

Legal Remedies for Human Trafficking in Burundi

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The exploitation of one human being by another is the basest crime. And yet trafficking in persons remains all too common, with all too few consequences for the perpetrators.¹

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¹ Yury Fedotov, Executive Director, UNODC

I. Introduction

The crime of trafficking in persons is a global issue involving different levels of trafficking flows ranging from domestic to intraregional and transregional level.² In six cases out of ten, trafficking in persons involves transnational operations.³ From a global perspective, trafficking for the purposes of sexual and labor exploitation are most prevalent, yet other forms, like the recruitment of children for armed combat and forced begging are occurring at growing rates as well.⁴ Victims of trafficking are mostly women and children, female children being the more vulnerable than male.⁵

Since the entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the Protocol), most of the countries party to the Protocol passed new or updated legislation criminalizing trafficking in persons.⁶ However, the compliance of national legislations with the Protocol's standards and the law enforcement remain major challenges in combating trafficking in persons and providing adequate remedies to the victims. Criminal prosecutions are scarce, making "human trafficking a low-risk [but] high-profit activity for criminals."⁷

Different forms of human trafficking exist in Burundi. The United State Country report on trafficking in person recount that children and women are trafficked for labor or sexual exploitation. Children and adults with disabilities are victims of forced street begging and the recruitment of child soldiers by rebel groups still an existing issue.⁸ While domestic trafficking in person is the most reported, transnational operations are also common, involving mostly

² United Nations Office of Drugs and Crimes, *Global Report On Trafficking In Persons*, 2014, P.7

³ *Id.* At p.8

⁴ *Id.* At p.9

⁵ *Id.* At p.10

⁶ *Id.* At p.51

⁷ *Id.* At p.1

⁸ The United State Department of State, *Trafficking in person Report 2015*, Report, p.107
<http://www.state.gov/documents/organization/245365.pdf>

trafficking for labor or sexual exploitation.⁹ The main destinations for Burundian victims of human trafficking are Tanzania, Kenya, Uganda, Middle East and Gulf countries.¹⁰

Although the government of Burundi ratified the Protocol in 2012 and enacted a specific law on the Prevention and the Punishment of trafficking in Persons and the Protection of victims of Trafficking (Author's translation), it has made limited efforts to combat human trafficking. Except Y2010 where the country has been classified Tier2¹¹ by the US annual report, from Y2008 to Y2014, Burundi has been classified 2WL¹² and in 2015 it fell to Tier3, meaning that the government does not fully comply with the Trafficking Victims Protection Act's minimum standards for eliminating Trafficking in Person and is not making significant efforts to do so.¹³

Using the UN basic principles on the right to an effective remedy for victims of trafficking in persons this paper seeks to identify available legal remedies for victims of human trafficking in Burundi and assesses to what extent these remedies are effectively implemented. The paper concurs with the State Department reports' conclusions that Burundi is making inadequate effort to identify and protect trafficking victims for four main reasons: (1) the Government tolerates a range of domestic forms of human trafficking "socially tolerated"; (2) the corrupted judiciary and police sustain widespread impunity for traffickers; (3) the lack of holistic approach to victim identification and subsequent protection; (4) lack of technical capacities, material resources for law enforcement institutions and absence of long-term anti-trafficking policies.

The paper is divided into two main part. The first discusses the political and socio-economic factors contributing to human trafficking in Burundi and forms of trafficking that actually exist in the country. The second part deals with the national and international legal framework for

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Supra* note 8, p.47

¹² *Id.*

¹³ *Supra* note 8, p.107

trafficking victims' remedies. It mainly focuses on evaluating the Burundian anti-trafficking law against the standards lay down in the Palermo Protocol and assesses how effective are the legal remedies for victims as recommended by the UN basic principles.

II. Country background: Political and socio-economic context

1. Factors contributing to trafficking in person

Burundi is a small country straddling between the Central and East of Africa. It is bordered in east and south by Tanzania, north by Rwanda and west by the Democratic Republic of the Congo. The US Department of State report on human trafficking affirms that “Burundi is a source country for children and possibly women subjected to forced labor and sex trafficking”¹⁴. Overlapping factors including repetitive political crisis, widespread of poverty, and a quasi-failure of the judiciary branch are the issues that contribute to sustaining a complex situation of trafficking in person.

