundi's justice system. While it is difficult to measure corruption, interviews and opinion polls suggest it is widespread. One study places the justice system as the fourth most corrupt public sector in Burundi (OAG, 2006: 66). Another, more recent study suggests the judicial sector is among the sectors most touched by low-level corruption (Nimubona and Sebudandi, 2007: 16). National surveys of ordinary citizens and provincial authorities confirm this impression (Béduwé and Van Herp, 2008). Interviews with officials and surveys of justice sector workers indicate that corruption exists within the legal profession, including among high-ranking judges, though these assertions are difficult to prove (OAG, 2007).

Since 1993, actors in the justice system have benefited from several national and international, government and NGO-led training programs. However, these programs were conducted without coordination or strategic vision, resulting in some repetition and redundancy. Frequently, those responsible for managing judicial staff are not aware of the training offered to their personnel. To overcome this significant weakness, the Ministry of Justice, supported by the UN Integrated Office, is initiating a study that will lead to the development and implementation of a strategic training plan for judges and justice sector personnel, in line with its policy goals. Broader reforms to legal institutions, such as legal aid, will need to be linked up with strategic training of staff and adequate resources to achieve the larger reforms identified in the Arusha Agreement.

<sup>11</sup> Article 97 of the criminal law procedure amendment underlines the binding nature of legal aid when the accused is younger than 18 years of age, a victim of sexual assault, mentally ill or accused of a crime that carries at least a 20-year sentence.

<sup>12</sup> Notes provided to the author by the coordination secretary of Ministry of Justice, Ladislav de Coster, 2009.



The justice system is also largely believed to be influenced by the executive branch, a reputation established when both institutions were controlled by the Tutsi elite. Throughout this time, the justice system was largely unable to mete out punishment for crimes, especially those of a political nature. The transition following the 2005 elections shifted key personalities in both the executive and judicial branches, but the legitimacy of the judicial system remains threatened by perceptions of executive dominance.

Opinion polls reveal that the population remains dissatisfied with the justice system. According to a survey carried out by a local NGO, Observatoire de l'Action Gouvernementale, many defendants believe that the justice system is corrupt, favours the rich and is under the influence of the executive branch of government. They also condemn the delays of the courts, the lack of respect for procedural time limits and the failure to enforce court decisions; they also cite allegations that judges, in collaboration with public prosecutors, are involved in covering up unlawful and illegal detentions (Béduwé and Van Herp, 2008). Another survey on corruption and good governance shows that the level of confidence in the justice system varies significantly depending on the socio-professional category and location (rural or urban) of respondents (MPRGG, 2008). The level of trust in the justice system is 62% among rural populations, 28% for those in urban areas, 8% in the private sector and 6% among NGO respondents. Part of this divergence may be explained by the overwhelming preference for traditional justice mechanisms for dispute resolution in rural areas.<sup>13</sup>

Survey work further shows that more than one third of respondents complain about how difficult it is to access justice (Béduwé and Van Herp, 2008). The main obstacle is the high cost of participating in the process, followed by

the remoteness of courts and the absence of appropriate information on how the system functions. Moreover, close to one third of respondents who turned to the official justice system (rather than traditional mechanisms) in 2006–08 could not understand the procedures (MPRGG, 2008). These responses are not surprising due to the fact that most legal documents in Burundi are published in French and not in Kirundi, the national language, making it difficult for large parts of the population to understand judicial processes or access justice services. This situation certainly does not encourage people to make full use of the official judicial system, particularly when they have recourse to traditional mechanisms conducted in a language they understand.

Overall, the justice system has several urgent needs, but it also faces obstacles in achieving them. Particularly, it seems that the implementation of reforms is fragmented, making it difficult to measure their impact on the legal and judicial system as a whole. An approach that focused on more generalized reform rather than specific, separate pieces of legislation or training could be more meaningful and appears to be under discussion within the Burundian government and with their technical and financial partners. Priority needs include:

1. Rehabilitation of the judiciary, especially reform of the statute governing judicial authorities to ensure judicial independence and autonomy. This will require significant financial resources.
2. Reorganization of judicial institutions, including improving planning, organization and financial management. An audit of the organizational structure of the central administrative and judicial institutions would help to identify where blockages prevent judicial institutions from fulfilling their mandates.
3. Creation of an enabling environment for the effective

<sup>13</sup> Traditional justice is carried out by prominent members of the community — called *bashingantahe* — who are known for their wisdom and appointed during public ceremonies. Though its influence decreased with the advent of modern courts, this institution still exists and Burundians often turn to it for various conflicts, including land disputes.

functioning of courts and the public prosecutor's office, including the allocation of financial and qualified human resources.

