##### **CHILDREN NOT TREATED AS CHILDREN DURING TRIAL**

Throughout December 2014 IBJ provided a significant amount of legal assistance to prisoners from Cibitoke. IBJ legal fellows handled a total of 33 cases, with assistance from a group of volunteer advocates who were motivated by a desire to protect the rights of the indigent accused to legal representation.

It appears that all except 2 cases were to be held in ordinary chambers, rather than criminal chambers, despite the fact that one of the cases concerned a child defendant, called Bigirimana Toto. None of the case files brought before the judges were marked out as different, and his case was treated alongside adult defendants’ cases.

While defending Toto, who claimed to be 17 years old, the advocate raised the issue of his client being a minor. He demonstrated that, under the new Code on Criminal Procedure, Toto’s case should be held in a special chamber for children. In fact, under the new Code the case should have been treated differently from the stage of arrest onwards, however the investigating police officer had not paid attention to the details of the case.

The court did not believe that the case of a child defendant would be treated alongside those of adult defendants, and the prosecutor therefore attempted to prove that the defendant was lying about his age. He demanded that Toto provide his birth certificate.

The child’s lawyer did not consider it necessary to demand that Toto provide his birth certificate, since he had stated the same age consistently from the police stage of his case onwards.

The prosecutor was, however, obliged to find out the true age of the defendant while he was instructed on the case. It therefore took a long time for the lawyer to convince the bench. The fact that the defendant could not provide supporting evidence for his age was creating doubt around his legal situation, and the only way to address this was to provide the birth certificate, which was not easy to find. The defendant was imprisoned in Bujumbura, whereas his family, absent on the day of the trial, were in Cibitoke Province.

Finding the certificate could take a long time, and the child would have to spend further time in detention without a trial. The lawyer therefore took advantage of the doubt surrounding the child’s age, asserting the legal principle of *in dubio pro reo* to argue that the court should give Toto the benefit of the doubt, assume that he was a child, and treat him accordingly.

Fortunately, the court accepted this argument, and decided to hold Toto’s case *in camera.*

This changed everything. Toto was accused of robbery, and pleaded guilty. The prosecutor had initially called for a sentence of 5 years’ imprisonment, however after conceding that Toto was a child, he called for a sentence of only 2 years.

His lawyer has explained that, in the light of his guilty plea and his age, Toto is likely to be given a light penalty of no more than 6 months’ imprisonment. Hopefully he will be tried as a child, and will benefit from the clement measures for children in the new Code on Criminal Procedure.