Liberated from Belgium domination in 1962, the country has a history of repetitive conflicts fueled by fighting for the control of the politico-economic sphere between the two major ethnic groups, Hutu (85%) and Tutsi (14%). Political, administrative and economic elites form a so tight triangle that controlling the politico-administrative realm is a synonym of becoming economically powerful and rich.¹⁵ In fact, the state is still the major employer and a highly active economic actor in the country.¹⁶ Therefore, fighting for politico-economic power between the two major ethnic groups has been the source of 1965¹⁷, 1972¹⁸, 1988¹⁹, 1993-

¹⁴ *Supra* note 8, p.107

¹⁵ International Crisis Group, *Burundi: A Deepening Corruption Crisis*, Report 2012, p.1
<http://www.crisisgroup.org/~media/Files/africa/central-africa/burundi/185-burundi-la-crise-de-corruption-english.pdf>

¹⁶ *Id.* At p. 4

¹⁷ United States institute of Peace, *International Commission of Inquiry for Burundi*, Final Report, 2004, Para 83 <http://www.usip.org/sites/default/files/file/resources/collections/commissions/Burundi-Report.pdf>

¹⁸ *Id.*, para 85

¹⁹ *Id.*, para 87

2005²⁰ and 2015²¹ crisis that have successively torn the social fabric of the country, making a large number of the population highly vulnerable to human trafficking.²²

Poverty is another factor that makes Burundians, particularly women and children, vulnerable to human trafficking. Burundi's Human Development Index value for 2014 is 0.400, which put the country in the low human development category, positioning it at 184 out of 188 countries and territories assessed.²³ The World Bank affirms that despite some progress made during the after war period (2005-2014), poverty remains widespread and the country continues to have one of the highest poverty rates in the world.²⁴ Women and children are the most affected by rampant poverty in Burundi. Sixty-seven percent of Burundians, a majority of whom are women, live under the poverty line on less than one dollar a day.²⁵

Burundi also suffers greatly from the lack of a culture of rule of law despite the constitutional principle of separation of powers.²⁶ According to Freedom House world report 2015, the Judiciary suffers from a rampant corruption, a lack of resources and training, a heavy backlog of cases and lack of independence from the Executive.²⁷ In the same vein, Transparency international's Global Corruption Barometer 2013 concurs that the most corrupted institutions

²⁰ *Id*, para 94

²¹ New York Times, *Burundi Crackdown Puts Hutus and Tutsis, and the West, on Edge*, December 28, 2015 http://www.nytimes.com/2015/12/29/world/africa/burundi-crackdown-puts-hutus-and-tutsis-and-the-west-on-edge.html?ref=collection%2Ftimestopic%2FBurundi&action=click&contentCollection=world®ion=stream&module=stream_unit&version=latest&contentPlacement=10&pgtype=collection&_r=0

²² International Organization for Migrants, *Human Trafficking in Eastern Africa: Research Assessment and Baseline Information in Tanzania, Kenya, Uganda, and Burundi*, 2008, p.9 <http://publications.iom.int/system/files/pdf/kenyahumantraffickingbaselineassessment.pdf>

²³ UNDP, *Human development report*, Burundi, Country report <http://hdr.undp.org/en/countries/profiles/BDI>

²⁴ The International Bank for Reconstruction and Development/ The World Bank, *Strategies for Urbanization and Economic Competitiveness in Burundi*, Report No: ACS14147, June 2015, p.18 <http://documents.worldbank.org/curated/en/2015/06/24675706/strategies-urbanization-economic-competitiveness-burundi>

²⁵ United Nations Development Program, *Gender Equality and Women's Empowerment in Public Administration, Burundi Case study*, 2012, p.7 <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Women-s%20Empowerment/BurundiFinal%20-%20HiRes.pdf>

²⁶ Burundi's Constitution of 2005, Article 18, available at https://www.constituteproject.org/constitution/Burundi_2005.pdf

²⁷ Freedom House, *Freedom in the world 2015, Burundi*, <https://freedomhouse.org/report/freedom-world/2015/burundi>

in Burundi are the police and the Judiciary.²⁸ Bribery and threats from the Executive branch are the main causes that prevent the police and prosecutors from investigating and prosecuting crimes, and judges from deciding cases fairly, a situation that sustains a widespread state of impunity²⁹ including for cases related to human trafficking.