4. Reestablishing the legitimacy of the justice system, including through the enforcement of court decisions; the fight against impunity; and awareness raising among judicial personnel regarding their accountability and ethical code. These steps are key to restoring public confidence in the justice system.

While each of these challenges could be overcome with adequate financial resources and technical support, none of them will be successful without the investment of political will on the part of Burundi's leadership. Ironically, this requisite commitment will eventually lessen the leadership's power as the judiciary becomes stronger and exercises its independence.

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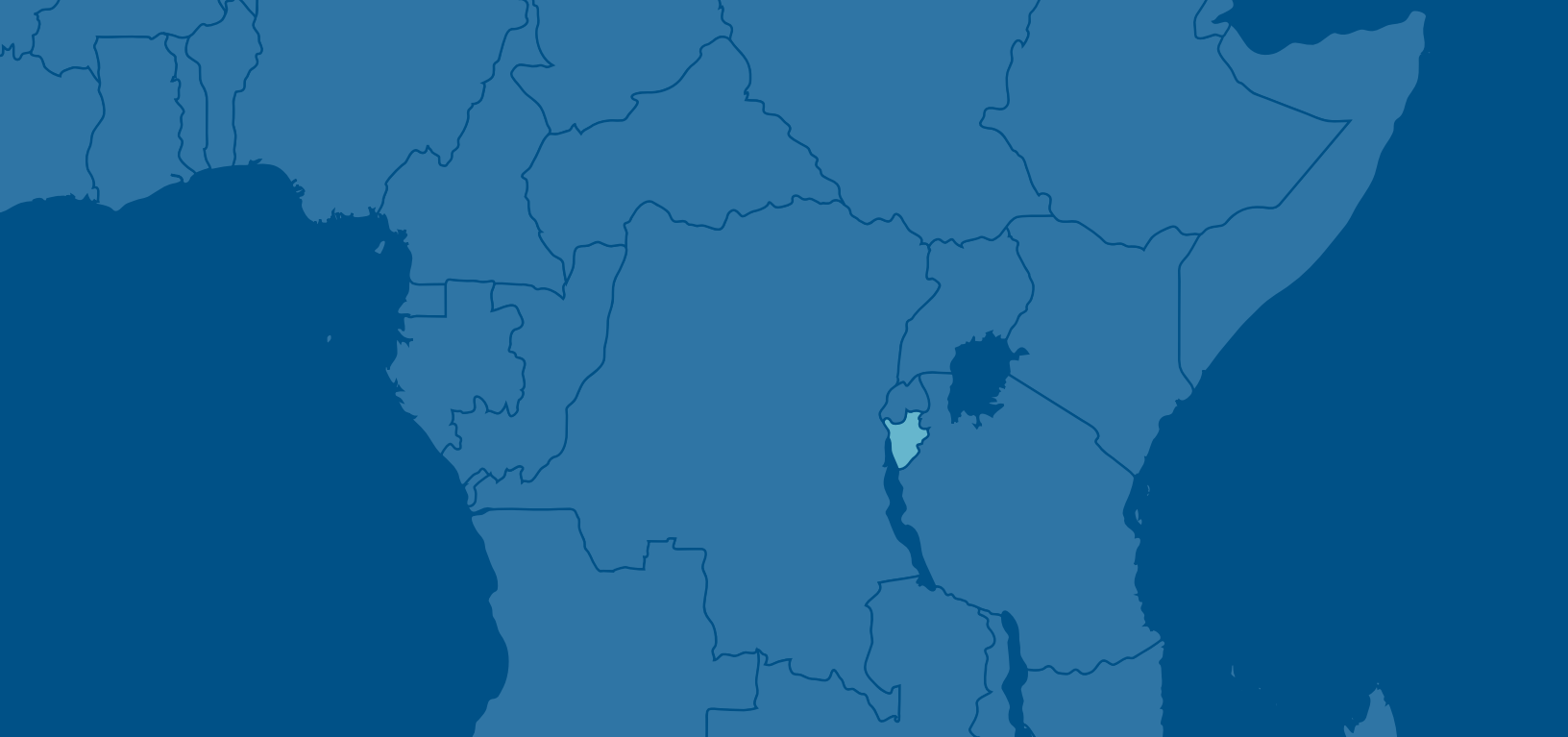
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57 Erb Street West, Waterloo, Ontario N2L 6C2, Canada  
tel +1 519 885 2444 fax +1 519 885 5450  
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