

Preamble

Informal justice structures in Burundi:

Abashingantahe - Formed from the verb "Gushinga" (to plant, to fix) and the noun "Intahe" (rod/stick of justice), the "Bashingantahe" are those who literally "plant the stick of justice" and by extension, "those who fix the law". They are so-called because of the "Stick of Justice" that they strike in cadence on the ground in turn "To call forth the wisdom of the ancestors buried in the ground.

"Intahe yo ku mugina" - Literally "Arbitration on the termite mound", with the 'Stick of Justice'. The sessions are held in the open air, with the presence of local administrators. In addition to the parties involved in the conflict, each person present at the session, administrative or otherwise, has the right to express his or her point of view regarding the case and the best way to settle it. Afterwards, the traditionally invested Bashingantahe only withdraw for the deliberation. Their decision is then publicly notified to the assembly. Usually the decision is accepted by all. If this is not the case, the local administrators draw up a report so that the aggrieved party can appeal to the judicial police or the court of residence.

Key findings

AGAHUNJA RUME

(Term in Rundi, referring to the following reality:)

When distances are long, stops are made in bars. Food and drink is then offered to judges who have travelled to enforce a sentence, usually for land disputes (or who have travelled to see the land in dispute)."

STATE OF PLAY OF THE JUDICIAL SYSTEM IN BURUNDI

The context of Burundi is still fragile, even though there is a slight improvement.

Burundi's formal justice system and structures have survived.

At the same time, justice has been deeply affected by massacres, reprisals and civil war.

In this context: can informal justice mechanisms (bottom-up approaches) play a key role in fostering the Rule of Law ?

RESEARCH

Objective

Sharing key learnings and recommendations, based on 4 years of working in the area of informal justice in relation to rule of law.

Methodology

Qualitative research, conducted in July-August 2021 in 3 target provinces of the 'Building Bridges in Burundi' (BBB) program.

Approach

Independent research through interviews with community members (equal gender division), police and magistrates.

Formal and informal justice have always co-habited in Burundi.

Informal justice in Burundi reduces the distance between communities and judicial services in many aspects.

Informal justice allows for the acceptance of a certain order and feeling of 'common belonging'.

Main elements, explaining the lack of equality and fairness before the law (which came up in almost all interviews): corruption, high trial costs, and excessive waiting times (especially in the case of land disputes).

Limits

One morning, when my husband and those of my two friends had disappeared for some time, each of us found her husband's head in front of her door. We never found their bodies. In these cases, who do you want us to turn to? Our neighbors know, the head of the hill and the judicial police officer, everyone knows but no one does anything. On the other hand, a few days later, I started to be threatened to leave my land, because in fact I was the second wife of my husband, the first one died. I live in constant fear and sorrow. Not only do I have nowhere to go, but to leave is to run the risk of losing everything. "

(Female interviewee from Bujumbura)

LIMITS IN RELATION TO CONTEXT

Human rights violation and shrinking civic space.

Context limits the impact of informal justice mechanisms at national level.

Victims of past and current humans rights violations lack a safe space for their claimance before either informal or formal justice.

LIMITS IN RELATION TO STRUCTURES

Lack of collaboration and coordination with/between informal justice systems and sortlike mechanisms, often set up by local organizations with support of foreign NGOs.

Local administrators are also considered as mediators when they are part of the executive power, which can potentially limit the access to justice by 'opposition members.'

SPECIFIC LIMITS FOR WOMEN AND YOUTH

The weight of culture is still very prevalent in Burundian communities, limiting women's and youth access to justice.

Access of women and youth to information and justice, often pass through female/youth organizations.

Opportunities

1

The legislation on the 'Reinstitution of the Council of the Notables' (mediators) on the hill' is the emanation of practice of what is done at grassroots level through informal justice.

2

Promulgated in January 2021, this Law is a proof, if any were needed, of the role that the informal justice could globally play in fostering the rule of law.

3

Now is the momentum to amplify the voice of the informal justice mechanisms so that their way of being is truly taken into account at the time the law comes into place/force.