2. Forms of human trafficking in Burundi.

Human trafficking forms are usually classified according to the various types of exploitation the victims may suffer from. However, in discussing existing forms of trafficking in Burundi, this section proposes a domestic trafficking versus transnational trafficking classification because much of the material used for this research project approach the human trafficking issue in that angle.

a. Domestic trafficking in person.

Trafficking in persons is an issue that existed for decades in Burundi, but only gained the public interest very recently. The reports of the US Department of State, works of NGOs and media have shed a light on the crime since 2008, calling the government to act to combat it. During 2010 and 2012, Heartland Alliance reported 174 victims of trafficking in persons, 47 cases involving children.³⁰ Women and children are the most vulnerable because of their unfavorable socioeconomic conditions. Primary education is not compulsory in Burundi and children are coerced into working in familial farms or sent to work for money in neighbors' farms.³¹ They are also compelled to working in industrial productions of tea, coffee, cotton and palm oil.³²

²⁸ Transparency International, *Global Barometer 2013*, Burundi, National Results, <http://www.transparency.org/gcb2013/country/?country=burundi>

²⁹ United States Department of State, Bureau of Democracy, Human Rights and Labor, Burundi : *Country Reports on Human Rights Practices for 2014*, p.2 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236334#wrapper>

³⁰ Commission Nationale Indépendante des Droits de l'Homme, *Etude sur l'Exploitation et le Trafic des Enfants au Burundi*, Rapport, 2014 p.36 (Independent National Commission on Human Rights, Study on Child exploitation and Trafficking in Burundi, report, 2014, p.36) (Author translation) Available at: <http://cnidh.bi/>

³¹ *Supra* note 8, p.107

³² United States Department of Labor, 2015 findings on the worst forms of child labor, Burundi, p.1 Available at <http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/burundi.pdf>

In addition to child exploitation in farms, children are taken from poor families in the villages for domestic work in the cities where they work more than 12 hours a day.³³ Almost each home in cities has a girl babysitter and a boy for cooking and other domestic duties³⁴. Most of the time minors, those children are hired and employed in a complete violation of the labor code that fixes the age of work at 16, for some specific easy work.³⁵ The major problem of this form of exploitation is that it is tolerated by the government and does not shock the public. However, those children are victim of purely domestic servitude, wages confiscation, verbal, physical and sexual abuses. In a joint report submitted by 14 NGOs including the Irish Catholic Church charity TRACAIRE, to the 2nd cycle of the Universal Periodic Review on Burundi in 2013, the organizations complained that child domestic labor is a phenomenon that grows at a dangerous pace in full sight of everyone.³⁶ Children are also involved in informal commerce in streets, gold mining, collecting river stones for construction and fishing industry.³⁷

Children are also exploited for sexual purposes. They are recruited in rural areas, brought in cities and employed in bars, guest houses, entertainment places where they end up in forced prostitution. Young girls are usually trained by old women that host them in their homes luring them for a better life in cities and use them in sex industry for their own interest.³⁸ Sexual exploitation is also reported among children attending schools. UNFPA conducted a survey on school pregnancies during the period 2009 - 2012 and found that 4760 cases of pregnancy

³³ *Supra* note 30, p.46

³⁴ *Id.*

³⁵ Article 3 of the Labor Code; Article 3 of Ministerial Ordinance n° 630/1 (15).

³⁶ TROCAIRE, Burundi, Contribution Écrite Conjointe de la Société Civile pour l'examen Périodique Universel, Deuxième cycle, 2012, para 57, (Author Translation: TROCAIRE, Burundi, Civil Society Joint written contribution for the Universal Periodic Review, Second Cycle, 2012.) Available at:

[file:///N:/Private/HT/Burundi/UPR%20COALITION%20JS6 UPR BDI S15 2012 JointSubmission6 F.pdf](file:///N:/Private/HT/Burundi/UPR%20COALITION%20JS6%20UPR%20BDI%20S15%202012%20JointSubmission6%20F.pdf)

³⁷ *Supra* note 8, p.107

³⁸ *Supra* note 28, p.2

were reported for girls ranging from 14 to 18 years old. The authors of those pregnancies were men from various sectors of life including education.³⁹

Forced begging is another form of exploitation broadly reported and tolerated in Burundi. Frequent around markets, bars, public transportation parking, and churches, the exploitation involves children and adults with disabilities. Three scenarios happen in these cases: orphan children beg for survival; parents and tutors send their children to beg on streets considering that the public is more favorable to children than adults or, the worst form, children or adults with disabilities are used by the parents or rent by other persons to be exposed to the public mercy.⁴⁰

Another form of trafficking that is alarming human rights organizations is the killing and mutilation of albinos for the purpose of selling parts of their bodies for ritual beliefs. From 2008 to 2015, the independent human rights commission estimates to 16 cases of albinos killed for that purpose. The annual report of the commission indicates that ten persons have been arrested for only two cases.⁴¹

b. Transnational trafficking in person

Transnational trafficking in person involves labor and sexual exploitation. Burundi is identified as a country of source and transit for trafficking in person. East African countries, Middle East⁴² and the Gulf countries are the main destinations of Burundians whereas cases of transit involved Ethiopian citizen trafficked into South Africa.⁴³ In 2007, a network of traffickers taking young girls from Burundi and sending them to Lebanon has been discovered, following

³⁹ Fonds des Nations Unies pour la Population, *Etude sur les Grossesses en Milieu Scolaire*, 2013, p.6 (Author translation : United Nations Population Fund, Study on School Pregnancies, 2013) Available at:

<http://burundi.unfpa.org/sites/esaro/files/resource-pdf/RAPPORTFINALETUDEGROSSESSESENMIIEUSCOLAIREAUBURUNDI.pdf>

⁴⁰ *Supra* note 28, p.48

⁴¹ Commission Nationale Indépendante des Droits de l'Homme, *Rapport Annual*, édition 2015, (Independent National Commission on Human Rights, Annual Report, 2015 Edition) p.70 Available at: <http://cnidh.bi/>

⁴² *Supra* note 8, p.107

⁴³ The Protection Project, *Country report*, Burundi, p.1 Available at: <http://www.protectionproject.org/wp-content/uploads/2010/09/Burundi.pdf>

testimonies of a victim that was sent back because of the 2006 Lebanon war with Israel.⁴⁴ Testimonies of victims reveal that there is established agencies in destination countries that hire representatives in Burundi for the purpose of recruiting young girls and helping them in administrative processes such travel document. Arrived in destination countries, the agencies distribute them to the employers that use them either in domestic work or prostitution or, in some cases, in both.⁴⁵

III. Legal remedies for human trafficking and their accessibility

1. International and national legal framework

The government of Burundi has ratified the international human rights instruments that provide for victims' remedies as part of human rights violations redress. Those treaties include, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities and its optional protocol, the Convention on the Rights of the Child, and its two Optional Protocols on the involvement of children in armed conflict and on sale of children, child prostitution and child pornography, among others.⁴⁶ Burundi is also a party to the African Charter on Human and People's Rights which guarantees "the elimination of every discrimination against women [...] and protection of the rights of the woman and the child"⁴⁷ as well as the right to be free from "all forms of exploitation and degradation."⁴⁸ Particular to human trafficking, in 2012, the Government ratified, without reservation⁴⁹, the Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish

⁴⁴ BBC News, *Burundian's ordeal in Lebanon*, June 27, 2017 Available at: <http://news.bbc.co.uk/2/hi/africa/6241214.stm>

⁴⁵ *Supra* note 28, p.53

⁴⁶ Status of Ratification Interactive Dashboard, Burundi: 10-14, <http://indicators.ohchr.org/>

⁴⁷ Article 18 of the African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, Organization of African Unity Doc. CAB/LEG/67/3 rev. 5. Congo ratified the charter on 20 July 1987

⁴⁸ *Id.* Article 5

⁴⁹ See United Treaty Collection at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en

Trafficking in Persons, Especially Women and Children. Burundi also ratified the ILO C 138, Minimum Age Convention in 2000 and the ILO C182, Worst Forms of Child Labor Convention in 2002.⁵⁰ However, the country has not yet ratified the ILO Convention 189 & Recommendation 201 on Decent Work for Domestic Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

At the national level, the Constitution of the Republic of Burundi ⁵¹ provides that “no one shall be held in slavery or in servitude. Slavery and trafficking in slaves are prohibited in all their forms.”⁵² It also provides that every child has the right [...] “to be protected against the bad treatments, abuse and exploitation,”⁵³ and not to be directly involved in armed conflict.⁵⁴ With regard to the right to reparation the Constitution states that the State has the obligation to compensate any person victim of arbitrary treatment by its act or of the act of its organs⁵⁵. Moreover, article 19 of the Constitution incorporates human rights instruments in the constitution by providing that the rights and the duties proclaimed and guaranteed by core International human rights treaties are an integral part of the Constitution of the Republic of Burundi.

In addition to constitutional provisions, Law No. 1/05 of April 22, 2009, on the Revision of the penal Code⁵⁶ (Author’s translation) introduced a broad criminalization of some forms human trafficking⁵⁷ with a particular emphasis on trafficking involving children.⁵⁸ The Labor Code, Decree-Law No. 1/037 of 7 July 1993 also contains some provision useful for combating

⁵⁰ International Labor Organization, Ratification for Burundi, Available at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103466

⁵¹ Articles 26 and 44 of the Constitution of the Republic of Burundi, 2005. available in English at :

https://www.constituteproject.org/constitution/Burundi_2005.pdf

⁵² Article 26

⁵³ Article 44

⁵⁴ Article 45

⁵⁵ Article 23

⁵⁶ Loi No 1/1/05 du 22 Avril 2009 portant Revision du Code Penal, Available in French at:

[https://www.icrc.org/ihl-nat.nsf/0/cb9d300d8db9fc37c125707300338af2/\\$FILE/Code%20P%C3%A9nal%20du%20Burundi%20.pdf](https://www.icrc.org/ihl-nat.nsf/0/cb9d300d8db9fc37c125707300338af2/$FILE/Code%20P%C3%A9nal%20du%20Burundi%20.pdf)

⁵⁷ Article 242-243 of the Criminal code

⁵⁸ Article 518-522 of the Criminal code

trafficking in persons. It bans forced labor and sets the minimum age to work at 16 with some exception that may be admitted for 12 and above.⁵⁹

In 2014, as part of the implementation of the Palermo Protocol ratified in 2012, the Government enacted a specific law on trafficking in persons titled “The Law No. 1/28 of October 29, 2014 on the Prevention and the Punishment of trafficking in Persons and the Protection of victims of Trafficking⁶⁰ (Author’s translation). The enactment⁶⁰ of the specific law on trafficking in persons is a major step in combating the crime and protecting of victims. It is a special law that prevails on any other general law (i.e. the criminal code) according to the general principle of the civil law *Specialia generalibus derogant*.⁶¹ Therefore, when a judge is called to decide on a case involving trafficking in persons, he no longer can apply the criminal code but the anti-trafficking law.

2. Evaluating the anti-trafficking law.

The anti-trafficking law is shaped on the model of the Palermo protocol and largely complies with the protocol’s standards in terms of the objective of the law, the definition of trafficking in persons and in the criminalization of the crime. Article 1 of the law states that the objective of the law is to prevent and to combat trafficking in persons, to protect and assist the victims of such trafficking, with full respect for their human rights, and to promote national as well as international cooperation among States in order to meet those objectives.

The definition of trafficking in persons contained in the law is perfectly in line with the Palermo protocol’s definition in its three elements: act, means and purpose⁶². The law also stipulates

⁵⁹ Article 2 -3 of the Labor code.

⁶⁰ Loi N°1/28 du 29 Octobre 2014 portant Prevention et Repression de la Traite des Personnes et la Protection des Victims de la Traite. Available in French at: https://www.unodc.org/res/cld/document/loi-no--1-28-du-29-octobre-2014-portant-prevention-et-repression-de-la-traite-des-personnes-et-protection-des-victimes-de-la-traite_html/loi_burundaise_sur_la_traite_des_personnes.PDF

⁶¹ When both general and specific rules may apply to a legal issue, the more specific rules prevail on the understanding that they are considered exceptions to or special applications of the general rule.

<http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1920>

⁶² Article 4 a) of the Anti-trafficking law

that the consent of the victim of trafficking is not relevant and that for the trafficking involving a child, no particular means is required to meet the elements of the crime.⁶³ The law expressly criminalizes trafficking in persons⁶⁴ and other related offenses such as receiving material profit from trafficking, disclose victim and witness information to the public by state agent, fraud of travel documents, and non-compliance of transport companies with rules of verification of travel documents.⁶⁵ However, the law fails to **fails to criminalize** the acts of attempting to commit a trafficking offense, the participation as an accomplice in human trafficking, and the act of organizing or directing of other persons to commit such an offense.

Penalty against offenders is ten years of imprisonment and a maximum of 500,000 Burundian franc (~\$250) fine⁶⁶. The penalty can raise to fifteen years⁶⁶ and 2,000, 000 Burundian Franc (~\$1,000) fine when an offender uses the authority and means he as part of his official position, when an offender is a state agent using his official position to commit the crime, and when the offense is committed as part of activities of an organization should the offender be the leader or not of the organization.⁶⁷ Furthermore, penalty can reach 20 years and 10,000,000 Burundian franc (~\$5,000) of fine when the crime is committed on a child or when the offender takes advantage of the legal, administrative or socioeconomic vulnerability of the victim. When the commission of the crime leads to death, including suicide, the perpetrator is sentenced to life imprisonment and a maximum fine of 20,000,000 Burundi Franc (~\$10,000). In addition to the primary penalty, the law also contains some additional penalty such as the loss of some civil, political and family rights and confiscation of facilities used to commit the crime.⁶⁸

⁶³ *Id.*

⁶⁴ Article 10 of the Anti-trafficking law

⁶⁵ Articles 14-17 of the Anti-trafficking law

⁶⁶ Article 10 of the Anti-trafficking law.

⁶⁷ Article 18 of the Anti-Trafficking law.

⁶⁸ Article 11-12 of the Anti-trafficking law.

With regard to the legal remedies for victims of trafficking in persons other than the prosecutions, the law contains shortcomings when it comes to redressing the violation that the victim suffered from. While the law provides for general protection measures for victims, it fails to include modalities on how a victim can claim the rights it creates. It also fails to elaborate on long-term reparation measures for victims such as socio-economic reintegration. The law also does not provide for compensation for all economically assessable damages proportional to the gravity of the violation. The chart below elaborates on legal remedies for victims on the basis of UN basic principles on the right to an effective remedy for victims of trafficking in persons.

UN Basic principles	Law No. 1/28 of October 29, 2014 on the Prevention and the Punishment of trafficking in Persons and the Protection of victims of Trafficking
Rights and Obligation	<ol style="list-style-type: none"> 1. The overall objective of the law is to prevent and combat trafficking in persons, to protect and assist the victims of such trafficking, with full respect for their human rights, (Article 1. a),b)) 2. The anti-trafficking law provides for some remedies for victims that cover the restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition even if the law does not follow expressly this classification of remedies. (Article 10-31) 3. The law contains a range of actions that must be taken on behalf of the victim when she/he is identified. 4. Article 2 of the law prohibit any form of discrimination in handling cases related to trafficking in persons. 5. The law contains substantive and procedural rights that aim at allowing the victim to exercise such remedies. 6. One of the objective of the law is to promote national as well as international cooperation among States in order to meet its objectives (Article 1 c))
Access to the right to a remedy	<p>a) Legally enforceable right: The law provides for legally enforceable rights in form of Criminal, Civil proceedings (Art.10-20) and Administrative proceedings against traffickers through the creation of a commission in charge of designing anti-trafficking policies and the protection of victims (Art.7-9).</p>

	<p>b) Prompt identification of victims: Among the Commission's mission is to set up a victim identification mechanism (Art.21) based on the definition of trafficking victim given by the law. (Art.4 q.)</p> <p>a. The victims is defined by the law as: Any person who has been subject to human trafficking or when the competent authorities or non-governmental organizations have reasonable grounds to believe that a person is a victim of trafficking in persons, notwithstanding that perpetrator is unidentified, arrested, prosecuted or convicted.(Unofficial translation)</p> <p>c) Information on available remedies: The Law states that the victim has the right to be informed of resources available in government or non-government organizations. (Art.22) The information is given in the language he can understand. (Art.23)</p> <p>d) Reflection and recovery period: The law allows the victim to spend a certain period of reflection and recovery before the criminal proceedings and the judge can decide, considering the advice of an expert, to begin the investigations and hearings. (Article 26-27)</p> <p>e) Services v. Immigration status: The law provide for adequate housing, medical and psychological services. The service are not linked to the immigration status of the victim.</p> <p>f) Prosecutions against victims: The law is not specific on the issue but the law is victim-oriented and contains no provision against victims</p> <p>g) Immigration status: Non-resident victims have the right to stay legally in Burundi during judicial proceedings and whenever their security requires them to stay. (Art.22-23)</p> <p>h) Equal access to remedies and gender sensitivity: The prohibit discrimination in article 2. However it does not contain specific measure applicable to specific vulnerable categories of persons other than children.</p> <p>i) Remedies v. cooperation with legal proceedings: there is no requirement for the victim to cooperate with the law enforcement institutions in order to access to remedies</p> <p>j) Protection of victims family and witness: The law emphasizes on protection of victims and witnesses against retaliation of traffickers (Art.24)</p>
<p>Forms of the rights to remedy</p>	<p>Restitution: The law provides for some forms of restitution for victim including the restoration of liberty, the enjoyment of his /her human rights; safe repatriation for Burundian victims identified outside the country or foreign victims identified in Burundi, the right to legal immigration status for nonresidents; return of properties; (Art.21-31) The law does not provide for any long-term form of restitution such as social or economic reintegration of victims(Vocational trainings, school, economic empowerment)</p>

	<p>Compensation: The law does not provide Compensation other than civil damages filed with the criminal case by the victim (Partie Civile) (Art.10-20). The victim of trafficking can file civil damages along with the prosecutor criminal case. (Criminal proceedings law). In Burundian legal system, a victim of a criminal offense can only file civil damages and become an independent party to the main criminal case. There is not independent proceedings for compensation outside criminal proceedings. The victim's claim can only be satisfied if the offender is convicted.</p> <p>The law provide for a possible confiscation of trafficker's assets used in trafficking or that are a product of the crime. However, confiscated assets become state's property under art. 62 of the penal code.</p> <p>The civil damages that the judge can award are: material damages, other costs that the victim can prove as resulting from the crime. Moral damages or loss of opportunity, or potential earnings are never awarded by courts.</p> <p>Rehabilitation and recovery: The law provides for a set for services aiming at rehabilitation such as adequate housing, medical and psychological services, (Art.21-25) and respect recovery period before judicial proceedings(Art.26-29)</p> <p>Satisfaction: The Law provides for criminal proceedings against traffickers and penalty as part of satisfaction for the victim. The criminal proceedings are one of means to know the truth of what happened to the victims. In addition to primary penalty, the offender can be disbarred of his political, civil or family rights for offenders.(Art.11)</p> <p>Guarantee of non-repetition: the Law create a commission in charge of designing anti-trafficking national policies and follow up of their implementation. The commission. The commission is entrusted with the overall objective of combating human trafficking through prosecutions, protection of victims and other policies that can contribute to end the crime.</p>
<p>Special care for children victim of human trafficking</p>	<p>Special care is given to children:</p> <ul style="list-style-type: none"> - Children victim of trafficking taking in consideration of their specific needs in terms of security, housing, medical care and education - When a victim look like a child, the law provides that she/he is assumed a child, until otherwise proven. - Tutors are assigned to non-resident children victim of trafficking to stand for his interests - Necessary measure are taken to search for child's family, determine the identity-nationality of the child.

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| | - To respect the best interest of the child in all the process (Art.25) |
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3. Efforts towards the implementation of the anti-trafficking law. law

It has been difficult to access to cases that have been decided according to the new law on trafficking in persons. In fact, the law is relatively new and the Judiciary does not have any system of case law publication. To have access to decisions of courts requires to be physically present in the office of the clerk and ask for a particular decision.

However the media has recently revealed a network of trafficking in persons that operates in a total impunity and sometimes with the help of security authorities. In an article made public on January 25, 2016, testimonies given to on condition of anonymity says that girls aged between 14 and 25 years were being massively recruited go to countries like Oman, Dubai and Qatar to be hired as domestic workers. The poorest neighborhoods of Bujumbura the capital city are most affected by what the newspaper called a "strange movement". According to the reporter, the girls say that they leave officially the country as the use travel documents issued by the competent authorities. However, one parent complained that he saw his daughter transported in a vehicle by a military officer up to the airport and that he was not even allowed to accompany her. A young girl that came back from Oman a month before told the reporter the atrocities she suffered from: "They beat me every time accusing me of being a thief, I ate leftovers while I was working 24 hours without rest for a monthly salary slightly higher than one hundred US dollars. When I told them that I need to go back home, they refused, telling me that my contract was for two years. The girl said that on arrival, all travel documents are confiscated by an association involved in the recruitment." The girl was rescued by his family and testified that there are other Burundian that she saw in Oman.

The same reporter met another girl that returned from Lebanon. She revealed that most Burundian girls are used as sex objects by their bosses or people who have brought them in those countries. She indicated that there are girls who have returned to Burundi with mental health problems because of torture, inhuman and degrading treatments such as burnings of their bodies. The reporter acknowledges that it is very difficult to know exactly the number of victims. He confirmed in his article that the network of traffickers is supported by some local authorities.⁶⁹ Our research didn't find any action taken by the judicial authority after that article.

Despite the enactment of a relatively good anti-trafficking law, Burundi has made few efforts to bring to justice offenders and to protect victims of human trafficking. Impunity prevails particularly when government officials are directly or indirectly involved in human trafficking such as teachers, police officers, military and prison officials.⁷⁰ From the revision of the criminal code in 2009 to the enactment of the anti-trafficking law, there are no reported cases of prosecutions against state officials accused of human trafficking.⁷¹ Therefore, there are no reliable data that can show the trends of prosecutions of human trafficking offenders. In its concluding observations, the Human Rights Committee noted with concern the persistence of human trafficking in Burundi, the lack of information on the scope of the phenomena and the lack of convictions for human trafficking during the reporting period. The committee recommended that "The State party [...] should carry out investigations into all cases of human trafficking, prosecute the suspected perpetrators and, if they are found guilty, impose

⁶⁹ *Burundi- Alerte : Trafic humain ou recherche d'un travail domestique?*, BONESHA FM, January 25, 2016, (Burundi- Alert : Human Trafficking or search for domestic work ?) available in french at :

<http://www.bonesha.bi/Burundi-Alerte-Trafic-humain-ou.html>

⁷⁰ *Supra*, note 8, p.108

⁷¹ *Id.*

appropriate sentences on them and take the necessary steps to see that the victims receive appropriate compensation.”⁷²

According to the 2015 US State department report, shortcomings in the implementation of the law are due to lack of training for law enforcement agents including the police, the judiciary, immigration officers on how to apply the law and the rights that it sets for victims. In addition, widespread corruption and officials’ lack of investigative skills, basic understanding of trafficking crimes, resources including the funding for transportation of personnel continued to hinder the judiciary from initiating investigations and prosecutions.⁷³

The law creates a commission of consultation and monitoring the prevention and punishment of trafficking in persons. The commission’s mandate is to design and implement anti-trafficking policies, to closely monitor and follow up human trafficking trends and to propose effective measures to prevent the crime, to provide protection and assistance to victims, and to monitor criminal proceedings so as to ensure effective criminal response to human trafficking.⁷⁴ However, information provided by the Burundian National Human Rights Commission says that the commission is not operational until now.⁷⁵ Outside the framework of that commission, a victim, even if he would secure a conviction of the offender, cannot pretend to any form of reparation or compensation.

IV. Conclusion

Burundi has made efforts to conform its legislation on human trafficking to the Palermo Protocol by enacting a specific anti-trafficking law. However, it has not made efforts to train law enforcement agents namely policemen, prosecutors, judges on the law and the standards it

⁷² International Covenant on Civil and Political Rights, Human Rights Committee, Concluding observations on the second periodic report of Burundi, November 2014, para 16 <file:///N:/Private/HT/Burundi/G1422582.pdf>

⁷³ Supra note 8 p. 108

⁷⁴ Article 8 of the Burundi law.

⁷⁵ Information given by a human rights monitor of the National Human Rights Commission via Email.

lay down in terms of prosecutions and victims protection. Few have also been done to raise awareness of the population about the law so that the victims may know the scope of their rights.

In the context of Burundian legal system, the availability of legal remedies for victims of human trafficking are closely linked to the ability of the state to prosecute offenders. In fact, the victims have little chance to get any kind of reparation outside a criminal proceeding. Unless a suspect is convicted of the crime of trafficking, a judge cannot award damages or compensation to the *partie civile*. In addition, the commission that the law create to design and implement anti-trafficking policies is a key actor to translate the letter of the law in real remedies for victims. Our recommendation is to entrust that duty to the already existing National Human rights Commission instead of creating a new commission that would require more human and material resources. In addition to encouraging proactive investigations, monitoring of prosecutions and providing protection to victims, the commission should conduct public awareness campaigns on human trafficking and strengthen links with neighboring countries in order to combat trafficking effectively.